

How to scrub personal-injury fraud clean

Both plaintiff and defense bars will have to end this blight

We've all heard put-downs about our profession, such as lawyers are "those who lie, conceal and distort everything and slander everybody," by Jean Giraudoux. What is concerning is when these observations are proven true.

I have been practicing law for 17 years with a focus on retail and hospitality litigation, and in those years, I've seen my share of fraudulent injury claims.

I've seen plaintiffs view a fall as a winning lottery ticket, intentionally trip themselves and pretend to be injured.

Other plaintiffs lie about their medical history or their pre-existing symptoms. In my opinion, these are all fraudulent claims because the plaintiffs are trying to squeeze money from the defendant for an alleged injury.

Joking about the antics of certain plaintiffs may be fun at parties, but to our profession, the prevalence of these claims is an embarrassment.

For the defense, it is embarrassing when we cannot stop these claims because we lack sufficient procedures in court or because it is cheaper for our clients to settle than fight the claim.

For plaintiff attorneys, it is embarrassing because they failed to properly investigate the claim to ensure it was legitimate and were manipulated by a client. For the profession as a whole, it fosters the negative stereotype of lawyers.

The first step in the prevention of fraudulent injury claims falls on the plaintiff bar.

Plaintiff attorneys must be more vigilant when meeting a new client. Look at the client's litigation and claim history. It is hard to find a valid reason for anyone to have filed 10 prior personal-injury lawsuits.

If there is surveillance footage, watch it. Take the blinders off and be sure the claim is genuine.

Once a fraudulent injury claim becomes a lawsuit, we need better procedural tools to help the defense prevent these claims.

In state court, where the vast majority of these cases are filed, there are only two procedural tools that are currently used: Illinois Supreme Court Rules 137 and 219.

The purpose of Rule 137 is to prevent the filing of false and frivolous lawsuits. *Sanchez v. City of Chicago*, 352 Ill.App.3d 1015, 1020 (1st Dist. 2004).

On its face, this rule seems perfect to confront the fraudulent injury



Closing Argument

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claim problem, but in practice, it is far from it.

With a Rule 137 motion, the court is forced to make a factual finding that the plaintiff intentionally faked an incident. Obviously, that is not the type of ruling a judge wants to make.

As an added complication, many plaintiffs have a real injury; the lawsuit is filed so someone else pays the medical bills.

A motion in limine based on Rule 137 gets around the evidence issue but creates other problems.

The trial judge has the benefit of seeing all the evidence, but in practice, this option does not stop plaintiffs from filing frivolous injury claims. These motions are rarely granted, and when granted, a court is not likely to order the plaintiff to pay for all defense costs.

The second option is a Rule 219 motion, but it is intended to address a party's failure to comply with discovery rules and orders.

If a plaintiff lies about her prior medical care or pre-existing symptoms, a Rule 219(c) sanction motion may be warranted.

However, based on my experience, these are also difficult motions to win because the judge can rule the plaintiff's improper or incomplete answers merely go to weight and credibility.

To truly combat the problem of fraudulent injury claims, there must be tougher procedures in place that penalize a plaintiff where it is found that his or her claim is fraudulent.

On several occasions where I have had overwhelming evidence and expert opinions supporting fraudulent misrepresentation, I have requested leave of court to file a counter claim against the plaintiff. Whether the motion has been granted depends on the judge.

From my perspective, if the plaintiff can file suit against my client for being injured, my client should be able to counter sue if he, she or it truly believes it can be proven that the claim is fraudulent.

Such a counter claim levels the playing field. It also takes the decision out of the judge's hands and gives it to the jury. If the plaintiff is found to have a fraudulent claim, he or she is forced to reimburse the defendant for all litigation expenses. This practice would no doubt help prevent fraudulent injury claims.

Whether you represent plaintiffs or defendants, it is time to take this problem seriously.

In the long run, allowing fraudulent injury claims to be successful does not help anyone. ■

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