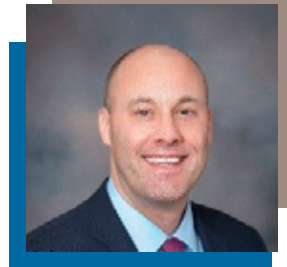


By Eric Moch

“I’ve Fallen, and I Can’t Get Up (Just As We Planned!)”

Federal Indictment of Slip-and-Fall Conspiracy Provides Window
into the Planning and Execution of Organized Insurance Fraud



BACKGROUND

Of all the injury claims that trigger suspicions in SIU investigators and defense counsel, slip-and-falls at businesses may be in a class by themselves. The facts vary from claim to claim but the dubious patterns are well established: unwitnessed falls on almost non-existent imperfections in flooring, patrons who trip over seemingly nothing and simply drop to the ground and sprawl before calling out for help, and alleged victims who despite their supposed injuries seem far more eager to lead staff to the precise condition on which they slipped and fell. Sometimes closed-circuit video proves beyond doubt that the claim is a set-up. Other times, dogged claim investigations including witness interviews and consultations with experts reveal the fiction. When we know the patterns of suspicious premises claims before they even land on our desk, we are already well along the path to a successful investigation.

A recent federal indictment in New York provides an intriguing case study of just how dedicated and regimented fraud rings can be in perpetrating commercial slip-and-fall claims at scale. The case peels the lid off a scheme that has all the hallmarks of modern conspiracies to commit injury claim fraud: mass recruitment of specifically targeted injury claimants, personal injury attorneys who direct medical care, participating physicians who go so far as to perform unnecessary surgeries in furtherance of the scheme, or even an appearance by a litigation funding business. Probably no large city is immune from elaborate insurance fraud conspiracies, so this case has much to teach us.

U.S.A. V. GEORGE CONSTANTINE, MARC ELEFANT, ANDREW DOWD, SADY RIBEIRO AND ADRIAN ALEXANDER (21 CRIM 530 U.S. DIST. CT. SOUTHERN DIST. N.Y.)

On October 20, 2021, the United States Attorney for the Southern District of New York announced an indictment charging Adrian Alexander with conspiracy to commit mail and wire fraud, mail fraud, and wire fraud in connection

with a scheme to obtain insurance settlements and other compensation for fraudulent trip-and-fall injury claims. A prior indictment in the case charged New York lawyers George Constantine and Marc Elefant and New York doctors Sady Ribeiro and Andrew Dowd for their participation in the fraud scheme. Constantine and Elefant are New York personal injury attorneys. Dowd and Ribeiro are New York doctors. Alexander is New York litigation financier who funded the fraud scheme. He also owns an MRI facility.

OVERVIEW OF THE FRAUD SCHEME

Between 2013 and 2018, the defendants allegedly recruited over 400 financially destitute and even homeless New Yorkers to stage trip-and-falls in area businesses. Claimants would either lie and say they suffered unwitnessed falls at establishments or actually go through the motions of intentionally falling to the ground in the presence of others for dramatic effect. Doing so would create witnesses, and ensure that ambulances would transport the claimants to local emergency rooms, leading to the preparation of medical records that would provide the slip and fall injury claims more credibility. The scheme prioritized claims of serious injuries to knees, shoulders and backs, as the charges for treatment and rehabilitation of these body parts can become exorbitant in New York. The same is generally true in just about every major metropolitan area. In Chicagoland, for example, there are over forty Level I and II trauma hospitals. A patient who receives medical attention at one of these facilities for any sort of trauma will soon have sizeable medical bills even if she sees no other physicians after discharge.

The claimants, through attorneys Constantine and Elefant, presented injury claims to businesses and insurers, and filed lawsuits. At the core of their injury claims was fraudulent billing by Dr. Dowd, an orthopedic surgeon, and Dr. Ribeiro, a pain management specialist, for medical treatment including surgeries

that either never occurred, or did occur, but were not medically necessary. Constantine and Elefant filed hundreds of these personal injury lawsuits between 2013 and 2018. The Government alleges that the defendants attempted to defraud their victims of more than \$31 million.

THE TARGET INJURY CLAIMANTS WERE FINANCIALLY DISADVANTAGED

The scheme organizers recruited prospective injury claimants they knew to be extremely poor, thus making their participation likely. Many of the claimants asked for meals when they met with the lawyers for intake meetings. Others asked for shoes and warm clothing during the winter. Others were drug addicts and residents of homeless shelters. The organizers recruited the financially destitute with little bargaining power to serve as injury claimants because doing so enabled them to pay the claimants very little from eventual settlements. Probably none of these individuals had any sense of the significant settlement values their claims eventually might attain. They just wanted food, clothing and a few bucks.

MEDICALLY UNNECESSARY ARTHROSCOPIES AND SPINAL FUSIONS

The injury claimants frequently underwent unnecessary MRIs at an MRI facility Adrian Alexander owned. Treatment regimens included lengthy courses of unnecessary chiropractic care and physical therapy. Dr. Dowd and Dr. Ribeiro frequently recommended that the claimants undergo surgeries ranging from epidural steroid injections and arthroscopic knee and shoulder repairs to spinal fusions. As financial incentive, scheme organizers offered the claimants \$1,000 - \$2,000 loans in exchange for each surgery, and at least two surgeries became the preferred treatment protocol. The indictment alleges that one injury claimant nearly died during one of the procedures. The purpose of all of this treatment, including the surgeries, was not the repair of actual injuries but the generation of considerable medical bills to support settlement demands. Dr. Dowd and Dr. Ribeiro even engaged in email exchanges with scheme participants in which they acknowledged that their treatment recommendations were not medically necessary.

LITIGATION FUNDING WITH PREDATORY LOANS

The defendants, and especially Alexander, did not allow the claimants' lack of personal vehicles or money to be barriers to executing the scheme. Organizers frequently drove carloads of claimants to medical clinics for their unnecessary appointments. Alexander paid for many of the surgeries, as well as the costs of the lawsuits, with a litigation funding company he owned. He did so even when claimants had

healthcare coverage through private insurance or government programs. His litigation funding company loaned money to claimants for their medical bills at interest rates as high as 100%, a predatory rate that ensured the claimants would receive almost no money from eventual settlements. Alexander's litigation funding business thrived; he boasted to investors of annual returns in excess of 30%.

CONCLUSION

It is unclear just how the United States obtained the evidence to support the indictments, but the government definitely owes gratitude to Dr. Dowd and Dr. Ribeiro, who were each brash enough to send emails making clear that they were engaged in the conspiracy. Each defendant faces charges of federal conspiracy to commit mail and wire fraud, as well as mail fraud and wire fraud. The charges carry potential sentences of 20 years, as well as orders of financial restitution. It is also plausible that the attorneys and doctors will lose their professional licenses. As of this writing, there have been no plea agreements and the case does not have a trial date.

This case warrants monitoring through the eventual plea agreements. It is likely that additional indictments against other members of the conspiracy will be forthcoming. In the meantime, SIU professionals and defense counsel should view this case as a stark reminder of just how brazen and well-funded organized medical fraud rings can be. Inoculation against these conspiracies, as always, comes from constant training. The training should call upon both internal claims department resources as well as the wisdom of experienced defense counsel who are well-versed in current litigation trends surrounding these schemes. Federal prosecutions are always nice to see, but the claims industry will continue to shoulder most of the burden in this fight.

Eric W. Moch, a partner in the Chicago office of HeplerBroom, LLC, focuses his practice on organized medical fraud and insurance fraud, including organized activity and staged losses, as well as first- and third-party coverage and bad faith defense. Mr. Moch counsels and represents national insurers, businesses, not-for-profit organizations and individuals in a variety of matters and litigated disputes. His insurance fraud practice entails the defense of insurers and their insureds against fraudulent claims at trial and the pursuit of civil recoveries for insurance carriers resulting in recoveries against medical fraud perpetrators. He has extensive civil litigation experience in Illinois state and federal courts, including more than fifty jury verdicts, victorious oral arguments before the Illinois Supreme Court and Seventh Circuit U.S. Court of Appeals and several published appeals. He is a former national board member of the National Society of Professional Insurance Investigators and is the former President of the Illinois chapter. Mr. Moch has also held several positions in the insurance industry, including as a founding member of a Special Investigations Unit for an international insurer, a role in which he investigated alleged fraudulent claims across a wide range of insurance lines. Mr. Moch can be reached at (312) 205-7712 and at eric.moch@heplerbroom.com.