

"I've Fallen, and I Can't Get Up (Just as We Planned)!"

Federal Prosecutors Score Guilty Pleas and Criminal Convictions in Staged Slip-and-Fall Conspiracy Case Pursuit of Insurance Proceeds



BACKGROUND

In the Winter 2021 Law Update column, I covered the federal indictment of New York area personal injury attorneys, physicians, and the owner of a litigation funding company in connection with a \$31 million staged slip-and-fall ring in the New York metropolitan area. I concluded that column with the promise to update readers with significant developments in that case.

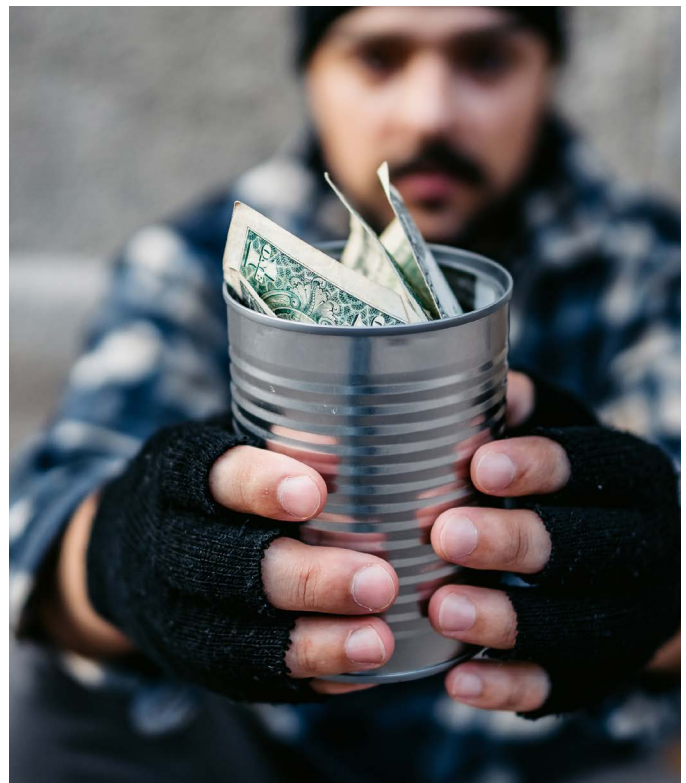
As promised, I am back with some very welcome news. In the summer and fall of 2022, Federal prosecutors secured guilty pleas against a few of the key defendants, and on December 16, 2022, a federal jury convicted the two remaining defendants of multiple counts of mail and wire fraud in connection with the scheme. The guilty pleas and jury verdicts represent a significant victory against perpetrators of one of the most lucrative organized fraud schemes in recent memory.

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 the 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 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. 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.

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. One injury claimant nearly died during one of the procedures. The purpose of these treatments, 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 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. 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%.



UPDATE - DOMINOES START TO FALL: FEDERAL PROSECUTORS SECURE GUILTY PLEAS

In August, 2022, Alexander changed his original not guilty plea and pleaded guilty to one count of conspiracy to commit wire fraud. As part of his plea agreement, Alexander agreed to forfeit \$659,001 to the United States and to make restitution in the amount of \$3,928,133.

In September, 2022, Ribeiro followed suit and pleaded guilty to one count of conspiracy to commit wire fraud as well. As part of his plea agreement, he agreed to forfeit \$513,005 to the United States and to make restitution in the amount of \$3,928,133.

On October 24, 2022, personal injury attorney Marc Elefant pleaded guilty to one count of conspiracy to commit wire fraud. In an e-mail to local media, Elefant's criminal defense attorney stated: "Today, Mr. Elefant expressed his deep remorse for settling several accident cases he came to later realize involved unnecessary medical procedures. He is looking forward to this matter being fully resolved." As part of his plea deal, he agreed to forfeit \$955,281 to the United States and to make restitution in the amount of \$1,486,000.

UPDATE – FEDERAL JURY CONVICTS CONSTANTINE AND DOWD

On December 16, 2022, Damien Williams, the U.S. Attorney for the Southern District of New York, announced the unanimous guilty verdicts against attorney George Constantine and Dr. Andrew Dowd. The jury trial lasted three weeks. One juror who spoke following the trial stated that prosecutors proved their case with "dominoes of evidence."

Sentencing is set for March 31, 2023. Each count of conspiracy to commit mail and wire fraud carries a maximum term of 20 years in prison, not to mention forfeiture of assets and restitution.

It seems likely that federal prosecutors conditioned the plea agreements with Alexander, Ribeiro, and Elefant upon their agreement to testify against Constantine and Dowd at trial. If this indeed was the case, it is stunning to think Constantine and Dowd thought they stood a chance of acquittal at trial. It would be hard to imagine that a criminal conspiracy defendant could encounter more devastating evidence than the testimony of several former co-conspirators who flipped and cooperated with the government. While every criminal defendant is presumed innocent until convicted by a jury of his peers, the federal government certainly has ways of increasing the likelihood of securing those convictions, and federal prosecutors did a masterful job in this case.

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 in excess of 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

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