



## Uncivil civil suits allow auto insurers to take down organized fraud rings

*Civil actions give insurers a legal tool to counter the spread of complex rings*

By Frank Goldstein, Esq.

**C**ountering automobile-insurance fraud has become especially troublesome with the continued spread of organized crime rings in varied states. This was evidenced when law enforcement recently cracked a suspected major staged-crash operation in Florida.<sup>1,2</sup>

In that case, investigators reaffirmed how well-orchestrated many rings have become in recent years. In fact, several automobile-fraud rings create files that both identify insurers they perceive as soft touches willing to pay claims and avoid prolonged anti-fraud efforts, and which carriers are more likely to fight back.

I believe the rise of organized insurance-fraud rings can be linked in no small measure to many insurance carriers looking the other way and paying suspicious claims just to stop the bleeding. The thinking is, let's cut our losses and not get mired in a protracted legal fight that could cost more than the initial fraud. That position only emboldens aggressive fraud rings.

This seeming money-saving decision likely has cost some insurers much more over the long term because perpetrators keep returning to the same well for relatively easy pickings. Large-scale scammers



**Abstract:** Automobile insurers increasingly are turning to civil suits to help counter the growth of complex, organized fraud rings. Civil actions can be expensive and require a full commitment to seeing the action through. Insurers often barely break even after large legal expenses. Yet the suits signal to the criminal underworld that defrauding particular insurers is a no-win proposition. They also allow insurers leeway to take action instead of waiting for criminal charges to be handed down. Auto insurers increasingly are filing state and federal RICO actions. RICO allows insurers to present evidence of the defendant's entire criminal operation. This gives insurers a powerful legal tool to take down the complete enterprise.

who have succeeded in one state often migrate to other states they believe lack the infrastructure to successfully combat their operations. Different locales, but the same insurers are hit up for fraudulent payments.

This rise of organized auto-fraud rings comes with a price tag. Average automobile premiums must be raised to cover fraud losses; just how much depends upon the state in which an insured lives. In New York, for example, auto-insurance fraud costs residents \$1 billion every year, state officials estimate.<sup>3</sup>

### **“This rise of organized auto-fraud rings comes with a price tag.”**

No-fault schemes also add nearly \$100 in extra premiums for the average family with two drivers in Florida, the Insurance Information Institute estimated at the height of a successful 2012 drive to reform that state’s no-fault fraud laws.<sup>4</sup>

### **Suits make statements**

A number of auto insurers, however, have actively begun using civil suits to counter organized auto-fraud rings. These carriers are willing to absorb usually significant court costs without assurances of full restitution. They want to send a statement to the public and criminal underground that targeting them exacts a large and untenable price.

Insurers also can act decisively on their own rather than wait for the criminal system to accept and prosecute cases. The burden of proof is lower in civil cases than criminal actions as well, and can earn potentially large court awards that offer opportunities to bankrupt the ringleaders. All told, civil suits can be an imposing weapon.

Overall, some insurers appear to be filing more civil actions to take a public stand against insurance fraud. The aim is to stop the crime on a global front. Otherwise the concern is that fraud rings will simply continue reinventing themselves and their scams, thus eroding insurer profits and raising customers’ auto premiums.<sup>5</sup>

Led by several major insurers, numerous fraud cases have been litigated in recent years. Civil suits

typically seek millions of dollars in restitution from fraud rings.

❖ In a case settled out of court days before trial, State Farm Insurance may have recovered as much as \$20 million from the Palm Beach Lakes (Fla.) Surgery Center for wrongfully driving up medical costs by colluding with attorneys and medical device manufacturers in a 2013 no-fault fraud case.<sup>6</sup>

❖ In New York, Allstate filed a \$30-million lawsuit against numerous doctors, attorneys and clinics involving a more than \$400-million “massive and sophisticated” no-fault scam involving 22 healthcare firms, 10 licensed medical professionals and three attorneys in a case the FBI labeled at the time as the largest single no-fault auto insurance fraud ever charged.<sup>7</sup> Several defendants have pled guilty, with millions of dollars recovered to date.

❖ In August 2014, Allstate and the State of California won a judgment of more than \$1.4 million against a Sonoma County business that billed for fraudulent auto-glass and windshield replacements.<sup>8</sup>

### **Insurers may face reprisals**

So why don’t all insurers litigate civil cases, and more often? Even though I litigate insurance fraud, I am not always convinced that filing a suit is the optimal course of action.

There is much to consider. Filing a successful civil action typically requires significant substantiation to prove fraudulent activity. An insurer must be prepared to fight ... long and hard.<sup>9</sup> A lawsuit usually is time-consuming and expensive. And insurers often are fortunate to break even because court-ordered restitution may have been laundered or spent.

Beyond that lies the possibility of reprisal. Many defendants file a counter-suit almost immediately after an insurer files its action. Bad faith is one common allegation. Insurers must be certain of their facts.

Although insurers lodge most civil suits in state courts, a growing number of actions are playing out in federal venues.

Farmers Insurance, for example, sought nearly \$2 million in a federal lawsuit filed in Minnesota against 46 chiropractors and an MRI firm it alleged was ordering unnecessary scans for auto-accident victims.<sup>9</sup>

State Farm filed a federal suit alleging a “massive fraud scheme” against the 1-800-ASK GARY accident-referral service in Florida. The insurer alleges the large firm illegally referred crash victims only to medical providers controlled by owner Gary Komptheclas in Florida, Minnesota and Kentucky.<sup>10</sup>

The defendants allegedly “promoted their fraudulent enterprises by providing money to anyone who referred accident victims to the clinics, offering cash directly to patients who agreed to accept unnecessary chiropractic treatment, and dispensing treatment in a manner designed to maximize profits, rather than heal patients.”

### **RICO takes down rings**

Geico filed suit against a Florida chiropractic center and its recruiters in July 2012. The insurer was going after a suspected staged-crash ring that allegedly stole more than \$2.3 million in bogus claims.<sup>11</sup>

The insurer alleged civil conspiracy, common-law fraud, tortious interference with contractual relationships, tortious interference with advantageous business relationships and unjust enrichment, plus violations of federal RICO

(Racketeering Influenced and Corrupt Organization Act) and the Florida Deceptive and Unfair Trade Practices.

The suit illustrates that insurers may combine RICO with a wide range of other state and federal charges to cast a large legal net that increases the likelihood of a favorable verdict.

Whether a state or federal action, RICO suits enable insurers far more freedom to present to the court a total picture of a complex fraudulent enterprise. Insurers can go beyond presenting evidence solely for a single false claim. RICO allows insurers the legal infrastructure to identify and take down the entire operation in civil court.

A number of prosecutors and insurance companies are successfully using RICO charges. The federal law allows crime-syndicate leaders to be prosecuted for crimes they ordered or assisted in – even if they did not directly participate in the criminal action.

RICO has proved so effective on the federal level that 33 states have adopted RICO laws to enable suits against criminal enterprises at the state levels.<sup>12</sup>

Suing to recover more than \$185 million in fraud-related damages since 2003,<sup>13</sup> Allstate uses

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RICO lawsuits to go directly after the leaders of organized fraud rings, beyond solely the lieutenants and foot soldiers. The tactic has worked, as evidenced by the company's \$7-million judgment in its first Nevada medical-fraud case.<sup>14</sup>

Filed in 2010, the suit challenged several medical professionals and personal-injury attorneys, and sought to recover funds from 78 auto-accident claim settlements. Allstate alleged that each defendant violated Nevada and federal law based on a pattern of deceitful behavior.

**“Carriers using civil suits, along with support legislation and landmark court cases, believe they must make a stand or automobile-fraud will continue escalating.”**

As Allstate puts it: “exaggerating treatment reports, providing unnecessary chiropractic services, preparing fraudulent bills and making unnecessary referrals to healthcare providers for their own financial gain.”

RICO suits also can stretch expensively for years. Allstate's federal lawsuit, for example, alleged deception and coercion against accident victims by medical clinics in Alabama, Indiana, Ohio and Texas. The case also involved a Louisiana telemarketing firm and 66 defendants in a complex multi-layer prosecution.<sup>15</sup>

Allstate alleged the organization solicited persons involved in automobile accidents, ran them through unnecessary treatment, and referred them to allied personal-injury law offices to make false claims.

This lawsuit was filed in March 2008,<sup>16</sup> and went to trial in February 2013. A verdict eventually was handed down that April.<sup>17</sup> The verdict was appealed, and an appeals court finally approved the \$6-million award in April 2014.<sup>18</sup>

Building complex and far-ranging RICO cases such as this also requires meticulous preparation to prove such expansive allegations. The insurer also could face actions alleging bad faith, defamation, abuse of process and other charges. Many insurance companies may not have the resources or will for

such a protracted legal battle, and thus let other insurers fight the fight.

### Insurers taking longer view

Carriers using civil suits, along with support legislation and landmark court cases, believe they must make a stand or automobile-fraud will continue escalating. While cost-benefit analyses and the time commitment remain important considerations when deciding whether to file civil cases, insurers are moving forward for other reasons.

Many are taking a closer look at their exposure, searching for patterns and trends, and then filing suits — even with no immediate return on the investment. I believe this is leading many carriers to



take the longer view — that fighting today will help minimize future exposures.

The insurance industry may have won several recent key battles and is increasingly deploying anti-fraud tools that have helped put a dent in fraud. While we all realize we will not eliminate fraud. It is too profitable, and in some cases, just too easy. The question becomes: How do we attack it?

By taking more aggressive action against the rings and their leadership, insurers can strip away much of the profit and make it more-difficult for organized rings to succeed. More important, that creates major victories for their customers, who are the ones who must pay the price for fraud.



**About the author:** Frank S. Goldstein is the founder and managing partner of Goldstein Law Group, a premier AV-rated law firm concentrating on the investigation, detection and litigation of fraudulent insurance claims. The firm's practice areas include auto, property and healthcare insurance fraud. Goldstein concentrates on civil prosecution of insurance fraud claims and defense of insurance matters, including personal injury protection, bodily injury and uninsured/underinsured motorist claims. Goldstein was recognized as Insurance Attorney of the Year at the annual Florida Insurance Fraud Education Committee conference in 2013.

## endNOTES

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<sup>3</sup> Allstate Alleges \$30 Million Insurance Fraud, Demands NY Reform, Law360.com, May 11, 2012.

<sup>4</sup> No-Fault Auto Insurance in Florida, white paper, Insurance Information Institute, 2011.

<sup>5</sup> Conversation with insurance company SIU representative, August 18, 2014.

<sup>6</sup> Source: Insurer settles lawsuit against West Palm Beach surgery center, maker over spinal device for as much as \$20 million, Palm Beach Post, February 23, 2013.

<sup>7</sup> Two Clinic Owners Plead Guilty for Their Roles in Massive No-Fault Insurance Fraud Scheme, fbi.gov/newyork, February 13, 2013.

<sup>8</sup> Sonoma County windshield repair business ordered to pay \$1.4 million in fraud case, Press Democrat, August 7, 2014.

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<sup>11</sup> Chiropractors in \$2.3 Million PIP Insurance Fraud Scheme Will Face RICO Charges, FLPIPGuide.com, April 15, 2014.

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