



PROGRAM MATERIALS

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The Rise of the "Fraudemic": Strategy, Decisions, and Trial Outcomes

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The Rise of the “Fraudemic”

Strategy, Decisions, and Trial Outcomes



RICO Complaints

Paving the Landscape for Counterclaims for Fraud and Cross-Examination

METRO EXCLUSIVE

MS-13, Russian mobsters use migrants in elaborate injury scam — even getting spinal surgery to pull it off: sources

NY Post Article

NEWS / HEALTH

ONLY IN NEWSDAY

Court complaint: Deer Park surgeon fraudulently copied and pasted language in dozens of operative reports

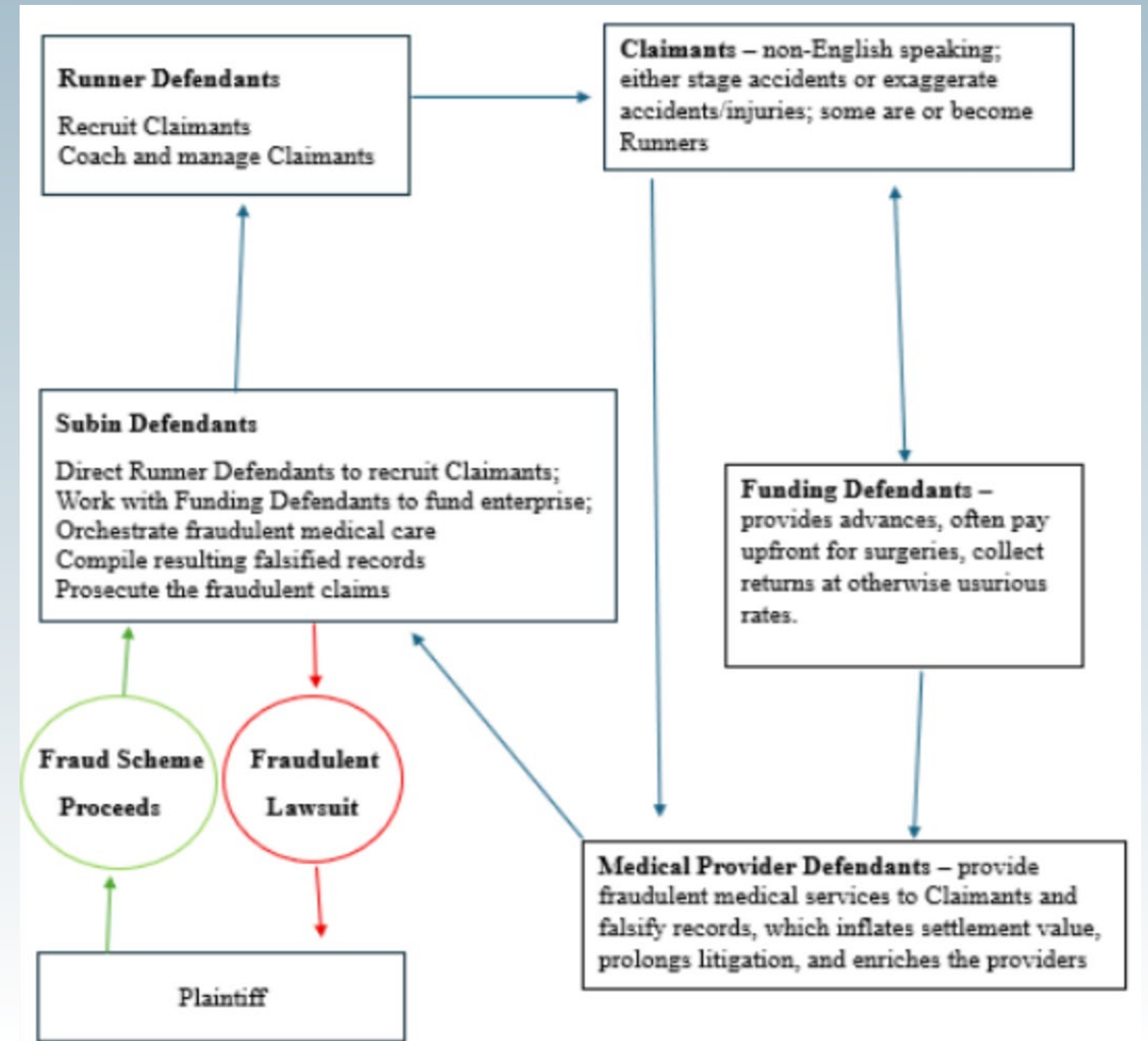
Newsday Article

DAILY LITIGATION

Says Philly Law Firm, Doctors Fabricated Injuries

RICO Framework

- Complaints filed from 2016 to present in federal courts in **New York, Florida, California, Texas, and Pennsylvania** against *law firms, medical providers, third-party litigation funding companies, and alleged “runners”*
- Elaborate schemes with billions of dollars in fraudulent services alleged
- Increased media coverage of staged accidents and fraudulent treatment



The Early RICO Complaints

GEICO v. Michael Gerling, M.D., et. al. (May 9, 2017)

- Sought recovery of *\$2.2 million* in fraudulent no-fault charges for unnecessary surgeries
- *Awarded \$2.5 million* after proving conspiracy to defraud with unlawful patient brokering scheme related to MVAs
- October 2023 settlement reached with individuals sued for allegedly brokering patients and suit against Dr. Gerling dismissed without prejudice in April of 2024

Tradesman v. John Hajar, et. al. (March 1, 2024)

- Complaint filed against over 40 medical facilities, attorneys and doctors for fraudulent enterprise and conspiracy, alleging targeting of N.Y.'s scaffold law and exploiting foreign born, non-English speaking plaintiffs
- Law firm sponsored OSHA classes with advertisement and solicitation
- Fraudulent treatment protocol including initial examinations resulting in nearly identical findings, conservative care with vague treatment that always fails, and surgery at ambulatory surgery centers that charge high fees

RICO Complaints

Tradesman v. Herbert S. Subin, et. al. (July 19, 2024)

- Filed in E.D.N.Y. alleging that since 2018, defendants orchestrated the submission, filing and prosecuting of fraudulent Workers' Compensation claims and lawsuits arising out of workplace accidents, directed by “runners,” recruiting construction workers into staging and/or perpetuating fake construction accidents
- Complaint dismissed on June 19, 2025 and appeal fully submitted as of January 2026 waiting for oral argument

Since Tradesman, about 28 similar RICO complaints have been filed in New York federal courts, but *there have been many partial dismissals and/or settlements*

Statistics

- An estimated **\$306 billion annually** is lost to insurance fraud in the U.S. each year
- An estimated **20%** of all insurance claims are fraudulent, which results in higher premiums for consumers
- New York's economy lost **\$292.9 million** as a result of third-party financed litigation, according to a recent report by The Perryman Group
 - The harm to business activity leads to over \$70 million lost in resources for the state and the loss of thousands of jobs

Approximately 2,000 lawsuits in New York have been affected, with a potential \$1 billion to \$4 billion fraud figure, or more...

Motions to Amend to Assert Counterclaim for Fraud

Strategy and Results on Motions to Amend

Best Practices for Motions to Amend

- It is insufficient to move on RICO allegations **alone** (Linares v. The City of New York, 1st Dep't 2024) and need an independent basis for the fraudulent conduct
- Assess potential patterns between the place of residence, the site of the accident, between aliases used by plaintiff, medical providers, contractors, etc.
 - Many cases involve the same alleged defect or similar cases brought by the same law firm
- Retain private investigator to conduct criminal background check, ISO search, DMV search, investigating OSHA credentials
 - Are there crimes involving mortal turpitude? Need certified certificates of conviction or disposition.
- Plaintiff's medical records could indicate fraudulent mechanism of injury or other indicators

Recent Decisions on Motions to Amend

Linares v. City of New York, 233 A.D.3d 479 (1st Dep’t December 10, 2024)

- Defendants moved to amend its answer to assert a counterclaim for fraud based on an “unrelated” RICO complaint, and held that the lower court providently exercised its discretion in denying same
- The counterclaim failed to allege any facts that the plaintiff knowingly made material misrepresentations so as to support a fraud claim, and **“the unproven allegations against plaintiff’s attorney and medical providers in the RICO complaint do not, without more, warrant a counterclaim for fraud against plaintiff himself”**
- “It should be left to the trial court to determine to what extent defendants can explore RICO allegations at trial”

Recent Decisions on Motions to Amend

Litmuma v. Liberty Coca-Cola Beverages LLC, 243 A.D.3d 504
(1st Dep't 2025)

- Lower court providently exercised its discretion in *allowing defendants to seek materials related to the funding of plaintiffs' litigation*
- Defendants argued that the information was material and necessary by explaining that it could reveal a financial motive for fabricating the accident, where they had an affirmative defense and counterclaim premised on fraud

Recent Decisions on Motions to Amend

Breton v. Dishi, 234 A.D.3d 432 (1st Dep't January 7, 2025)

- Reversed the lower court's decision which granted defendants' motion under C.P.L.R. 3025(b) to amend its answer to assert a counterclaim for fraud
- The counterclaim failed to plead the essential element of justifiable reliance with sufficient particularity, and that defendant could not have relied on plaintiff's allegations because it denied them in his answer and throughout the litigation
- Defendant did not plead damages with sufficient particularity, only alleging that he has incurred significant sums in defending the action
 - To the extent defendant claims litigation costs, such remedy would be to seek sanctions under C.P.L.R. 8303-a, but that provision does not support an independent cause of action

Responses on Justifiable Reliance and Damages

- The reliance was justified because it was compulsory, as the plaintiff filed a complaint, the allegations of which must be presumed as true. This assumption, combined with the duty to zealously defend should not lead to unreasonable reliance.
- Litigation premised on good-faith dispute regarding the facts and application of the law to the facts
- The question of what constitutes reasonable reliance is so fact-intensive and not generally a question to be resolved as a matter of law on a motion to dismiss
- A fraud claim in this context is plead with requisite particularity because it alleges the basic facts necessary to establish the elements of the cause of action, and should not be confused with unassailable proof of fraud
- Legal fees expended by defendant are recoverable in an action alleging fraud

Recent Decisions

Taveras v. Tuck-It-Away Assoc., L.P., 243 A.D.3d 427 (1st Dep't November 6, 2025)

- Both plaintiffs, a mother and daughter, represented by named law firm and provider who performed surgery named in RICO complaint.
- Court held that the amendment was not palpably insufficient or clearly devoid of merit as Columbia demonstrated a fraud on the Court, that the plaintiff willfully engaged in deceitful and obstructionist conduct designed to undermine the integrity of the proceeding by attempting to provide false and misleading testimony regarding her alleged injuries and how she sustained them.



Inconsistent Rulings at Trial

Cross-Examination on RICO Allegations

Impeachment through Unproven Allegations

- **It is left to the trial court** to determine to what extent defendants can explore the RICO allegations at trial. Linares v. City of New York, 233 A.D.3d 479 (1st Dep’t 2024), which has led to inconsistent rulings.
- The most popular basis for trial courts to exclude cross-examination on RICO allegations is because these “bad acts” based on fraud have not yet been proven at trial.
- However, there is Court of Appeals’ authority to support cross-examination based on unproven allegations.
 - People v. Smith, 27 N.Y.3d 652 (2016): *“the relevance of prior bad acts that have been alleged in court filings, but not proved at trial, is consistent with our precedent; we have previously decided that there is no prohibition against cross-examining a witness about bad acts that have never been formally proved at a trial.”*
- The Court in Nereyda Benitez v. Brett A. Anderson, et al. (Sup. Ct. Bronx Cty. Index No. 22128/2019E) granted the defendants’ motion in limine for an order permitting cross-examination, based on the Court of Appeals’ framework in Smith:
 - *“Here I don’t see any question that there’s a good-faith basis for the cross examination, as Dr. Kosharskyy had been independently named in a federal lawsuit, detailing what defendants refer to as a wide-ranging conspiracy to defraud insurance companies. This lawsuit, which is among a series of lawsuits in federal court against certain personal injury attorneys and physicians is well known to the court. It’s been in the law journal, it’s been on the news. I’m not unfamiliar with them. So I do find that there is good-faith basis for the cross examination.”*
 - *“I find that allegations of not just one instance of fraud, but possibly -- and again, just allegations – of widespread fraud in numerous personal injury cases, **has an absolute bearing on the doctor’s credibility as a witness to be truthful**, and based on that framework and People v Smith, the defendants’ motion in limine, which is sequence number 7, is granted.”*

Ildo Lopes v. County of Suffolk

- Dr. Merola was scheduled to testify after opening statements, and plaintiff's counsel presented a motion *in limine* to preclude any questioning regarding the RICO allegations.
- Defense counsel opposed the motion on the grounds that parties are permitted to cross-examine a witness pertaining to prior bad acts, even if such acts have not been proven at trial, where: 1) such party has a good-faith basis for inquiring, 2) there are specific allegations that are relevant to the witness' credibility, and 3) such inquiry would not unduly prejudice plaintiff.
- Judge Farneti granted plaintiff's motion in limine and **precluded** defense counsel from making reference to the federal lawsuit in any way during the trial, except that defense counsel could make inquiry of Dr. Merola as to the specific allegations set forth in the federal lawsuit complaint, upon showing of good-faith basis for such questioning, and for the sole purpose of addressing Dr. Merola's credibility.

Norman Rivera v. 454 West 57th St.

Holding

- The plaintiff was struck on the nose by a falling pipe, suffering a bad laceration and requiring reconstructive surgery two years post-accident, as well as a two-level cervical fusion and a one-level lumbar fusion.
- The plaintiff was treated by Drs. Grimm, Kolb, Weinstein, and briefly with Dr. Kaplan.
- Judge Bianka Perez **denied all pre-trial motions** in limine and would not allow defense counsel to question regarding “prior bad acts” and precluded the defense from asking causation questions of plaintiff’s neuroradiologist.
- **HOWEVER**, defense counsel got the neuroradiologist to admit that the disc herniations, bulges, osteophytes and other degenerative conditions existed prior to the accident based on his review of diagnostic films.

■ Use of RICO Allegations at Trial

Tactics and Outcomes

Cross-Examining Medical Experts

Questions to Ascertain: “Concerned Physician” vs. Professional Expert

- *How many times have you been retained by Plaintiff’s counsel?*
- *How many present patients of yours have cases with Plaintiff’s firm?*
- *Have you ever referred any cases to this Plaintiff’s firm?*
- *How many patients have cases that are being defended by this law firm?*
- *How many patients have you treated with Drs. X, Y, and Z? You work as a team, do you not?*
- *How much are you paid for performing an independent medical examination?*
- *Doctor, do you take insurance? Why are you treating this patient on a lien?*

Considerations for Medical Experts:

- Are the reports the same for every patient?
- Investigate the physician’s privileges and professional affiliations.
- Has the physician been cited by the Workers’ Compensation Board?
- Obtain prior testimony from testifying expert to confirm information is accurate prior to trial.

Urquia v. Capital Concrete, et al.

- The plaintiff, represented by Wingate Russotti, alleged that while working on a construction site removing forms from the ceiling, several 20 to 30-pound beams fell onto him from above, causing him to fall off the ladder upon which he was working.
- Damages-only trial, where the plaintiff alleged that he sustained a two-level cervical anterior discectomy and fusion, and a right shoulder arthroscopy (performed by Dr. Ashley Simela and Dr. David Capiola, respectively) and made claims of future necessary lumbar fusion in a deeply inflated LCP (by Dr. Vicki Seidenberg) that valued his future medical care at around \$700,000 over his anticipated 36-year life expectancy.
- Jury returned a total verdict of **\$450,000**, including \$200,000 of past pain and suffering, \$100,000 in future pain and suffering, \$100,000 in past medical expenses, and \$50,000 in future claimed medical expenses.

Felicia Watson v. OLR ECW Housing Development Fund Company, Inc.

- The plaintiff demanded \$11,200,000, inclusive of a \$5,300,000 life care plan.
- The plaintiff alleged a two-level cervical fusion, a concussion with cognitive losses and alleged complete disability in relation to the accident in addition to recommendations for a two-level fusion and shoulder surgery.
- Jury awarded **\$780,000** in total damages, including \$500,000 in past pain and suffering, \$100,000 in future pain and suffering over 25 years, \$176,000 in past medical expenses, and \$4,000 in future medical expenses.
 - Jury indicated to counsel post-trial that *they would have awarded a complete defense verdict* if they had known that all of the plaintiffs' treating providers were direct referrals from the plaintiff's attorneys.

Jonathan Gustavo Mendez Meza v. Dutch Vortex LLC

- The plaintiff, represented by Subin, alleged tears in both shoulders requiring arthroscopic surgery in each shoulder and a cervical fusion and lumbar discectomy with a \$8,850,000 demand.
- The RICO-named defendants included Dr. Gerling, who ended up **not testifying** at trial, and plaintiff's counsel did not provide any specifics regarding his unavailability.
- The Court denied defense counsel's request for a missing witness charge for the plaintiff's failure to call any of the plaintiff's treating physicians except for Dr. Ali Guy, on the basis that the medical records were in evidence and his testimony would be cumulative.
- Jury deliberated for an afternoon and returned a **\$1,860,000** aggregate verdict, including \$735,500 for 37 years' of future pain and suffering and \$500,000 in future medical expenses.

New York County Index No. 160934/2020

Seaz v. Excellent Bus Service Inc.

- The plaintiffs, two brothers and their friend were represented by Liakis Law and alleged that they were returning from their construction jobsite when they stopped their van on I-87 and a commercial bus rear-ended them.
- The plaintiffs claimed that heavy traffic stopped in front of them requiring them to stop, and the defendants claim that the plaintiffs' van was stopped for no apparent reason, and that the accident was staged.
- The plaintiffs' claimed injuries included a cervical fusion, shoulder surgery (rotator cuff and labrum), meniscectomy, and spinal epidural injections.
- Line of questioning with orthopedist Dr. Kumar: *“Well, I mean, obviously, I know the case was funded. I know that much. I don't know what means it was paid.”* When immediately asked what “funded” meant his answer speaks for itself: *“Essentially, that the -- the law firm is paying for the case.”*
- After a 6-day trial the jury returned a verdict totaling **\$615,000 for all three plaintiffs**

E.D.N.Y. Case No. 21-CV-6967

Defense Verdicts

- Walter Naranjo v. Vassar (Queens County)
 - The plaintiff, a 34 year-old union worker represented by Wingate Russotti, brought a Labor Law § 240 claim after he allegedly fell from a roof of an 8-foot asbestos decontamination unit that he climbed due to his inability to complete his work safely and securely from a ladder
 - Plaintiff claimed surgery to his neck, both shoulders, both knees, as well as a TBI with early onset dementia
 - \$10,000,000 demand
- Laliashvili v. Kadima Tenth Avenue SPE (Kings County)
 - The plaintiff, represented by Schwitzer & Associates, claimed a Labor Law § 240 violation where an A-frame cart loaded with 5-foot glass mirrors tipped over while a co-worker was pushing it.
 - The plaintiff claimed multiple cervical and lumbar spine procedures performed by Dr. Merola, knee surgeries, as well as a TBI
 - \$9,000,000 demand

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