NYSSIU Legal Update

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CASE DECISIONS:

GENERAL LIABILITY – APPLICATION MISREPRESENTATION – PRIOR INDICTIMENT – In Accelerant Specialty Insurance Company v. Big Apple Designers, Inc. (EDNY decided 08/05/2025), Big Apple applied for commercial insurance in June 2022, answering "no" to whether it had been indicted for fraud. In fact, Big Apple had been indicted earlier that year for payroll-related insurance fraud. Accelerant issued liability and excess policies, later disclaiming coverage when Big Apple was impleaded in construction injury suits. Accelerant moved for judgment on the pleadings, dismissing the action.

Motion GRANTED. Although insurance application questions are ordinarily construed against the insurer if ambiguous, the clause "in connection with this or any other property" could reasonably apply to all listed crimes (including fraud). "Property" is broad enough to include money, so the fraud indictment might still fall within the scope. Ambiguity required further factual inquiry.

GENERAL LIABILITY – STAGED ACCIDENT DEFENSE – PLEADING SPECIFICITY – In Peralta v. Matz (EDNY decided 08/04/2025), after removing this personal injury action to federal court, defendants moved to amend their answer and to assert a counterclaim based on staged collision/attempted insurance fraud. Plaintiffs cross-moved to consolidate this action with another state court action stemming from the same motor vehicle incident and remand the case back to state court, arguing lack of federal diversity jurisdiction.

Motion GRANTED and cross-motion DENIED. Despite plaintiffs' objections, removal was proper and subject matter jurisdiction remained. On amendment, defendants cured earlier defects by filing a detailed proposed amended answer with counterclaim, supported by deposition testimony and investigative findings, including dash cam footage, indicative of a "swoop and squat" staged collision. Plaintiffs' arguments against amendment (inconsistencies in testimony, alleged unrelated claims) went to weight and credibility, not the sufficiency of pleadings.

NO-FAULT – CIVIL RICO – RIPENESS– POLICY EXHAUSTION – In GEICO v. Akiva (EDNY decided 07/30/2025), GEICO filed a RICO recovery action against the defendants based on an alleged fraudulent insurance scheme. The scheme allegedly involved staged automobile accidents and the submission of false or inflated insurance claims for medical services and property damage. In moving to dismiss this action, defendants argued, in part, that plaintiffs' success in this case would recover fraudulent payments made to defendants on the exhausted policy, thereby reviving the policy by reducing the total disbursements paid on the policy below the previously exceeded coverage limit. Plaintiffs would then have to pay other providers' claims on the revived policy until its coverage limit is reached again. Effectively, defendants argued that "[t]he alleged fraud did not add to [Plaintiffs'] economic loss, and it has suffered no RICO injury."

Motion DENIED. In compliance with the specificity of pleading requirements for fraud of FRCP Rule 9(b) GEICO's complaint detailed the alleged scheme with specifics: names, dates, accident reports, billing records, and the defendants' connections. This level of detail was held sufficient to withstand dismissal. The court also determined that plaintiffs' RICO claims—seeking damages for fraudulent claims for no-fault benefits already paid to defendants—were ripe.

NO-FAULT – FRAUDULENT MEDICAL BILLING – RULE 9(b) PLEADING STANDARD – In GEICO v. Onyema (EDNY decided 07/09/2025), GEICO brought this breach of contract against the defendant healthcare provider, his professional corporation, and medical group, alleging that they failed to make installment payments pursuant to a $325,000 settlement agreement that resolved a prior federal RICO action for insurance fraud. The defendants defaulted in pleaded and GEICO moved for a default judgment.

Motion GRANTED. (1) The district court had subject matter jurisdiction over action and personal jurisdiction over defendants, as prerequisite to entry of default judgment; (2) venue for claim for breach of settlement

agreement was proper in Eastern District of New York; (3) insurers satisfied procedural requirements of pre-amended local rules in effect at time of suit and Servicemembers Civil Relief Act (SCRA), as prerequisites to motion for default judgment; (4) New York law governed insurers' action for breach of settlement agreement; (5) insurers established defendants' liability under New York law for breach of settlement agreement; (6) insurers met burden of proving, with reasonable certainty, $456,666.65 in damages from breach; (7) insurers were entitled to recover statutory pre-judgment interest at statutory rate of nine percent per annum, or $112.60 per day, under New York law, from day after ten-day notice of default and opportunity to cure expired to date of entry of final judgment; (8) insurers were entitled to award of post-judgment interest; and (9) defendants were jointly and severally liable for breach.

UM/SUM – STAY OF ARBITRATION – PROOF NECESSARY – FRAMED-ISSUE HEARING – In Liberty Mutual Fire Ins. Co. v. Wilson (Sup. Ct., King Co., decided 07/06/2025), Liberty Mutual commenced this special proceeding to permanently stay the UM/SUM arbitration of the respondent on the ground that the underlying crash was a staged/intentional event (thus not a covered "accident"), that respondent was collaterally estopped by an adverse AAA arbitration award from relitigating that issues, and/or that the respondent violated the policy's fraud provision. In the alternative, Liberty Mutual sought a framed-issue hearing on coverage/fraud.

In support of its petition, Liberty Mutual submitted: EUO transcripts, an affidavit of its SIU investigator describing the hallmarks of staged Uber collisions (newly created accounts, gift-card rides, fleeing "mystery minivan," etc.), and dash-cam video. Respondent opposed the permanent stay arguing that the investigator's assertions were speculative and the dashcam was unauthenticated.

Petition DENIED. The petitioner bears a prima facie burden to show "evidentiary facts" justifying a stay; otherwise arbitration proceeds. Authentication rules govern video submissions (e.g., a witness to events attesting the video accurately depicts them). Unauthenticated video is inadmissible. "There is no necessity for a framed-issue hearing where the petitioner has failed to make out a prima facie case in support of its claims. Here, Petitioner Liberty Mutual did not make out a prima facie case that the subject collision was fraudulent. Therefore, a framed-issue hearing is not warranted." Temporary stay to allow Liberty Mutual to conduct an IME of the respondent, however was GRANTED.

WORKERS COMPENSATION – CIVIL RICO – COMMON LAW FRAUD – STAGED CONSTRUCTION ACCIDENTS – In Roosevelt Road Re, Ltd. v. Subin, et al., Case No. 1:24-cv-05033 (EDNY decided 06/19/2025) (aka the "Tradesman Program Managers" or "Tradesman" action) plaintiffs Roosevelt Road Re, Ltd., a reinsurance company) and Tradesman Program Managers, LLC, a managing general agent and claims administrator, alleged that defendants engaged in a scheme by which they used a law firm to direct construction workers to stage worksite injuries, inflated the value of these claimants' cases by referring them for unnecessary medical procedures, and obtained money through fraudulent judgments, settlements, and workers' compensation payments. That scheme allegedly injured plaintiffs because Roosevelt, a reinsurer, needed to pay out on bogus claims covered by primary insurers, and Tradesman, a claim administrator, managed payments for these claims and was required to perform investigative and support work to process them.

The plaintiffs' amended complaint described a multi-component enterprise ("Fraud Scheme Enterprise") that operates roughly as follows:

1. Recruitment of Claimants (Runners)
    - Defendants Lupi, Hurtado, and others recruit construction workers (sometimes for staged accidents, or exaggerate minor injuries)
    - Transport them and arrange medical care
2. Inflation of Claims & Medical Treatment
    - Defendants refer these Claimants to medical providers who provide unnecessary, "wholly unrelated," or excessive medical services (radiology, physical therapy, surgery, pain management, etc.)
    - Medical documentation is falsified or inflated to support exaggerated injuries

3. Attorney Involvement & Litigation
    - Subin Firm and its attorneys file personal injury lawsuits (general liability) and workers' compensation claims in parallel for many claimants, to maximize settlement value
    - Using advance funding / litigation financing ("Best Case," etc.), cash advances to claimants, "broker fees," kickbacks, etc.
4. Use of Hidden or Shell Entities, Misrepresentations
    - Use of medical provider companies and entities under nominal ownership to conceal true control
    - Misuse of referral fees, guarantees of payment, use of non-attorney runners and agents, etc.
    - Instances where imposters attend treatment under another's name; paperwork in English for non-English speakers, etc.
5. Financing & Money-Flow
    - Litigation funders advance payments (with interest etc.), broker fees for originations
    - Use of checks, e-checks, wire/mailer communication across state lines, using corporate alter egos to funnel profits

On June 19, 2025 the district court GRANTED defendants' motion to dismiss the amended complaint, holding that plaintiffs' RICO claims failed because they failed to adequately plead cognizable, direct injuries from the defendants' alleged RICO violations. The financial losses alleged—administrative costs, reinsurance payouts, or expense burdens—were too attenuated (i.e. remote, derivative) to satisfy the RICO injury requirement.

On July 20, 2025 the plaintiffs filed a second amended complaint (SAC), attempting to address and correct earlier deficiencies by: identifying more specific claimants and concrete examples of fraud, misrepresentation, and imposters; and alleging direct costs borne by plaintiffs (administrative, defense, etc.) rather than remote or derivative losses; documenting communications, referrals, advances, etc., to show coordination among defendants.

Another round of MTDs is expected.

NO-FAULT – CIVIL RICO ACTIONS – INJUNCTIVE RELIEF – In State Farm Mutual Automobile Ins. Co. v. Tri-Borough NY Medical Practice P.C., 120 F.4th 59 (2nd Cir. decided 10/24/2024), State Farm commenced a RICO recovery action against multiple no-fault providers and moved for a preliminary injunction enjoining defendants from proceeding with any existing AAA arbitrations or state-court collection actions (over 2,400 arbitrations and about 480 court cases). The EDNY court granted the motion for a preliminary injunction in part by enjoining defendants from proceeding with the pending arbitrations and from initiating *new* arbitrations and state-court proceedings but denied an injunction of the *pending* state-court proceedings. State Farm appealed.

In MODIFYING the order appealed from, the Second Circuit ruled that the lower court had the power to halt the arbitrations, even though the insurance policies normally require arbitration. The judges said this was an exceptional situation: the flood of arbitrations themselves was being used to advance and conceal the alleged fraud, making it impossible for State Farm to pursue its federal racketeering claims effectively. The court also found that federal law allows stopping the pending state-court suits. Although federal courts are normally barred from interfering with state cases, there is an exception when state proceedings are themselves part of a scheme violating a federal statute like RICO.

In short, the Second Circuit expanded the injunction. It ordered that both the arbitrations and the already-filed state-court suits must be put on hold while the federal RICO case goes forward. The decision underscores that, in rare situations where numerous small lawsuits and arbitrations are used to hide or fund a large fraud, a federal court can step in early to freeze those proceedings so the alleged fraud can be addressed in one comprehensive case.

NO-FAULT– RICO – INJUNCTIVE RELIEF – In GEICO v. Akiva Imaging Inc. (EDNY decided 05/19/2025), GEICO alleged defendants' violation of civil RICO, common law fraud, unjust enrichment, and aiding and

abetting fraud. Additionally, GEICO sought a declaratory judgement that defendants may not recover on any of the outstanding bills submitted to GEICO. After commencing this action, GEICO moved for a preliminary injunction to (1) stay all of defendants' pending No-Fault insurance collection arbitration and state-court collection lawsuits against GEICO, pending disposition of GEICO's declaratory judgment and RICO claims, and (2) enjoin defendants from commencing new no-fault insurance collection arbitration or state-court collection lawsuits against GEICO, pending resolution of this action. Defendants cross-moved to stay this action "pending resolution of the arbitrable claims" or, alternatively, to dismiss it.

GEICO's motion for a preliminary injunction GRANTED: defendants' cross-motion DENIED. The court noted that insurers frequently face hundreds of piecemeal arbitrations while alleging a unified fraudulent scheme under RICO. Such fragmentation risks inconsistent results and undermines judicial efficiency. The Second Circuit's *State Farm v. Tri-Borough NY Medical Practice P.C.* (2024) decision directly controlled. *Tri-Borough* confirmed that district courts may:

- Enjoin ongoing arbitrations, and
- Enjoin pending state-court collection proceedings under the "expressly authorized" exception to the Anti-Injunction Act.

Applying *Tri-Borough*, the court found:

- Likelihood of success: GEICO plausibly alleged systemic fraud and fraudulent incorporation.
- Irreparable harm: Continuing arbitrations and lawsuits would force GEICO to defend duplicative proceedings and risk inconsistent outcomes.
- Balance of hardships: Defendants would only be delayed in pursuing claims; GEICO faced serious prejudice without an injunction.
- Public interest: Favored centralized resolution of fraud allegations.

Defendants' motion to stay or dismiss was rejected because the federal RICO and declaratory judgment claims went beyond the scope of arbitration.

See, also:

- GEICO v. Innovation Anesthesia & Pain Services, P.C., et al. (EDNY decided 03/25/2025) (involving both NY and NJ no-fault schemes; preliminary injunction GRANTED)

- State Farm Mutual Automobile Insurance Co. v. NYC Medical Treatments, P.C. (EDNY decided 08/02/2024) (preliminary injunction enjoining new arbitrations or suits and all pending AAA arbitrations GRANTED)

- GEICO v. Gerling (EDNY decided 02/26/2024) (motion for preliminary judgment GRANTED: refusal to stay arbitrations would irreparably harm insurer; insurer raised serious questions going to merits; balance of hardships tipped in favor of injunction; Court had authority to stay pending lawsuits and enjoin future lawsuits; and waiving security requirement was warranted)

- GEICO v. SMK Pharmacy Corp. (EDNY decided 02/23/2022) (injunctive relief GRANTED staying pending arbitrations and enjoining defendants from brining any new arbitrations or lawsuits)

But, see:

- American Transit Ins. Co. v. Pierre (EDNY decided 05/16/2024) ("The Court declines to preliminarily enjoin defendants from pursuing no-fault actions that are currently pending in state court because the Anti-Injunction Act precludes that relief.")

NO-FAULT – CIVIL RICO – UNJUST ENRICHMENT – INJUNCTIVE RELEF – In GEICO v. Strut (WDNY decided 11/26/2024), after commencing this action against Dr. Mikhail Strut (fka Mikhail Strutsovskiy) and his clinic for RICO violations, common-law fraud, and unjust enrichment, alleging that defendants submitted thousands of fraudulent no-fault insurance charges relating to medically unnecessary illusory, and otherwise nonreimbursable healthcare services, GEICO moved for a preliminary injunction, seeking to

enjoin no-fault insurance litigation and arbitration collections proceedings against it pending resolution of its claims in this action.

Motion DENIED. Citing the State Farm v. Tri-Borough decision, the WDNY magistrate judge reminded that "[t]o obtain a preliminary injunction, a party must show (1) irreparable harm; (2) either a likelihood of success on the merits or both serious questions on the merits and a balance of hardships decidedly favoring the moving party; and (3) that a preliminary injunction is in the public interest." The court concluded that "[g]iven GEICO's [three-year] unexplained delay in commencing this action, and its further unexplained [four-month] delay in moving for preliminary relief, I conclude that it has failed to make a clear showing of irreparable harm, and that its motion should be denied for that reason." Although not required to do so, the court also addressed and found that GEICO had failed to establish the second and third factors of what a party must show to obtain preliminary injunctive relief.

HOMEOWNERS – FLOOD LOSS/CLAIM – FRAUDULENT INVOICES – FALSE TESTIMONY – In Goldstein v. AmGUARD Insurance (EDNY decided 11/15/2024) AmGUARD moved for summary judgment dismissing plaintiff's complaint and granting judgment on AmGUARD's counterclaims, contending that plaintiff breached his homeowners policy's Concealment or Fraud condition by having submitted fraudulent construction invoices in support of his damages claims and provided false testimony regarding these invoices and the work performed.

Motion DENIED, the court finding:

> The record clearly shows there is a genuine dispute as to the falsity of the invoices. As discussed above, Plaintiff has claimed in his deposition that he did not create the $60,000 invoice, does not know who did, and believes Medina Contractors created it. … Notwithstanding the high bar for proving insurance fraud under New York law…whether the invoices were falsified clearly turns on the credibility of both Mr. Medina and the Plaintiff. Credibility is, as in almost all cases, an issue for the trier of fact.
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> Defendant's argument that, because Mr. Medina's first name – "Jonathan" – was misspelled on both the Invoices and a check signed by Plaintiff, Plaintiff must have fraudulently created the invoices, is unavailing…. This Court will not grant summary judgment without conclusive evidence as to the falsity of the statements at issue.
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> Further, there remain genuine questions of fact whether Mr. Medina had any email or text communications with Plaintiff, whether Plaintiff created the Invoices submitted by Plaintiff in discovery, and therefore whether the Invoices are fraudulent. In his deposition testimony, Plaintiff claimed he did not recall how he received the Invoices, … and that Mr. Medina had forwarded Plaintiff text messages and emails in the past. … The parties go back and forth in their motion papers over what communications Plaintiff proffered or should have proffered during discovery. … Clearly, there remains a question of fact about what communications occurred between Plaintiff and Mr. Medina. Furthermore, Defendant's insistence that the searchable PDF demonstrates Plaintiff fraudulently created the Invoices, without more, is not conclusive evidence warranting summary judgment in its favor.
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> Finally, AmGUARD has not presented evidence that any of Plaintiff's purported misstatements were made with the intent to defraud. A fact finder, with the opportunity to judge the witnesses' credibility in person, must determine the authenticity of the invoices, and, by extension, the truth of Plaintiff's and Mr. Medina's statements under oath.

NO-FAULT – REFERRAL FEES or "KICKBACKS" – REIMBURSEMENT ELIGIBILITY – In GEICO v. Mayzenberg (2ND Circuit decided 11/12/2024)

GEICO and affiliated entities sued Igor Mayzenberg and three acupuncture professional corporations (Mingmen, Sanli, Laogong), alleging they paid third parties "kickbacks" for patient referrals and then billed GEICO for no-fault services. GEICO sought declaratory relief (no obligation to pay) and damages under RICO, RICO conspiracy, common-law fraud, unjust enrichment, and aiding and abetting fraud. The district court granted summary judgment to GEICO; defendants appealed.

In deferring resolution of the appeal, the Court held:

- bare assertion by providers, unsupported by any detail or evidence, and contradicted by undisputed evidence, as well as principal's own admission that he paid recipients to send him patients, was insufficient to create disputed issue of fact as to whether payments were made for referrals; and

- the issue of whether paying for patient referrals, in violation of New York Education Law, disqualifies healthcare service provider from receiving no-fault payments under New York's no-fault Eligibility Regulation had to be certified to New York Court of Appeals.

CRIMINAL LAW – POST-NO-FAULT/HEALTHCARE FRAUD CONVICTION RESTIUTION – In United States v. Israilov (SDNY decided 08/20/2024), the US Government sought an an order requiring defendant Roman Israilov, who in November 2023 had pled guilty to conspiracy to commit healthcare fraud and aggravated identity theft in connection with a long-running no-fault insurance fraud scheme, to make restitution to thirteen insurance companies in the aggregate amount of $46,651,801.04. Writing from federal prison, Israilov argued that the restitution amount should be reduced to account for payments for medically necessary treatment and to reflect settlements that he entered into with certain insurers in related civil litigation. Israilov also contended that certain insurers' requests for restitution were untimely under the Mandatory Victims Restitution Act.

In support of it motion, the Government submitted affidavits or declarations from 13 insurers stating that they made payments to medical clinics controlled by Israilov and his coconspirators in the following amounts:

- Farmers Insurance Exchange: $888,765.20
- State Farm Automobile Insurance Company: $8,598,629.81
- New York Central Mutual Fire Insurance Company: $295,556.66
- Nationwide Mutual Insurance Company: $1,019,700.49
- Liberty Mutual Insurance Company: $1,010,495.15
- Government Employees Insurance Company: $14,607,524.83
- United Services Automobile Association: $1,422,103.16
- Allstate Insurance Company: $11,936,282.45
- Connect Insurance Company: $36,283.45
- Country-Wide Insurance Company: $5,742,743.97
- Plymouth Rock Management Company of New Jersey: $134,954.54
- Plymouth Rock Assurance Corporation: $65,509.39
- National General Insurance: $893,252.94

After rejecting most of Israilov's arguments to limit the amount of restitution, the court held:

> Finally, Israilov requests that any order of restitution require monthly payments of less than twenty percent of his gross monthly income. … In determining a payment schedule, this Court must consider "the financial resources and other assets of the defendant[,]" "projected earnings and other income of the defendant[,]" and "any financial obligations of the defendant[,] including obligations to dependents." 18 U.S.C. § 3664(f)(2). In this regard, Israilov states that he will "likely return to work as a barber after imprisonment," and will "need to support his wife and three children." Given these circumstances, Israilov contends that installment payments amounting to twenty percent of his monthly gross income would be excessive.

> In light of Israilov's likely future employment and his family obligations, this Court's restitution order will provide for monthly installment payments amounting to fifteen percent of his gross monthly income.
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> For the reasons stated above, this Court will enter an order of restitution in the aggregate amount of $46,651,801.04.

So…even if Israilov is a really good barber and makes $10,000/month as a barber when he gets out of federal prison, it'll take him **2,591 years and 7 months** to make restitution to the 13 insurers, not counting interest.

NO-FAULT – ALLEGED FRAUDULENT INCORPORATION -- DECLARATORY JUDGMENT ARBITRABILITY OF COMPLIANCE WITH VERIFICATION REQUESTS – In State Farm Mutual Automobile Ins. Co. v. Eclipse Medical Imaging, P.C. (EDNY decided 08/09/2024), defendant moved to compel arbitration of its pending arbitration claims against State Farm, as to which the court had previously granted a preliminary injunction.

In GRANTING the motion and dissolving the preliminary injunction, the court held:

> At bottom, the central issue in this case boils down to questions of the proper scope and amount of verification information a claimant must provide to an insurer under the No-Fault scheme to be considered compliant such that insurer must promptly pay out a No-Fault reimbursement claim. Whether the information State Farm currently possesses amounts to its entitlement to "to receive all items necessary to verify the claim directly from the parties from whom such verification was requested," 11 N.Y.C.R.R. § 65-3.5(c), is an issue for the expedited and simplified No-Fault arbitration and not this Court because it is a "matter which may arise pursuant to" Eclipse supplying "proof of the fact" that first party benefits were "incurred." N.Y. INS. LAW § 5106(a)-(b).
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> Put another way, the Court concludes that the issue of whether Eclipse properly complied with State Farm's verification requests under the No-Fault statutes and regulations falls under the No-Fault scheme's broad arbitration provision, which allows a party to elect arbitration for issues regarding both "liability" and "any other matter" related to "first party benefits" which necessarily encompasses verification of the "amount of loss sustained." N.Y. INS LAW § 5106(a)-(b).

NO-FAULT – MOTION TO DISMISS COUNTERCLAIMS & AFFIRMATIVE DEFENSES – In GEICO v. Clarke (EDNY decided 06/20/2024) GEICO brought suit against Clarke and associated defendants, alleging involvement in an insurance fraud scheme. The Clarke Defendants filed counterclaims, including common law fraud, aiding and abetting fraud, and breach of contract (including covenant of good faith and fair dealing). GEICO moved to dismiss these counterclaims, arguing they were inadequately pled and legally deficient.

Motion GRANTED. Defendants' counterclaims for fraud and aiding and abetting fraud lacked the specificity required by FRCP Rule 9(b). The allegations were conclusory, with no particularized facts about misrepresentations, reliance, or damages. In dismissing the defendants' breach of the covenant of good faith and fair dealing counterclaim, the court noted that New York law implies this covenant in contracts, but to plead it, a party must allege conduct that undermines the contract's purpose. The Clarke Defendants failed to identify the contracts at issue or explain how GEICO's conduct subverted them.

CRIMINAL RICO – RACKETEERING – EXTORTION – FIRE RESTORATION INDUSTRY – In United States v. Smith (SDNY decided 02/14/2024; appeal filed 6/25/2024, 2d Cir.) defendant Jatiek "Tiek" Smith, a member of the Bloods gang, proceeded *pro se* at a bench trial with standby counsel, charged with racketeering conspiracy and extortion conspiracy. The case centered on the fire restoration industry in New York City, where "chasers" solicit contracts from property owners after fires. Competitors included First Response, where Smith rose to effective control by 2020, and American Emergency Services (AES). Public adjusters also competed, often paired with preferred restoration firms.

The Government contended that Smith and his associates used threats, violence, and intimidation to eliminate competition (especially AES) and impose Smith's control over the market through a "rotation system" dictating which company got each fire. The prosecution's evidence included:

- Altercations at fire scenes where Smith and subordinates (including fellow gang members) assaulted AES employees.
- A May 5, 2020 retaliatory attack on AES's warehouse, directed by Smith.
- Recorded conversations where Smith admitted to conspiring in assaults and acknowledged potential gang-assault charges.
- Meetings with AES owner Eddie McKenzie, during which Smith demanded $100,000 in exchange for allowing AES to continue operating, at times backed by armed associates.
- Testimony from cooperating witnesses, public adjusters, and competitors confirming that AES ultimately withdrew from the industry due to Smith's threats and violence.
- After AES exited, Smith enforced rules on other companies and public adjusters, ensuring his enterprise's dominance.

After trial, the court found Smith GUILTY of both charges. The court found that Smith led an association-in-fact enterprise overlapping with but distinct from First Response, and that the enterprise engaged in multiple acts of extortion, intimidation, and violence, satisfying the continuity and relatedness requirements. On the extortion charge, the court found that Smith's demands for $100,000 from AES under threat of continued violence clearly constituted extortion under the Hobbs Act. Recorded statements, witness testimony, and AES's exit from the market corroborated the Government's case.

NO-FAULT– FRAUD – SUMMARY JUDGMENT – PROVING INTENT – ATTORNEY WITHDRAWAL – In GEICO v. Davy (EDNY decided 01/05/2024) plaintiffs filed a pre-motion letter seeking permission to move for summary judgment against several defendants. Defendants opposed that request, and their attorneys also moved to withdraw as counsel. Plaintiffs also moved to compel the production of documents from several non-parties.

The court DENIED GEICO permission to move for summary judgment:

> Based on the extensive record compiled in the parties' statements of material facts, GEICO cannot meet its burden on summary judgment of showing that a different result should apply here. GEICO has not offered undisputed evidence to support its arguments about key facts related to Davy's knowledge or participation in the scope of the alleged fraud. Notably, Davy admitted that St. Louis played a role in managing Davy's professional corporations, but Davy invoked his Fifth Amendment privilege against self-incrimination when asked about the extent of St. Louis' control and the role Davy played in supervising the administration of medical services. … Davy similarly invoked his Fifth Amendment privilege when asked about the role that technicians played in administering medical services at his corporations and the role that St. Louis played in hiring technicians. … Additionally, Davy has failed to dispute GEICO's evidence that his purported signatures on his companies' insurance claims were not actually his, and he invoked his Fifth Amendment privilege when asked whether he provided a signature stamp to St. Louis or whether he personally signed any of the claim forms. … Collectively, GEICO's reliance on Davy's refusal to answer many of these questions leaves open issues about Davy's knowledge of the insurance claims that were being submitted on behalf of his companies, the role that St. Louis played in submitting allegedly fraudulent claims, and the qualifications and roles of the technicians who supposedly performed the medical services.

The court GRANTED defense counsel's motion to withdraw as counsel for defendant based on the "irredeemable breakdown in the attorney-client relationship", noting that "if Davy elects to represent himself, then Defendants Big Apple Medical Services, P.C., and Hourglass Medical Services will be in default because a corporation cannot represent itself pro se through a non-attorney representative."

CRIMINAL LAW – RICO – DISCOVERY – FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION – In United States v. Pierre, et al. (SDNY decided 12/11/2023) defendant William Weiner moved for: (1) a "*Kastigar* hearing" to determine whether the government improperly used compelled testimony or evidence from prior civil/administrative proceedings, including Liberty Mutual and the NICB investigations; (2) permission to issue subpoenas to Liberty Mutual and NICB for documents and to compel testimony from investigators; and (3) an order requiring the government to produce all *Brady* material in the hands of Liberty Mutual and NICB. Weiner argued that the government had effectively "outsourced" parts of its investigation to Liberty Mutual and NICB, violating his Fifth Amendment rights.

Motion DENIED. Although the evidence showed Liberty Mutual and NICB cooperated extensively with law enforcement, this cooperation did not amount to improper direction or control by the government:

> What Weiner has largely ignored throughout these proceedings, however, is the "ample evidence ... of Liberty Mutual's independent interest in investigating Weiner." … As discussed at length in the Memorandum Opinion & Order, Liberty Mutual's Special Investigations Unit first opened an investigation of Weiner and Nexray Medical in 2010 – six or seven years before the Government initiated its investigation. … And as discussed above, Di Minno participated in that investigation. In November 2011, Liberty Mutual "took an [examination under oath ('EUO')] of Dr. Weiner in regard[ ] to who controlled that Nexray facility," and also conducted "numerous [examinations under oath] of claimants [who had undergone] MRIs at Nexray." … Di Minno also prepared a "Project Plan" for the Weiner and Nexray Medical investigation at that time. …
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> Given Liberty Mutual's long history with Weiner and its allegations of misconduct against him and Nexray Medical, there is no reason to distrust the testimony from Di Minno and Agent Infusino that the Government did not influence or seek to influence Liberty Mutual's new investigation of Weiner and Nexray. Liberty Mutual had ample cause to investigate Weiner on its own. For all these reasons, Weiner's request to call Liberty Mutual investigator Beadle at a *Kastigar* hearing, and for a Rule 17(c) subpoena directed to Liberty Mutual, will be denied.

NO-FAULT – PROVIDER ACTION – STAGED COLLISION DEFENSE – ASSIGNOR EUO NO-SHOWS – AFFIDAVITS/CRIMINAL CONFESSIONS – SUMMARY JUDGMENT – In NYRX Pharmacy Inc. aao Danferlin Ortiz v. Mid-Century Ins. Co., 80 Misc.3d 1225(A) (NYC Civ. Ct., Kings Co., decided 10/11/2023), the alleged subject MVA occurred on or about November 29, 2018, 2:27 p.m. as insured Joshua Guzman Lorenzo in his vehicle was stopped at a traffic light at the intersection of East 150 Street and Prospect Avenue in Bronx, New York, when his vehicle was rear-ended by Edwin S Baez driving a U-Haul truck, insured by Repwest Insurance Company. Mid-Century (Farmers) moved for summary judgment based on the assignor's EUO no-shows and two "affidavits/criminal confessions" obtained by Repwest from the drivers of the two vehicles.

Motion DENIED. As to Farmer's staged collision defense/proof:

> In this instant matter, insurer fails to meet its burden to establish prima facie entitlement for summary judgment as a matter of law. Here, the insurer relies wholly on the affidavits of drivers related by consanguinity or affinity as alleged co-conspirators to attempt to prove material misrepresentation of a staged intentional accident, which has been held as insufficient. Rather, these are not merely affidavits, but alleged co-conspirators criminal confessions. 5 Here, insurer does not provide affidavit of an affiant with personal knowledge as to the veracity, accuracy, reliability nor the making of these notarized criminal confessions. Insurer woefully fails in its attempt to do so by merely adding to its claim representative affidavit that Repwest Insurance alerted Defendant Insurer as to the alleged fraud and impliedly of its own volition provided both confessions to Defendant. However, where Repwest Insurance has used such fillable affidavits/criminal confessions to establish summary judgment in staged intentional accidents, corroboration by an investigator with personal knowledge engaged in recorded, formally transcribed and certified

> conversations with alleged conspirators eliciting admissions against own interest [*sic*]. ***Herein, these fillable affidavits/criminal confessions are rejected out of hand.*** The mere presence of these fillable affidavits/criminal confessions are unreliable at best. Notably, both alleged conspirators are Latinos. Are they fluent in English? Did they understand what they were signing? The alleged fillable affidavits/criminal confessions are typed and handwritten in. Who actually typed them? Who handwrote the fillable areas? Who provided the specific typed or handwritten text? Did the alleged conspirators understand that they were signing admissions to a crime that may be used against them in a criminal court of law with exposure to prison time? 6 Were they given notification of their right against self-incrimination? 7 Most notably, the alleged conspirators executed fillable affidavit/criminal confessions were notarized two (2) days, on January 12, 2019, and seven (7) days, on January 17, 2019, after their attorney terminated representation. Thereby not represented by counsel.

As to Farmer's assignor EUO no-show ground/defense, the court curtly noted:

> There is a triable issue of fact as to alleged EUO no shows, where there is inconsistent names of proper insurer, Farmers Insurance Company or Mid-Century Insurance Company.

UFB.

NO-FAULT – FRAUD – UNJUST ENRICHMENT – ILLEGAL OWNERSHIP – WRIT OF PRE-JUDGMENT ATTACHMENT – In GEICO v. Grody (EDNY decided 09/28/2023), GEICO moved for a writ of prejudgment attachment of the property of defendant Lilian Ishvan and defendant AVL Capital LLC up to the amount of $576,040.41, as well as an order directing disclosure of AVL's and Ishvan's assets, in order to facilitate the attachment.

Motion GRANTED. Pursuant to FRCP Rule 64, which provides for seizure of "a person or property to secure satisfaction of [a] potential judgment[,]" Plaintiffs sufficiently established that (1) there is a cause of action for money judgment, (2) it is probable that the claim will succeed on the merits, (3) grounds for attachment under CPLR § 6201 exist, [ ] (4) the amount demanded exceeds all counterclaims known to Plaintiffs" and that, based on Defendants' financial position or past and present conduct, there exists a real risk of enforcement of a future judgment.

> "The Court's assessment of the merits of a motion for prejudgment attachment does not require depositions, nor does it require a fully developed record. Indeed, such a requirement that discovery be substantially completed or closed would defeat the purpose of a pre-judgment attachment. Magistrate Judge Kuo reviewed and relied on the affidavits, declarations, and dozens of accompanying exhibits provided by both parties in assessing Plaintiffs' motion. On de novo review, this Court agrees that there is sufficient evidence to support an order issuing a writ of pre-judgment attachment."

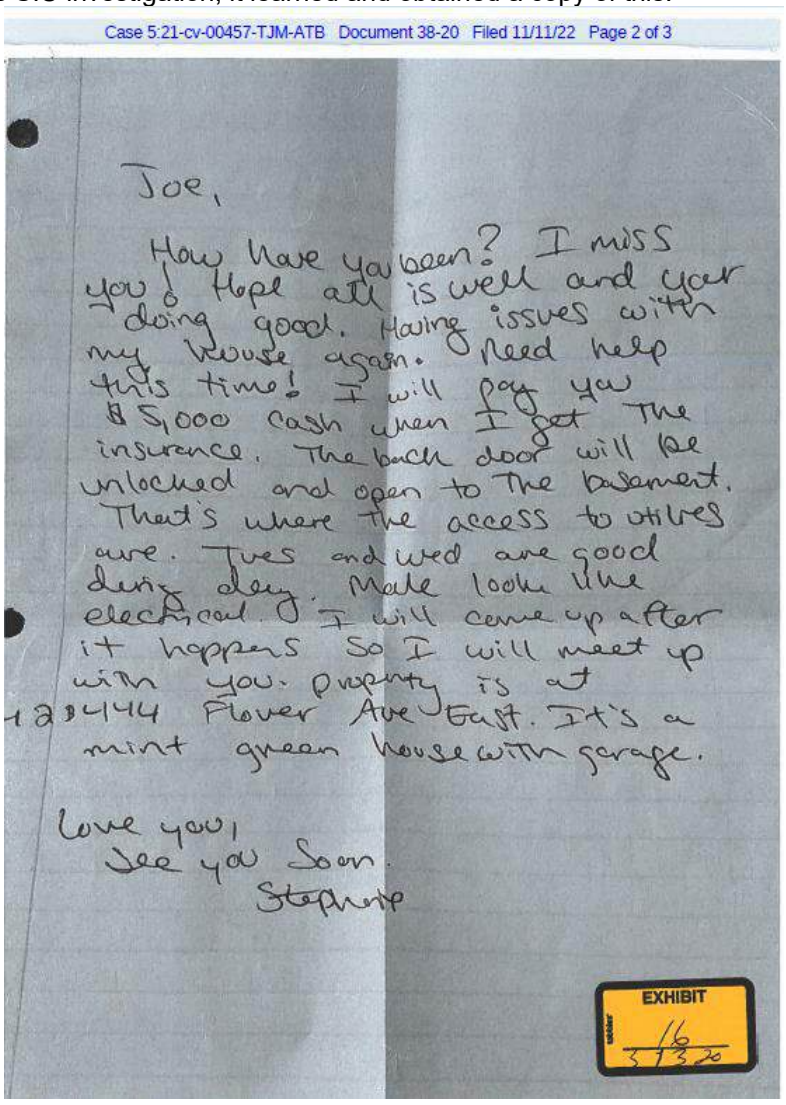
NO-FAULT – PROVIDER ACTION – STAGED COLLISION – PROOF OF FOUNDED BELIEF – SUMMARY JUDGMENT – In Parisien v. Esurance (App. Term, 2d Dept., decided 09/22/2023), on appeal of an order denying plaintiff's MSJ and granting Esurance's cross-MSJ, the Appellate Term, Second Department MODIFIED the order appealed from by:

- AFFIRMING the lower court's denial of plaintiff's motion: "A review of the record indicates that plaintiff was not entitled to summary judgment since it failed to demonstrate, prima facie, that defendant had either failed to timely deny the claims"; but
- REVERSING the court's grant of Esurance's MSJ: "It is well settled that "an intentional and staged collision caused in the furtherance of an insurance fraud scheme is not a covered accident under a policy of insurance"…In support of this defense, defendant submitted numerous documents and photographs, including the affidavit of its senior investigator who concluded, based upon his review of a Department of Motor Vehicles abstract, police reports, and ISO claim search records, as well as transcripts of examinations under oath of people involved in the incident, that the collision in which plaintiff's assignor was allegedly injured was "a staged/caused event for which there was no

coverage." Although defendant demonstrated that it possessed a "founded belief that the alleged injur[ies] do[ ] not arise out of an insured incident" … defendant failed to submit sufficient evidence in admissible form to establish that conclusion as a matter of law, so as to warrant dismissal of the complaint[.]…We note that, contrary to plaintiff's contention, defendant did not cross-move for dismissal on the ground that there was a material misrepresentation in the procurement of the insurance policy and, as a result, we do not pass upon that issue."

PROPERTY – CLAIM FRAUD/MISREPRESENTATION – COOPERATION – ARSON SOLICITATION – UNTIMELY PROOF OF LOSS – INSURABLE INTEREST – In Converse v. State Farm Fire & Casualty Co. (NDNY decided 07/12/2023), named insured Stephanie Converse and her brother Richard Converse, as additional insured, owner and record co-owner of a Watertown multi-family home that was destroyed in a December 2019 fire, filed suit against State Farm for breach of contract and related causes of action arising out of State Farm's denial of coverage for the claim made under the homeowners policy. Upon removal, other claims were dismissed. Following discovery, the parties filed opposing motions for summary judgment on remaining claim for breach of contract.

During State Farm's SIU investigation, it learned and obtained a copy of this:


Case 5:21-cv-00457-TJM-ATB Document 38-20 Filed 11/11/22 Page 2 of 3

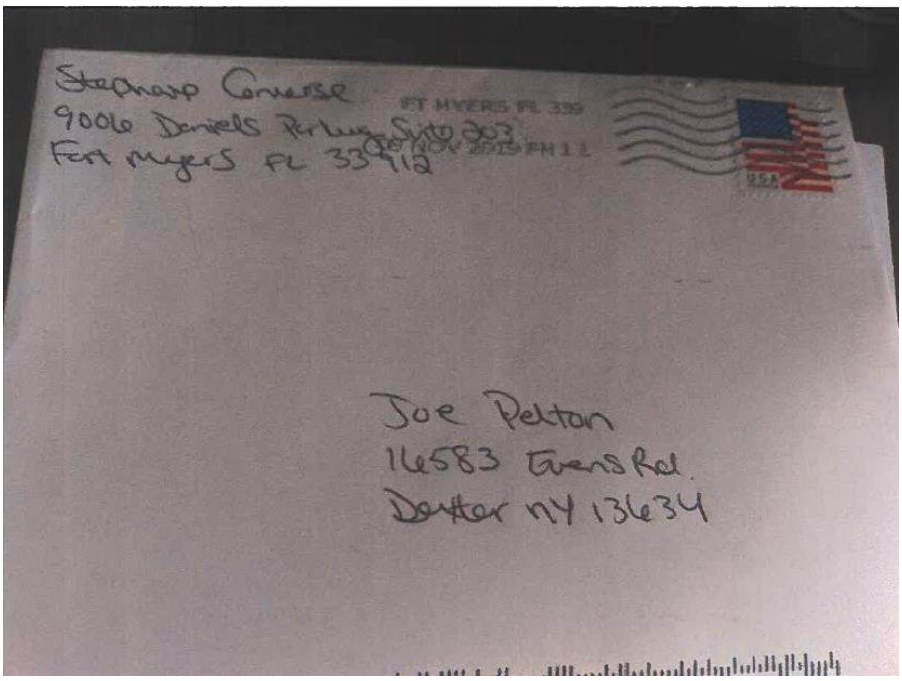
Joe,

How have ya been? I miss you! Hope all is well and your doing good. Having issues with my house again. Need help this time! I will pay you $5,000 cash when I get the insurance. The back door will be unlocked and open to the basement. That's where the access to utilities are. Tues and Wed are good days. Make look like electrical. I will come up after it happens so I will meet up with you. Property is at 122444 Flower Ave East. It's a mint green house with garage.

Love you,
See ya Soon.
Stephanie

EXHIBIT 16 3/3/20

Together with this:



Motion by State Farm GRANTED; motion by the plaintiffs DENIED, the court finding:

- Re Stephanie Converse:
  - "No reasonable juror could find that Stephanie Converse did not make false statements to Defendant's investigators regarding her contacts with Joseph Pelton and her expressed desire to pay him to burn the home down. A jury would be required to find that Plaintiff made misrepresentations in connection with State Farm's investigation of the claim. … Plaintiff's alleged misrepresentation here is her statements to investigators that she did not ask anyone to start the fire, that she was unaware of any mail sent to Pelton, or that she did not remember a letter sent to Pelton. The uncontroverted evidence related above makes clear that Plaintiff knew she sent the letter to Pelton and then denied she sent the letter when interviewed by claims investigators. Stephanie Converse denied knowledge of the letter to State Farm's investigator shortly before she admitted she wrote the letter to police investigators and continued those misrepresentations in her EUO. 2 The Court finds that as a matter of law Plaintiff made these misrepresentations willfully. Taken as a whole, the Court must conclude that Plaintiff Stephanie Converse's statements represented a continuing attempt to conceal from State Farm that she had contacted Pelton and offered him money to burn down the insured property. Plaintiff made multiple contradictory statements to various investigators, and the Court concludes that a reasonable juror could not find that such contradictory statements were the result of mistake or misunderstanding, but that the differences between what Plaintiff told various investigators were intentional. …The fact that no one has ever been charged with arson for the incident and the fact that Pelton has an alibi for the day of the fire does not alter the fact that Stephanie Converse misrepresented to State Farm that she had never asked anyone to light the property on fire. A reasonable juror would have to find that her misrepresentations were willful. The final question for the Court in this respect is whether Stephanie Converse's misrepresentations to the Defendant were material. Plaintiffs contend that her misrepresentations were not material because Loarca knew about the Pelton letter when he asked Converse about it, and thus her misrepresentations did not effect the investigation. Courts are clear, however, that "the materiality of false statements during an insurance company investigation is not to be judged by what the facts later turn out to have been." Fine, 725 F.2d at 183. "The purpose" of procedures like examinations under oath and other investigative measures "is to enable the insurance company to acquire

knowledge or information that may aid it in its further investigation or that may otherwise be significant to the company in determining its liability under the policy and the position it should take with respect to the claim." Id. Even if the investigator knew about the letter Stephanie Converse sent when the investigator asked about it, Converse's testimony about the document is material as a matter of law, since the investigator would need to know about Converse's purpose in writing the letter, whether she expected Pelton to act, whether she had any additional contact with Pelton, and whether he responded–among other issues–in determining the proper status of the claim. By denying any knowledge of the letter, Converse acted in a way that could frustrate the ongoing investigation. A reasonable juror could only find that her misleading conduct was material. The Court therefore finds that the evidence establishes that Stephanie Converse made material misrepresentations to insurance investigators as a matter of law. Stephanie Converse therefore breached the insurance contract and Defendant is entitled to summary judgment in this respect.

- Converse breached the policy's cooperation condition by misrepresenting her knowledge of the letter she wrote to Pelton. "Such conduct obstructed State Farm's efforts to investigate the claim. … Since there can be no reasonable dispute that Converse willfully failed to cooperate in the investigation, the Court will grant the Defendant's motion in this respect as well."
- Converser breached the policy's POL condition. "On January 2, 2020, Roy A. Mura, State Farm's counsel, wrote Stephanie Converse about the status of her claim and the documents necessary for Defendant to process it. … Mura's letter also contained the following statement: Please be advised that a failure to attend your examination under oath or to produce the information and documents requested in this letter or to timely complete and return the Sworn Statement in Proof of Loss form for the reported loss may result in the loss of your rights under the above-numbered insurance policy. Please be further advised that State Farm Fire and Casualty Company specifically reserves all rights and defenses which it may have at law or under the terms of the policy. By scheduling and/or proceeding with your examination under oath and/or by requesting that you produce other documents and records to substantiate your claim, State Farm does not waive any other policy conditions or obligations of yours." … The record thus makes clear that State Farm repeatedly and clearly reserved its right to deny coverage based on Stephanie Converse's failure to provide a sworn statement by February 17, 2020. Since "[w]hen an insurer reserves its right to deny coverage, estoppel and waiver may not be inferred" the Court cannot find that Defendant waived the requirement or is estopped from asserting that defense. Steadfast Ins. Co., 277 F.Supp.2d at 254. Since failure to timely file the sworn statement is a complete defense to a breach-of-contract claim, the Court will grant the motion in this respect as well."

- Re Richard Converse:
  - Richard Converse's only connection to the property was that he had agreed to apply with Stephanie for a mortgage because he had good credit. After denying coverage, State Farm paid the mortgage balance. "In this case, the uncontroverted evidence establishes that Richard Converse did not invest any money in the purchase of the property. He did not make any payments to satisfy the mortgage. While Richard Converse was liable on the mortgage on the property, he admits that the mortgage is satisfied and he is no longer obligated on that note. Richard Converse further admits that he did not receive any income from the property and did not expect to do so. His sister received any income from rentals. Richard and Stephanie Converse had apparently agreed that Richard would receive a portion of any equity in the property at the time of sale. Under these circumstances, the Court finds that no reasonable juror could conclude that Richard Converse had an insurable interest that was not satisfied by the Defendant. Richard Converse did not lose any rental income from the fire. His obligation on the mortgage has been satisfied. His only loss is a speculative one–the potential profit he hoped to realize from the equity in the home upon sale–and this potential profit is not an insurable interest."

NO-FAULT – SPECIAL PROCEEDING – MASTER ARBITRATION AWARD IN FAVOR OF PROVIDER CONFIRMED – CAUSAL RELATIONSHIP – PROOF OF A "FOUNDED BELIEF" OF A STAGED COLLISION – In American Transit Ins. Co. v. Nexray Medical Imaging, P.C. aao Carlos Guzman (NYC Civil, Kings Co., decided 05/25/2023), American Transit commenced a CPLR Article 75 special proceeding to vacate a $878.78 master arbitration award in favor of the defendant. The defendant cross-petitioned for confirmation of the award. American Transit's NF-10 asserted: "Based on American Transit's investigation and EUO [examination under oath] testimony conducted on 6/17/20, American Transit is asserting a lack of coverage, as it has established the 'fact or founded belief' that the claimant's treated condition was unrelated to the motor vehicle accident. The eligible injured person failed to establish that the alleged injuries were causally related to the motor vehicle accident."

In sustaining Nexray Medical's claim and awarding the sought amount, the arbitrator observed:

> I find that Respondent failed to establish its lack of coverage/causation defense. I find that there is insufficient credible evidence in the record to support a founded belief that "the claimant's treated condition was unrelated to the motor vehicle accident." Respondent did not upload any explanatory brief, any witness statements, any medical records, any expert affidavit regarding causation, any SIU affidavit discussing Respondent's investigation or explaining how or why Respondent's determination was made, or any other actual proof to support and substantiate its defense, other than the EUO transcript of the Assignor, and the MV-104, Report of Motor Vehicle Accident. I have carefully review[ed] the EUO transcript of the Assignor, as well as the EUO transcript of the other claimant/passenger in the linked case, and I find it unclear as to what specific testimony Respondent believes adequately supports its assertions/defense and how Respondent made the leap that the Assignor's treated condition was unrelated to the motor vehicle accident. While counsel asserted that the accident was not significant and that the asserted injuries were disproportionate to the low impact nature of the accident, I do not[ ] believe that the testimonial evidence alone was sufficient to reach such conclusion, particularly without the presentation of some actual medical evidence and/or expert opinion. With respect to the asserted indictment of Applicant's owner, Respondent did not present any actual evidence of any indictment nor any evidence that any such indictment related to the subject accident, the claimants and/or claims at issue in this proceeding. If Respondent's investigation was broader than what was presented herein, then Respondent should have uploaded such supporting evidence to the record herein. In sum, only limited evidence was uploaded to the record and on this record, the evidence submitted to the record in this case does not, in my view, make out a prima facie case in support of Respondent's asserted defense. Based on the totality of the evidence in the record, Respondent has failed to meet its initial burden and its denial cannot be sustained.

American Transit filed for master arbitration, and the master arbitrator, in affirming the award, concluded:

> Arbitrator Kim's conclusions and findings were in his discretion and interpretation of the evidence. It cannot be regarded as reversible error within this Master Arbitrator's purview. This Master Arbitrator cannot conduct a de novo review and substitute my interpretation and view of the evidence for that of Arbitrator Kim. In particular, as here, Arbitrator Kim's determination is rational and supported by the record.

In DENYING American Transit's petition to vacate and GRANTING defendant's cross-petition to confirm the award, the court held:

> An expert's affirmation is needed to provide a factual foundation for an insurance carrier's good faith belief that an alleged injury did not arise out of an insured accident; speculation or wishful thinking does not suffice[.]…The courts have also recognized that a prima facie case of lack of coverage may be established by other than a medical expert. This can include a biomechanical engineer's report…a special investigator's affidavit…or a low-impact study[.]…Very rarely will a case contain a Perry Mason-like moment where there is a confession that an assignor injured person's injuries were not the result of the claimed accident. Of necessity an insurer's founded belief that a collision was staged will be established by circumstantial evidence. "Circumstances

> insignificant in themselves may acquire probative force as links in the chain of circumstantial proof."…For example, where a vehicle was involved in several collisions within a short period of time after the insurer issued an insurance policy, this may satisfy the need for a founded belief necessary to support a denial grounded in asserted fraud [citation omitted]. Where a driver rear ends another vehicle two days after taking out insurance, and again less than sixty days after the first collision, and his written and recorded statements contain discrepancies, this constitutes compelling circumstantial evidence that there was an intentional collision staged for the purpose of insurance fraud [citation omitted].
>
> Clearly, Arbitrator Kim did not misapply well-settled law in the arbitration at bar. As indicated above (supra at 5), he noted case law governing the adjudication of insurer defenses that there was a fact or founded belief that a condition and/or treatment was not proximately related to an alleged accident. What ATIC is challenging as a misapplication of settled law is Arbitrator Kim's finding that its evidence did not meet the evidentiary minimum to make out its initial burden of proof. That is an issue of fact—not an issue of law.
>
> The arbitrator must remain objective and impartial. It is unfair for a respondent insurer to place the arbitrator in the role of evidence explorer on its behalf. The arbitrator is not an investigator or detective. To argue to an arbitrator, "Our defense relies on the EUO testimony," or offer a similar statement, without any identification of the transcript components being relied on is improper advocacy, and an arbitrator should decline the implied invitation to search the transcript to locate testimony supporting the respondent's defense. It is unknown whether ATIC's counsel made such a statement to Arbitrator Kim. From his award, it is evident that nothing was offered by way of specification as to particular testimony in one or more EUO transcripts.
>
> This Court finds that ATIC failed to establish that there was corruption, fraud, or misconduct in procuring the award; that there was partiality on the part of either arbitrator; that either arbitrator exceeded his or her power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or that there was a failure to follow the procedure of Article 75.

ATTORNEY MISCONDUCT – INSURANCE FRAUD – RECIPROCAL SUSPENSION – In Matter of Neal Meredith Pomper (2d Dept. decided 6/29/2022) the respondent attorney was convicted after a jury trial in New Jersey of third-degree conspiracy to commit insurance fraud, third-degree insurance fraud, and third-degree attempted theft by deception for having sent his homeowners insurer a fraudulent "paid in full" remediation invoice following a flood loss. The New Jersey Supreme Court imposed a two-year suspension, retroactive to Sept. 18, 2019, for recordkeeping violations, criminal misconduct, and trust-account/record-keeping violations. In New York, the Grievance Committee moved for reciprocal discipline. Pomper did not show any ground to avoid it (no due-process infirmity, no infirmity of proof, and the conduct would be misconduct under New York's rules). Order issued suspending Pomper for two years, matching New Jersey's suspension, with the usual directives for suspended attorneys.

CRIMINAL LAW – SPLIT VERDICT – REPUGNANCY – In People v. Holley (4th Dept. decided 10/08/2021) the defendant argued on appeal that his conviction following a jury trial on three counts of falsifying business records, but acquitted of three concomitant counts of insurance fraud, was repugnant and required reversal.

In AFFIRMING defendant's judgment of conviction, the Appellate Division, Fourth Department, held:

> Here, the jury's not guilty verdict on the counts of insurance fraud did not necessarily negate an essential element of the falsifying business records in the first degree counts. … Although the jury acquitted defendant of insurance fraud, which is the crime the People alleged that defendant intended to commit or conceal by falsifying business records, the jury could "convict defendant of falsifying business records if the jury concluded that defendant had intended to commit or conceal another crime, even if he was not convicted of the other crime.

CRIMINAL LAW – INSURANCE FRAUD – FALSIFYING BUSINESS RECORDS – In People v. Murray (4th Dept. decided 02/05/2021) defendant appealed from a judgment convicting her of verdict of insurance fraud in the third degree (Penal Law § 176.20) and falsifying business records in the first degree (§ 175.10). The case arose from an insurance claim by which defendant attempted to recover the cash value of items of personal property that were ostensibly lost in a house fire. The Fourth Department previously affirmed the judgment convicting defendant's spouse after a separate trial of the same crimes, arising from the same events.

In REVERSING the judgment of conviction and ordering a new trial, the court held that it was not harmless error to allow the arson investigator to give his opinion that the fire had been intentionally set inasmuch as the probative value of that testimony was outweighed by its potential for prejudice. The investigator's testimony that the fire had been intentionally set was irrelevant to prove any of the essential elements of the crimes charged against defendant. The investigator's conclusion was highly prejudicial because it allowed the jury to speculate that defendant burned the house down with all of her possessions inside of it in order to collect the insurance money, which, if true, would be conclusive of her alleged intent to defraud.

REGULATORY DEVELOPMENTS:

PUBLIC ADJUSTERS – The Seventh Amendment to 11 NYCRR Part 25 (NYS Insurance Regulation 10) eff. 10.08.21

Section 25.11 Books, files, and records; communications

(b) When an insured is represented by a public adjuster, an insurer shall include the public adjuster in any written or oral communications the insurer initiates with the insured unless the insured instructs the insurer otherwise in writing.

AI VIEWPOINTS:

Is insurance fraud really a problem or are insurance companies just making that up?