

EAGLE INTERNATIONAL ASSOCIATES

PRESENTS



Another Annual Eagle Landing

June 11, 2026

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EAGLE INTERNATIONAL ASSOCIATES

MISSION STATEMENT

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DIVERSITY POLICY

EAGLE INTERNATIONAL ASSOCIATES, INC. IS OF THE STRONG BELIEF THAT OUR ORGANIZATION IS STRONGER, MORE VALUABLE, AND MORE EFFECTIVE THROUGH THE INCLUSION OF ADJUSTORS AND ATTORNEYS OF DIVERSE GENDER, SEXUAL ORIENTATION, RACIAL, ETHNIC, CULTURAL BACKGROUNDS, AND ALL RELIGIOUS OR NON-RELIGIOUS AFFILIATIONS. EAGLE RECOGNIZES THAT THE INCLUSION OF SUCH DIVERSITY IS VITAL IN ORDER TO ACHIEVE EXCELLENCE AND TO SERVE ITS CLIENTELE EFFECTIVELY. EAGLE IS COMMITTED TO A FURTHER UNDERSTANDING OF ITS CULTURAL FILTERS AND THE ABSOLUTE NEED TO ACCEPT EACH PERSON AS A VALUED, TALENTED, UNIQUE INDIVIDUAL, WHICH, WHEN WORKING WITH OTHER EAGLE MEMBERS, WILL BRING THE ORGANIZATION AND ALL ITS MEMBERS GENUINE BENEFITS AND COMPETITIVE ADVANTAGE IN THE MARKETPLACE.

ANOTHER ANNUAL EAGLE LANDING

**JUNE 11, 2026
PROGRAM**

7:55 a.m. Arrival & Welcome

8:00 a.m. Introductions

8:15 a.m. Trial Strategy in Casualty Large Losses

Ted Waldeck ESQ., Waldeck & Woodrow, P.A.

John Safarli ESQ., Macdonald Devin Madden Kenefick Harris & Quinn, P.C.

9:15 a.m. UM/UIM – Carrier Responsibilities and Evaluation

Perry Oxley ESQ., Oxley Rich Sammons Law Firm

Ted Waldeck ESQ., Waldeck & Woodrow, P.A.

10:15 a.m. Break

10:30 a.m. Defense of Day Care/Abuse Claims

Brian Leinhauser ESQ., MacMain Leinhauser

11:30 a.m. The Industry Under Attack and Counter

Litigation Funding - Lyle Robinson ESQ., Taylor Wellons Politz & Duhe, LLC

RICO & Uber Litigation – Shawn Brousseau ESQ. Napierski, VanDenburgh, Napierski & O'Connor, LLP.

Using AI – Frank Gassler ESQ., Banker Lopez Gassler, P.A.

12:30 p.m. Closing and Lunch

ANOTHER ANNUAL EAGLE LANDING

**JUNE 11, 2026
PROGRAM**

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SHAWN BROUSSEAU IS A PARTNER WITH THE FIRM. HE RECEIVED HIS B.A., MAGNA CUM LAUDE, IN ECONOMICS AND GOVERNMENT FROM ST. LAWRENCE UNIVERSITY IN 1991 AND IS A 1994 GRADUATE OF ALBANY LAW SCHOOL OF UNION UNIVERSITY.

MR. BROUSSEAU PRACTICES PRIMARILY IN THE FIELD OF CIVIL LITIGATION, INCLUDING THE DEFENSE OF EMPLOYMENT LAW, CIVIL RIGHTS LITIGATION, MUNICIPAL DEFENSE, PERSONAL INJURY, PRODUCTS LIABILITY, AND CONSTRUCTION LAW ACTIONS IN FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK. HE IS EXPERIENCED AT DEFENDING AGE, DISABILITY, RACE, AND SEX DISCRIMINATION LAWSUITS, WAGE CLAIMS, EMPLOYMENT CONTRACT ACTIONS, GRIEVANCE PROCEEDINGS, AND UNFAIR LABOR PRACTICE PROCEEDINGS. HE ALSO HAS EXTENSIVE EXPERIENCE IN HANDLING EMPLOYEE DISCIPLINE HEARINGS ON BEHALF OF EMPLOYERS IN THE PRIVATE AND PUBLIC SECTORS. IN ADDITION, MR. BROUSSEAU IS EXPERIENCED IN DEFENDING HOSPITALS, MUNICIPALITIES AND COMPANIES AGAINST CIVIL RIGHTS AND TORT CLAIMS.

MR. BROUSSEAU ALSO REGULARLY DEFENDS PHYSICIANS AND HOSPITALS IN THE DEFENSE OF MEDICAL MALPRACTICE ACTIONS AND IN DEFENSE OF PROFESSIONAL LICENSES BEFORE THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT AND THE OFFICE OF PROFESSIONAL DISCIPLINE.



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FRANK GASSLER IS A SHAREHOLDER WITH BANKER LOPEZ GASSLER P. A . IN ITS TAMPA , FLORIDA OFFICE. HIS DIVERSE LITIGATION PRACTICE INCLUDES THE DEFENSE OF PROFESSIONAL LIABILITY, PRODUCTS LIABILITY, PREMISES LIABILITY, TOXIC TORT, AND CONSTRUCTION DEFECT CLAIMS. HE IS BOARD CERTIFIED AS A CIVIL TRIAL LAWYER BY THE FLORIDA BAR. HE IS ADMITTED TO PRACTICE IN ALL STATE AND FEDERAL DISTRICT COURTS IN FLORIDA , THE ELEVENTH CIRCUIT COURT OF APPEALS, AND THE UNITED STATES SUPREME COURT.

HE IS A 1973 CUM LAUDE GRADUATE OF VILLANOVA UNIVERSITY AND A 1976 GRADUATE OF COLUMBIA UNIVERSITY SCHOOL OF LAW. HE IS A MEMBER OF FEDERATION OF DEFENSE AND CORPORATE COUNSEL (FDCC), DEFENSE RESEARCH INSTITUTE (DRI), THE FLORIDA DEFENSE LAWYERS ASSOCIATION (FDLA), THE FEDERAL BAR ASSOCIATION (FBA), AND THE AMERICAN BOARD OF TRIAL ADVOCATES (ABOTA). HE HAS BEEN SELECTED FOR INCLUSION IN BEST LAWYERS IN AMERICA (2005 - 2021) (PERSONAL INJURY, LEGAL MALPRACTICE, PROFESSIONAL MALPRACTICE, AND PRODUCTS LIABILITY),FLORIDA SUPER LAWYERS (2006 - 2021), AND FLORIDA LEGAL ELITE (2004; 2008; 2010 - 2014).



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BRIAN WORKED HIS WAY THROUGH COLLEGE WITH THE HELP OF HIS FAMILY. AFTER GRADUATING FROM VILLANOVA UNIVERSITY, BRIAN STUDIED AS A SEMINARIAN WITH THE ORDER OF SAINT AUGUSTINE, EXPLORING HIS POSSIBLE CALL TO ORDAINED MINISTRY. AFTER LEAVING THE SEMINARY, BRIAN CONTINUED HIS THEOLOGY STUDIES AT DUQUESNE UNIVERSITY AND LATER TAUGHT RELIGION AND MATH IN THE ARCHDIOCESE OF PHILADELPHIA.

AFTER TEACHING, BRIAN PURSUED HIS JURIS DOCTOR DEGREE AT THE THOMAS R. KLINE SCHOOL OF LAW OF DUQUESNE UNIVERSITY. UPON GRADUATION, HE ACCEPTED A POSITION AT THE LAW FIRM OF CAMPBELL, DURRANT, BEATY, PALOMBO & MILLER P.C., FOCUSING HIS PRACTICE ON PUBLIC SECTOR LABOR AND EMPLOYMENT COUNSEL AND LITIGATION.

IN 2007, BRIAN JOINED THE LAW FIRM OF LAMB MCERLANE, WHERE HE WAS AN ASSOCIATE IN THE APPELLATE LITIGATION AND LABOR AND EMPLOYMENT PRACTICE GROUPS. IN APRIL 2013, BRIAN, ALONG WITH PARTNER DAVID J. MACMAIN FOUNDED THE FIRM THAT WOULD BECOME MACMAIN LEINHAUSER.



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LYLE WAS BORN IN ATLANTA, GEORGIA, IN 1970. HE RECEIVED A BACHELOR OF BUSINESS ADMINISTRATION IN RISK MANAGEMENT AND INSURANCE FROM THE UNIVERSITY OF GEORGIA IN 1992. HE RECEIVED HIS JURIS DOCTOR MAGNA CUM LAUDE FROM MISSISSIPPI COLLEGE SCHOOL OF LAW IN 2000. WHILE IN LAW SCHOOL, HE SERVED AS THE MANAGING EDITOR OF THE LAW REVIEW. IN ADDITION, HE RECEIVED AMJUR AWARDS IN INSURANCE LAW AND SECURED TRANSACTIONS, AND WAS AWARDED AN ACADEMIC SCHOLARSHIP. LYLE IS ADMITTED TO PRACTICE IN ALL STATE AND FEDERAL COURTS IN THE STATE OF MISSISSIPPI, AS WELL AS THE UNITED STATES COURTS OF APPEALS FOR THE FIFTH AND ELEVENTH CIRCUITS. HE IS AN EXPERIENCED LITIGATOR WHO SPECIALIZES IN MATTERS THAT INVOLVE COMPLEX COMMERCIAL AND TORT LITIGATION, INSURANCE COVERAGE DISPUTES, BAD FAITH CLAIMS AND PRODUCTS LIABILITY. LYLE IS A MEMBER OF THE MISSISSIPPI BAR, THE CAPITAL AREA BAR ASSOCIATION, THE DEFENSE RESEARCH INSTITUTE AND THE MISSISSIPPI DEFENSE LAWYERS ASSOCIATION.



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JOHN SAFARLI IS SENIOR COUNSEL AT THE LAW FIRM OF MACDONALD DEVIN & ASSOCIATES, P.S. IN SEATTLE AND HAS BEEN IN PRIVATE PRACTICE SINCE 2012. HE IS LICENSED TO PRACTICE IN TEXAS AND WASHINGTON AND ADMITTED TO PRACTICE IN NUMEROUS FEDERAL COURTS ACROSS THE COUNTRY, INCLUDING THE UNITED STATES SUPREME COURT. JOHN EARNED HIS J.D. FROM SEATTLE UNIVERSITY SCHOOL OF LAW AND HIS DIPLOMA FROM THE BENJAMIN N. CARDOZO SCHOOL OF LAW IN NEW YORK. HIS PRACTICE FOCUSES ON THE DEFENSE OF EMPLOYERS, EDUCATIONAL INSTITUTIONS, CORPORATIONS, AND INDIVIDUALS AGAINST A VARIETY OF CLAIMS, INCLUDING EMPLOYMENT DISCRIMINATION, SEXUAL ABUSE, CATASTROPHIC INJURIES, AND COMMERCIAL DISPUTES. JOHN HAS TRIED JURY AND NON-JURY CASES TO VERDICT IN BOTH STATE AND FEDERAL COURT AND HAS SIGNIFICANT EXPERIENCE SUCCESSFULLY DEFENDING THOSE VERDICTS ON APPEAL.

PRIOR TO JOINING MACDONALD DEVIN IN 2023, JOHN PRACTICED FOR 10 YEARS IN WASHINGTON STATE AND WAS RETAINED BY THE WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP AND TO IMPLEMENT A PROGRAM THAT PROVIDED LEGAL RESEARCH AND ANALYSIS SUPPORT TO STATE COURT JUDGES WHO DID NOT HAVE LAW CLERKS DUE TO BUDGETARY CONSTRAINTS.



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THEODORE J. WALDECK IS A PARTNER THAT PRACTICES IN ALL INSURANCE DEFENSE MATTERS INCLUDING PERSONAL INJURY, CONSTRUCTION LAW, PRODUCT LIABILITY, INSURANCE COVERAGE, NO-FAULT UM/UIM, AUTO LIABILITY, PROPERTY CLAIMS, CHURCH AND SCHOOL CASES, DENTAL MALPRACTICE, LONG TERM CARE AND ASSISTED LIVING CASES, PROFESSIONAL LIABILITY, EMPLOYMENT LAW, AND LIQUOR LIABILITY. THIS INCLUDES ALL PHASES OF LITIGATION FROM PRE-SUIT THROUGH TRIAL AND APPEALS. MR. WALDECK HAS TRIED CASES THROUGHOUT MINNESOTA, WISCONSIN, AND NORTH DAKOTA.

Trial Strategy in Casualty Large Losses



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TRIAL STRATEGY

1) Intro

- a. Social inflation – combination of anchoring, per diem, and the reptile to inflate claims
- b. How do we respond? Spot the tactic → name it for the jury → keep jurors on the evidence → preserve the record

2) Anchoring in voir dire and closing

- a. What is anchoring? (First large number a juror hears becomes gravitational center for verdict)
- b. How is it being used by plaintiff's bar? Early and often, including during voir dire
- c. What are defense counters?
 - i. Counter-anchoring? Pros vs. cons?
 - ii. Attacking unsupported anchors through motions in limine
 - 1. Texas opinion from 2023 holding that noneconomic damages arguments need "rational basis" tied to the evidence
 - 2. What do other states say?

3) Per diem

- a. What is per diem? Converting a noneconomic injury into a daily or hourly rate, multiply across life expectancy
- b. What are defense counters?
 - i. Challenging the unit
 - ii. Use your jurisdiction's case law to your advantage

4) Reptile

- a. What is reptile? Reframing a specific dispute as a broad safety threat, pushing for punishment rather than compensation
- b. What are defense counters?

- i. Understand false absolutes and train witnesses to reject false absolutes and add missing context

5) Closing thoughts

- a. Use voir dire to probe attitudes toward large verdicts
- b. Profiling social-inflation-prone jurors

UM/UIM – Carrier Responsibilities and Evaluation



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**MANDATORY UM UIM
SETTLEMENT
OFFERS AND DEADLINES
FOR THE 50 STATES AND DISTRICT OF COLUMBIA**

MAY 2023

PREPARED BY:
EAGLE INTERNATIONAL
ASSOCIATES, INC.



INTRODUCTION

It is with great pleasure that Eagle International Associates, Inc. presents its ***Mandatory UM UIM Settlement Offers and Deadlines For the 50 States and District of Columbia***. Eagle members for all states contributed to this publication. This is an example of the collective efforts of Eagle providing both service and benefits to clients. We hope that you will find this booklet informative and useful in your respective practices and businesses. We invite you to contact any Eagle member with questions or comments.

With best wishes!

The Members of Eagle International Associates, Inc.

SINCE 1989

Since 1989 the members of Eagle International Associates have been providing clients with the highest quality legal and adjusting services throughout the United States, Canada and Europe.

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THE LINKS TO THE STATUTES, CODES AND REGULATIONS PROVIDED IN THIS PUBLICATION DIRECT THE USER TO A COMBINATION OF DYNAMIC REAL TIME PUBLIC ACCESS GOVERNMENTAL WEBSITES AND STATIC PDF FILES WHICH WERE CURRENT AT THE TIME THEY WERE SCANNED, BUT WHICH MAY HAVE CHANGED SINCE THIS PUBLICATION WAS ISSUED. USERS ARE CAUTIONED TO VERIFY THAT THE STATUTES, CODES AND REGULATIONS LINKED TO HEREIN HAVE NOT BEEN AMENDED, DELETED, REVISED OR SUPPLEMENTED SINCE THE TIME OF PUBLICATION PRIOR TO TAKING ANY ACTION BASED ON THE INFORMATION LINKED TO HEREIN. THE EAGLE MEMBER REFERENCED FOR EACH STATE WILL BE HAPPY TO ASSIST YOU.

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State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Alabama	No	No	Eagle Member Eagle International Associates, Inc. 702-221-1399
Alaska	No. Alaska law Alaska Stat. Ann. § 28.20.445 (Chapter 20 of the Motor Vehicle Law) covers both Uninsured and Underinsured motorists. Some sections of Chapter 22 also cover UIM's. The statutes do not require that a carrier make an offer to settle the UIM claim as soon as they have enough information. Rather, an insured must use up, or "exhaust," available underlying liability policy limits before he or she can pursue UIM benefits. Coughlin v. Gov't Employees Ins. Co. (GEICO), 69 P.3d 986, 989 (Alaska 2003) .	No	Eagle Member Eagle International Associates, Inc. 702-221-1399
Arizona	Per the fair claims act, the carrier is required to gather information and adjust the claim as the facts require. The carrier cannot wait for the underlying tort case to resolve. The UIM carrier is only entitled to the credit for the underlying policy limits. Country Mutual v Fonk 198 Ariz 167, 7 P3d 973 (App 2000) .	No. The carrier is not required to pay the amount offered (claimed undisputed amount) in a UM or UIM context. Voland v Farmers Ins Co 189 Ariz 448, 943 P2d 808 (App 1997) . Some carriers nevertheless do pay what it believes to be the value and arbitrate the remained under a liberal reading of Borland v Safeco, 147 Ariz 195, 709 P2d 552 (App 1985) .	Eagle Member Eagle International Associates, Inc. 702-221-1399
Arkansas	Underinsured motorist carriers have no obligation to pay underinsured motorist benefits until the tortfeasor's liability coverage limits are "paid in full." E.g., Hartford Ins. Co. v. Mullinax, 336 Ark. 335, 984 S.W.2d 812 (1999); State Farm Mut. Automobile Ins. Co. v. Thomas, 316 Ark. 345, 871 S.W.2d 571 (1994) . Thus, underinsured motorist carriers are not subject to penalties for refusing to pay underinsured benefits prior to the liability carrier's payment of policy limits. Uninsured motorist claims, on the other hand, are to be paid within a reasonable time following the insured's notice of the claim regardless of the status of the underlying claim. Farm Bureau Mut. Ins. Co. v. Mitchell, 249 Ark. 127, 458 S.W.2d 395 (1970) . Failure to do so may result in imposition of a 12% penalty and attorney's fees pursuant to Ark. Code Ann. § 23-79-208 should the insured prevail in an action to recover underinsured benefits. <i>Id.</i>	A diligent search of Arkansas case law, statutory law, and insurance regulations reveals no authority requiring a settlement check be sent with any offer to settle an uninsured or underinsured motorist claim.	Jason J. Campbell, Esq. Mark D. Wankum, Esq. Anderson, Murphy & Hopkins 501-372-1887

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
<p>California</p>	<p>Yes for Uninsured Motorist Claim. Under California law an insurer has a duty to effectuate settlement where liability is reasonable clear. They cannot wait for a demand or resolution of the underlying claim. (Du v. Allstate Ins. Co. (9th Cir. 2012) 681 F.3d 1118.)</p> <p>No for Underinsured Motorist Claim. In California, UIM coverage does not apply to any bodily injury until the limits of the bodily injury liability policies applicable to all insured motor vehicles causing the injury have been exhausted by payment of judgments or settlements, and proof of the payment is submitted to the insurer providing the underinsured motorist coverage. (Cal. Ins. Code, section 11580.2(p).)</p> <p>If the underlying claim has not resolved, the insured driver cannot bring their underinsured motorist claim since “all applicable coverage” has not been “exhausted by payment of judgments or settlements.”</p>	<p>No. California requires that there be a settlement with the claimant first. As for partial payments the regulations state: “No insurer shall issue checks or drafts in partial settlement of a loss or claim that contain or are accompanied by language releasing the insurer, the insured, or the principal on a surety bond from total liability unless the policy or bond limit has been paid, or there has been a compromise settlement agreed to by the claimant and the insurer as to coverage and amount payable under the insurance policy or bond.” (Cal. Code Regs. tit. 10 § 2695.4.)</p>	<p>Los Angeles Paul A. deLorimier, Esq. Michael Acain, Esq. McKay deLorimier & Acain 213-386-6900</p> <p>San Francisco Richard S. Diestel, Esq. Alison M. Crane, Esq. Davis J. Reilly, Esq. Bledsoe Diestel Treppa & Crane 415-981-5411</p>
<p>Colorado</p>	<p>Yes. Pursuant to Tubbs v. Farmers, 353 P.3d 924 (Colo. App. 2015), an insured can settle with an at-fault driver for less than that driver’s full liability limit and still recover UIM benefits. Because an insured’s right to recover UIM benefits is not contingent upon the insured recovering the full underlying limit, UIM insurers can and should evaluate (and, if appropriate, negotiate and pay) UIM claims at the time they are presented, regardless of the status of the underlying claim.</p> <p>Regarding the timing of any offer, Colorado’s UIM statute, C.R.S. § 10-4-609, has no stated requirement regarding when a settlement offer must be conveyed, and the body of case law surrounding this topic merely indicates that UIM insurers must act reasonably under the circumstances.</p> <p><i>Continued on page 3</i></p>	<p>It depends. If an offer includes amounts for undisputed benefits, a check for the undisputed benefits should be sent within a reasonable amount of time after it is determined that the benefits are undisputed. If an offer is solely an offer of compromise, and does not include any amounts for undisputed benefits, there is no obligation to advance pay the amount of the offer.</p> <p>Pursuant to State Farm Automobile Insurance Company v. Fisher, 418 P.3d 501 (Colo. 2018) (Fisher II), which interpreted Colorado’s unreasonable delay and denial statute, C.R.S. § 10-3-1115, “insurers have a duty not to unreasonably delay or deny payment of covered benefits, even though other components of an insured’s claim may still be reasonably in dispute.” Meaning, in Colorado, UM/UIM insurers must pay undisputed benefits piecemeal, and then continue to adjust and negotiate any disputed aspects of a claim.</p> <p><i>Continued on page 3</i></p>	<p>Art Kutzer, Esq. Tiffany Norton, Esq. SGR, LLC 303-320-0509</p>

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Colorado <i>Continued</i>	<p>The Regulation provides:</p> <p>All insurers authorized to write property and casualty insurance policies in Colorado, shall make a decision on claims and/or pay benefits due under the policy within sixty (60) days after receipt of a valid and complete claim unless there is a reasonable dispute between the parties concerning such claim, and provided the insured has complied with the terms and conditions of the policy of insurance.</p> <p>The Regulation goes on to provide guidance as to when a “valid and complete claim is deemed received by the insurer,” and as to when a “reasonable dispute” may exist between the parties.</p> <p>The Regulation goes on to provide guidance as to when a “valid and complete claim is deemed received by the insurer,” and as to when a “reasonable dispute” may exist between the parties.</p>	<p>It should be noted that <i>Fisher II</i> addressed payment of discernable, past medical expenses that an insurer specifically acknowledged were reasonable and accident-related and, thus, owed under the terms of a policy. Whether <i>Fisher II</i> applies to non-economic damages is a trending topic. Most courts that have addressed the issue have held that non-economic damages are inherently debatable and, thus, that there is no obligation to advance pay them. One Court has held differently and that case, <i>Fear v. GEICO Cas. Co.</i>, 2021CA2023, is currently on appeal to the Colorado Court of Appeals.</p>	
Connecticut	<p>No. In a UIM context, the underlying policy must be exhausted, but there is no requirement or statute which requires a UIM carrier to make an offer regardless of the status of the underlying claim.</p>	<p>No. C.G.S. Section 52-195c, however, requires the payment of the settlement funds within 30 days of the receipt of the settlement documents by the defendant, the defendant’s attorney or agent or by the insurance carrier.</p>	<p>Christopher M. Harrington, Esq. Howard, Kohn, Sprague & Fitzgerald 860-525-3101</p>
Delaware	<p>No. Title 18, Chapter 39, Section 3902 of the Delaware Code covers both Uninsured and Underinsured motorists’ claims. The statute does not require a carrier to make an offer as soon as it has enough information.</p>	<p>No</p>	<p>Eagle Member Eagle International Associates, Inc. 702-221-1399</p>
District of Columbia	<p>No</p>	<p>No</p>	<p>Maryland Paul M. Finamore, Esq. 410-740-3170</p> <p>Virginia David D. Hudgins, Esq. Hudgins Law Firm 703-739-3300</p>

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Florida	Under Florida law a UM/UIM carrier can be liable for bad faith for not settling before the tort case was settled. The Supreme Court said that the bad faith claim cannot be brought against the UM/UIM carrier until after settlement, but that the bad faith damages can include damages for actions taken before the tort case was settled. See Vest v. Travelers Ins. Co., 753 So. 2d 1270 (Fla. 2000) .	Florida does not require that a settlement check be sent with any offer. Where there is a time limit demand, which the Defendant wishes to accept, they must do so by sending the check with the letter accepting the time limit demand. The acceptance of the time limit demand must be made, and the money paid prior to the date the time limit demand expires.	Frank H. Gassler, Esq. Jeffrey M. James, Esq. Banker Lopez Gassler P.A. 813-222-1500
Georgia	Yes, but Georgia does not require that an Uninsured or Underinsured Motorist Carrier make an offer to settle an UIM claim, and thus does not require any settlement offer to be accompanied with a check.	No	David V. Hayes, Esq. Bendin Sumrall & Ladner, LLP 404-671-3100
Hawaii	No. Hawaii law Haw. Rev. Stat. § 431:10C-301 (Article 10C of the Insurance Code) covers both Uninsured and Underinsured motorists. However, a general principle of insurance law requires an insurer to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies. Haw. Rev. Stat. § 431:10C-301 . Contract clauses that require insured to exhaust the full amount of tortfeasor's liability insurance before seeking underinsured motorist (UIM) benefits have been found generally void as against public policy. <i>Taylor v. Gov't Emps. Ins. Co.</i> , 90 Haw. 302, 978 P.2d 740 (1999).	No	Eagle Member Eagle International Associates, Inc. 702-221-1399
Idaho	Yes, within 60 days or risk attorney's fees. Idaho Code Ann. § 41-1839 addresses awarding attorney's fees in UIM actions. The statute conveys to the insurance companies, in UIM actions, the obligation to pay within 60 days of proof of loss the amount that is justly due or they will risk attorney's fees in any subsequent action or arbitration.	No. Martin v. State Farm Mut. Auto. Ins. Co. , 138 Idaho 244, 247, 61 P.3d 601, 604 (2002) addresses this situation and explains: The purpose of the statute is to provide an incentive for insurers to settle just claims in order to reduce the amount of litigation and the high costs associated with litigation. This Court has held that the statutory attorney fee is not a penalty but is an additional sum rendered as compensation when the insured is entitled to recover under the insurance policy. Before a plaintiff may recover attorney fees under the statute, it must be shown that: (1) the insured has provided proof of loss as required by the insurance policy; and (2) the insurance company failed to pay an amount justly due under the policy within thirty days of such proof of loss.	Eagle Member Eagle International Associates, Inc. 702-221-1399

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Illinois	No. Illinois law 215 Ill. Comp. Stat. Ann. 5/143a addresses Uninsured Motorist Coverage and 143a-2 addresses both Uninsured and Underinsured Motorists coverage. Neither statute requires that or otherwise addresses whether a carrier makes an offer to settle claims as soon as it has enough information and regardless of the status of the third-party claim. In respect of UIM in particular, Section 143a-2 states that "(7) A policy which provides underinsured motor vehicle coverage may include a clause which denies payment until the limits of liability or portion thereof under all bodily injury liability insurance policies applicable to the underinsured motor vehicle and its operators have been partially or fully exhausted by payment of judgment or settlement."	No. Illinois law 215 Ill. Comp. Stat. Ann. 5/155 prohibits "unreasonable delay" in settling a claim but contains no specific provision that a settlement check accompany an offer or that UM claims be settled as soon as the investigation is complete.	Mitchell A. Orpett, Esq. Tribler Orpett & Meyer, P.C. 312-201-6413
Indiana	No, and actually, the State of Indiana preserves the right of the insurer to withhold settlement pending a dispute over liability or coverage for the underlying claim. In Indiana, insurance companies have a duty to deal in good faith with the insured. Erie Insurance Company v. Hickman, 622 N.E.2d 515, 518 (Ind. 1993) ("Indiana law has long recognized that there is a legal duty implied in all insurance contracts that the insurer deal in good faith with its insured."). However, insurance companies may, in good faith, dispute claims. Id. at 520 . With respect to a UIM claim, an insurer may delay settlement of the claim pending a determination of underlying liability, as this will have a necessary effect with respect to coverage under the policy. See Hopper v. Carey, 810 N.E.2d 761, 766 (Ind. Ct. App. 2004) (holding that a court properly granted summary judgment on a bad faith claim when the insurer delayed payment on the claim pending a determination of liability against the alleged tortfeasor).	No, the State of Indiana does not require the issuance of a settlement check with a settlement offer, either through statute or common law.	Nicholas G. Brunette, Esq. Ronald A. Mingus, Esq. Reminger Co., LPA 317-663-8570
Iowa	In Iowa, an uninsured or underinsured motorist insurance company must act in good faith towards its insured. This is so whether or not the uninsured motorist's liability has been adjudicated. Iowa Code §§ 516A.1 et. Seq.; Belleville v. Farm Bureau Mutual Insurance Company, 702 N.W.2d 468 (2005) . That said, there is no case law that explicitly states that it is mandatory for the UIM carrier to extend a settlement offer as soon as there is sufficient information, regardless of the status of the underlying claim.	In Iowa, there is no judicial or statutory requirement that a settlement check be sent with any settlement offer. Iowa Code § 507B.4(j), Unfair Claims Settlement Practices .	Eagle Member Eagle International Associates, Inc. 702-221-1399

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Kansas	No	No	Sean M. Sturdivan, Esq. Brad S. Russell, Esq. John E. Bordeau, Esq. Elizabeth Evers Guerra, Esq. Sanders Warren & Russell, LLP 913-234-6100
Kentucky	<p>Generally, no. But there are some considerations to be given based on the facts and status of each claim. First, ascertain what are the tortfeasor's available liability policy limits. Second, check to see if a Coots letter was sent to the UIM carrier Third, if no Coots letter is received, the UIM carrier should make an independent analysis of the new money UIM exposure if the tortfeasor (or his or her carrier) disagrees that the liability policy limits should be paid for some reason.</p> <p>If the third scenario occurs, there could be reason enough for the UIM carrier to "buy out" or tender its limits to the claimant/insured. This depends on the potential exposure as the claim is presented. Of course, any plan of action involving this strategy should be discussed with claimant's counsel and shared with the tortfeasor's carrier.</p> <p>Every UIM claim is different. Individualized attention to the facts and circumstances is critical to dealing in good faith with a first-party claimant.</p>	No	<p>Lexington John Dunn, Esq. Reminger Co., LPA 859-426-7222</p> <p>Louisville Robert A. Ott, Esq. Reminger Co., LPA 502-584-1310</p>
Louisiana	<p>The carrier should make an unconditional tender of the undisputed amount within thirty (30) days of when it has enough information to determine the following 1) An accident occurred; 2) The insured was not at fault; 3) The other driver was underinsured; 4) The insured suffered damages and the nature and extent of those damages. Failure to make a tender of the undisputed amount within thirty days of receipt of satisfactory proof of loss is bad faith "per se." Payment should be made to the insured without any strings attached. The unconditional tender should not accompany a release of any kind, and the check itself shall not indicate payment in full and final settlement. See: McDill v. Utica, 475 So.2d 1085 (La. 1985); LA R.S. 22:1295; LA R.S. 22:1973; LA R.S. 22:1892</p>	<p>Once the undisputed amount has been paid through an unconditional tender, the parties may negotiate the disputed portion of the claim for complete resolution. When negotiating, the insurer should use language that it disputes the balance of the claim after payment of the unconditional tender. The insurer should clearly state that negotiations moving forward are to resolve the disputed portion because the undisputed portion has been paid via unconditional tender.</p>	<p>Kelly E. Theard, Esq. Deutsch Kerrigan 504-593-0667</p> <p>Josh G. Keller, Esq. Deutsch Kerrigan 504-593-0735</p>

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Maine	No. Beal v. Allstate Ins. Co., 989 A.2d 733 (Me. 2010); 24-A Maine Rev. Stat. §2902(1)	No	Eagle Member Eagle International Associates, Inc. 702-221-1399
Maryland	No	No	Maryland Paul M. Finamore, Esq. 410-740-3170
Massachusetts	No, but insurer may be required to arbitrate the UM/ UIM claim prior to resolution of the underlying claim. See Aetna Cas. and Sur. Co. v. Faris, 27 Mass. App. Ct. 194, 536 N.E. 2d 1097 (1989) ; Pritzky v. Safety Ins. Co., 64 Mass. App. Ct. 751, 835 N.E. 2d 621 (2005) ; Massachusetts Insurers Insolvency Fund v. Safety Ins. Co., 439 Mass. 309, 787 N.E. 2d 555 (2003) ; Mass. Gen. Laws, ch. 175, §§ 111D, 113L.	No	John Egan, Esq. Rubin and Rudman LLP 617-330-7181
Michigan	No. UM and UIM is not mandatory in Michigan see: Farm Bureau Gen. Ins. Co. of Mich. v. Hare, No. 320710 (Mich. Ct. App. Aug. 20, 2015)	No	Eagle Member Eagle International Associates, Inc. 702-221-1399
Minnesota	No. Minnesota law MN ST § 65B.49 Subd. 3a covers Uninsured and Underinsured motorists. The statute does not require that a carrier make an offer to settle the UIM claim as soon as they have enough information.	No. MN ST § 65B.49 Subd. 3a	Peter M. Waldeck, Esq. Theodore J. Waldeck, Esq. Lindsey J. Woodrow, Esq. Waldeck & Woodrow P.A. 612-375-1550
Mississippi	Yes. See Miss. Code Ann. § 83-11-101, et. seq. ; James v. State Farm Mut. Auto. Ins. Co., 743 F.3d 65, 71 (5th Cir. 2014)	No. Mississippi's statute regarding UM/ UIM claims does not impose any such requirement. See Miss. Code Ann. § 83-11-101, et. seq.	Jeremy D. Hawk, Esq. Taylor Wellons Politz Duhe 769-300-2988

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Missouri	No. Missouri does not per se require an insurer to settle UM or UIM claims when it has sufficient information, though the unfair claims settlement provisions do require that the insurer promptly investigate and resolve claims. R.S.Mo. § 375.1007 (2000) . The insurer is not permitted to fail to settle a claim on the basis that another may be responsible for the payment unless the policy provisions provide otherwise. Therefore, if the insurance policy provides that the underlying policy must be exhausted first, then a carrier may wait to offer to settle the claim until after the underlying claim has been resolved. Accordingly, the language in the insurance policy is critical to determining whether an insurer has a duty to resolve a claim prior to resolution of the underlying claim.	No	<p>St. Louis Stephen J. Fields, Esq. Jeffrey J. Brinker, Esq. Gary Paul, Esq. Michael C. Bowgren, Esq. Brinker & Doyen, LLP 314-863-6311</p> <p>Kansas City Sean M. Sturdivan, Esq. Brad S. Russell, Esq. John E. Bordeau, Esq. Elizabeth Evers Guerra, Esq. Sanders Warren & Russell, LLP 913-234-6100</p>
Montana	No. Montana Statute 33-23-201 (Motor vehicle liability policies to include uninsured motorist coverage) covers both Uninsured and Underinsured motorists. The statutes do not require that a carrier make an offer to settle the UIM claim as soon as they have enough information.	No. Montana Statute 33-18-201 (Unfair claim settlement practices prohibited) includes a provision which provides that failure to promptly settle claims, if liability has become reasonably clear under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage will be regarded as an unfair settlement claim. This statute encompasses all insurance companies.	<p>Eagle Member Eagle International Associates, Inc. 702-221-1399</p>
Nebraska	No	No	<p>Eagle Member Eagle International Associates, Inc. 702-221-1399</p>

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Nevada	<p>Yes. Nevada statutory law requires an Uninsured or Underinsured Motorist carrier to make an offer to settle a UIM claim when “liability of the insurer has become reasonably clear.” See NRS 686A.310(1)(e). In fact, NRS 686A.310(1) contains the following provisions regarding what constitutes an unfair practice on the part of an insurer in the context of settling or resolving a claim, to wit:</p> <p>NRS 686A.310 Unfair practices in settling claims; liability of insurer for damages.</p> <p>1. Engaging in any of the following activities is considered to be an unfair practice:</p> <p>...(e) Failing to effectuate prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear.</p> <p>(f) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds, when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered....</p> <p>(l) Failing to settle claims promptly, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.</p> <p>The Supreme Court of Nevada has held that “an insured is not required to obtain a judgment against the tortfeasor before he or she is entitled to receive proceeds under a UM Policy.” Pemberton v. Farmers Insurance Exchange, 109 Nev. 789, 797, 858 P.2d 380, 384 (1993). In addition, an insured may bring a claim for bad faith against an insurer without obtaining and underlying judgment if the insured can establish “legal entitlement” to such proceeds and if the insured also demonstrates unreasonable conduct by the insurer concerning its obligation to the insured. Pemberton, 109 Nev. at 797, 858 P.2d at 384. In order to establish “legal entitlement”, the insured must demonstrate fault by the tortfeasor (i.e., the uninsured motorist) and the extent of damages. Id. at 797, 858 P.2d at 384.</p> <p><i>Continued on page 10</i></p>	<p>Yes. NAC 686A.675 requires an insurer to pay a claim within 30 days after it is accepted. NAC 686A.675 states:</p> <p>If the claim of the first-party claimant is accepted, the insurer shall pay the claim within 30 days after it is accepted. If the accepted claim is not paid within that period, the insurer shall pay interest on the claim at the rate of interest established pursuant to NRS99.040. The interest must be calculated from the date on which the payment is due until the claim is paid.</p> <p>With increasing frequency insureds are demanding that partial payments be made in the UM/UIM motorist context. Those courts which have considered the issue of whether insurers are required to make partial advance payments in the UM/UIM context before the total liability of the uninsured motorist is fixed by arbitration or litigation have held that an insurer’s duty to pay a partial undisputed amount of a UM/UIM claim is not bad faith prior to a determination of the total claim value.</p> <p>§ 5:23. Advancing partial payments, The Claim Adjuster’s Automobile Liability Handbook § 5:23</p> <p><i>Continued on page 10</i></p>	<p>Leland Eugene (Gene) Backus, Esq. Shea M. Backus, Esq. Backus Carranza & Burden 702-872-5555</p>

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
<p>Nevada <i>Continued</i></p>	<p>An insured who establishes “legal entitlement” may recover damages through any of the following means: settlement with insurance company; settlement with the uninsured motorist; an arbitration proceeding with the insurance company; or by suing the insurance company. Id. at 796, 858 P.2d at 384 (citing Allstate Insurance Co. v. Pietrosch, 85 Nev. 310 313, 454 P.2d 106, 108 (1969)). Nevada case law remains unclear as to how an insured may prove legal entitlement or settlement or arbitration. One would assume that as long as the insured meets the threshold of showing legal entitlement (i.e., demonstrating fault on the part of the uninsured motorist and the extent of damages), the insured should be entitled to proceeds under a UM or UIM policy provision.</p> <p>The UM/UIM insurer however has independent duties to promptly respond to its insureds’ communications, spend a reasonable amount of time investigating insureds’ claims for UM benefits, and affirm or deny coverage under the Unfair Claims Practices Act. Estate of Lomastro ex rel. Lomastro v. American Family Ins. Group, 195 P.3d 339, 124 Nev. 1060 (2008) <i>rehearing denied, reconsideration en banc denied</i>.</p> <p>Therefore, upon the establishment of the insured’s legal entitlement, either by the insured or the carrier through its own investigation, the carrier would have enough information to make an offer to settle the UM or UIM claim regardless of whether the underlying action has been resolved through settlement, court judgment, or an arbitration proceeding.</p> <p>The phrase “legally entitled” is contained within NRS 687B.145(2), which addresses uninsured and underinsured coverage in Nevada. The pertinent provision of NRS 687.145(2) states:</p> <p>Uninsured and underinsured vehicle coverage must include a provision which enables the insured to recover up to the limits of the insured’s own coverage any amount of damages for bodily injury from the insured’s insurer which the insured is <i>legally entitled</i> to recover from the owner or operator of the other vehicle to the extent that those damages exceed the limits of the coverage for bodily injury carried by that owner or operator. (Emphasis added.)</p> <p><i>Continued on page 11</i></p>	<p>In a trial court order, a presiding District Court judge held as follows:</p> <p>Defendant’s Motion in Limine regarding Payment of Undisputed Amounts under NIR 686A.675(7) is hereby granted, and counsel and any witness called by either party are hereby precluded from testifying, stating, commenting on, intimating, or otherwise suggesting in the presence of the jury at the trial of this matter that it is a violation of Nevada statute, Nevada regulation, or other Nevada legal authority for an insurance company doing business in the State of Nevada not to pay the so-called “undisputed amount” owing on a claim <i>within</i> a single coverage type, e.g., uninsured motorist coverage, etc., since the Court finds that the insurance regulation at issue, to wit: NIR 686A.675(7), only requires payment of undisputed amounts <i>between</i> different coverage types, e.g., UM and property damage, or UM and collision, etc. Accordingly, this ruling is now the law of this case, and neither counsel nor any witness, expert or non-expert, shall state or testify to his or her opinion to the contrary.</p> <p>Conger v. Arcos, No. A515982, 2009 WL 7195775 (Nev.Dist.Ct. Dec. 16, 2009).</p> <p>NRS686A.675(7) states:</p> <p>Except for a claim involving health insurance, any case involving a claim in which there is a dispute over any portion of the insurance policy coverage, payment for the portion or portions not in dispute must be made notwithstanding the existence of the dispute where payment can be made without prejudice to any interested party.</p> <p>Nev. Admin. Code 686A.675</p>	

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Nevada <i>Continued</i>	<p>In addition, UM and UIM carriers should also be prepared to propose a fair offer upon a showing by the insured that he or she is legally entitled to recover damages from the uninsured motorist. Assuming the carrier does not propose an offer of settlement after the demonstration of legal entitlement by the insured, the insured may bring a claim for bad faith action if the insured can also establish unreasonable conduct by the insurer concerning its obligations to the insured.</p> <p>Insured's allegation that underinsured motorist (UIM) insurer twice failed to provide details about how it reached its valuation of her claim was sufficient to state claim under Nevada law for unfair claims handling practices. <i>Jimenez v. GEICO General Insurance Company</i>, 448 F.Supp.3d 1108 (2020).</p> <p>Insured's allegations that underinsured motorist (UIM) insurer failed to effectuate prompt and equitable settlement of her claim failed to state claim under Nevada law for unfair claims handling practices, absent factual allegations to make a reasonable inference that insurer's liability had become reasonably clear. <i>Id.</i></p> <p>Insured's allegations were insufficient to state bad-faith claim against automobile insurer under Nevada law, arising from alleged underpayment of underinsured motorist (UIM) benefits; insured's claim consisted of rote recitations of the elements of bad-faith claim, and insured's only factual allegations that could possibly support claim were that his medical bills totaled approximately \$38,822.40 and that insurer failed to make a reasonable settlement offer and instead only offered \$8,400. <i>Plaza v. Geico Direct</i>, 430 F.Supp.3d 689 (2020).</p> <p>Insured failed to allege that automobile insurer's delay or denial of underinsured motorist (UIM) benefits was anything more than typical claim-processing under disputed valuation and, thus, did not state claim for unfair claims practices under Nevada law, although insured alleged that insurer reasonably understood what insured's coverage limits were and that it failed to promptly investigate and pay her benefits; insured's coverage limits were not clear to insurer at time of claim, and insured's allegation that insurer failed to investigate was undercut by her later claims that insurer's special investigations unit opened investigation into her claim. <i>Clifford v. Geico Casualty Company</i>, 428 F.Supp.3d 317 (2019).</p> <p><i>Continued on page 12</i></p>		

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Nevada <i>Continued</i>	<p>Insured failed to allege that automobile insurer unreasonably delayed payment of underinsured motorist benefits under policy and, thus, did not state claim for bad faith under Nevada law; factual allegations showed insurer in frequent communication with insured and represented typical back-and-forth in claims-negotiation process, insured's allegations that insurer's offers were unreasonable because they did not cover all of her alleged damages were conclusory and did not show insurer's intent to act in bad faith, and insured did not allege that insurer lacked reasonable basis for disputing or delaying coverage. <i>Id.</i></p> <p>Passenger failed to allege that driver's UM insurer unduly delayed payment of benefits, did not conduct reasonable investigation, misrepresented pertinent facts or policy provisions, and undervalued her claim, and thus failed to state claim for unfair settlement practices under Nevada law against insurer in action arising out of insurance coverage of injuries resulting from a car accident. Rosas v. GEICO Casualty Company, 365 F.Supp.3d 1123 (2019).</p> <p>Under Nevada law, insured failed to state a claim against her automobile insurer for unfair claims practices arising out of insurer's failure to pay her the policy limits of her UM/UIM coverage after an automobile accident; insured's complaint merely regurgitated the statutory provisions governing insurance trade practices without providing any underlying factual support. Sgrillo v. Geico Casualty Company, 323 F.Supp.3d 1167 (2018).</p>		
New Hampshire	No. Estate of Ireland v. Worcester Ins. Co., 149 N.H. 656, 826 A.2d 577 (2003) ; N.H. Rev. Stat. 264:15.	No	Eagle Member Eagle International Associates, Inc. 702-221-1399
New Jersey	No. In New Jersey, a UM/UIM carrier need not, and generally will not, resolve an underinsured motorist claim (UIM) until the underlying claim against the tortfeasor is resolved.	No	David A. Abrams, Esq. Strongin Rothman & Abrams, LLP 973-758-9301

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
New Mexico	No. New Mexico law N.M. Stat. Ann. § 66-5-301 (Article 5 of the Motor Vehicle Law) covers uninsured, unknown drivers and underinsured drivers. The statute does not require that a carrier make an offer to settle the UIM claim as soon as they have enough information.	No	Eagle Member Eagle International Associates, Inc. 702-221-1399
New York	No. UM coverage is mandatory in New York NYS Insurance Law Section 3420 UIM is optional in New York. See links below for useful information: SUM coverage New York 11 N.Y.C.R.R. §60-2.3(f)	No	Albany John W. VanDenburgh, Esq. Kimberly E. Kenealy, Esq. Napierski, VanDenburgh, Napierski & O'Connor 518-862-9292 New York David A. Abrams, Esq. Strongin Rothman & Abrams, LLP 973-758-9301
North Carolina	Yes. N.C. Gen. Stat. § 20-279.21(b)(4) provides that “[a]n underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle.”	No. North Carolina does not require settlement checks to accompany offers. N.C. Gen. Stat. § 20-279.21 governs Uninsured and Underinsured Motorist claims. This statute does not require settlement checks to be sent along with any offer to settle.	Alex J. Hagan, Esq. Jeremy Falcone, Esq. Ellis & Winters, LLP 919-865-7000
North Dakota	No. North Dakota laws ND ST 26.1-40-15.2 and ND ST 26.1-40-15.3 cover Uninsured and Underinsured motorists. The statutes do not require that a carrier make an offer to settle the UIM claim as soon as they have enough information, although if bad faith is found on the part of the insurance company attorney fees will be awarded.	No. ND ST 26.1-40-15.2 and ND ST 26.1-40-15.3	Peter M. Waldeck, Esq. Theodore J. Waldeck, Esq. Lindsey J. Woodrow, Esq. Waldeck & Woodrow P.A. 612-375-1550

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Ohio	<p>Ohio does not require that the UM/UIM carrier offer to settle before the underlying claim is resolved. See R.C. 3937.18 (statute covering UM and UIM coverage). Insurers are held to the good faith standard but can refuse to make a settlement offer while the underlying liability is contested for a non-arbitrary or capricious reason. See State Farm Mut. Auto. Ins. Co. v. Reinhart, 114 Ohio App.3d 625, 683 N.E.2d 843 (3d Dist.1996). Furthermore, policy violations by the insured can release the insurer from the obligation to pay certain claims. See Ferrando v. Auto-Owners Mut. Ins. Co., 98 Ohio St.3d 186, 2002-Ohio-7217, 781 N.E.2d 927.</p>	<p>Ohio does not require UM/UIM carriers to send settlement checks with every settlement offer. See R.C. 3937.18. Instead, settlement negotiations are allowed to play out over the phone and over long periods of time. These negotiations are treated in the same way other negotiations are treated.</p>	<p>Cleveland Mario Ciano, Esq. Reminger & Co., LPA 216-687-1311</p> <p>Cincinnati Robert W. Hojnoski, Esq. Reminger & Co., LPA 513-721-1311</p> <p>Columbus Matthew L. Schrader, Esq. Melvin J. Davis, Esq. Reminger & Co., LPA 614-228-1311</p>
Oklahoma	<p>Yes. In Oklahoma, uninsured/underinsured motorist carriers are obligated to investigate, evaluate, and pay an insured's claim in a reasonable manner. Buzard v. Farmers Ins. Co., 824 P.2d 1105 (Okla. 1991) (the investigation and evaluation must be independent--the carrier may not rely on the investigation or evaluation of the tortfeasor's carrier); Newport v. USAA, 11 P.3d 190 (Okla. 2000) (lowball offers less than an insurer's own evaluation of the claim can constitute bad faith).</p> <p>Since uninsured motorist coverage is primary, first-party coverage, insurance companies cannot avoid or delay their obligation to pay by requiring the insured exhaust all available liability insurance prior to receiving uninsured motorist benefits. See Everaard v. Hartford Accident & Indem. Co., 842 F.2d 1186 (10th Cir. 1988) ("Oklahoma Statute Title 36 § 3636 does not require the adjudication of tort claims against the uninsured motorist as a prerequisite to recovery.").</p> <p><i>Continued on page 15</i></p>	<p>No. Neither 36 O.S. § 3636, nor Oklahoma case law require uninsured/ underinsured motorist carriers to tender settlement checks along with their settlement offers. Gov't Employees Ins. Co. v. Quine, 2011 OK 88, 264 P.3d 1245, the Court concluded that, "an insurer's refusal to unconditionally tender a partial payment of UIM benefits does not amount to a breach of the obligation to act in good faith and deal fairly when: (1) the insured's economic/special damages have been fully recovered through payment from the tortfeasor's liability insurance; (2) after receiving notice that the tortfeasor's liability coverage has been exhausted due to multiple claims, the UIM insurer promptly investigates and places a value on the claim; (3) there is a legitimate dispute regarding the amount of noneconomic/general damages suffered by the insured; and (4) the benefits due and payable have not been firmly established by either an agreement of the parties or entry of a judgment substantiating the insured's damages." Id. at 1251.</p>	<p>Michael Woodson, Esq. Nevin R. Kirkland, Esq. Edmonds Cole Law Firm, P.C. 405-272-0322</p>

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Oklahoma <i>Continued</i>	<p>While an insurer may withhold or delay a payment to its first-party insured if based on a legitimate dispute or reasonable justification (legal or factual), “a claim must be promptly paid unless the insurer has a reasonable belief that the claim is either legally or factually insufficient.” Barnes v. Oklahoma Farm Bureau Mut. Ins. Co., 2000 OK 55, 11 P.3d 162, 171. See also Buzzard v. Farmers Ins. Co., Inc., 1991 OK 127, 824 P.2d 1105, 1108-09 citing Christian v. American Home Assurance Co., 577 P.2d 899 (Okla.1977) (“The insurer’s duty [of good faith] includes, but is not limited to, the duty not to unreasonably withhold payment of claims.”).</p> <p>Finally, an uninsured motorist carrier, once its evaluation of the likely worth of the claim exceeds the tortfeasor’s liability limits, is liable for the entire amount of its insured’s loss from the first dollar up to the policy limits without regard to the presence of other coverage. Burch v. Allstate Ins. Co., 977 P.2d 1057 (Okla. 1998). Thus, regardless of the status of any pending liability claims, once the uninsured motorist carrier completes its investigation, and/or determines that the tortfeasor will be underinsured, it has a duty to promptly pay its insured. Under 36 O.S. § 3636(E), an uninsured motorist carrier may seek subrogation from the tortfeasor.</p>		
Oregon	Yes, or risk of attorney fees awarded after six months of receipt of claim.	No	Peder Rigsby, Esq. Megan Cook, Esq. Jeffrey Hill, Esq. Loren Podwill, Esq. Bullivant Houser 503-228-6351
Pennsylvania	<p>No. Pennsylvania does not require that the UM/UIM carrier make an offer to settle the UIM claim at any point. The relevant statute is 75 Pa. C.S. §§1731-1738. However, the statute does not contemplate this directly. In Pennsylvania, an insurer’s duty to settle a UM/UIM (or failure to) is an issue of bad faith where the insurer is required to make a good faith investigation into the facts of the case and make any settlement offer based on those facts. A recent case discussing this is Johnson v. Progressive Ins. Co., 2009 PA Super 255 (December 28, 2009).</p>	No	Gerald J. Valentini, Esq. Deasey Mahoney & Valentini, Ltd. 215-587-9400

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Rhode Island	In Rhode Island, an uninsured or underinsured motorist insurance company must act in good faith towards its insured, including making a settlement offer on the uninsured motorist claim as soon as it has sufficient information to adjust the claim. This is so whether or not the insured has brought an action against the uninsured or underinsured tortfeasor. R.I.G.L. § 27-7-2.1(h) ; Skaling v. Aetna Insurance Company, 799 A.2d 997 (R.I. 2002) .	In Rhode Island, there is no judicial or statutory requirement that a settlement check be sent with any settlement offer. See, e.g., R.I.G.L. §§ 27-9.1-1 et. seq. , Unfair Claims Settlement Practices Act.	Eagle Member Eagle International Associates, Inc. 702-221-1399
South Carolina	There is no such statutory requirement in South Carolina. Likewise, the common law does not articulate such a requirement. However, the UM/UIM carrier is certainly free to begin negotiations prior to the settlement of the underlying claim.	No	John E. Cuttino, Esq. Gallivan White & Boyd, P.A. 803-724-1714
South Dakota	No. South Dakota Codified Laws § 58-11-9 covers Uninsured and Underinsured interchangeably. The statute does not require that a carrier make an offer to settle the UIM claim as soon as they have enough information.	No. Bad faith on the part of the insurance company can be challenged by plaintiff with the relatively burdensome test laid out in Isaac v. State Farm Mut. Auto. Ins. Co., 522 N.W.2d 752, 759 (S.D. 1994) which “requires a plaintiff to demonstrate ‘an absence of a reasonable basis for denial of policy benefits and the knowledge or reckless disregard of a reasonable basis for a denial,’ and which provides that an insurance company will be held liable only when it ‘intentionally denies a claim without a reasonable basis.’ ”	Eagle Member Eagle International Associates, Inc. 702-221-1399
Tennessee	No	No	Daniel J. Ripper, Esq. Luther-Anderson, PLLP 423-756-5034

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Texas	<p>An underinsured/uninsured motorist insurer is obligated to pay damages which the insured is “legally entitled to recover” from the underinsured motorist. See Brainard v. Trinity Universal Insurance Co., 216 S.W.3d 809, 818 (Tex. 2006). However, the underinsured/uninsured insurer has no duty to pay such damages until a trial court signs a judgment establishing the negligence and underinsured/uninsured status of the other motorist. Id. A judgment against a tortfeasor is not, however, a prerequisite to recovery on an underinsured claim, as the insured may settle with a tortfeasor and then litigate underinsured motorist coverage with the insurer. See State Farm Mut. Auto Ins. Co. v. Matlock, 462 S.W.2d 277, 278 (Tex. 1970). But, neither a settlement with the tortfeasor, nor an admission of liability from the tortfeasor establishes underinsured motorist coverage, because a jury could find that the other motorist was not at fault or that the damages award does not exceed the tortfeasor’s liability insurance. Henderson v. Southern Farm Bureau Casualty Ins. Co., 17 S.W.3d 652, 654 (Tex. 2000). An insured seeking the benefits of underinsured motorist coverage may:</p> <ol style="list-style-type: none"> 1. Sue the insurance company directly without suing the underinsured motorist; 2. Sue the underinsured motorist with the written consent of the insurance company making the judgment binding on the insurance company; or 3. Sue the underinsured motorist without the written consent of the insurance company and then re-litigate the issue of liability and damages. United States Fire Ins. Co. v. Millard, 847 S.W.2d 668, 671-72 (Tex. App.-Houston [1st Dist.] 1993) 	No	<p>Dallas David M. Macdonald, Esq. Macdonald Devin, P.C. 214-651-3300</p> <p>Houston Marc A. Sheiness, Esq. Sheiness Glover & Grossman, LLP 713-374-7005</p>
Utah	<p>No. Utah law Utah Code Ann. § 31A-22-305 covers Uninsured Motorist Coverage and § 31A-22-305.3 covers Underinsured Motorist Coverage. Neither statute requires that that a carrier make an offer to settle the UIM claim as soon as they have enough information. However, there is a 60-day timeline for the carrier to respond or tender once a claimant provides the carrier with an election for arbitration or a notice of filing litigation and a proper demand for payment. See Utah Code Ann. § 31A-22-305 (10) and § 31A-22-305.3 (9)(c).</p>	<p>No. However, a payment can be tendered. See Utah Code Ann. § 31A-22-305 (10) and § 31A-22-305.3 (9)(c)</p>	<p>Eagle Member Eagle International Associates, Inc. 702-221-1399</p>

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Vermont	No. See Bradley v. H.A. Manosh Corp., 157 Vt. 477, 601 A.2d 978 (1991); 23 Vt. Stat. Ann. § 941(a).	No	Eagle Member Eagle International Associates, Inc. 702-221-1399
Virginia	No. See Va. Code § 38.2-2206.	No	David D. Hudgins, Esq. Hudgins Law Firm 703-739-3300
Washington	Yes	No, not directly but strict compliance with Washington Insurance Fair Claims Practices Act required. Risk of non-compliance severe and include potential for treble damages, penalties and attorney fees.	Peder Rigsby, Esq. Megan Cook, Esq. Jeffrey Hill, Esq. Loren Podwill, Esq. Bullivant Houser 206-292-8930
West Virginia	In West Virginia, an uninsured or underinsured motorist insurance company must act in good faith towards its insured, including making a settlement offer on the uninsured motorist claim, as soon as it has sufficient information to adjust the claim. This is so whether or not the insured has won a judgment against the uninsured or underinsured motorist. W.Va. Code § 33-6-31; Weese v. Nationwide Insurance Company, 879 F.2d 115 (4th Cir. 1989) . Essentially, insurance companies have a “contractual obligation of fair dealing and good faith that arises from the inception of the contract.” <i>Id.</i> As a result, an underinsured or uninsured motorist insurance company may offer to settle the claim at any point if it desires to do so.	In West Virginia, there is no judicial or statutory requirement that a settlement check be sent with any settlement offer. See, e.g., W.Va. Code § 33-11-4(9) , Unfair Claims Settlement Practices.	Perry W. Oxley, Esq. Oxley Rich Sammons Law Firm 304-522-1138
Wisconsin	No. Wisconsin law WI ST § 632.32(4) and WI ST § 632.32(4m) cover Uninsured and Underinsured motorists. The statute does not require that a carrier make an offer to settle the UIM claim as soon as they have enough information.	No. WI ST § 632.32(4) and WI ST § 632.32(4m)	Theodore J. Waldeck, Esq. Peter M. Waldeck, Esq. Lindsey J. Woodrow, Esq. Waldeck & Woodrow P.A. 612-375-1550

State	Can the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Wyoming	No. Wyoming General Statute 31-10-101 governs uninsured and underinsured motorists' coverage. The statute does not require carriers to make offers to settle once they have enough information to adjust the claim.	No. The statutes contain no such requirements.	Eagle Member Eagle International Associates, Inc. 702-221-1399

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Defense of Day Care/Abuse Claims



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Defending Daycare Abuse Claims: Investigation, Coverage, and Video Evidence

CLE Monograph for Claims Professionals and Defense Counsel

Introduction

Claims involving allegations of abuse, molestation, neglect, improper supervision, or injury occurring in childcare facilities present some of the most complex liability matters faced by insurers, claim professionals, and defense counsel. Unlike ordinary negligence actions, daycare abuse claims frequently involve allegations of institutional failure, regulatory investigations, parallel criminal proceedings, mandatory reporting obligations, and significant reputational exposure.

The modern plaintiff's case rarely focuses solely upon the conduct of an individual employee. Instead, plaintiffs routinely assert claims for negligent hiring, negligent retention, negligent supervision, negligent training, failure to report, and failure to protect children from foreseeable harm. Consequently, successful defense strategies require a comprehensive understanding of childcare regulations, industry standards, insurance coverage issues, evidence preservation obligations, and emerging technologies such as video surveillance.

This monograph examines the investigation and defense of daycare abuse claims from the perspective of insurers, claims professionals, and defense counsel. It offers practical guidance grounded in federal standards and nationally recognized childcare best practices.

I. Federal Regulatory Standards and Industry Benchmarks

Although childcare licensing remains primarily a matter of state regulation, Federal law establishes important baseline expectations concerning child safety and employee screening.

The Child Care and Development Block Grant Act ("CCDBG") significantly expanded childcare provider obligations by requiring comprehensive background checks for childcare employees working in programs receiving covered funding.¹ These

¹ Child Care and Development Block Grant Act of 2014, 42 U.S.C. § 9858f.

requirements generally include fingerprint-based criminal history checks, sex offender registry reviews, child abuse and neglect registry searches, and periodic rescreening.²

The significance of these requirements extends beyond regulatory compliance. In civil litigation, plaintiffs frequently argue that employers failed to identify warning signs that should have prevented an employee's hiring or continued employment. Evidence demonstrating compliance with federal screening expectations often serves as persuasive evidence that an employer exercised reasonable care.

National accreditation organizations have similarly influenced standards of care. The National Association for the Education of Young Children ("NAEYC") promotes continuous supervision, child-safety protocols, staff training, and risk-management practices that are frequently cited by experts in daycare litigation.³

Likewise, Head Start guidance emphasizes "active supervision," requiring intentional observation, strategic positioning of staff, and continuous awareness of children's activities.⁴

Although these standards may not establish legal duties in every jurisdiction, they frequently influence expert testimony and jury expectations.

II. Investigation of Daycare Abuse Claims

A. Immediate Evidence Preservation

The most significant errors in daycare abuse litigation often occur within the first forty-eight hours following notice of an incident.

Practice Point: Upon notice of an incident, claim professionals should issue immediate preservation directives for video recordings, incident reports, staffing schedules, employee communications, personnel files, inspection reports, electronic records, and parent complaints.

² Office of Child Care, U.S. Department of Health and Human Services, Criminal Background Check Requirement Resources.

³ National Association for the Education of Young Children (NAEYC), Early Learning Program Accreditation Standards.

⁴ U.S. Department of Health and Human Services, Head Start Program Performance Standards, Active Supervision Guidance.

Many childcare facilities operate surveillance systems that automatically overwrite recordings after a predetermined period. Failure to preserve potentially relevant footage may create substantial spoliation exposure.

Defense counsel should be retained early whenever allegations involve serious bodily injury, sexual misconduct, criminal investigations, media attention, or potential punitive damages exposure.

B. Regulatory and Criminal Investigations

Childcare abuse allegations frequently trigger investigations by:

- Child protective services;
- State licensing authorities;
- Law enforcement agencies;
- Prosecutors;
- Child advocacy centers.

The existence of criminal investigation does not establish civil liability. Nevertheless, statements obtained during criminal investigations frequently become important evidence in subsequent litigation.

Claims handlers should coordinate carefully with defense counsel regarding witness interviews and document production to avoid inadvertently compromising litigation strategies or privilege protections.

C. Witness Credibility and Documentation

Because many daycare claims involve young children, witness credibility frequently becomes a central issue.

Contemporaneous records often prove more persuasive than recollections developed months or years later. For that reason, investigators should focus on obtaining:

- Classroom logs;
- Attendance records;
- Staff schedules;
- Parent communications;
- Training records;
- Inspection reports.

A well-documented facility frequently enjoys a significant evidentiary advantage.

III. Staffing Ratios, Supervision, and Negligence Allegations

A recurring theme in daycare litigation is the assertion that children were inadequately supervised.

Plaintiffs often argue that:

1. Staffing ratios were inadequate;
2. Employees were distracted;
3. Supervisors failed to monitor staff;
4. Children were left unattended;
5. Policies were not followed.

Importantly, numerical staffing compliance does not necessarily defeat a negligence claim.

A facility may satisfy licensing ratios yet still face allegations that supervision was ineffective. Courts and juries frequently focus upon the quality of supervision rather than mere compliance with minimum numerical requirements.

National childcare standards increasingly emphasize active supervision. Under that model, staff members are expected to anticipate risks, maintain visual awareness of children, conduct frequent headcounts, and actively monitor transitions between activities.

Claims professionals should therefore evaluate both ratio compliance and actual supervision practices.

IV. Negligent Hiring, Retention, and Supervision

A. Negligent Hiring

Negligent hiring claims typically focus on whether the employer knew or should have known that an employee posed a risk of harm.

Practice Point: In evaluating negligent hiring exposure, investigators should review criminal background checks, child abuse registry searches, reference checks, employment histories, prior complaints, and hiring documentation.

The strongest defense often arises where an employer can demonstrate compliance with established hiring protocols and the absence of any disqualifying information.

B. Negligent Retention

Negligent retention claims frequently present greater exposure than negligent hiring claims.

The issue becomes whether management learned information after hiring that should have prompted corrective action.

Practice Point: In negligent retention claims, the key inquiry is whether management learned information after hiring that should have prompted corrective action, including prior complaints, disciplinary records, counseling memoranda, parent concerns, or licensing violations.

Plaintiffs commonly argue that management ignored warning signs or failed to investigate concerns adequately.

C. Negligent Supervision

Negligent supervision claims typically alleges institutional failures rather than individual wrongdoing.

Practice Point: Negligent supervision defenses should address institutional oversight, training, policy enforcement, and the monitoring of employee interactions with children.

The defense should focus on demonstrating active management involvement, training, reporting mechanisms, and documented supervision procedures.

V. Employee Misconduct and Criminal Conduct

Some of the most severe daycare claims involve allegations of intentional misconduct, including physical abuse, sexual misconduct, inappropriate restraint, or criminal acts.

From a liability perspective, an important distinction exists between:

1. Vicarious liability claims; and
2. Direct negligence claims.

Many jurisdictions hold that intentional criminal conduct falls outside the scope of employment. Consequently, plaintiffs frequently pursue direct negligence theories against the institution itself.

The central issue often becomes foreseeability.

If an employee passed required background checks, received appropriate training, and had no prior disciplinary history, the defense may argue that the conduct was unforeseeable.

Conversely, evidence of ignored complaints, policy violations, or inadequate investigations may substantially increase exposure.

VI. Video Evidence and Spoliation

A. The Increasing Importance of Surveillance Evidence

Video evidence has transformed childcare litigation.

Many facilities now maintain cameras covering:

- Entrances;
- Hallways;
- Playgrounds;
- Classrooms;
- Common areas.

Surveillance footage often provides objective evidence concerning:

- Staffing levels;
- Supervision practices;
- Timing of events;
- Employee conduct;
- Child behavior.

Video may either confirm or refute allegations.

B. Preservation Duties

Practice Point: Upon notice of a claim, facilities and insurers should promptly determine whether relevant footage exists, the applicable retention and overwrite schedules, and whether the system allows footage to be exported and preserved.

Preservation letters and litigation hold should specifically identify surveillance footage.

Failure to preserve evidence may result in adverse inference instructions, discovery sanctions, or evidentiary limitations.

C. Practical Considerations

Video should never be viewed in isolation.

Claims professionals should evaluate:

- Camera angles;
- Blind spots;
- Audio limitations;
- Missing footage;
- Metadata integrity.

A recording that appears favorable initially may present challenges when analyzed alongside witness testimony.

VII. Insurance Coverage Analysis

A. Commercial General Liability Coverage

Practice Point: In commercial general liability coverage analysis, focus immediately on occurrence language, expected-or-intended injury exclusions, professional services exclusions, abuse-and-molestation endorsements, and any punitive-damages issues.

Coverage disputes often arise concerning:

The precise policy language remains critical.

B. Abuse and Molestation Endorsements

One of the most significant developments in childcare insurance has been the widespread adoption of abuse and molestation endorsements.

These endorsements generally fall into three categories:

1. Coverage-grant endorsements;
2. Sublimit endorsements;
3. Exclusionary endorsements.

Some policies provide affirmative coverage subject to sublimits.

Others exclude abuse-related claims entirely.

Still others provide limited defense coverage while restricting indemnity obligations.

Because endorsement language varies substantially among insurers, claims professionals should conduct policy analysis immediately upon receiving notice of a claim.

C. Negligence-Based Coverage Claims

A common coverage dispute arises when plaintiffs assert negligence-based claims against the institution while alleging intentional misconduct by an employee.

Many courts examine whether negligent hiring, retention, and supervision claims constitute independent occurrences or merely derivative claims arising from excluded conduct.

Outcomes vary significantly based upon policy wording and applicable state law.

Accordingly, coverage counsel should evaluate both the underlying allegations and the specific endorsement language.

VIII. Claims Handling Best Practices

Practice Point: Effective claims handling requires immediate evidence preservation, early coverage analysis, coordination with defense counsel, regulatory monitoring, witness identification, video preservation, document review, exposure evaluation, settlement analysis, and ongoing reassessment as new evidence develops.

Claims professionals who implement structured investigative protocols place both insurers and insureds in the strongest possible position.

IX. National Case Survey: Lessons from Institutional Liability, Coverage Litigation, and Evidence Preservation Cases

Although daycare abuse litigation is highly fact-specific, appellate decisions across the country reveal several recurring themes that provide practical guidance to claims professionals, insurers, and defense counsel. Courts consistently focus on four core questions: (1) whether the misconduct was foreseeable; (2) whether the institution exercised reasonable care in hiring, training, and supervising employees; (3) whether insurance coverage exists for negligence-based claims arising from intentional misconduct; and (4) whether critical evidence was preserved once litigation became reasonably foreseeable.⁶

A. Negligent Hiring, Retention, and Supervision

Perhaps the most significant trend in daycare abuse litigation is the increasing emphasis on institutional conduct rather than solely on the actions of an individual

employee. Plaintiffs routinely allege that a childcare provider failed to implement appropriate safeguards, ignored warning signs, or failed to investigate complaints adequately.

In *C.A. v. William S. Hart Union High School District*, the California Supreme Court recognized negligent hiring, retention, and supervision as independent theories of liability distinct from respondeat superior. The court held that an employer may face direct liability for its own negligence even when the employee's intentional misconduct falls outside the scope of employment.

For claims professionals, the critical inquiry often is whether management possessed information that should have prompted further investigation, discipline, or removal of the employee. Investigations should therefore focus not only on the alleged abuse itself, but also on prior complaints, disciplinary records, supervision practices, and the employer's response to warning signs.

A recurring plaintiff theme is that misconduct was foreseeable. Facilities that can demonstrate documented background checks, regular supervision, complaint investigation procedures, and employee training are generally in a stronger position to rebut such claims.

B. Failure-to-Report and Failure-to-Protect Allegations

A growing area of exposure involves allegations that employees or supervisors failed to report suspected abuse.

In *G.A.-H. v. K.G.G.*, the New Jersey Supreme Court examined whether coworkers and employers could be liable for failing to report suspected sexual misconduct. Although the court declined to impose liability under the facts presented, the decision highlights the increasing focus on reporting obligations in abuse litigation.

Claims professionals should carefully analyze:

- Applicable mandatory reporting statutes;
- Licensing regulations;
- Internal reporting policies;
- Training regarding reporting obligations;
- Documentation of complaints and investigations.

Plaintiffs often argue that institutions fail to recognize or act upon warning signs. Accordingly, the existence of documented reporting procedures and evidence that complaints were investigated promptly may become central components of the defense.

C. Abuse-and-Molestation Coverage Litigation

Insurance coverage frequently becomes a separate battleground in daycare abuse claims.

Insurance coverage frequently becomes a distinct battleground in daycare abuse claims. Modern policies increasingly contain abuse-and-molestation endorsements designed to limit coverage, impose sub-limit, or exclude coverage altogether.

In *Hussein v. State of New York*, the court examined policy language excluding coverage for abuse-related claims, including negligence claims arising from hiring, supervision, investigation, and retention decisions. The decision illustrates a common coverage issue: plaintiffs often attempt to plead negligence theories to avoid exclusions directed at intentional misconduct.

Courts increasingly focus on the precise wording of abuse-and-molestation endorsements. Some endorsements bar coverage for all negligence claims arising from abuse, while others preserve limited defense obligations or provide separate sub-limits.

Accordingly, coverage analysis should begin immediately upon receipt of a claim. Claims professionals should identify:

- Whether the policy contains an abuse-and-molestation endorsement;
- Whether the endorsement is exclusionary or affirmative;
- Whether negligence claims are treated independently;
- Whether defense costs erode limits;
- Whether punitive damages are addressed.

Coverage analysis should therefore begin immediately upon receipt of the claim. Claims professionals should identify:

1. Derivative Negligence Claims

One of the most litigated issues involves whether negligent hiring, retention, and supervision claims constitute separate covered occurrences or merely derivative claims arising from excluded abuse.

Numerous courts have concluded that negligence claims remain excluded where the policy expressly excludes all claims arising out of abuse, regardless of how the complaint is pleaded. As a result, claims professionals should focus on policy language rather than solely on the plaintiff's characterization of the allegations.

D. Multiple Occurrences and Long-Term Abuse Claims

Institutional abuse cases frequently involve allegations spanning months or years. Coverage disputes often arise regarding whether repeated acts constitute a single occurrence or multiple occurrences.

The distinction may affect:

- Limits of liability;
- Self-insured retentions;

- Attachment points;
- Excess coverage obligations.

Courts have reached varying conclusions depending upon policy wording and the nature of the alleged misconduct. Consequently, occurrence analysis should be undertaken early whenever allegations involve multiple victims, repeated incidents, or extended periods of alleged abuse.

E. Surveillance Video and Spoliation

No aspect of modern daycare litigation has evolved more rapidly than the role of surveillance video.

Childcare facilities increasingly maintain cameras covering classrooms, hallways, entrances, playgrounds, and common areas. As a result, courts have devoted substantial attention to preservation obligations and spoliation claims.

In *Duluc v. AC&L Food Corp.*, the New York Appellate Division addressed the consequences of failing to preserve surveillance footage after notice of a claim. Although the specific facts differed from a daycare setting, the court's analysis reflects a broader national trend: once litigation becomes reasonably foreseeable, parties have an obligation to preserve relevant evidence.

1. Immediate Preservation Obligations

Upon receipt of notice, claims professionals should determine:

1. Whether video exists;
2. Which cameras may have captured relevant events;
3. Applicable overwrite schedules;
4. Whether metadata can be preserved;
5. How footage will be exported and maintained.

Many surveillance systems automatically overwrite recordings after thirty to ninety days. Consequently, delays in preservation may result in the permanent loss of evidence.

2. Adverse Inference Risks

Where relevant footage is lost, plaintiffs frequently seek sanctions, including adverse inference instructions.

An adverse inference permits a jury to conclude that missing evidence would have been unfavorable to the party responsible for its loss. Such instructions can significantly increase settlement pressure and trial exposure.

However, courts generally require a showing that:

- The evidence was relevant;

- Preservation was reasonably required;
- The loss caused prejudice;
- The party failed to take reasonable preservation measures.

3. When Missing Video Does Not Establish Liability

Not every lost recording will result in sanctions.

Several appellate decisions have recognized that sanctions may be inappropriate when the missing footage would not have captured the incident, contained only cumulative information, or was lost before preservation obligations arose.

Claims professionals should therefore evaluate both the relevance of missing footage and the timing of preservation obligations before assuming that spoliation exposure exists.

F. Emerging Litigation Trends

A review of national decisions reveals several trends likely to continue shaping daycare abuse litigation:

Trend One: Institutional Conduct Is the Primary Focus

Modern juries increasingly evaluate whether an institution acted reasonably rather than focusing solely on the conduct of an individual employee.

Trend Two: Documentation Determines Outcomes

Facilities with documented hiring procedures, complaint investigations, training records, and supervision protocols often enjoy significant evidentiary advantages.

Trend Three: Video Evidence Has Become Central

Video recordings increasingly serve as the most persuasive evidence in daycare litigation, often resolving factual disputes that previously depended solely upon witness testimony.

Trend Four: Coverage Litigation Is Expanding

Abuse-and-molestation endorsements have become increasingly sophisticated, leading to more frequent disputes regarding coverage scope and defense obligations.

Trend Five: Reporting Obligations Continue to Expand

Courts and regulators continue to scrutinize how institutions respond to allegations, complaints, and warning signs.

Practice Point for Claims Professionals

The strongest defenses typically rest on four considerations:

1. Comprehensive employee screening;
2. Active supervision and documented training;
3. Prompt reporting and investigation of complaints;
4. Immediate preservation of video and electronic evidence.

When those factors exist, insurers and defense counsel are generally positioned to challenge both liability and damage more effectively.

Selected Authorities for Section IX

1. See generally Child Care and Development Block Grant Act of 2014, 42 U.S.C. § 9858f; NAEYC Accreditation Standards; Head Start Active Supervision Guidance.
2. *C.A. v. William S. Hart Union High School District*, 53 Cal. 4th 861 (2012).
3. *G.A.-H. v. K.G.G.*, 238 N.J. 401 (2019).
4. *Hussein v. State of New York*, 19 N.Y.3d 899 (2012).
5. See generally abuse-and-molestation exclusion cases enforcing exclusions against negligence-based claims arising out of abuse.
6. *Duluc v. AC&L Food Corp.*, 119 A.D.3d 450 (N.Y. App. Div. 2014).
7. See authorities discussing adverse inference standards where lost surveillance footage was not relevant or did not capture the incident at issue.

Conclusion

Daycare abuse litigation presents distinctive legal, factual, regulatory, and reputational challenges. An effective defense requires more than disputing the allegations; it also requires showing that the institution implemented reasonable safeguards, maintained appropriate supervision, conducted proper screening, responded appropriately to concerns, and preserved critical evidence.

The increasing use of surveillance technology, expanding regulatory oversight, and evolving child-protection standards ensure that these claims will remain a significant source of exposure for insurers and childcare providers. By understanding both the governing legal principles and the operational realities of childcare settings, claims professionals can evaluate liability more effectively, manage litigation risk, and pursue fair claim resolution.

The Industry Under Attack

Litigation Funding



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Litigation Funding – Are We Allowed to Know About That?

1. Types of Litigation Funding

Third-party litigation funding is an arrangement where an entity that is not a party to the lawsuit agrees to provide funding to a litigant or law firm in exchange for an interest in the potential recovery in a lawsuit. Typically, the funding is for the plaintiff. In some cases, the third-party funds are used for the medical treatment of plaintiffs. The funding is essentially a non-recourse loan to plaintiffs. Although this practice has been accepted around the world for many years, it has become prevalent in the United States in the last decade. There are three basic types of litigation funding in use in the United States.

a. Commercial litigation funding.

Commercial litigation funding typically involves corporate plaintiffs and law firms, which use the funding for legal expenses or to supplement their general operating budgets. These types of arrangements usually involve a funder providing users with millions of dollars through single-case or portfolio financing agreements.

b. Consumer funding.

Consumer funding is generally used to fund living expenses such as rent and medical bills while a plaintiff's litigation is ongoing. The funding normally is not used to finance the actual litigation itself. The use of litigation funding to pay legal costs may conflict with some states' laws prohibiting such conduct through champerty laws. In most cases, consumer funding involves a single plaintiff in a single action. It is common for a plaintiff to be funded multiple times over the course of a single litigation. The most common types of cases used in litigation funding involve car accidents, slip and fall accidents, and medical malpractice.

The average funding amounts range between \$1,000 and \$10,000 for consumer litigation funding. Some funders indicate they are willing to fund approximately 7% to 10% of the estimated value of a case. Funding investors have indicated they take a conservative approach as to the amounts they are willing to fund because clients may be deterred from accepting settlement offers due to the fact they then owe the funder exorbitant amounts. Consumer funders typically, prior to providing funds, evaluate whether the defendant's liability for the plaintiff's injuries has been established and whether the defendant has insurance to cover the plaintiff's injuries.

c. Medical Litigation Funding

Medical litigation funding is used for the medical treatment of a plaintiff. There are two primary types of medical litigation funding. In the first type of this particular funding, the funding entity loans money to a plaintiff for medical treatment. The treating physician (chosen by plaintiff's counsel) bills at a discounted self-pay rate or special litigation rate. The medical provider then sells the patient's account at inflated rates to a medical factoring company for less. However, the medical factoring company files a lien to recover the difference between what it paid and the inflated account total.

In the second type of medical litigation funding, the funder provides loans to medical providers for overhead expenses so the providers can treat patients on a volume basis. Providers, in turn, then work with lawyers who identify and refer patients to them. The providers create inflated medical bills by over-treating the patients and over-billing. Providers receive approximately 50-60% of the total billed charges. Providers then reimburse the litigation funder with a percentage of the surplus.

2. How are third-party litigation funds repaid?

In most cases, third-party litigation funding is non-recourse. That is, the funding entity is not entitled to repayment of the funds unless the plaintiff is successful. Plaintiffs and their attorneys see this contingency as a major benefit of third-party litigation funding. Funds are repaid to the litigation funder directly from the proceeds of settlement or jury awards. Most agreements call for the funder to be repaid first, before any other expenses are paid.

3. Problems associated with third-party litigation funding

a. Expensive

Because litigation funders assume a lot of risks with funding, the funders charge higher interest rates, which can range from 15-18% of the amount funded. There have even been cases reported with litigation funders charging in excess of 18%. Because of these high interest charges, the fees associated with the financing may significantly reduce the amount a plaintiff ultimately recovers.

b. Settlement deterrence

Plaintiffs who have secured litigation funding may not be inclined to accept a fair settlement offer. In addition, plaintiffs may seek additional monetary damages to make up for the amount that has to be repaid to these funders. As such, this can be a significant obstacle to reaching a resolution.

c. Increase in defendant's litigation costs

Plaintiffs' access to litigation funding may encourage the filing of meritless lawsuits. In addition, plaintiffs' use of funding may cause defendants to file additional discovery motions to obtain access to the third-party litigation funding agreement, which could increase costs. Defendants may also face increased expenses and costs because cases may take longer to litigate if plaintiffs are less inclined to settle.

d. Outside control of plaintiff's case

Although most litigation funders take the position that they cannot control the plaintiffs' litigation, in some instances, these funders may provide input to plaintiffs or their counsel. In such a situation, a substantial risk exists that the attorney's professional judgment may be impaired.

4. Disclosure issues/requirements relating to litigation funding

Whether defendants are entitled to the disclosure of third-party litigation funding agreements and related documents is a hot topic throughout the country. Currently, there are no disclosure requirements in federal litigation. Whether defendants are allowed to obtain this information in state court depends on the actual state. In many cases where disclosure of third-party litigation funding agreements is required, the issue involves some type of medical litigation funding. Accordingly, much of the additional discovery related to litigation funding is through third-party subpoenas for documents and depositions of medical professionals.

a. Federal level – no disclosure requirements

There is no nationwide requirement to disclose litigation funding agreements to courts or opposing parties in federal litigation. There have been efforts by those in the industry to implement such a requirement. A proposal has been submitted to the advisory committee on civil rules to consider an amendment to require disclosure of third-party litigation funding agreements in any civil action filed in federal court. In 2019, there was a proposed revision to the Federal Rules of Civil Procedure Rule 26(a)(1)(A) to include a requirement that Initial Disclosures include disclosure of any third-party litigation funding arrangement in civil actions filed in federal court. Thus far, however, the committee has not taken any action in this regard. The committee, though, has stated that it would continue to monitor third-party litigation funding issues.

Federal legislation to require disclosure of third-party litigation funding agreements has been proposed due to concerns that the agreements could create conflicts of interest between plaintiffs and their attorneys and because disclosure could provide additional transparency. Opponents are concerned that defendants want access to third-party litigation funding agreements in order to gain a tactical advantage in courts namely that they would discover how much plaintiffs could spend on litigation.

Although no nationwide disclosure requirement exists at this time, federal courts may still obtain information about third-party litigation funding arrangements. For instance, judges can obtain information about third-party litigation funding when it may be relevant in a particular case. Some federal courts have also developed local rules for taking other steps to require litigants to disclose information regarding their third-party litigation funding arrangements.

In November 2018, the Northern District of California, through a standing order, began requiring parties in any class, collective, or representative actions to disclose to the court the identity of any person or entity funding the prosecution of any claim or counterclaim. U.S. District Court for the Northern District of California, Standing Order for all Judges of the Northern District of California on the Contents of the Joint Case Management System, § 19 (effective Nov. 1, 2018). Additionally, in June 2021, the District of New Jersey adopted a rule requiring litigants to have certain third-party litigation funding arrangements to file a statement that

- (1) identifies the funder, including the name, address and, if a legal entity, its place of formation;
- (2) states whether the funder's approval is needed for litigation or settlement decisions, and if so, the nature of the terms and conditions of that approval; and
- (3) provides a brief description of the nature of the funder's financial interest. Parties may seek additional discovery of the terms of the agreement upon a showing of good cause that the funding entity has authority to make material litigation decisions or settlement decisions.

U.S. District Court for the District of New Jersey, Local Civ. Rule 7.1.1, Disclosure of Third-Party Litigation Funding.

b. State level – State by State

At the state level, several states have enacted laws requiring disclosure of third-party litigation funding agreements in civil litigation. In 2018, Wisconsin passed a law requiring a party in a civil action to disclose to the other party any agreement that provides a contingent right to compensation from the proceeds of the action. The statute states:

Except as otherwise stipulated or ordered by the court, a party shall, without awaiting a discovery request, provide to the other parties any agreement under which any person, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent on and sourced from any proceeds of the civil action, by settlement, judgment, or otherwise.

Wis. Stat. § 804.01(2).

One year later, in 2019, West Virginia amended a state consumer protection law to include a

similar requirement for agreements with litigation funders. Similar to Wisconsin, in West Virginia, disclosure is required unless otherwise stipulated or ordered by the court.

Other states have considered, but not passed, proposed legislation to require disclosure of third-party litigation funding agreements. It is likely that more states will follow the lead of Wisconsin and West Virginia in enacting legislation addressing the disclosure of third-party litigation funding agreements.

In addition, Montana recently enacted legislation requiring disclosure of litigation funding agreements. Georgia, Kansas, Indiana, Louisiana, and New York have expanded the discovery of litigation funding agreements through discovery.

c. Bases for allowing disclosure of third party litigation funding agreements

Proponents of the disclosure of third-party litigation funding agreements assert it may assist the trier of fact to determine bias, intent, and motivation of actions and testimony, specifically the testimony of medical professionals. In *Rangel v. Anderson*, 202 F.Supp.3d 1361 (S.D. Ga. 2016), the court addressed a treating physician's financial incentive to testify favorably on behalf of a plaintiff. It found that evidence of payment arrangement between the funder, physician, and plaintiff were admissible as evidence of the reasonableness of plaintiff's medical treatment and the value of the services rendered. *Id.* at 1374.

In *Stephens v. Castano*, 814 S.E.2d 434 (2018), the Georgia Court of Appeals overturned a \$700,000 verdict due to the trial court's exclusion of evidence relating to a third-party funding agreement. The *Stephens* Court found that the evidence related to the third-party litigation funding went directly to bias, intent, and motive, as the treating physician's financial interest in the outcome of the case was "highly relevant" to the physician's credibility and potential bias. *Id.* at p. 440.

The logical takeaway from these cases is that the physician and the funding entity are incentivized to perform as many procedures as possible to increase the charges to a plaintiff. Another argument for the disclosure of third-party litigation agreements is that it allows defendants to have an understanding of the motivation behind a plaintiff's position in litigation. It should be noted, however, that many courts faced with these issues have not required the disclosure of third-party litigation agreements or the documents related thereto.

5. Discovery methods regarding litigation funding

As noted above, disclosure of third-party litigation funding agreements will depend on the state or federal court in which you are operating. Where disclosure is required, a creative approach to discovery is required. The discovery sought will most likely come from third parties through subpoenas. In most cases where disclosure is required and additional discovery is needed, medical litigation funding is at issue.

a. Seek documents from third parties

In medical litigation funding, medical providers may use marketing specialists or liaisons for communications with plaintiff's counsel. These communications may involve the marketing of a physician's services directly to plaintiffs' attorneys. In addition, there are often discrete ways in which medical professionals and attorneys communicate. These communications may take place in forms other than emails and often the communications involve much more than treatment of plaintiff's injuries. Thus, it is important to request much more than a typical subpoena may request.

For litigation funders, there may be communications between the funders and medical professionals or plaintiffs' attorneys. In addition, some funders have presentations, including video presentations, providing advice and guidance on how to drive up litigations costs and, accordingly, the value of a claim. These materials are marketing materials that should be subject to production by court that require production of litigation funding agreements.

b. No boilerplate third-party subpoena language

Discovery issued to third parties should be formulated to seek specific documents and information from the third parties. You should seek documents and information regarding communications platforms between the funder and medical providers and plaintiffs' attorneys. The requests should include communications between medical providers and staff with plaintiffs' counsel and their staff. They should also include marketing materials. There are no specific requests that should be used but these are a few examples for subpoenas to a third-party litigation funder:

- All communications between your office and the offices of any attorney representing [plaintiff] specifically including:
 - o All report to [litigation funding company] regarding the status or progress of [plaintiff's] lawsuit;
 - o [Litigation funding company's] complete file on [plaintiff], including any intake sheets or letters or register of phone calls regarding the progress of the lawsuit filed on behalf of [plaintiff].
- All contracts, letters of agreement, agreement, letter of protection, memo of agreement [litigation factoring company] has with any physician or medical facility at which [plaintiff] received medical care after [date] and up to the present.
- All documentation of all policies and procedures regarding the amounts that [litigation funding company] accepts or considers as payment in full for its services.

There are many areas of inquiry for both the litigation funding company and the medical professionals. It is important to thoroughly research the types of communications, the means of communications, and the documents that may be available. Following the production of documents by the litigation funding company and medical providers, the depositions of both should be completed.

c. Motions to compel

You can expect the litigation funding company and the medical providers to object to the production of documents and information. In the event they object to production, it is important to move to compel the production of the materials as soon as possible. Litigation funding companies and medical professionals may attempt to delay production in hopes that the matter resolves prior to the production.

The Industry Under Attack

RICO & Uber Litigation



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UBER RICO LAWSUITS UPDATE

EAGLE CMIC ANNUAL MEETING JUNE 11, 2026

Overview

A RICO lawsuit refers to legal action taken under the Racketeer Influenced and Corrupt Organizations (RICO) Act, a federal law designed to combat organized crime. This law allows for both criminal and civil penalties against individuals or organizations engaged in a pattern of racketeering activity, which includes various criminal offenses such as fraud, bribery, and drug trafficking. In a civil RICO lawsuit, a successful plaintiff can recover treble damages.

Uber Technologies has filed a series of RICO suits against a dozen personal injury lawyers and firms in Federal Court in California, Florida, New York and Pennsylvania. Uber alleges the personal injury firms conspired with medical providers and others to turn low-value auto accident claims involving Uber drivers into high value lawsuits, to take advantage of the company's large insurance policies. In New York State, for example, minimum liability coverage is \$1,250,000 when a rideshare driver is on a prearranged trip. New York City requires rideshare drivers to carry commercial insurance at all times, not just when the app is on. No liability deductible or retained limit is permitted. Uber claims, for example, that approximately 45% of the fare of every Uber ride in Los Angeles County goes to mandated insurance costs, driving up prices for riders and reducing earnings for drivers.

RICO lawsuits have been brought in the past in similar situations with little success. The exception is the case of CSX v. Gilkison et al out of West Virginia. The case brought in July 2007, alleged that the defendants conspired to manufacture and litigate fraudulent asbestos claims against CSX. This case has a long, complicated history, including a trial in 2012 that resulted in a verdict of \$429,000 in damages which was tripled to \$1,300,000 under RICO. The matter was ultimately settled in 2014 for \$7,300,000, including attorney fees and costs.

Uber's NY Complaint

Uber has filed suit in U.S. District Court for the Eastern District of New York against several firms, including Wingate, Russotti, Shapiro, Moses & Halperin. See, Case. No. 25-cv-00522. The above-mentioned plaintiff's firm advertises that it has recovered over \$2 billion for its clients.

Uber's complaint in NY details a widespread conspiracy involving Defendants—lawyers, doctors, and medical entities—who allegedly engaged in fraudulent activities to inflate personal injury claims related to minor vehicle collisions, primarily targeting Uber, through fabricated injuries, unnecessary treatments, and false legal filings.

Uber alleges a coordinated scheme was devised to exploit minor vehicle accidents by generating false injury claims and inflating damages to secure larger settlements from Uber and other defendants who are required to carry large insurance policies. The alleged conspiracy consisted of:

- Law firms recruited claimants and referred them to doctors for unnecessary treatments.
- Payments were made to doctors to produce false diagnoses and testimony.
- Claimants with potential claims against Uber were referred to the Wingate Law firm for a cut of future recoveries.
- Payments to doctors were above-market, inducing false medical reports and testimony.
- The scheme aimed to manufacture claims of serious injuries to bypass insurance law limitations and increase settlement values.
- The activity spanned numerous cases, involving falsified accident reports, unnecessary medical procedures, and false court testimony.

The Amended Complaint alleges Doctors performed unnecessary surgeries, notably spinal fusions, and issued medical reports to falsely attribute injuries to minor accidents, inflating damages. In addition, Uber alleges the doctors signed false statements claiming injuries were caused by accidents, knowing these claims were false to meet the NYS No Fault serious injury threshold and enabling plaintiffs to seek non-economic damages and litigate claims exceeding \$50,000.

Exemplar Accident/Lawsuit cited in the NY Complaint

In the Amended Complaint, Uber cites several exemplar lawsuits including Ludmila Gorbacevska v. Osama F. Zalouk, et al. – Supreme Court, Kings County – Index No. 522028/2020. A copy of said Amended Complaint is included with these materials.

On July 4, 2020, Ludmila Gorbacevska was a passenger in an Uber after connecting with the driver via the Uber app. While driving on the highway the Uber driver had to slow down because his vehicle hit a cardboard box containing a sofa cushion that fell out of the back of a pickup truck. Figure 1 provided below was taken from the forward-facing dashboard camera of the vehicle in which Gorbacevska was riding. It displays the moment preceding the event.

Figure 1.



Neither the vehicle nor the sofa cushion was damaged when the vehicle hit the box. Gorbacevska did not report any pain or injury at the time. The vehicle had both forward-facing and passenger view cameras, which recorded both the vehicle hitting the sofa cushion and Gorbacevska's reaction. Uber alleges the video footage depicts Gorbacevska talking on her phone before, during, and after the incident, and shows no injury to Gorbacevska; no contact between Gorbacevska and any part of the interior of the vehicle; and no damage to the vehicle.

Thereafter, Uber alleges Gorbacevska's attorneys, Banilov & Associates, P.C., had her file a blank Report of Motor Vehicle Accident. The firm then allegedly fabricated facts regarding the accident including claiming a collision between the two vehicles, which did not occur. A lawsuit followed and the case was transferred to the Wingate firm with the Banilov firm retaining a lien. Gorbacevska testified at her deposition that she did not seek medical care until her attorneys directed her to certain health care providers. Uber alleges that the health care providers she was referred to falsely claimed treatment, including a discectomy, as a result of the accident.

Uber was eventually dismissed from the case, but Uber claimed it had incurred "hundreds of thousands of dollars in unreimbursed defense costs" as a result of the scheme.

Uber cites several other cases it was forced to defend or pay settlements on that involved allegedly fabricated accidents and/or unnecessary/unrelated medical treatment.

Status of the Present Case

In the instant matter, Defendants filed a motion to dismiss. They allege that litigation activities, such as false filings and witness bribery, cannot serve as predicate acts for a RICO claim. They warn against expanding RICO to cover routine litigation activities, which could undermine judicial processes. They assert RICO should not be used to target ordinary litigation or alleged misconduct that is part of the legal process.

Uber has opposed the motion arguing RICO is appropriate for addressing wide-ranging, ongoing corruption, including conduct in civil litigation. Uber argues the Second Circuit recognizes injuries like legal fees and expenses as sufficient standing under RICO. Uber asserts that Defendants' coordinated scheme involving multiple cases and court proceedings is actionable under RICO, as it involves pattern, enterprise, and predicate acts of fraud and bribery.

Recent E.D. PA Decision

Motions to dismiss remain pending in California and New York. However, on May 11, 2026, Judge Kearney in the Eastern District of Pennsylvania refused to dismiss Uber's PA complaint. Judge Kearney rejected many of the arguments raised in Uber's California and New York cases. A copy of the PA decision is included with these materials.

Uber recently made supplemental filings on both jurisdictions regarding the decision of Judge Kearney. Judge Kearney sustained Uber's RICO complaint because it alleged a "coordinated, multi-actor scheme spanning dozens of lawsuits over several years, supported by the repeated creation and transmission of materially false medical and billing records."

Defendants' response to the PA decision note that the PA allegations are more detailed and extensive accusing the defendant law firm of more egregious activities including "scheduling emails directing procedures before examination" and alleging that attorneys fabricated medical records.

Impact of the Uber RICO lawsuits

Should the Courts – especially in California and New York – refuse to dismiss, the complaints will proceed through a long and expensive period of discovery, probable discovery motions and motions for summary judgment. This could embolden other large corporations that are faced with frequent specious lawsuits to look at taking similar action.

Meanwhile the plaintiff's bar is characterizing the RICO lawsuits as a corporate intimidation tactic that threatens access to justice of accident victims and an attack on the lawyers who hold Uber accountable.

There has also been intense lobbying in California and New York to reform automobile insurance laws to reduce premiums. New York just enacted the Auto Insurance/Tort Reform package as part of the 2027 budget that changes the No Fault law as follows:

1. The 90/180 serious-injury category is gone. Insurance Law §5102(d) no longer recognizes a non-permanent injury that prevents substantially all daily activities for 90 of 180 days as a qualifying serious injury. Plaintiffs must now qualify under fracture, dismemberment, significant disfigurement, permanent loss of use, permanent consequential limitation, significant limitation of use, loss of a fetus, or death.
2. Plaintiffs more than 50% at fault recover nothing in non-economic damages (they still can collect their no-fault benefits)
3. A sequencing rule will now require juries to allocate fault before deciding the injury threshold.
4. There are expanded fraud penalties for staged accidents.

The most impactful reform will be the elimination of the 90/180 day serious-injury category. That category enabled plaintiffs with non-permanent injuries to meet the serious injury threshold if they were prevented from performing "substantially all" daily activities for at least 90 of the 180 days after an accident.

Shawn F. Brousseau

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Shawn Brousseau is a partner with the firm Napierski, VanDenburgh, Napierski & O'Connor, LLP. He received his B.A., Magna Cum Laude, in Economics and Government from St. Lawrence University in 1991 and is a 1994 graduate of Albany Law School of Union University.

Mr. Brousseau practices primarily in the field of civil litigation, including the defense of defense of medical malpractice actions, civil rights and employment law litigation, municipal defense, personal injury, products liability, and construction law actions in Federal and State Courts in the State of New York.

Mr. Brousseau is admitted to practice in New York State and is also admitted to the United States Supreme Court, U.S. Court of Appeals for the Second Circuit, as well as U.S. District Courts for the Northern District of New York, Southern District of New York and Western District of New York. Mr. Brousseau is a member of the Eagle International Associates, the Defense Research Institute, the Capital District Trial Lawyers Association, the New York State Bar Association and the Albany County Bar Association.



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UBER TECHNOLOGIES, INC.,

Plaintiff,

v.

WINGATE, RUSSOTTI, SHAPIRO, MOSES
& HALPERIN, LLP, JAY WECHSLER,
BANILOV & ASSOCIATES, P.C., NICK
BANILOV, IGOR TARASOV, THE LAW
OFFICE OF DOMINICK W. LAVELLE d/b/a
LAVALLE LAW FIRM, EMILY K.
LAVALLE, MICHAEL GERLING,
GERLING INSTITUTE, LEONID
REYFMAN, AND PAIN PHYSICIANS NY,
PLLC,

Defendants.

Case No. 25-cv-00522-OEM-VMS

AMENDED COMPLAINT

JURY TRIAL DEMANDED

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Plaintiff Uber Technologies, Inc. (“Uber”), by its undersigned attorneys, hereby alleges as follows against Defendants Wingate, Russotti, Shapiro, Moses & Halperin, LLP, and Jay Wechsler (the “Wingate Defendants”); Banilov & Associates, P.C., Nick Banilov, and Igor Tarasov (the “Banilov Defendants”); the Law Office of Dominick W. Lavelle d/b/a Lavelle Law Firm, and Emily K. Lavelle (the “Lavelle Defendants,” and together with the Wingate and Banilov Defendants, the “Law Firm Defendants”); Michael Gerling and Gerling Institute (the “Gerling Defendants”); Leonid Reyfman and Pain Physicians NY, PLLC (“Pain Physicians NY”; together with Reyfman, the “Reyfman Defendants”; together with the Gerling Defendants, the “Doctor Defendants”; and collectively with the Law Firm Defendants, “Defendants”):

SUMMARY OF THE ACTION

1. Hundreds of thousands of New Yorkers rely on Uber’s ride-matching services every day to get door-to-door. The unscrupulous and fraudulent conduct of Defendants threatens to make those services more expensive and less available, harming the broader public as well as Uber, earners using the Uber application, and the other specific victims of this scheme. Defendants—personal injury attorneys and doctors who specialize in treating personal injury plaintiffs—are conspiring to exploit passengers in purported or actual minor vehicle collisions and provide them with medically unnecessary and/or causally unconnected “treatments,” up to and including invasive and painful surgeries such as spinal fusions, for conditions that are fictitious, exaggerated, or that preexisted the purported accident. Lawyers, directly or indirectly, regularly pay for the treatments with the understanding that such payments will corruptly influence those providers into creating false medical documentation and supplying false testimony.

2. Defendants have used, and threaten to continue using into the future, such fabricated medical evidence that bears no relationship with the actual injuries that the passengers experienced (if any), in an attempt to fraudulently induce settlements from Uber and others. To

accomplish their scheme, Defendants knowingly and willfully misrepresent material facts at every turn—to the passengers, to the courts, and to parties to such meritless litigation, including Uber. This scheme harms Uber and the many users of Uber’s apps who are affected by increased costs caused by Defendants’ widespread fraud.

3. This case is not about litigation activity in a single or even a series of frivolous, fraudulent, or baseless lawsuits. Rather, these Defendants engaged in wide-ranging out-of-court actions to further their fraudulent scheme. These actions encompassed a pattern of corrupt activity, including wire fraud, mail fraud, and bribery. Uber principally seeks equitable relief to remediate the fraudulent activity and to prevent such misconduct from occurring in the future, including injunctive relief and a monitorship of the corrupt medical practices and law firms. Uber also seeks monetary damages to hold Defendants accountable.

THE PARTIES

4. Plaintiff Uber is a Delaware corporation with its principal place of business in California.

5. Defendant Wingate, Russotti, Shapiro, Moses & Halperin, LLP is a limited liability partnership duly organized and existing under the laws of the State of New York. At all relevant times, the Wingate firm maintained its principal place of business in New York.

6. Defendant Jay Wechsler resides in and is a citizen of New York. At all relevant times, Wechsler was an employee of the Wingate firm in New York.

7. Defendant Banilov & Associates, P.C. is a professional service corporation duly organized and existing under the laws of the State of New York. At all relevant times, Banilov & Associates maintained its principal place of business in New York.

8. Defendant Nick Banilov resides in and is a citizen of New York. At all relevant times, Banilov was a named partner of Banilov & Associates.

9. Upon information and belief, Defendant Igor Tarasov resides in and is a citizen of New York. At all relevant times, Tarasov was a personal injury attorney working with Banilov. Tarasov and Banilov shared office space and staff; regularly appeared for one another's clients regardless of which one was attorney of record in a particular case; and registered the same email address, litigation86street@nypilaw.net, for NYSCEF notifications.

10. Defendant Law Office of Dominick W. Lavelle, d/b/a Lavelle Law Firm is a professional services corporation duly organized and existing under the laws of the State of New York. At all relevant times, Lavelle Law Firm maintained its principal place of business in New York.

11. Defendant Emily K. Lavelle resides in and is a citizen of New York. At all relevant times, Lavelle was a named partner of Lavelle Law Firm.

12. Defendant Michael Gerling resides in and is a citizen of New York. Gerling is a physician who specializes in spinal surgery.

13. Defendant Gerling Institute is a New York medical professional corporation with its principal place of business in New York. Gerling Institute at all relevant times was owned and controlled by Gerling.

14. Defendant Leonid Reyfman resides in and is a citizen of New York. Reyfman is a physician who specializes in pain management.

15. Defendant Pain Physicians NY is a New York medical professional corporation with its principal place of business in New York. Pain Physicians NY at all relevant times was owned and controlled by Reyfman.

JURISDICTION AND VENUE

16. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 over claims brought under 18 U.S.C. § 1961, et seq. (the Racketeer Influenced and Corrupt Organizations Act, or "RICO").

17. This Court also has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332(a)(1) because the total matter in controversy, exclusive of interests and costs, exceeds \$75,000, and the controversy is between citizens of different states.

18. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

19. Venue is proper pursuant to 28 U.S.C. § 1391 because one or more Defendants reside in the Eastern District of New York and a substantial amount of the activities forming the basis of this Amended Complaint occurred within the Eastern District of New York.

FACTUAL BACKGROUND

I. DEFENDANTS' SCHEME TARGETS UBER

20. Defendants conceived and implemented a fraudulent scheme to exploit passengers in purported or actual minor motor vehicle collisions, generating phony or exaggerated claims through delivery of unnecessary or unrelated medical treatment. Defendants' ongoing scheme involves a pattern of corrupt activity intended to manufacture claims that passengers in vehicle collisions suffered materially more severe injuries than they actually experienced (if any). Pursuant to the scheme: (i) the Law Firm Defendants recruit personal injury claimants; (ii) the Law Firm Defendants refer the personal injury claimants to the Doctor Defendants for a course of medically unnecessary treatments; (iii) the Law Firm Defendants also refer claimants with a potential cause of action against Uber to the Wingate Defendants in exchange for a cut of any future settlement or other recovery; and (iv) the Law Firm Defendants, directly or indirectly, make above-market payments to the Doctor Defendants for the corrupt purpose of inducing false diagnoses, false statements, and false testimony by the Doctor Defendants that the personal injury claimants' treatment was medically necessary and/or that their injuries were caused by the accidents in question. This pattern of falsehoods results in the manufacture of false liability and damages evidence designed

to induce Uber and other deep-pocketed defendants into settling cases for far more than they would be worth absent the fraud.

21. The pattern of corrupt activity spanned a wide range of misconduct, including falsified accident reports; medical examination reports used to justify unnecessary treatments and services; medically unnecessary imaging used to attribute any preexisting condition or injury to the alleged collision and to thereby inflate medical bills; invasive, expensive, and medically unnecessary and/or causally unconnected treatments and surgeries; and knowingly false statements and testimony made before, in the course of, and/or after the medical treatment by the Doctor Defendants that were then utilized by the Law Firm Defendants to effectuate the scheme.

22. Chief among the medically unnecessary treatments provided by the Doctor Defendants is spinal fusion surgery. A spinal fusion is a surgical procedure to treat severe spinal injuries that cannot be relieved through less invasive options. In a spinal fusion, the surgeon reinforces a patient's back structure by linking two or more vertebrae in the spine together using bone or bone-like material. The surgeon typically inserts metal screws or rods to hold the bones together. The two bones then "fuse" and heal as one bone. Once the healing process is complete, the fused bones cannot move independently of each other.

23. A spinal fusion is a major surgery, and even spinal fusions performed through "minimally invasive" methods can take several hours. Spinal fusion is performed under general anesthesia. In average cases, a hospital stay of two to three days is required after successful fusion surgery. As with any major surgery, patients undergoing a spinal fusion face the risk of complications including infections, bleeding, pain, anesthesia problems, or wound issues.

24. Spinal fusion also has serious, long-term consequences for patients. Even after recovering—which can require significant support at home for weeks—the procedure permanently

limits mobility between the two fused bones. Patients often must undergo months of physical therapy to learn how to move, sit, stand, and walk again in a way that keeps their fused spine in line. Having a spine that is fused in certain areas can also put additional strain on other areas of the back that have not been fused, causing these areas to break down faster. As a result, even patients who undergo successful fusion procedures often require additional spinal surgeries in the future.

25. As part of the scheme, the Doctor Defendants performed medically unnecessary spinal fusion surgeries on personal injury claimants to artificially inflate damages and, therefore, potential settlement amounts. The Doctor Defendants did so notwithstanding the risk that the personal injury claimants would experience life-long pain and injury from a procedure that was not medically necessary and that offered the personal injury claimants little to no benefit.

26. The Law Firm Defendants, directly or indirectly, caused the Doctor Defendants to be paid excessive and/or above-market compensation in exchange for providing false diagnoses, medically unnecessary treatments—including spinal fusions—and false statements and testimony regarding causation and medical necessity. The payments received far exceeded what the Doctor Defendants would otherwise have recovered from ordinary sources of reimbursement for delivery of legitimate medical care.

27. Additionally, the Doctor Defendants understood and agreed that in exchange for these false diagnoses, unnecessary treatments, and false statements, the Law Firm Defendants would continue to funnel patients to the Doctor Defendants' offices, thus continuing the corrupt pattern.

28. The Law Firm Defendants paid such excessive and/or above-market compensation to induce the Doctor Defendants to manufacture evidence, and the Doctor Defendants accepted such payments. The manufactured evidence was necessary to support a false and fraudulent claim

of “serious injury” among personal injury plaintiffs from minor vehicle collisions who were, in truth, uninjured or only lightly injured, so that the Law Firm Defendants could pursue multi-million-dollar claims against Uber and others in New York state court. Under New York State Insurance Law § 5104(a), the Law Firm Defendants could not seek non-economic damages on behalf of their clients, including damages for pain and suffering, without showing that the plaintiff suffered a “serious injury.” The false evidence that Defendants manufactured and intended to procure through the scheme was essential to surviving pre-trial motion practice on the “serious injury” issue and maintaining lucrative claims for non-economic damages.

29. A “serious injury” is defined under New York State Insurance Law § 5102(d) as follows:

“Serious injury” means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

30. Section 5104(a) further states that, with respect to motor vehicle negligence claims, there is no right to recover for “basic economic loss.” A basic economic loss is defined under New York Insurance Law § 5102(a) in relevant part as follows:

“Basic economic loss” means, up to fifty thousand dollars per person of the following combined items . . . :

(1) All necessary expenses incurred for: (i) medical, hospital (including services rendered in compliance with article forty-one of the public health law, whether or not such services are rendered directly by a hospital), surgical, nursing, dental, ambulance, x-ray, prescription drug and prosthetic services; (ii) psychiatric, physical therapy (provided that treatment is rendered pursuant to a referral) and

occupational therapy and rehabilitation (provided that treatment is rendered pursuant to a referral); (iii) any non-medical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of this state; and (iv) any other professional health services; all without limitation as to time, provided that within one year after the date of the accident causing the injury it is ascertainable that further expenses may be incurred as a result of the injury. . . .

(2) Loss of earnings from work

(3) All other reasonable and necessary expenses incurred

31. The availability of non-economic damages—which should not have been available at all because the plaintiffs did not in fact suffer any serious injury—substantially increased the potential claim that could be presented to a jury and hence the expected settlement value of such cases. Incurring medical expenses above the \$50,000 threshold for basic economic loss also permits a plaintiff to litigate a motor vehicle negligence claim.

32. Uber also relied upon Defendants’ fraudulent statements and conduct with respect to entering into settlements, as discussed below.

33. In sum, the purpose of Defendants’ scheme was to attempt to fraudulently induce larger settlements in personal injury lawsuits that Defendants prosecuted using manufactured “evidence” of nonexistent injuries. Defendants at all times acted with the intent of depriving Uber and others of their property and/or money.

34. The scheme was employed in numerous cases against Uber and others. It involved a wide-ranging pattern of corrupt activity, including conduct in violation of 18 U.S.C. § 1343 (wire fraud), 18 U.S.C. § 1341 (mail fraud), and N.Y. Penal Law §§ 215.00 and 215.05 (bribery) described in the following non-exhaustive sampling of cases.

A. ***Ludmila Gorbacevska v. Osama F. Zalouk, et al.*** – Supreme Court, Kings County – Index No. 522028/2020

35. On July 4, 2020, Ludmila Gorbacevska was a passenger in a vehicle after connecting with the driver via the Uber app. While driving on the highway her driver had to slow down because his vehicle hit a cardboard box containing a sofa cushion that fell out of the back of a pickup truck. Figure 1 below was taken from the forward-facing dashboard camera of the vehicle in which Gorbacevska was riding. It shows the moment before that event.



Figure 1.

36. Neither the vehicle nor the sofa cushion was damaged when the vehicle hit the box. Gorbacevska did not report any pain or injury at the time. The vehicle had both forward-facing and passenger view cameras, which recorded both the vehicle hitting the sofa cushion and Gorbacevska’s reaction. The video footage shows Gorbacevska talking on her phone before, during, and after the incident, and shows no injury to Gorbacevska; no contact between Gorbacevska and any part of the interior of the vehicle; and no damage to the vehicle. Figure 2 below shows Gorbacevska immediately before the incident, and Figure 3 shows her shortly afterward.



Figure 2.



Figure 3.

37. The vehicle in which Gorbacevska was riding did not collide with another vehicle. The police were not called, no ambulance came, and no airbags deployed.

38. The driver of the pickup truck that lost the sofa cushion stopped to exchange information with the driver of the vehicle in which Gorbacevska was riding. Both the pickup truck driver who lost the cushion and Gorbacevska were Russian speakers. Because they were traveling in the same direction, the pickup truck driver gave Gorbacevska a ride home from the scene of the incident. As the pickup truck driver memorialized in a subsequent email: “Through out the ride she essentially discusses how she’s going to ride the insurance claim and sue [] the driver She showed no signs of any physical distress, pain or injury Additionally her chatty nature also noted that she’s happy to use her prior medical procedure to blame [a]nyone because everyone[]

in New York is dishonest and it's her right to do so" Upon information and belief, Gorbacevska's lawyers were also aware of her plans.

39. Gorbacevska retained the Banilov Defendants to file a personal injury lawsuit. The Banilov Defendants executed on the scheme by fabricating evidence falsely describing Gorbacevska as having been in an accident between two vehicles and having been injured therein. Specifically, Gorbacevska signed a blank Report of Motor Vehicle Accident, MV-104. This is a standard form utilized in New York to report the circumstances of an accident. Though she signed the blank form, as she later admitted in sworn testimony, she never saw or reviewed the completed form, and the handwriting on the form was not her handwriting.

40. Upon information and belief, the Banilov Defendants or persons acting at their direction completed the blank Report of Motor Vehicle Accident that Gorbacevska had signed. In furtherance of the scheme, the form reflected fabricated facts about a supposed collision that simply did not occur. The completed form falsely stated that "V1 rear ended V2," that Vehicle 1 suffered damage to its front bumper, and that Vehicle 2 suffered damage to its rear bumper. It further falsely represented that Gorbacevska suffered "multiple" injuries. The statements that "V1 rear ended V2," that the vehicles suffered damage, and that Gorbacevska suffered "multiple" injuries were knowingly false when made given that there was no such vehicle collision or injuries. On or about July 6, 2020, in furtherance of the fraud scheme and in violation of 18 U.S.C. § 1343 (wire fraud), the Banilov Defendants caused the completed Form MV-104 to be transmitted to the New York Commissioner of Motor Vehicles by electronic means on Gorbacevska's behalf.

41. Gorbacevska did not initially seek medical treatment after the incident. She was neither visibly injured at the time of the incident nor did she complain to either driver about any injury. She did not seek medical care to treat any legitimate injury resulting from the incident.

Instead, she sought medical care from the Doctor Defendants as part of the scheme to manufacture a false and fraudulent claim. As Gorbacevska testified at her deposition, “I only spoke with the attorney. I was recommended to do that and the attorney explained to me . . . where I could go.”

42. Upon information and belief, the Banilov Defendants directed Gorbacevska to an extensive program of unnecessary and expensive medical treatment in furtherance of the scheme.

43. Over the ensuing months, Gorbacevska received an extensive range of medical treatments that were unnecessary and/or causally unconnected with the sofa cushion incident. Such medical treatment included treatment on or about the following dates:

- Acupuncture from July 8, 2020, through September 24, 2020;
- Chiropractor treatment from July 22, 2020, through December 4, 2020;
- Orthopedic surgery and follow-up from July 29, 2020, through May 2, 2023;
- Pain management from August 6, 2020, through January 4, 2021;
- Physical therapy from July 8, 2020, through December 4, 2020.

44. Pursuant to the fraudulent and corrupt scheme, the providers of these medical treatments purported to deliver services to address the non-existent injuries from the incident. In reality, the services were provided for the purpose of enabling Gorbacevska to pursue a claim in New York state court against the driver and against Uber, and to increase the supposed value of such claim. To maximize the value of such claim, Gorbacevska received a range of unnecessary and expensive pain management and surgery treatments from medical providers. Such treatments were at the heart of the scheme.

45. Upon information and belief, such treatments were coordinated and funded by the Banilov and Wingate Defendants, directly or indirectly. The Banilov and Wingate Defendants provided such funding, including excessive payments for unnecessary medical services, to persons

whom they knew or reasonably should have believed would be witnesses in the action and for the purpose of inducing false statements and testimony from the Reyfman and Gerling Defendants regarding medical necessity and/or causation in violation of N.Y. Penal Law § 215 (bribery).

46. On August 6, 2020, Gorbacevska visited Reyfman's pain management practice. Reyfman is a medical professional who specializes in pain management and surgery. He routinely performs various medical procedures on patients, including lumbar discectomies, annuloplasties, and contrast injections, in addition to routine pain evaluation and management. Reyfman has been named as a defendant in several lawsuits alleging that he engaged in fraudulent activity to fabricate and inflate no-fault insurance claims.

47. With respect to Gorbacevska and pursuant to this scheme, Reyfman documented non-existent "soft tissue" injuries resulting from the incident and recommended an extensive program of medical treatment, including physical therapy and injections.

48. Throughout the course of Gorbacevska's treatment at Pain Physicians NY, Reyfman and his staff produced fraudulent statements that falsely attributed Gorbacevska's injuries to the claimed accident with the intent to defraud Uber. The Gerling Defendants engaged in the same conduct, both in this and other cases. There was no medical reason for the Doctor Defendants to make these causation statements because the treatment would be the same regardless of the origin of the supposed injuries. Rather, the purpose of the causation statements was to manufacture evidence to support future false testimony by the Doctor Defendants in support of the personal injury plaintiffs—false testimony that was induced by, and offered in exchange for, payments from the Law Firm Defendants.

49. For example, on August 6, 2020, in violation of 18 U.S.C. § 1343 (wire fraud), Reyfman used an electronic patient records portal to electronically sign the following knowingly false causation statement in connection with an epidural steroid injection he performed that day:

CAUSALITY:

No pre-existing conditions exist that affects the causality. I feel that there is a direct causal r[e]lationship between the accident described and the patient's current injuries. The patient's symptoms and clinical findings are consistent with musculoskeletal injuries to the described areas.

50. The statement—which was purportedly based upon specialized knowledge—was knowingly false when made given that there was no such “accident” and no such resulting “current injuries.” Reyfman made this statement knowing that it was false. It was obvious that Gorbacevska was not, in fact, injured.

51. Beginning in August 2020 and continuing through at least November 2020, Reyfman or his staff acting at his direction administered a series of medically unnecessary spinal injections to Gorbacevska. In furtherance of the scheme, Reyfman's assistant incorporated identical false assertions regarding causation in medical records describing a “telemedicine” visit on November 10, 2020, and a follow-up visit on November 13, 2020. These false statements and the associated medical records were created for the purpose of litigation and were provided to defendants in that litigation in support of Gorbacevska's claim in furtherance of the scheme.

52. Upon information and belief, Gorbacevska's counsel also referred her to Gerling.

53. Gerling is a physician licensed to practice medicine in New York and New Jersey who owned and controlled several medical entities including Gerling Institute. Separate and apart from this action, Gerling has repeatedly been alleged to have engaged in fraudulent and unlawful no-fault insurance billing through these entities in addition to an illegal patient brokering, referral, and self-referral scheme.

54. During Gorbacevska's visits with Gerling, Gerling ordered a variety of unnecessary medical imaging, including MRIs and spinal x-rays. Gerling ordered an MRI and then recommended that Gorbacevska undergo neck surgery.

55. As with Reyfman, Gerling made false and fraudulent statements regarding causation and medical necessity with respect to this neck surgery treatment in the medical records for Gorbacevska. In connection with a November 24, 2020 initial appointment, Gerling falsely described patient pain and injury and added:

CAUSATION:

As the patient was asymptomatic in the cervical spine prior to their injury, it is my professional opinion, within a reasonable degree of medical certainty, that the injuries above, recommended treatments above, and resultant disability are directly causally related to the above stated accident.

56. Gerling made this statement knowing that it was false. It was obvious that Gorbacevska was not injured. On November 24, 2020, in violation of 18 U.S.C. § 1343 (wire fraud), Gerling used an electronic patient records portal to electronically sign and transmit this knowingly false and fraudulent statement with the intent to defraud the victims of the scheme.

57. Gerling operated on Gorbacevska on February 1, 2021. Gerling performed a cervical discectomy and fusion, as well as a spinal graft. Gerling also inserted a titanium plate and screw system into Gorbacevska's spine.

58. In connection with these surgeries, Gerling signed a statement regarding Gorbacevska's cervical spine—which at most reflected the ordinary wear and tear of a person of plaintiff's age rather than any acute injury—stating that it was his “professional opinion, within a reasonable degree of medical certainty, that the injuries above, recommended treatments above, and resultant disability are directly causally related to the above stated accident.” Gerling signed an identical note concerning Gorbacevska's alleged lumbar spine injury. Both such statements were

knowingly false when made given that there was no such accident or resulting injury. On August 17, 2021, in violation of 18 U.S.C. § 1343 (wire fraud), Gerling used an electronic patient records portal to electronically sign and transmit this knowingly false and fraudulent statement with the intent to defraud the victims of the scheme.

59. A medical expert retained by Uber reviewed Gorbacevska's pre-surgical imaging and did not identify any acute disc herniations or other injury that would indicate so aggressive a surgical treatment as a spinal fusion. The expert noted that "[b]ased on the images, I am not quite sure of the indications for the claimant's cervical spine surgery, which clearly was degenerative in nature." Gerling's statements regarding causation, the associated medical records, and indeed the spinal fusion surgery itself were created and/or performed for the purpose of litigation. The medical records containing the false statements were provided to defendants in that litigation in support of Gorbacevska's fraudulent claim and in furtherance of the scheme.

60. On November 9, 2020, the Banilov Defendants filed a lawsuit on Gorbacevska's behalf against her driver and the driver of the pickup truck who lost the sofa cushion. The complaint did not yet name Uber as a defendant, even though Gorbacevska and the Banilov Defendants knew that Gorbacevska had used the Uber app to connect with the driver. Upon information and belief, at the time of filing the Banilov Defendants intended to subsequently add Uber as a defendant on a vicarious liability theory. They waited to do so for the perceived strategic advantage of setting a discovery schedule and obtaining some discovery from the driver defendant before Uber's involvement in the case. The Banilov Defendants at all times knew that their false statements in support of Gorbacevska's fabricated claims were directed at Uber, and at all times intended to coerce an inflated settlement amount from Uber.

61. The complaint repeated the false statement from the accident report that one driver had rear-ended the other, stating that the box containing the sofa cushion caused the motor vehicle “in which plaintiff . . . was a lawful passenger to loss [sic] control and rear-end the motor vehicle, owned and operated by” the second driver defendant. The complaint also falsely stated that a collision had rendered Gorbacevska “sick, sore, lame and disabled,” and that she was now “incapacitated from attending to her usual duties.” Again, these statements were knowingly false when made given that there was no such vehicle collision or injury. The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud). In violation of 18 U.S.C. § 1341 (mail fraud), copies of the complaint were served on defendants by U.S. mail on or about November 19, 2020, and December 19, 2021.

62. On August 3, 2021, Wechsler and the Wingate firm entered an appearance in the case for Gorbacevska. Neither the Banilov Defendants nor the Wingate Defendants ever filed a Consent to Change Attorney, and Banilov never withdrew his representation of Gorbacevska in the action.

63. Upon information and belief, Banilov retained an attorney’s lien on Gorbacevska’s eventual recovery even after the Wingate Defendants appeared for Gorbacevska, and/or entered into a fee-splitting agreement with the Wingate Defendants in order to maintain a financial interest in the settlement payment that Defendants intended to coerce from Uber. The basis for this belief is twofold. First, there is a consistent pattern, reflected below, in which the Banilov Defendants recruit personal injury plaintiffs, commence the action, and then refer the case to the Wingate Defendants when it is time to add Uber as a defendant. The Wingate firm is larger and more resourced, and therefore more suited to litigation against Uber. Second, Banilov was representing Gorbacevska on a contingency basis and would not have agreed to refer his client to another

attorney without assurance that he would be compensated for the work that he had done at the start of the case.

64. On August 24, 2021, the Wingate Defendants filed an amended complaint that added Uber as a defendant and repeated the false and fraudulent allegations about the incident. When Uber was added as a defendant, it reviewed the prior public filings in the action and relied upon those documents, and the representations contained therein, for the purpose of evaluating its potential exposure and assessing the settlement value of the case. The documents on which Uber relied include the November 9, 2020 Complaint. As Uber received other documents in discovery, including the Gerling and Reyfman medical records discussed above, it likewise relied on those documents, and the representations contained therein, for the same purpose of evaluating its potential exposure and assessing the settlement value of the case.

65. The Wingate Defendants' amended complaint repeated the false statements that the two vehicles "came into contact with each other" and that Gorbacevska "was severely injured." Upon information and belief, such statements were knowingly false when made given that there was no such "accident" involving a collision between two vehicles, or any resulting injury. It was apparent to the Wingate Defendants from the face of the record and/or disclosure that the MV-104 misrepresented the accident. The amended complaint, which the Wingate Defendants prepared in furtherance of the fraud scheme, was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud). That same day, the Wingate Defendants also caused the amended complaint to be served on Uber and the other defendants by U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

66. On or about November 16, 2021, in furtherance of the fraud scheme, and in violation of 18 U.S.C. § 1343 (wire fraud), the Wingate Defendants electronically filed a verified bill of particulars response providing information regarding the incident and made a false statement

that the “motor vehicles [came] into contact with one another.” The bill of particulars provided a false laundry list of claimed injuries resulting from the purported collision between two vehicles and a list of surgeries that the Wingate Defendants falsely claimed were necessitated thereby:

As a result of the accident the plaintiff sustained the following serious and permanent injuries:

Left Shoulder: Full thickness tear of the anterior supraspinatus tendon; Partial rotator cuff tear; Partial labral tear; Glenohumeral joint effusion that extends into the subcortacoid; Fluid within the subdeltoid bursa and within the biceps tendon sheath; Loose bodies; Chondromalacia of the posterior glenoid grade IV; Adhesions; Synovitis; Impingement syndrome; Traumatic internal derangement; Traumatic induced pain; Instability; Weakness; Sprain/strain secondary to trauma; Restricted flexibility and range of motion; Post traumatic arthritis;

Surgical Procedure: Necessity to undergo the following surgical procedure on September 8, 2020 performed by Aleksandr Khaimov, D.O.:

- Arthroscopy; Arthroscopic rotator cuff and labral debridement; Removal of loose bodies; Microfracture of the glenoid; Lysis of adhesions; Synovectomy; Permanent disfiguring scarring overlying the left shoulder secondary to the above surgical procedure.

Right Shoulder: Partial thickness tear, communicating with the articular surface; along the anterolateral margin of the supraspinatus tendon; Focal of the infraspinatus tendon consistent with a focal erosion at the lateral glenoid process; Post traumatic edema; Fluid in the subdeltoid bursa and in the glenohumeral joint space; Impingement syndrome; Traumatic internal derangement; Traumatic induced pain; Instability; Weakness; Sprain/strain secondary to trauma; Restricted flexibility and range of motion; Post traumatic arthritis.

Cervical Spine: C3-C4 central right paracentral herniation, the midline component of which flattens the thecal sac; C5-C6 broad-based posterior herniation involving the central and bilateral posterolateral disc margins, flattening the thecal sac; C6-C7 central left paracentral herniation causes moderate flattening the thecal sac; C6-C7 grade I anterolisthesis with endplate change; Reversal of the cervical lordosis; Cervical radiculopathy; Sprain/strain secondary to trauma; Post traumatic cervicalgia; Cervical myofascitis; Cervical displacement;

Subluxation; Cervical stenosis; Chronic neck pain; Myalgia; Muscle spasms.

Surgical Procedure: Necessity to undergo the following surgical procedures on February 1, 2021 performed by Michael Gerling, M.D.:

- Anterior cervical discectomy and fusion, including discectomy, arthrodesis and anterior instrumentation at C5-C6-C7; Partial Corpectomy: C6; Anterior Instrumentation: Accel spine VanGough Titanium plate and screw system; Biomechanical Device(s): peek cage x 2; Spinal Graft: Allograft, morselized, Autograft, local [through same incision]; Imaging: Fluoroscopic Guidance; Neurologic Monitoring Type: SSEP, MEP, EKG; Permanent disfiguring scarring overlying the left side of the neck secondary to the above surgical procedure.

Lumbar Spine: Lumbar radiculopathy; Muscle spasm; Lumbar post traumatic sprain/strain syndrome; Lumbar displacement; Lumbar spondylosis; Disc protrusions; Chronic back pain; Restricted range of motion; Lumbalgia; Lumbar Myalgia/Myositis.

Procedure: Necessity to undergo the following procedure on January 4, 2021 performed by Leonid Reyfman, M.D.:

- Interlaminar Epidural Steroid Injection at L5-S1

Thoracic Spine: T2-T3 posterior central herniation, flattening the thecal sac; T4-T5 posterior central herniation, flattening the thecal sac; Muscle spasms; Sprain/strain secondary to trauma; Thoracalgia; Thoracolumbar derangement[.]

67. The bill of particulars that the Wingate Defendants intentionally filed with knowledge of its falsity further falsely and fraudulently stated that permanent, serious injuries were caused by the purported accident between two vehicles:

[A]ll of the aforementioned injuries, manifestations and disabilities are associated with further soft tissue injury and traumatic arthritis to the areas traumatically affected including injury, tearing, derangement and damage to the associated muscle groups, ligaments, tendons, blood vessels, blood supply, nerves and nerve tissue, soft tissue, with resultant pain, deformity and disability, stiffness, tenderness, weakness and restriction and limitation of motion and pain on motion; all injuries were caused, aggravated, exacerbated and/or

precipitated by the accident; possibility of future surgical repair to those parts of the body claimed to have been injured in this accident; and possible loss of use of above mentioned parts, atrophy, anxiety and mental anguish, all of which substantially prevents this Plaintiff from enjoying the normal fruits of activities [social, educational and economical] and Plaintiff's enjoyment of life has been permanently impaired, impeded and/or destroyed.

All of the injuries referenced above are permanent and lasting in their nature and character, with permanent effects of pain, loss of motion, disability, atrophy, anxiety and mental anguish.

By reason of the subject occurrence and the serious injuries sustained therein, Plaintiff has been intermittently confined to bed at various periods of time since the accident relative to the afore-mentioned disability caused by the subject accident.

By reason of the subject occurrence and the serious injuries sustained therein, the Plaintiff remains significantly partially disabled with intermittent home confinement to date relative to the afore-mentioned disability caused by the subject accident.

68. Gorbacevska sought \$5,000,000 from Uber for her claimed injuries.

69. On or about January 5, 2022, in violation of 18 U.S.C. § 1343 (wire fraud), the Wingate Defendants electronically filed a copy of the MV-104 that Gorbacevska had signed in blank. As discussed above, the MV-104 falsely stated that a vehicle collision had occurred resulting in injury to Gorbacevska. Upon information and belief, the Wingate Defendants knew that such statements were false but nevertheless placed the report on the docket in order to advance the litigation and defraud Uber.

70. On or about June 9, 2023, in furtherance of the fraudulent scheme, and in violation of 18 U.S.C. § 1343 (wire fraud), the Wingate Defendants signed and electronically filed an affirmation in support of a motion to extend a note of issue deadline that repeated the false statement that Gorbacevska "was involved in a motor vehicle accident which resulted in multiple serious injuries." Upon information and belief, the Wingate Defendants knew this statement was false and made it with the intent to advance the litigation and defraud Uber.

71. Throughout the Gorbacevska litigation, the Banilov and Wingate Defendants utilized the Doctor Defendants' treatment and false statements to advance the scheme through the litigation. The Banilov and Wingate Defendants knew that under New York State Insurance Law § 5104(a) and (b), their ability to attempt to fraudulently induce a large settlement out of Uber was dependent on their ability to establish a basic economic loss of greater than \$50,000 or a "serious injury." Absent evidence of such loss or injury, they would have no state court claim. By directing the Doctor Defendants to make false diagnoses, provide unnecessary and expensive treatments, and provide false statements regarding causation and necessity, the Banilov and Wingate Defendants were able to manufacture injuries and damages that supposedly resulted from Gorbacevska's vehicle hitting the sofa cushion. The Banilov and Wingate Defendants induced such conduct and false statements by paying above-market and excessive compensation to Reyfman and Gerling, directly or indirectly.

72. For example, Gorbacevska's medical records from the day of the Gerling surgery memorialized that Gorbacevska had told the nurse that "[p]atient has no health insurance and no [primary care physician]. She states any meds/needs related to this surgery will be covered by *her payment through lawyer* by way of her accident." Such payment was made with the knowledge that Gerling would be a witness and with the agreement or understanding that it would corruptly influence Gerling's testimony regarding the necessity for such medical treatment and/or whether it was caused by the accident in question, in violation of N.Y. Penal Law § 215 (bribery). Gerling accepted such payment with the agreement or understanding that his testimony would be influenced thereby, in violation of N.Y. Penal Law § 215.05 (bribe receiving as a witness).

73. On October 16, 2023, and as described further below, a federal RICO lawsuit was filed in this District naming Gerling as a defendant and containing detailed factual allegations that

Gerling had participated in a conspiracy to submit thousands of fraudulent and unlawful no-fault insurance charges through Gerling Institute. Among other things, the lawsuit alleged that Gerling “was among the surgeons who, in exchange for payments from [an unlawful patient brokering entity] agreed to perform invasive, expensive, and medically unnecessary surgeries on automobile accident patients.” The lawsuit was captioned *Government Employees Insurance Co., et al. v. Michael Gerling, M.D., et al.*, Case No. 1:23-cv-07693 (E.D.N.Y.).

74. On February 2, 2024, Uber issued a subpoena to Gerling and Gerling Institute requiring his testimony regarding “the statements plaintiff LUDMILA GORBACEVSKA made about how the subject accident occurred.” The subpoena also sought Gerling’s testimony “regarding the matter of GOVERNMENT EMPLOYEES INSURANCE CO., et al. v. MICHAEL GERLING, M.D., et al. pending in the United States District Court Eastern District of New York Docket No. 1:23-cv-07693” and “whether Plaintiff LUDMILA GORBACEVSKA’s treatment with you is a subject of the pending lawsuit under EDNY Docket No. 1:23-cv-07693.”

75. Gerling was scheduled to appear for his deposition on March 7, 2024; however, Wechsler requested an adjournment.

76. On March 8, 2024—the day after the Gerling deposition was scheduled to occur—the Wingate Defendants filed an order to show cause seeking leave to withdraw as counsel for Gorbacevksa in the New York state court case.

77. In arguing that order to show cause, a Wingate attorney represented to the New York state court judge: “[W]e are requesting to be relieved as counsel based on a video that was exchanged which makes us believe the accident didn’t occur in the manner that the plaintiff claims it occurred, and it would be unethical for us to go forward with the case at this time.” The stated excuse for withdrawal, however, was false and misleading given that the video had been available

to the Wingate Defendants well before May 4, 2023, when it was an exhibit at Gorbacevska's deposition, which Wechsler defended; and given that the underlying false accident report had been manufactured by the attorneys and not by Gorbacevska.

78. The motion to withdraw was granted. Following the Wingate firm's withdrawal, the New York state court dismissed Uber from the case because the Wingate Defendants failed to proffer evidence showing that the driver was Uber's employee.

79. By the time of Uber's dismissal, Uber had already incurred hundreds of thousands of dollars in unreimbursed defense costs as a result of this scheme.

B. *Fatima Callum v. Namie Glendel Price, et al.* – Supreme Court, Bronx County – Index No. 23748/2019E

80. On March 1, 2019, Fatima Callum was a restrained passenger in the rear middle seat of a vehicle in which she was riding after connecting with the driver through the Uber app. As that vehicle made a right turn, it was hit lightly on its side by a second vehicle that was also turning right alongside it. At the time of the accident, Callum did not report any pain or injury at the scene and refused medical treatment from the ambulance that arrived. The airbags of the car in which she was riding did not deploy. Callum rode home afterward with the same driver in the same vehicle, which remained drivable.

81. Callum later went to a hospital emergency room complaining only of neck pain. She was diagnosed with a neck sprain, prescribed an over-the-counter non-narcotic pain reliever, and discharged.

82. Even though Callum did not complain of, or seek treatment for, any pain in her knees, back, or shoulders when she visited the emergency room, she brought a lawsuit against the other driver and, subsequently, Uber, alleging serious injuries to each of those body parts. Upon

information and belief, those supposed injuries were fraudulently manufactured by her attorneys in collusion with the Doctor Defendants.

83. On March 29, 2019, in furtherance of the fraud scheme, the Lavelle Defendants caused to be electronically filed a complaint against the driver, which Emily Lavelle verified. The verified complaint falsely states that as a result of the accident, Callum “was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature and duration, and plaintiff [Callum] will be permanently caused to suffer pain, inconvenience and other effects of such injuries.” The verified complaint further falsely states: “That as a result of the foregoing, this plaintiff [Callum] suffered a serious injury as defined by Section 5102(d) of the Insurance Law of the State of New York.” Upon information and belief, each such statement was knowingly false when made. In violation of 18 U.S.C. § 1343 (wire fraud) and 18 U.S.C. § 1341 (mail fraud), the Lavelle Defendants caused the complaint to be electronically filed and used the U.S. Postal Service to serve it on the driver defendant.

84. Over the ensuing months, Callum received an extensive range of medical treatments that were unnecessary and/or causally unconnected with the collision. Such medical treatment included: physical therapy; acupuncture; massage; cervical facet joint injections; discectomy and spinal fusion; shoulder arthroscopy; and knee meniscectomy and synovectomy. Upon information and belief, Callum was directed to the providers for such medical treatment by her lawyers. Gerling was one such provider.

85. On or about May 21, 2019, Callum visited Gerling for treatment. According to an independent medical examination, Callum’s cervical MRI revealed no injury that required a

cervical fusion to be repaired. But Gerling nevertheless recommended expensive and invasive neck surgery.

86. On August 28, 2019, Gerling performed a cervical discectomy and fusion at two levels, C5-6 and C6-7, on Callum.

87. The Lavelle Defendants paid for Gerling's surgery either in whole or in part. Callum's admission paperwork for such surgery listed "The Lavelle Firm," with the date of her accident as the policy number, as the payment source alongside the driver's no-fault policy carrier. Upon information and belief, such payment was made with the agreement or understanding that Gerling would be a witness and with the understanding that it would influence Gerling's testimony regarding the necessity for such medical treatment and/or whether it was caused by the accident in question in violation of N.Y. Penal Law § 215 (bribery). And upon information and belief, Gerling accepted such payment with the agreement or understanding that his testimony would be influenced thereby, in violation of N.Y. Penal Law § 215.05 (bribe receiving as a witness).

88. On December 10, 2019, in furtherance of the fraud scheme and in violation of 18 U.S.C. § 1343 (wire fraud), the Lavelle Defendants electronically filed a verified bill of particulars falsely stating that "as a result of [the] accident, Plaintiff sustained the following serious injuries:

Anterior cervical discectomy and fusion level C5-6 and C6-7, cervical spine; C5 anterior cervical corpectomy, cervical spine; Cervical spondylosis, cervical spine; C2-3 and C3-4 cervical facet joint injections, cervical spine; Fluoroscopic needle guidance, cervical spine; Right C5 and C6 radiculopathy, cervical spine; Cervical radiculopathy, cervical spine; Cervical multilevel discopathy, cervical spine; C5-C6 and C6-C7 herniation, cervical spine; C3-C4 and C4-C5 annular bulges, cervical spine; Canal and cord impingement, cervical spine; Spinal stenosis produced, cervical spine; Discogenic endplate reaction, cervical spine; Hypolordosis, cervical spine; Lateral meniscectomy and debridement, left knee; Left knee synovectomy 3 compartments, left knee; Lysis of adhesions, left knee; Medial meniscal tear, left knee; Lateral meniscal [sic] tear, left knee; Lateral meniscal myxoid reaction, left knee; ACL injury, left knee;

Quadriceps and patellar tendinitism, left knee; Joint effusion, left knee[.]

89. The bill of particulars also falsely states that Callum “sustained a serious injury resulting in . . . significant limitation of use of a body function or system which prevented him [sic] from performing substantially all of the material acts which constituted his [sic] usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.” Upon information and belief, each such statement was knowingly false when made and made with the intent to defraud the defendants in the litigation and the court.

90. On or about April 6, 2020, Callum executed a consent to substitute the Wingate firm as counsel of record, which was electronically filed on August 10, 2020. Upon information and belief, the Wingate firm and the Lavelle Defendants agreed to share the proceeds with respect to this lawsuit in furtherance of the scheme. Lavelle was representing Callum on a contingency basis and would not have agreed to refer her client to another attorney without assurance that she would be compensated for the work that she had done at the start of the case.

91. On October 13, 2020, the Wingate firm filed an amended complaint naming Uber as a defendant. As with Banilov in the Gorbacevska matter, it was Lavelle’s plan from the outset to eventually transfer the case to the Wingate firm so that they could add Uber as a defendant. Lavelle knew that her client, Callum, was allegedly injured while a passenger in a ride which she obtained using the Uber app. Lavelle’s conduct was therefore directed toward Uber and intended to increase the settlement value of Callum’s intended claim against Uber, the recovery of which Lavelle would share through her agreement with Wingate.

92. As with the initial complaint, the amended complaint alleged that Callum “was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous

shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature and duration, and Plaintiff [Callum] will be permanently caused to suffer pain, inconvenience and other effects of such injuries.” The verified amended complaint further alleged that “as a result of the foregoing, this Plaintiff [Callum] suffered a serious injury as defined by Section 5102(d) of the Insurance Law of the State of New York.”

93. The Wingate firm utilized Gerling’s fraudulently procured treatment as a basis for its claim. On November 11, 2022, one of the named defendants moved for summary judgment on the ground that there was no evidence that Callum had sustained a serious injury. The Wingate firm utilized Gerling’s treatment in opposition to such motion.

94. On February 21, 2023, Gerling produced a summary of Callum’s treatment with his office. This summary stated that Callum had “sustained significant musculoskeletal injuries to her neck and low back in the above stated accident,” and that the “treatments above, and resultant permanent disability are directly causally related to the above stated accident.” This statement was knowingly false when it was made and was made with the intent to defraud the defendants in the lawsuit. In violation of 18 U.S.C. § 1343 (wire fraud), Gerling electronically transmitted this summary to the Wingate firm for use in the affirmation discussed below.

95. On February 22, 2023, the Wingate firm electronically filed an affirmation signed by Gerling appending his medical records for treatment of Callum. In that affirmation, Gerling stated that he had treated Callum through Gerling Institute and that “the injuries above, recommended treatments and resultant disability, are directly caused by the accident of March 1, 2019.” In his affirmation, Gerling also testified that Callum was a “candidate for cervical discectomy and fusion” even though such invasive surgery was medically unnecessary. Gerling knew such statements—which he purported to make pursuant to his specialized knowledge—were false when

made and that they had been procured by the attorney payments described above. Gerling either did not subjectively believe such statements or, to the extent he did, such statements omitted material facts, including the circumstances regarding the underlying incident. In violation of 18 U.S.C. § 1343 (wire fraud) and in furtherance of the scheme, Gerling electronically transmitted the affirmation to the Wingate firm for electronic filing.

96. The Wingate firm continues to prosecute the case against Uber today, even though they knew or should have known that Callum was not seriously injured in the accident. Uber has suffered substantial defense costs as a result of this scheme.

C. *Cadeem Clarke v. Alex E. Perez, et al.* – Supreme Court, Bronx County – Index No. 811429/2022E

97. On the afternoon of December 4, 2019, Cadeem Clarke was a passenger of a driver with whom he had connected using the Uber app. The vehicle in which Clarke was a passenger was rear-ended in a light, low-speed collision. When the driver asked Clarke if he was “ok,” Clarke said yes and then left the scene.

98. A police report produced at the scene noted that there were no injuries. Clarke had been involved in a previous car accident and subsequent lawsuit in 2014. MRIs taken of Clarke’s back after the 2019 collision show the same damage already present in MRIs taken after the 2014 collision and do not show any new damage. He was not injured.

99. Late in the evening on the day after the 2019 collision, Clarke visited the emergency room at Montefiore Medical Center. Records from his visit to Montefiore show he was ambulating with a normal gait and showed no neurological deficit. He refused to wait for an official x-ray, stating that he “feels well.” Physicians at Montefiore discharged him shortly thereafter.

100. Approximately one month later, Clarke began visiting a physical therapy practice for treatment of a supposed neck injury. Clarke testified that he chose the specific practice “[a]fter

I spoke to my attorney.” Clarke’s attorneys referred him to this clinic and coordinated his medical treatment.

101. Clarke received physical therapy at this practice up to three times a week over a period of time lasting up to three years. At one point during the course of his treatment, he moved to a different home, and his attorneys personally arranged for him to begin attending therapy sessions at a different location of the same practice.

102. On or about March 30, 2020, Clarke had an appointment at Reyfman’s Pain Physicians NY practice, which, upon information and belief, was also arranged by his attorneys. Reyfman was the attending provider. The resulting medical record falsely and fraudulently stated that “there is a direct causal relationship between the accident described and the patient’s current injuries.” Upon information and belief, such statement was knowingly false when made. Reyfman’s associates administered two medically unnecessary epidural steroid injections to Clarke.

103. Upon information and belief, the attorneys for Clarke directly or indirectly made payments to Pain Physicians NY with the understanding that Reyfman would be a witness and with the understanding that such payments would influence his testimony. And, upon information and belief, Reyfman accepted such payments with the agreement or understanding that his testimony would be influenced thereby, in violation of N.Y. Penal Law § 215.05 (bribe receiving as a witness).

104. During and after the course of Clarke’s treatment at Pain Physicians NY, Reyfman caused certain fraudulent claim documents to be mailed to or electronically filed with no-fault insurance providers in connection with the vehicle collision in violation of 18 U.S.C. § 1343 (wire fraud) and 18 U.S.C. § 1341 (mail fraud). On April 13, 2020, Reyfman caused his staff to mail and

electronically file a claim form that falsely checked “yes” in response to a question that asked “[i]s condition solely a result of this automobile accident?” This statement was knowingly false at the time it was made. Reyfman caused his staff to submit additional false claim forms in connection with appointments that occurred on March 30, 2020, July 30, 2020, and April 26, 2022.

105. On or about February 2, 2023, Wechsler and the Wingate firm entered an appearance in the case and took over its prosecution. On information and belief, at the time that they took over the case, they were aware of the underlying facts, including Clarke’s lack of injury. In violation of 18 U.S.C. § 1343 (wire fraud) and 18 U.S.C. § 1341 (mail fraud), Wechsler and the Wingate firm electronically filed and served via U.S. mail a number of false and fraudulent statements made to advance the litigation.

106. Specifically, on or about March 7, 2023, the Wingate Defendants electronically filed a verified bill of particulars that stated that as a result of the accident, Clarke had sustained “serious and permanent injuries” and was “significantly partially disabled” by the collision and suffered “significant limitation of use of a body function or system ... which prevents her [sic] from performing substantially all of the material acts which constitute such person’s usual and customary daily activities.” The bill of particulars also falsely stated that:

As a direct and proximate result of the accident, the Plaintiff sustained the following serious and permanent injuries: C5-C6 CENTRAL SUBLIGAMENOUS DISC HERNIATION IMPRESSING ON THE ANTERIOR THECAL SAC AND NARROWING THE NEUROFORAMINA; C3-C4 DISC BULGING IMPRESSING ON THE ANTERIOR THECAL SAC AND NARROWING THE NEUROFORAMINA; CERVICAL RADICULOPATHY; SPRAIN/STRAIN SECONDARY TO TRAUMA; POST TRAUMATIC CERVICALGIA; CERVICAL MYOFASCITIS; CERVICAL DISPLACEMENT; INSTABILITY; SUBLUXATION; CERVICAL STENOSIS; CHRONIC NECK PAIN MYALGIA; MUSCLE SPASMS.

107. The bill of particulars went on to state that these injuries created a “necessity to undergo” the two epidural steroid injections and the spinal surgery. Upon information and belief, these statements were knowingly false when made and were made with an intent to defraud. It would have been obvious from any interaction with Clarke that he did not suffer from any serious and permanent injury, just as it had been obvious to the medical professionals at Montefiore. Clarke’s own social media account refutes any suggestion he was “significantly partially disabled” by the accident. That social media account records a large birthday party thrown in Clarke’s honor on April 8, 2022, during a time period in which he was supposedly “significantly partially disabled” and unable to work.



Figure 4.

108. Similar social media posts from the summer of 2022 indicate no evidence of an ongoing serious injury as alleged. The Wingate Defendants were aware from interacting with their client that he was not significantly disabled.



Figure 5.

109. The bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on Uber via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

110. On or about May 1, 2023, Wechsler and the Wingate firm filed another bill of particulars that contained the same false and fraudulent statements. Specifically, this bill of particulars stated that Clarke had suffered a “permanent and lasting” injury and had become “totally disabled” as a result of the accident. Upon information and belief, these statements were also knowingly

false when made. The bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on Uber via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

111. On or about November 14, 2023, Wechsler and the Wingate firm electronically filed an affirmation, in support of a motion to strike Uber’s answer, that falsely and fraudulently stated that Clarke had sustained “serious and permanent personal injuries” in the collision. Upon information and belief, these statements were also knowingly false when made. The affirmation was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on Uber via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

112. On or about January 30, 2024, Wechsler and the Wingate firm electronically filed an affirmation, in support of a separate motion to strike Uber’s answer, that repeated the false and fraudulent statement that Clarke had sustained “serious and permanent personal injuries” in the collision. Upon information and belief, these statements were also knowingly false when made. The affirmation was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on Uber via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

113. The Wingate Defendants continue to prosecute this case against Uber today, even though they know or should know that Clarke did not sustain serious injuries as a result of the accident. Uber has incurred substantial defense costs as a result of this scheme.

D. *Zarrina Khalilova v. Leonard Hakeem, et al.* – Supreme Court, Kings County – Index No. 506743/2017

114. On August 28, 2016, Zarrina Khalilova was a passenger in a ride that she arranged using the Uber app. Khalilova’s vehicle was driving eastbound on the Belt Parkway when it was rear-ended by another car. She was not significantly injured in the accident. Khalilova went to the emergency room after the accident, where medical imaging did not show any injury. She was

discharged with painkillers several hours later and was told to follow up with her primary care provider.

115. Khalilova then took the subway home from the emergency room. Khalilova testified during her deposition that there was no seat available on the train, so she stood for the entirety of the hour-long subway ride—something a seriously injured person would not have been able to do.

116. The next day, Khalilova visited her primary care doctor, who also reviewed her x-rays and prescribed physical therapy.

117. Khalilova retained the Banilov Defendants to represent her in a personal injury action. Thereafter, her treatment plan changed. At Banilov's direction, Khalilova went to see Reyfman. Reyfman in turn referred Khalilova to Gerling.

118. Despite Khalilova's lack of serious injury, Gerling performed an invasive cervical spinal fusion surgery on March 28, 2017. Gerling did so knowing that the surgery was not medically necessary. An independent medical review of Khalilova's imaging and treatment records confirmed that her asserted injuries did not support claims of debilitating pain and did not necessitate the surgery that was performed.

119. Khalilova testified that her no-fault insurance did not cover the Gerling cervical spinal fusion surgery. Upon information and belief, the Banilov Defendants, directly or indirectly, paid Gerling for Khalilova's surgery to induce him to perform medically unnecessary surgery and to supply false causation evidence on their behalf.

120. Reyfman subsequently performed a lumbar discectomy and annuloplasty in September 2017. Like Gerling's surgery, Reyfman's surgery was medically unnecessary. Upon information and belief, the Banilov Defendants, directly or indirectly, paid Reyfman for Khalilova's

surgery to induce him to perform medically unnecessary surgery and to provide false causation testimony on their behalf.

121. On or about April 5, 2017, Tarasov electronically filed a complaint on behalf of Khalilova to initiate the lawsuit. The complaint falsely stated that the vehicle collision “caused [Khalilova] to sustain severe and serious injuries,” including “economic loss greater than basic economic loss as defined by Section 5104 of the New York State Insurance Law.” These statements were knowingly false and were made for the purpose of advancing the lawsuit and defrauding defendants and the court. The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

122. The Banilov Defendants filed the lawsuit knowing that Khalilova had connected with her driver through the Uber app, and intended at the time of filing to ultimately add Uber as a defendant. The Banilov Defendants filed the lawsuit initially without Uber as a defendant so that they could attempt to obtain early non-party discovery from Uber before Uber could move to dismiss or move to compel Khalilova’s claim to arbitration. The Banilov Defendants therefore at all times intended that their false statements would coerce an inflated settlement from Uber, consistent with the overall purpose of the scheme.

123. Consistent with the general scheme, the Banilov Defendants referred the claim to the Wingate Defendants who appeared as counsel for Khalilova on September 13, 2017. The same day that they appeared, the Wingate Defendants filed an Order to Show Cause seeking enforcement of a third-party subpoena that the Banilov Defendants had served on Uber seeking early non-party discovery.

124. On or about February 26, 2018, the Wingate Defendants electronically filed an amended complaint on behalf of Khalilova. The amended complaint falsely stated that the vehicle collision caused Khalilova to become “sick, sore, lame and disabled,” and “sustained a serious injury as defined by Section 5102(d) of the Insurance Law of the State of New York, and has sustained economic loss greater than basic economic loss as defined Section 5102(d) of the Insurance Law of the State of New York.” These statements were knowingly false and were made for the purpose of advancing the lawsuit and defrauding defendants and the court. The amended complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud).

125. On or about August 2, 2018, the Wingate Defendants served a verified bill of particulars that stated that as a result of the accident, Khalilova had sustained “serious and permanent injuries” to her spine, was “significantly partially disabled” by the collision, and suffered “significant limitation of use of a body function or system . . . which prevents [her] from performing substantially all of the material acts which constitute such person’s usual and customary daily activities.” The bill of particulars also falsely stated that:

As a direct and proximate result of the accident the plaintiff sustained the following serious and permanent injuries:

Cervical Spine:

- C5-C6 herniated nucleus pulposus with cord and severe root impingement;
- C6-C7 herniated nucleus pulposus with cord and severe root impingement;
- C5-C6 lee paracentral protrusion which partially effaces the ventral thecal sac with abutment of the ventral cord;
- C6-C7 right paracentral protrusion with annular tear which indents the ventral thecal sac;
- C5-C6 spinal canal narrowing;
- Cervical disc disorder with myelopathy;
- Cervical radiculopathy;
- Muscle Spasm;
- Derangement of the cervical spine;

- Cervical spine tenderness;
- Cervical sprain/strain secondary to trauma;
- Cervicogenic headaches;

126. The bill of particulars went on to state that Khalilova was “required to undergo” anterior cervical discectomy and fusion. Upon information and belief, these statements were knowingly false when made and were made with an intent to defraud. It would have been obvious from any interaction with Khalilova that she did not suffer from any serious and permanent injury, just as it had been obvious to the medical professionals at the emergency room, as well as her primary care provider. Upon information and belief, the bill of particulars was served on defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

127. On or about August 13, 2018, the Wingate firm served another bill of particulars that contained the same false and fraudulent statements. Specifically, this bill of particulars stated that Khalilova had suffered a “permanent” injury and had become “permanently impaired” as a result of the accident. Upon information and belief, these statements were also knowingly false when made. Upon information and belief, the bill of particulars was served on defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

128. Uber ultimately settled Khalilova’s claims against it. Uber relied on the false statements described above in deciding whether and for what amount to settle the claims. The settlement amount was significantly inflated, relative to what Uber would have paid to settle the case without Gerling and Reyfman’s medically unnecessary surgeries and false testimony.

E. *Joshua Lopez v. Li Zhen Tang, et al.* – Supreme Court, Kings County – Index No. 510792/2023

129. On September 7, 2022, Joshua Lopez was a passenger in a ride that he arranged using the Uber app. Lopez’s vehicle was involved in a minor accident while at the intersection of 6th Avenue and 54th Street in Brooklyn. The airbags did not deploy and damage to the vehicle

was minimal. Lopez did not request medical treatment at the scene and did not go to the emergency room—instead, he walked home. Lopez was not injured.

130. Lopez testified that he was seated behind the front passenger seat of the vehicle, a Toyota SUV. He stated that, as a result of the impact of the collision, both sides of his head, neck and shoulders made contact with the left and right side of the vehicle. Such an occurrence would be physically impossible for someone who was wearing his seatbelt (which Lopez does not deny). Even if he was unbelted, at such low speeds he would not have been tossed all the way to the other side of a large SUV given the nature of the impact.

131. Lopez did not seek medical treatment at an emergency room, an urgent care facility, or from his primary care physician. Instead of going to a medical doctor for diagnosis of his purported injuries, Lopez went to a physical therapist in the days following the accident. Upon information and belief, he did so at the direction of his attorney, Tarasov—who is affiliated with and works alongside Banilov. During his physical therapy treatment and in furtherance of the scheme, Lopez underwent a number of expensive and medically unnecessary treatments, including shock therapy.

132. On or about December 14, 2022—three months after the accident—Lopez had his first appointment with Reyfman. Upon information and belief, Tarasov referred Lopez to Reyfman in furtherance of the scheme. Beginning in December 2022, Reyfman or his staff acting at his direction administered a series of medically unnecessary injections to Lopez. In violation of 18 U.S.C. § 1343 (wire fraud), after each of Lopez’s visits—including on December 14, 2022, January 3, 2023, January 16, 2023, January 31, 2023, February 28, 2023, March 13, 2023, and April 28, 2023—Reyfman used an electronic patient records portal to electronically sign the following knowingly false causation statement: “I feel that there is a direct causal relationship between the

accident described and the patient's current injuries. The patient's symptoms and clinical findings are consistent with musculoskeletal injuries to the described areas.”

133. On or about March 13, 2023, Reyfman's associate performed an invasive and medically unnecessary surgery on Lopez's spine. The operative report describes the surgery as an anterior cervical percutaneous discectomy and annuloplasty. An independent review of Lopez's MRI found only “degenerative disc disease” which “predates and is unrelated to the accident,” and did not find any evidence of trauma caused by the accident.

134. On or about November 27, 2023, another Reyfman associate performed an additional surgery on Lopez's spine, at Reyfman's recommendation. The operative report described the surgery as a discectomy, nucleoplasty and annuloplasty, and also included medically unnecessary injections. The operative report reiterated verbatim the fraudulent statement found in the operative report from the March 2023 surgery: “After reviewing the patient's clinical history, physical examination and imaging studies, the following procedure was deemed medically necessary for is therapeutic value.”

135. On or about April 11, 2023, Tarasov electronically filed a complaint on behalf of Lopez to initiate the lawsuit. The complaint falsely stated that, as a result of the vehicle collision, Lopez “was caused to sustain severe and serious injuries,” including “economic loss greater than basic economic loss as defined by Section 5104 of the New York State Insurance Law.” These statements were knowingly false and were made for the purpose of advancing the lawsuit and defrauding defendants and the court. The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

136. On or about June 8, 2023, Tarasov prepared and served a bill of particulars that contained numerous additional false statements. Specifically, among other similar statements, the bill of particulars stated, “[b]y reason of the subject occurrence, [Lopez] sustained the following personal injuries, all of which are alleged to be of a permanent nature,” followed by a laundry list of purported injuries of Lopez’s cervical spine, lumbosacral spine, thoracic spine, and right and left shoulder, along with the surgeries that Tarasov falsely claimed were necessitated thereby. Upon information and belief, the bill of particulars was served on defendants via electronic mail in violation of 18 U.S.C. § 1343 (wire fraud) and/or U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

137. On or about February 20, 2025, Tarasov prepared and electronically filed a supplemental bill of particulars. In addition to the injuries listed in the prior bill of particulars, the supplemental bill of particulars stated that Lopez had sustained additional, “future ... permanent” injuries, including, “Status-Post Discectomy, Mechanical Decompression at L5/S1; Nucleoplasty, Radiofrequency Ablation at L5/S1 And L4/5; Annuloplasty at L5/S1 and L4/5; Contrast Injection and Evaluation of Nucleograms at L4/5 and L5/S1; Intradiscal Injection of Platelet Rich Plasma Injection at L4/5 and L5/S1 on or about January 30, 2023.” The supplemental bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud).

138. On May 6, 2025, Tarasov electronically filed an affirmation signed by Reyfman appending his medical records for treatment of Lopez. In that affirmation, Reyfman stated that he was “a treating physician of Joshua Lopez” and “affirm[ed] under penalties of perjury” that the “opinions” in the medical records were “authentic, true and complete.” This statement was false when made. Reyfman knew that the opinion statements regarding injury causation in the medical records were untrue, and that Lopez was not injured. In violation of 18 U.S.C. § 1343 (wire fraud)

and in furtherance of the scheme, Reyfman electronically transmitted the affirmation to Tarasov and Tarasov electronically filed it.

139. Tarasov continues to prosecute this case against Uber today. Uber has incurred substantial defense costs as a result of this scheme.

II. THE SCHEME TARGETS OTHERS AS WELL

140. Uber is not the only victim of Defendants' widespread fraudulent scheme. Rather, Defendants have used the same illicit playbook—recruiting personal injury plaintiffs with nonexistent or minor injuries, referring them for unnecessary medical treatment, bribing doctors to provide the unnecessary medical treatment and provide false testimony, and using the resulting medically unnecessary surgeries to coerce inflated settlements—over and over again to target victims throughout New York. The equitable relief that Uber seeks will benefit not just Uber but all victims of Defendants' ongoing racketeering scheme.

A. *Ibrahim Abuzahrieh v. Robert Diliddo, et al.* – Supreme Court, Kings County – Index No. 500409/2019

141. On July 8, 2018, Ibrahim Abuzahrieh was involved in a minor vehicle collision in Brooklyn. A police report filled out at the scene of the collision stated there were no injuries. Abuzahrieh himself later testified that he never observed any damage to the vehicle he was riding in.

142. Abuzahrieh did not seek medical treatment immediately after the accident. In fact, he did not seek medical treatment at all until after he retained the Banilov Defendants to represent him in a personal injury lawsuit against the other driver.

143. A paralegal working for and at the direction of the Banilov Defendants directed Abuzahrieh to a specific physical therapist and arranged for a car service to transport Abuzahrieh

to and from his physical therapy appointments. Abuzahrieh attended physical therapy at this practice up to three times a week for four months.

144. Staff from Banilov & Associates also referred Abuzahrieh to a pain management provider in New Jersey (far from where he resided), who administered at least four medically unnecessary steroid injections in Abuzahrieh's back. Abuzahrieh testified that the Banilov Defendants scheduled all appointments at the pain management provider's office for him and paid for a car service for him to attend the appointments. The Banilov Defendants also referred Abuzahrieh for a series of MRIs at a specific radiology office of their choosing.

145. Upon information and belief, in violation of N.Y. Penal Law § 215 (bribery), the Banilov Defendants made these referrals to the physical therapy practice, the radiology practice, and the pain management physician upon an agreement or understanding that in exchange for the referrals and corresponding fees, these various providers would produce fraudulent causation statements and testimony that the Banilov Defendants could use to advance the litigation and defraud the defendants in the lawsuit.

146. The Banilov Defendants referred Abuzahrieh to Gerling with the agreement and understanding that in exchange Gerling would both conduct a medically unnecessary spinal surgery and provide fraudulent documentation and testimony supporting the need for said surgery. Abuzahrieh later testified that he visited Gerling's practice for the first time not because he found the practice on his own, but because he "was told to" become a Gerling patient.

147. On or about November 19, 2018, Abuzahrieh had his first appointment with Gerling. Gerling examined Abuzahrieh and produced an initial examination report. The report diagnosed Abuzahrieh with "low back" pain that "began after the patient sustained an accident" and stated that an invasive spinal surgery was recommended to alleviate Abuzahrieh's symptoms.

148. Before Gerling performed the surgery, the Banilov Defendants arranged for a third-party litigation funder to advance all of the costs. The advance came in the form of a loan for \$102,000, to be repaid through a lien on any recovery Abuzahrieh received from the lawsuit. Abuzahrieh later testified that he did not know how the bill for his surgery was paid, did not know that a loan had been taken out in his name, and did not know that the third-party litigation funder had asserted a lien on any recovery he obtained through the lawsuit. Upon information and belief, in violation of N.Y. Penal Law § 215 (bribery), the Banilov Defendants arranged the loan for the purpose of financing an unwarranted above-market payment to Gerling, with the understanding that it would influence Gerling's testimony regarding the necessity for such medical treatment and/or whether it was caused by the accident in question. And upon information and belief, Gerling accepted such payment with the agreement or understanding that his testimony would be influenced thereby in violation of N.Y. Penal Law § 215.05 (bribe receiving as a witness).

149. On or about March 12, 2019, Gerling performed the medically unnecessary surgery. The Banilov Defendants scheduled the surgery, and a paralegal from Banilov & Associates accompanied Abuzahrieh to the surgery.

150. On or about January 7, 2019, Banilov electronically filed a complaint on behalf of Abuzahrieh to initiate the lawsuit. The complaint falsely stated that, as a result of the vehicle collision, Abuzahrieh "was caused to sustain severe and serious injuries," including "economic loss greater than basic economic loss as defined by Section 5104 of the New York State Insurance Law." These statements were knowingly false and were made for the purpose of advancing the lawsuit and defrauding defendants and the court. The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

151. On or about March 21, 2019, Banilov electronically filed a bill of particulars that contained numerous additional false statements. Specifically, among other similar statements, the bill of particulars stated that:

By reason of the subject occurrence, the Plaintiff sustained, aggravated, activated, exacerbated and/or precipitated the following personal injuries, all of which are alleged to be of a permanent nature: LUMBOSACRAL SPINE, L5/S1, POSTEROLISTHESIS, L3/4, DISC BULGE FLATTENING THE THECAL SAC WITH MILD BILATERAL FORAMINAL ENCROACHMENT; L4/5, DISC BULGING WITH A SUPERIMPOSED RIGHT CENTRAL DISC HERNIATION ASSOCIATED WITH A FOCAL ANNULAR TEAR FLATTENING THE THECAL SAC; LUMBAR RADICULITIS/ RADICULOPATHY; LUMBAR SPRAIN/STRAIN; LUMBAGO; STATUS-POST TRANSFORAMINAL EPIDURAL STEROID INJECTION AT BILATERAL L5/S1 AND RIGHT L4/5 LEVELS UNDER FLUOROSCOPIC GUIDANCE ON OR ABOUT SEPTEMBER 11, 2018, SEPTEMBER 25, 2018 AND OCTOBER 9, 2018; STATUS-POST BILATERAL LUMBAR MEDIAL BRANCH NERVE BLOCK AT L3/4/5 LEVEL ON OR ABOUT OCTOBER 16, 2018. STATUS-POST TRANSFORAMINAL LUMBAR INTERBODY FUSION WITH INSTRUMENTATION AND ALLOGRAFT FROM CADAVER BONE ON OR ABOUT MARCH 12, 2019. THORACIC SPINE T8/9, DISC BULGING FLATTENING THE THECAL SAC; T10/11, DISC BULGING FLATTENING THE THECAL SAC; THORACIC DISC HERNIATION [. . .]; CERVICAL SPRAIN/STRAIN; CERVICALGIA.

152. These statements were knowingly false and were made with the intent to advance the litigation and defraud the defendants and the courts. Through the use of these false statements and the predicate acts of wire fraud, mail fraud, and bribery, Defendants were able to fraudulently advance this lawsuit by exaggerating Abuzahrieh's injuries and justifying expensive, invasive, and unnecessary medical procedures. The bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

B. *Fazliddin Asamov et al v. Djakhongir Khodjaev, et al.* – Supreme Court, Kings County – Index No. 516506/2019

153. On December 8, 2018, Fazliddin Asamov was involved in an accident that took place on the Belt Parkway at the 3rd Avenue/65th Street entrance in Brooklyn, when the driver of another vehicle attempted to slow down for traffic and rear-ended Asamov’s vehicle. According to the police report, Asamov suffered “minor injuries” and was transported to the hospital. On information and belief, Asamov retained the Banilov Defendants following the accident.

154. On July 9, 2019, Gerling performed a lumbar diskectomy on Asamov.

155. The Banilov Defendants paid for Gerling’s surgery either in whole or in part. Gerling’s medical office, NY Orthopedics, PC, issued an invoice in connection with surgical services for a lumbar diskectomy, a surgical assistant, and hospital fees. These expenses were invoiced under Asamov’s name, but addressed to the “Tarasov, Vakarev, and Banilov Law Firm” —in other words, to the Banilov Defendants, all under a single address.

156. Upon information and belief, such payment was made with the agreement or understanding that Gerling would be a witness and with the understanding that it would influence Gerling’s testimony regarding the necessity for such medical treatment and/or whether it was caused by the accident in question in violation of N.Y. Penal Law § 215 (bribery). And upon information and belief, Gerling accepted such payment with the agreement or understanding that his testimony would be influenced thereby, in violation of N.Y. Penal Law § 215.05 (bribe receiving as a witness). The amount that Gerling billed to the Banilov Defendants, \$36,500, was substantially in excess of the median fee for a lumbar diskectomy in New York City, which at the time was less than \$20,000. The above-market bill is a bribe and not merely payment for services rendered.

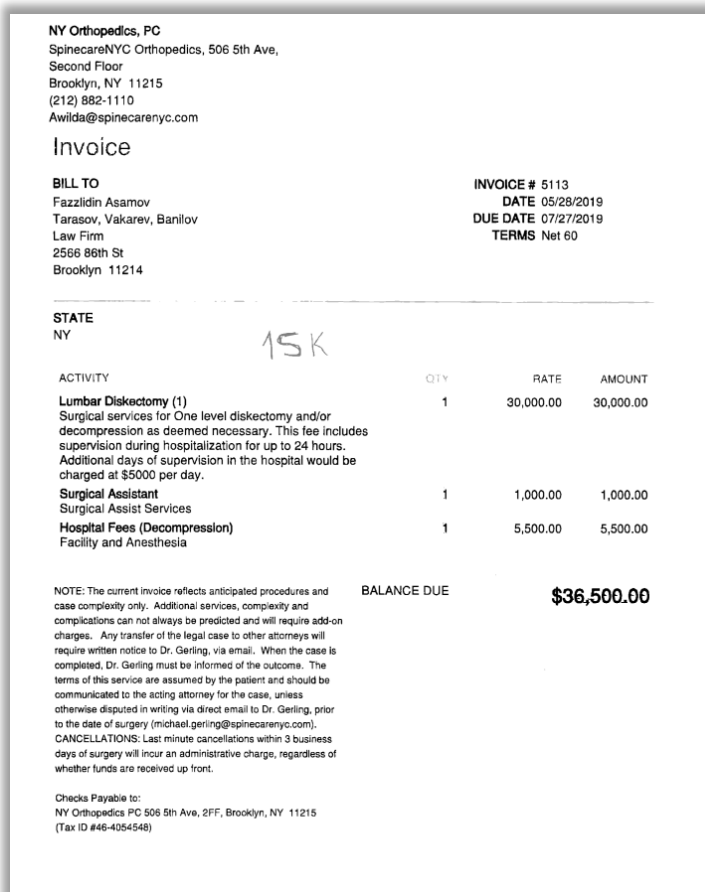


Figure 6.

157. The Banilov Defendants financed part of the bribe payment to Gerling by arranging for a third-party litigation funder, Pegasus Fund LLC, to lend the money to Asamov so that the illicit payment could pass through to Gerling. Under the terms of the loan, the litigation funder would have the right to nearly \$30,000 of any future recovery by Asamov—ensuring that the financial benefits of the scheme flowed not to a personal injury plaintiff like Asamov, but to the Defendants and to the litigation funders who facilitated the scheme.

158. On or about July 26, 2019, the Banilov Defendants, through Aleksandr Vakarev, electronically filed a complaint on behalf of Asamov to initiate the lawsuit. The complaint falsely stated that the vehicle collision “caused [Asamov] to sustain severe and serious injuries,” including

“economic loss greater than basic economic loss as to satisfy the exceptions of Sections 5102 and 5104 of the Insurance Law.” These statements were knowingly false and were made for the purpose of advancing the lawsuit and defrauding defendants and the court. The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

159. On or about June 1, 2021, the Banilov Defendants, through Vakarev, electronically filed a bill of particulars, dated November 8, 2019, that contained numerous additional false statements. Specifically, among other similar statements, the bill of particulars stated that, “[a]s a result of the [accident], . . . Asamov sustained the following personal injuries, all of which are alleged to be of a permanent nature . . .” including herniations of four discs in his cervical spine, disc herniations of his lumbar spine, tendinitis and contusions of the left shoulder, contusion of the right hip, and post-traumatic cervicogenic headaches. The bill of particulars further stated that Asamov had suffered injury and economic loss as defined by Section 5102 of the Insurance Law of the State of New York. The bill of particulars was electronically filed, in violation of 18 U.S.C. § 1343 (wire fraud), along with other bills of particulars containing numerous false statements, which were also served on defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

160. The bill of particulars went on to state that as a result of the accident, “Asamov sustained special damages . . . [in the form of] a loan asserted against his recovery by Pegasus Fund, LLC . . . in the amount of twenty-three thousand two hundred fifty dollars (\$23,250.00) to date plus interest for surgery performed by Dr. Michael Gerling on or about July 9, 2019.”

161. On or about June 7, 2022, Wechsler and the Wingate firm entered an appearance in the case to represent Asamov. Upon information and belief, the Banilov Defendants retained an attorney’s lien on Asamov’s eventual recovery even after the Wingate Defendants appeared for

Asamov, and/or entered into a fee-splitting agreement with the Wingate Defendants in order to maintain a financial interest in the settlement payment that Defendants intended to extract from the defendants in the case. Consistent with Defendants' practice, the Banilov Defendants were representing Asamov on a contingency basis, and would not have agreed to refer their client to another attorney without assurance that they would be compensated for the work that they had done at the start of the case.

162. In violation of 18 U.S.C. § 1343 (wire fraud) and 18 U.S.C. § 1341 (mail fraud), Wechsler and the Wingate firm electronically filed and served via U.S. mail a number of false and fraudulent statements made to advance the litigation, including an affirmation by Wechsler dated April 17, 2023 falsely attesting that this is an action "to recover damages for serious injuries" and that as "a result of the accident, Plaintiff[] sustained serious and permanent personal injuries."

C. *Irina Vayman v. Freddy M. Santana et al.* – Supreme Court, Kings County – Index No. 505564/2021

163. In 2011, Irina Vayman was reportedly involved in a slip and fall accident and had spinal fusion surgery performed by Gerling on October 11, 2012. Vayman filed a lawsuit in connection with that incident that ended in a settlement of \$850,000.

164. Then, on February 24, 2020, Vayman was involved in a motor vehicle accident. Vayman was at fault: the accident occurred when she entered the roadway from a parking lane, striking another driver, who was traveling straight, with the right of way.

165. On or about March 9, 2021, Banilov filed a complaint on behalf of Vayman to initiate the lawsuit. The complaint falsely stated that the vehicle collision "rendered [Vayman] sick, sore, lame and disabled and [that she had] remained so since the said occurrence." The complaint also falsely stated that Vayman had been "compelled to undergo medical aid, treatment and attention and expand [sic] money and incur obligations for physician's services, medical and

hospital expenses for the care and treatment of her injuries.” The complaint further stated that Vayman sustained “serious injuries and economic loss greater than basic economic loss as to satisfy the exceptions of Sections 5102 and 5104 of the Insurance Law.” The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

166. On or about June 23, 2021, Banilov served a verified bill of particulars about injuries sustained by Vayman. The verified bill of particulars falsely stated that “[b]y reason of the [accident],” the Plaintiff sustained “... personal injuries, all of which are alleged to be of a permanent nature” including a tear of the medial meniscus of the left knee, anterior labral tear of the left shoulder, disc herniation of two discs in the cervical spine, herniation of several discs in the lumbar spine, and “pain syndrome” of the left wrist. Upon information and belief, these statements were knowingly false when made. Upon information and belief, the verified bill of particulars was served on the defendants via electronic mail in violation of 18 U.S.C. § 1343 (wire fraud) and/or U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

167. Banilov knew or should have known that the statements in the complaint and the verified bill of particulars were false when made. An MRI of Vayman taken on March 14, 2020, almost a year before the complaint was filed, showed “no fractures or osseous contusions” and otherwise showed “non-specific finding[s] which may be positional in nature or related to spasm.” A review of that MRI concluded, “No post traumatic-type etiologies related to the accident date of February 24, 2020 can be determined.” A review of a follow-up MRI from June 11, 2020, taken almost a year before the verified bill of particulars was served, revealed the same result—preexisting damage from Vayman’s 2011 slip-and-fall and resulting fusion, but nothing new that could have been caused by the car accident.

168. Despite Vayman's lack of any serious injuries, Gerling performed another medically unnecessary and invasive surgery on Vayman. On November 1, 2021, Gerling performed a second lumbar fusion surgery on Vayman. Gerling's Operative Report, which falsely stated that Vayman had "a traumatic injury to the lumbar spine" requiring surgery was cut and pasted from another document without regard to the particulars of Vayman's circumstances. Among other things, the record repeatedly referred to Vayman using the wrong gender: "He [sic] was positioned into the prone position on a Jackson table . . . He [sic] was extubated and taken to the recovery in stable condition." On information and belief, the Banilov Defendants caused payment to be made to Gerling for such surgery and to influence his testimony.

169. On November 16, 2021, the Wingate firm entered an appearance in the case for Vayman, and, on information and belief, were aware of Vayman's lack of injury. In violation of 18 U.S.C. § 1343 (wire fraud) or 18 U.S.C. § 1341 (mail fraud), the Wingate firm nevertheless electronically filed or served via U.S. mail a number of false and fraudulent statements made to advance the litigation.

170. On or about December 8, 2021, the Wingate firm served a verified supplemental bill of particulars disclosing Gerling's medically unnecessary spinal fusion surgery. In its verified supplemental bill of particulars, the Wingate firm falsely stated that "all injuries and/or conditions were caused, aggravated, exacerbated and/or precipitated by the accident; and possible loss of use of above mentioned parts, atrophy, anxiety and mental anguish, all of which substantially prevents this Plaintiff from enjoying the normal fruits of activities (social, educational and economical) and Plaintiff's enjoyment of life has been permanently impaired, impeded and/or destroyed." Upon information and belief, the Wingate firm sent the supplemental bill of particulars to defendants via

electronic mail in violation of 18 U.S.C. § 1343 (wire fraud) and/or U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

171. In 2022, consistent with Defendants' pattern, Vayman was treated by Reyfman, who administered a medically unnecessary epidural injection.

172. On May 17, 2024, both parties filed a joint stipulation of discontinuance indicating that the case had settled.

D. *Yury Tsatskin v. Antonio Zavaleta et al.* – Supreme Court, Kings County – Index No. 512407/2018

173. On or about August 31, 2016, Yury Tsatskin was involved in a minor motor vehicle collision in Brooklyn. A police report filled out at the scene of the collision stated there was minor damage to Tsatskin's vehicle's side bumper but that there were "no visible injur[ies]" to either driver. Tsatskin declined the EMT's offer to go to the emergency room.

174. Tsatskin instead went to CityMD, an urgent care facility. The medical records for his visit state that Tsatskin's vehicle was rear-ended, but that the airbags did not deploy. The records state further that Tsatskin had a "H/o [history of] prior lower back pain that was reagrivated [sic] today," reflecting the fact that Tsatskin had a back injury prior to the collision on August 31, 2016. Imaging of Tsatskin's back and neck revealed "no acute fx [fracture] or dislocation."

175. On information and belief, Tsatskin retained the Banilov Defendants and thereafter the Banilov Defendants directed his medical care.

176. On or about September 8, 2016, Tsatskin had his first appointment with Reyfman—a provider located more than an hour by public transit from his home.

177. Reyfman's medical records falsely and fraudulently state that, notwithstanding Tsatskin's history of lower back pain, "all of his symptoms began" when "he was involved in a motor vehicle accident on 08/31/2016." The medical records include a false and fraudulent

causation opinion: “there is a direct causal relationship between the accident described and the patient’s current injuries,” and no “pre-existing conditions exist that affects the causality.” Upon information and belief, such statement was knowingly false when made.

178. Reyfman recommended an extensive program of medical treatment. Upon information and belief, throughout his treatment of Tsatskin, Reyfman and/or his associates administered numerous medically unnecessary epidural steroid injections.

179. On information and belief, Banilov also referred Tsatskin to Gerling. On or about February 3, 2017, Tsatskin had his first appointment with Gerling. Gerling examined Tsatskin and produced an initial examination report. The report diagnosed Tsatskin with “injuries to the neck, back and extremities including both shoulders” due to “an accident that occurred on 8/31/16 [.]” The report stated that Gerling reviewed a “conservative treatment” with Tsatskin, including physical therapy, medication, and diagnostic testing. The report included “Surgical Indications,” which stated “ACDF C5-6 and discectomy vs. fusion. L3-4, L4-5 discussed. Patient took CD which was copied into MAC. He mentioned second opinion and that he’s really scared.”

180. On or about June 15, 2018, in furtherance of the fraud scheme, Banilov filed a complaint on behalf of Tsatskin to initiate the lawsuit. The complaint falsely stated that as a result of the accident, Tsatskin “was rendered sick, sore, lame and disabled,” “continues to suffer mental anguish and great physical pain,” and “has been incapacitated from attending to his usual duties, functions, occupations, vocations and avocations[.]” The complaint further falsely states: “That by reason of the foregoing, plaintiff [Tsatskin], sustained serious injuries and economic loss greater than basic economic loss as defined by Section 5104 of the New York State Insurance Law.” Upon information and belief, these statements were knowingly false and were made for the purpose of advancing the lawsuit and defrauding defendants and the court. The complaint was electronically

filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

181. On or about September 26, 2018, in furtherance of the fraud scheme and in violation of 18 U.S.C. § 1343 (wire fraud), Banilov electronically filed a verified bill of particulars that falsely stated: “By reason of the subject occurrence, [Tsatskin] sustained the following personal injuries, all of which are alleged to be of a permanent nature:

Cervical Spine

- C2/3, right central disc herniation abutting the ventral portion of the cervical cord;
- C3/4, disc bulging flattening the cervical [sic] cord;
- C4/5, focal central disc herniation flattening the cervical cord;
- C5/6, broad-based central disc herniation;
- C6/7, disc bulging flattening the thecal sac;
- C7/T1, disc bulging;
- Posterior subluxation of C3 upon C4 and C5 upon C6;
- C5/6, radiculopathy;
- Intervertebral disc displacement;
- Cervical disc disorder with myelopathy;
- Cervical plexopathy;
- Cervical sprain/strain;
- Status-post cervical interlaminar epidural steroid injection at C6/7 level, under fluoroscopic guidance on or about June 12, 2017 and June 26, 2017;
- Aggravation of asymptomatic degenerative changes of the cervical spine that created susceptibility to injury and/or made his injuries more serious than otherwise would have been.

Lumbosacral Spine

- Posterolisthesis of L5 upon S1;
- L3/4, annular bulging disc, flattening the thecal sac with an area of superimposed right lateral disc herniation, abutting the exiting L3 nerve root;
- L4/5, central disc herniation associated with an annular tear and flattening the thecal sac;
- L5/S1, annular disc bulging with an area of superimposed right lateral disc herniation;
- Lumbar radiculopathy;
- Lumbosacral sprain/strain;
- Lumbosacral plexopathy;
- Sprain of ligaments of lumbar spine;
- Lumbosacral intervertebral disc displacement;
- Sacroillitis;

- Status-post interlaminar epidural steroid injection at L5/S1 level under fluoroscopic guidance on or about July 17, 2017 and September 5, 2017;
- Aggravation of preexisting asymptomatic degenerative changes of the lumbar spine that created susceptibility to injury and/or made his injuries more serious than otherwise would have been.

Other

- Post-traumatic headaches;
- Bilateral shoulder contusion;
- Sprain/strain of the thoracic spine;
- Right carpal tunnel syndrome.”

182. These statements were knowingly false and were made with the intent to advance the litigation and defraud the defendants and the courts. Through the use of these false statements and the predicate acts of wire fraud, mail fraud, and bribery, Defendants were able to fraudulently maintain and advance the lawsuit by exaggerating Tsatskin’s injuries and justifying expensive, invasive, and unnecessary medical procedures and treatment. The bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud).

E. *Edin Huseinovic v. Michael P. Silvia, et al.* – Supreme Court, Kings County – Index No. 525843/2018

183. Huseinovic was involved in a motor vehicle accident in 2009, which caused him to have neck and back pain. He treated this neck and back pain with physical therapy, which, upon information and belief, relieved some but not all of his symptoms.

184. On December 5, 2017, Edin Huseinovic was involved in a second vehicle collision in Brooklyn. The police report produced at the scene described the accident as a “side swipe” that resulted in “No Injuries.” Upon information and belief, Huseinovic did not go to the emergency room after the accident. He was not injured.

185. On information and belief Huseinovic retained the Banilov Defendants following his second accident and the Banilov Defendants directed his subsequent medical treatment.

186. Huseinovic's lawsuit over the 2017 accident followed the same path as Tsatskin's, above. Banilov, Reyfman, and Gerling each ignored Huseinovic's demonstrated and admitted history of prior accident and prior back and neck pain, and falsely attributed Huseinovic's supposed new injuries only to the new injury. Defendants made these fraudulent misrepresentations for the purpose of inflating the settlement value of Huseinovic's claim.

187. On or about March 26, 2018, Huseinovic had an appointment with Reyfman. The resulting medical record falsely stated that "all of [Huseinovic's] symptoms began" when "he was involved in a motor vehicle accident on 12/05/2017." The medical records further falsely stated that "there is a direct causal relationship between the accident described and the patient's current injuries." Upon information and belief, these statements were knowingly false when made—especially in light of Huseinovic's documented history of neck and back pain. The Reyfman Defendants administered a medically unnecessary epidural steroid injection to Huseinovic during this visit.

188. On or about March 12, 2018, Huseinovic had his first appointment with Gerling at SpineCare NYC. The resulting medical records falsely state that Huseinovic's "symptoms began after the patient sustained an accident[.]" Upon information and belief, in light of Huseinovic's prior 2009 motor vehicle collision and ensuing neck and back pain—which are mentioned in Gerling's medical records—these statements were knowingly false when made.

189. On or about December 25, 2018, in furtherance of the fraud scheme, Banilov electronically filed a complaint on behalf of Huseinovic to initiate the lawsuit. The complaint falsely stated that as a result of the accident, Huseinovic "was rendered sick, sore, lame and disabled," "sustained nervous shock and continues to suffer mental anguish and great physical pain," and "has been incapacitated from attending to his usual duties, functions, occupations, vocations and

avocations[.]” The complaint further falsely states: “That by reason of the foregoing, plaintiff [Huseinovic], sustained serious injuries and economic loss greater than basic economic loss as defined by Section 5104 of the New York State Insurance Law.” Upon information and belief, these statements were knowingly false and were made for the purpose of advancing the lawsuit and defrauding defendants and the court. The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

190. On or about April 11, 2019, in furtherance of the fraud scheme and in violation of 18 U.S.C. § 1343 (wire fraud), Banilov electronically filed a verified bill of particulars falsely stating that “[b]y reason of the subject occurrence, [Huseinovic] sustained the following personal injuries, all of which are alleged to be of a permanent nature[.]” including, among numerous other purported injuries: L4/5 annular disc bulging with a superimposed left lateral disc herniation flattening the thecal sac; intervertebral disc displacement of the lumbar spine; lumbar sprain/strain; right lateral disc herniation; cervical disc displacement; and cervical sprain/strain. The bill of particulars further falsely states: “Plaintiff has and will continue to experience impairment, disruption and difficulty with daily activities, and significant impairment of numerous daily activities.” The bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud).

191. These statements were knowingly false and were made with the intent to advance the litigation and defraud the defendants and the courts.

192. A stipulation of discontinuance, indicating a settlement, was filed on September 14, 2020.

F. *Uktam A. Ashurov v. Eunice L. Jemmott* – Supreme Court, Kings County – Index No. 508120/2021

193. On November 19, 2019, Uktam Ashurov was involved in a minor vehicle collision when his vehicle was rear-ended by Eunice Jemmott’s vehicle while the vehicles were driving in heavy traffic. Photographs taken at the scene show minor damage to Ashurov’s rear bumper. Ashurov told Jemmott that he was “all right” after they got out of their cars. When the police arrived on the scene, Ashurov said that he did not need an ambulance. The airbags did not deploy, and Ashurov drove his car home. The police report confirms that nobody was injured.

194. Upon information and belief, Ashurov retained the Banilov Defendants following the accident, and the Banilov Defendants directed his subsequent medical treatment.

195. Approximately three months after the accident, Ashurov sought pain management treatment from Reyfman. During the first appointment, Reyfman examined Ashurov and recommended epidural steroid injections for his neck. Reyfman and/or his associates administered medically unnecessary epidural steroid injections to Ashurov on at least three separate occasions.

196. On or about June 1, 2020, Reyfman performed surgery on Ashurov that involved adjusting a disc in his spine. Upon information and belief, the surgery was paid for in advance by a third-party litigation funder at the direction of the Banilov Defendants. The advance came in the form of a loan for approximately \$8,000, to be paid through a lien on any recovery, and was made for the purpose of inducing the unnecessary treatment and influencing Reyfman’s testimony.

197. In furtherance of Defendants’ scheme, Reyfman referred Ashurov to the Gerling Defendants for additional medically unnecessary surgery. Gerling performed a medically unnecessary and invasive spinal fusion surgery on Ashurov on April 19, 2021. Upon information and belief, Banilov caused Gerling to be paid, directly or indirectly, an above-market payment for the surgery intended to induce Gerling to provide false testimony regarding injury and/or causation.

198. On or about April 7, 2021, Banilov electronically filed a complaint on behalf of Ashurov to initiate the lawsuit. The complaint falsely stated that as a result of the vehicle collision, Ashurov “was caused to sustain severe and serious injuries,” including “economic loss greater than basic economic loss as to satisfy the exceptions of Section 5102 and 5104 of the Insurance Law.” These statements were knowingly false and were made for the purpose of advancing the lawsuit and defrauding defendants and the court. The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendant via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

199. On or about March 14, 2022, Banilov electronically filed a bill of particulars, dated June 16, 2021, that contained numerous additional false statements in violation of 18 U.S.C. § 1343 (wire fraud). In particular, among other similar statements, the bill of particulars stated: “By reason of the subject occurrence, the Plaintiff sustained, aggravated, activated, exacerbated and/or precipitated the following personal injuries, all of which are alleged to be of a permanent nature[.]” The so-called “personal injuries” spanned two pages and included claimed injuries related to Ashurov’s right shoulder, cervical spine and lumbosacral spine resulting from the purported accident. Upon information and belief, these statements were knowingly false when made and were made with an intent to defraud. The bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud).

200. The case settled on or around November 2, 2022.

G. *Alexandre Voltchenkov v. Gregory Ware, et al.* – Supreme Court, Kings County – Index No. 514489/2020

201. On September 4, 2019, Alexandre Voltchenkov was rear-ended while driving on Hempstead Turnpike in Nassau County.

202. The accident resulted in minimal damage to both vehicles, with “minor scuffing” on the front bumper of the other vehicle, and “minor damage” to the front of Voltchenkov’s automobile. Voltchenkov spoke with the driver of the other vehicle, who asked whether he wanted an ambulance, to which Mr. Voltchenkov responded that he did not. According to the police report, both vehicles were driven from the scene by their operators. No injuries were reported. On information and belief, Voltchenkov retained the Wingate Defendants after his accident and the Wingate Defendants directed his subsequent medical treatment.

203. This was not Voltchenkov’s first motor vehicle accident. In 2015, he was in a head-on collision resulting in a concussion and torn muscles. Following the 2015 accident, Voltchenkov received a cervical spinal fusion surgery from Gerling.

204. Even though Voltchenkov was not injured in the September 2019 rear-end collision, he still sought treatment from Gerling. On March 11, 2020, Gerling performed a second fusion and discectomy surgery. On information and belief, this invasive surgery was medically unnecessary.

205. Voltchenkov testified that he had not paid out of pocket for any medical treatment relating to the accident. On information and belief, Wingate paid Gerling, directly or indirectly, for Voltchenkov’s spinal fusion surgery. This payment was made as a bribe to induce helpful false testimony and for the purpose of fraudulently inflating the settlement value of Voltchenkov’s case.

206. On August 10, 2020, Voltchenkov, represented by Wingate, filed a complaint in Kings County Supreme Court, seeking damages for injuries allegedly incurred as a result of the accident. The complaint stated, “[b]y reason of the [accident], Voltchenkov sustained serious injury as defined in Section 5102(d) of the Insurance Law of the State of New York and/or economic loss greater than basic economic loss as defined in Section 5102(a) of the Insurance Law of the

State of New York.” The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud).

207. On or about November 19, 2020, Wingate electronically filed a verified bill of particulars that stated that as a result of the accident, Voltchenkov had sustained injuries to the cervical spine, lumbar spine, left shoulder, and experienced chronic post traumatic headaches. Upon information and belief, these statements were knowingly false when made and were made with an intent to defraud. The bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud).

208. On December 2, 2024, a stipulation of discontinuance was filed.

H. *Alberto Barco v. Joseph A. Micciola, et al.* – Supreme Court, Kings County – Index No. 523098/2018

209. On July 9, 2018, Alberto Barco was bent over in the middle of a crosswalk in Brooklyn when a vehicle that was moving approximately five miles per hour made contact with him. A police report produced at the scene stated that the vehicle went over Barco’s left foot. Barco did not fall, and was able to walk to the side of the road following the incident. The driver of the vehicle described the contact his vehicle made with Barco as a “bump.”

210. Barco visited the emergency room at NYU Langone in Brooklyn the day of the accident, where his “[c]hief [c]omplaint” was “[l]eft foot pain.” Records from his visit at NYU Langone stated that Barco’s x-rays were “neg[ative]” and that there was no evidence of “soft tissue swelling,” “displaced fracture” or “joint malalignment” in his foot. Physicians at NYU Langone discharged him only a few hours later.

211. Upon information and belief, Barco retained the Banilov Defendants shortly after the accident. On or about September 24, 2018, Barco visited Reyfman’s pain management practice, Pain Physicians NY, at the direction of the Banilov Defendants.

212. Reyfman's medical records falsely and fraudulently stated that "there is a direct causal relationship [sic] between the accident described and the patient's current injuries." Upon information and belief, such statement was knowingly false when made. Based on his assessment, Reyfman diagnosed Barco with "cervical disc displacement" and administered medically unnecessary epidural steroid injections to Barco. Barco visited Reyfman's practice for follow-up appointments on or about October 8, 2018, November 5, 2018, December 5, 2018, January 2, 2019. Upon information and belief, Banilov caused Reyfman to be paid, directly or indirectly, above-market payments in exchange for his false testimony.

213. On or about November 15, 2018, Banilov electronically filed a complaint on behalf of Barco to initiate the lawsuit. The complaint falsely stated that as a result of the accident, Barco "was caused to sustain severe and serious injuries," including "economic loss greater than basic economic loss as defined by Section 5104 of the New York State Insurance Law." The complaint stated further Barco "was rendered sick, sore, lame and disabled" as a result of the accident, and "has been incapacitated from attending to his usual duties, functions, occupations, vocations and avocations[.]" These statements were knowingly false and were made for the purpose of advancing the lawsuit and defrauding defendants and the court. The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

214. On or about February 13, 2019, Banilov electronically filed a bill of particulars that contained numerous additional false statements in violation of 18 U.S.C. § 1343 (wire fraud). Specifically, among other similar statements, the bill of particulars stated that, "[a]s a result of the subject occurrence, the Plaintiff sustained, aggravated, activated, exacerbated and/or precipitated the following personal injuries, all of which are alleged to be of a permanent nature:

Left Knee

- Intrasubstance tear of the posterior horn of the medial meniscus of the left knee;
- Partial tear of the anterior cruciate ligament of the left knee;
- Sprain/strain of the posterior cruciate ligament of the left knee;
- Chondromalacia of the left knee;
- Effusion of the left knee;
- Internal derangement of the left knee;
- Aggravation of asymptomatic hypertrophic changes of the left knee that created susceptibility to injury and/or made his injuries more serious than otherwise would have been.

Cervical spine

- C2/3, posterior disc bulge impinging upon anterior thecal sac;
- C3/4, posterior disc bulge impinging upon anterior thecal sac;
- C4/5, posterior disc bulge impinging upon anterior thecal sac;
- C5/6, broad-based posterior disc bulge impinging upon anterior thecal sac;
- C6/7, broad-based posterior disc bulge impinging upon anterior thecal sac;
- T1/2, broad-based posterior disc bulge;
- T2/3, broad-based posterior disc bulge;
- Cervical intervertebral disc displacement;
- Cervicalgia;
- Cervical radiculopathy;
- Cervical strain/sprain;
- Cervical nerve root impingement;
- Status-post interlaminar epidural steroid injection at C7/T1 level on or about September 24, 2018.

Lumbar Spine

- L4/5, broad disc bulge;
- L3/4, disc bulge;
- L5/S1, disc bulge;
- T11/12, broad disc bulge flattening the thecal sac;
- T10/11, broad disc bulge flattening the thecal sac;
- Lumbar intervertebral disc displacement;
- Lumbar sprain/strain;
- Lumbar nerve root impingement;
- Lumbar radiculopathy;
- Aggravation of asymptomatic hypertrophic changes of lumbar spine that created susceptibility to injury and/or made his injuries more serious than otherwise would have been.

Other

- Pain syndrome of the left foot;

- Bilateral ankle pain syndrome.”

215. The bill of particulars also falsely stated that Barco “has further suffered and continues to suffer severe pain and difficulty with prolonged sitting, standing, walking, bending, climbing stairs, lifting or carrying heavy objects, performing strenuous activities,” and that he “will continue to experience impairment, disruption and difficulty with daily activities, and significant impairment of numerous daily activities.” The bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud).

216. These statements were knowingly false and were made with the intent to advance the litigation and defraud the defendants and the courts. Through the use of these false statements and the predicate acts of wire fraud, mail fraud, and bribery, Defendants were able to fraudulently advance this lawsuit by exaggerating Barco’s injuries and justifying expensive, invasive, and unnecessary medical procedures.

217. Barco was deposed on June 3, 2020. His testimony confirms that he did not suffer any serious injuries. For instance, he testified that at various times since the incident, he has been able to work strenuous jobs as a laborer. In particular, he stated that during one job, he was responsible for lifting heavy pieces of debris from the floor of a construction site to a large dumpster. On another occasion, he had to lift large pieces of wood in and out of different houses.

218. In January 2020, Gerling performed medically unnecessary back surgery on Barco. Upon information and belief, the Banilov Defendants caused payments to be made to Gerling for such surgery. Following that surgery, the case was settled and a stipulation of discontinuance was filed on September 2, 2022.

I. *Georges Nicolas v. Jean B. Robillard, et al.* – Supreme Court, Kings County – Index No. 513771/2017

219. On April 23, 2016, a Ford E450 van owned by GCF Transportation made contact with an ambulance at the intersection of Flatbush Avenue and Prospect Place. According to the police report, there were no injuries. George Nicolas was not a passenger in the van and was not involved in the accident. Indeed, Mr. Nicolas’s wife said in a written statement that Mr. Nicolas did not know about the accident until she called to inform him that it had occurred, at which point he drove his own vehicle to the location of the accident before police arrived on the scene.

220. On or about July 17, 2017, in furtherance of the fraud scheme, Lavelle electronically filed a complaint on behalf of Nicolas to initiate the lawsuit. That complaint was entirely false and frivolous because Nicolas was not involved in the accident. It falsely stated that as a result of the accident, Nicolas was “severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature.” The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

221. Nicolas testified that after the accident, his attorneys (the Lavelle Defendants) scheduled medical appointments with Gerling. Gerling, in turn, directed him to Reyfman (who was working out of the same office). Upon information and belief, the Lavelle Defendants caused payments to be made to Gerling to influence his testimony.

222. On May 7, 2018, the Lavelle Defendants electronically filed a Response to Demand for Verified Bill of Particulars, stating that “[a]s a result of this accident, Plaintiff sustained” injuries to his lumbar spine, cervical spine, left knee, future pain and suffering, future lost wages, and future surgery. Upon information and belief, these statements were knowingly false when made

and were made with an intent to defraud. The bill of particulars further stated that these injuries “are of a permanent nature and were proximately caused by the ... motor vehicle accident,” or “were exacerbated or aggravated” by the accident. It would have been obvious from any interaction with Nicolas that he did not suffer from any serious and permanent injury. The bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

223. On November 11, 2018, Gerling performed a medically unnecessary cervical diskectomy surgery on Nicolas. Upon information and belief, the Lavelle Defendants caused Gerling to be paid, directly or indirectly, for such surgery and to influence his testimony.

224. According to defendant’s expert report in this matter, even if Nicolas had actually been a passenger in the van that day, the impact felt would have been so minimal that Mr. Nicolas’s body would not have experienced any substantial movement, and that there was therefore “no injury mechanism present in the subject incident” to account for his injuries.

225. On July 8, 2025, the parties entered a joint Stipulation of Discontinuance with prejudice.

J. *Aubrosio Lora v. Angelica Compagnone* – Supreme Court, Kings County – Index No. 509468/2020

226. On October 13, 2019, Ambrosio Lora’s vehicle was sitting in traffic on the Verrazano Bridge when he was rear-ended by another vehicle. According to the police report, the airbag did not deploy, and there were no reported injuries. The only damage to his vehicle was a small scratch on the bumper.

227. For a full six months following the accident, Lora did not seek any medical attention.

228. Lora then retained Lavelle as his attorney. Continuing the pattern, Lavelle sent his client to Gerling for treatment, even though Lora was uninjured. The referral was itself a bribe, with Gerling receiving fees from treating a new patient and Lavelle receiving in exchange a witness willing to provide false testimony regarding injury and causation in support of a plaintiff who was not injured in the subject car accident. Lavelle's referral of Lora to Gerling is evidenced by Lora's testimony and corroborated by Gerling's medical records, which contain the same typo as in Lavelle's file (misspelling Lora's first name, Ambrosio, as Ambrosio) and show that Gerling obtained intake information for Lora from Lavelle, and not from his patient. Upon information and belief, the Lavelle Defendants made a further upfront payment for treatment and to influence Gerling's testimony.

229. Gerling performed a medically unnecessary lumbar fusion on Lora on December 9, 2020. On information and belief, a doctor of Gerling's experience knew or should have known that Lora was not injured in the accident and did not require a lumbar fusion.

230. On or about June 8, 2020, in furtherance of the fraud scheme, Lavelle electronically filed a complaint on behalf of Lora to initiate the lawsuit. The complaint falsely stated that as a result of the accident, Lora was "severely injured and damaged, rendered sick, sore, lame and disable, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature." The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendant via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

231. On August 27, 2020, Lavelle Defendants filed a Response to Demand for Verified Bill of Particulars, stating that "As a result of this accident, Plaintiff sustained the following injuries:

- L5-S1 herniated nucleus pulposus with foraminal stenosis; lumbosacral spine;
- L4-L5 disc herniation, lumbar spine;
- right L5 spinal nerve lesion;
- Radiculopathy, lumbar spine;
- Restricted range of motion, thoracolumbar spine;
- Future pain and suffering;
- Future lost wages and medical expenses;
- Future surgery.”

232. The bill of particulars further stated, “All of the aforementioned injuries are of a permanent nature and were proximately caused by the aforementioned motor vehicle accident or in the alternative, the injuries are of a pre-existing nature and were exacerbated or aggravated by this occurred.” Upon information and belief, these statements were knowingly false when made and were made with an intent to defraud. It would have been obvious from any interaction with Lora that he did not suffer from any serious and permanent injury. The bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendant via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

233. On or about January 29, 2021, Lavelle served, via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud), a supplemental verified bill of particulars that stated that as a result of the accident, Lora sustained the following additional injuries:

- Transforaminal lumbar interbody fusion right side, lumbar levels L5-S1, posterior instrumentation: Medtronic Sextant titanium screw system, biomechanical device(s): PEEK FlareHawk Expandable Spacer back filled with graft material, Spinal Graft(s): Allograft, morselized Autograft, local (through same incision), Nanoss CaPO₄, Imaging: Fluoroscopic Guidance, using loops and headlight;
- Laminectomy, facetectomy and foraminotomy, lumbar vertebral segments: L5-S1 Right Side (One level);
- Arthrodesis, posterior or posterolateral technique: Lumbar Level(s): L5-S1;
- Smith Peterson Osteotomy LS-S1.

234. On May 17, 2021, plaintiff attended an Independent Medical Exam, which noted that only “mild progression of degenerative changes ... that this is the anticipated expected course of the disease process as degeneration will continue to progress over the patient’s lifetime,” and that “there are no findings to indicate a traumatic injury.”

235. On September 1, 2021, Lavelle electronically filed an affirmation, signed by Gerling under penalties of perjury on June 24, 2021, stating that “the injuries sustained by Ambrosio Lora were as a result of the automobile accident of October 13, 2018 [sic], are permanent in nature and have caused a permanent partial disability.” This causation statement was intentionally false and fraudulent, because Gerling knew that Lora was not injured in the accident, let alone permanently disabled. Gerling transmitted the signed affirmation to filing counsel electronically, in violation of 18 U.S.C. § 1343 (wire fraud), or by mail, in violation of 18 U.S.C. § 1341 (mail fraud). Gerling gave this false testimony in exchange for a bribe from Lavelle, in violation of N.Y. Penal Law § 215.05 (bribe receiving as a witness). The affirmation was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud).

236. The case was discontinued on February 23, 2023.

K. *Rene G. Perez Rosario v. Victor O. Parra Siguencia, et al.* – Supreme Court, Kings County – Index No. 503324/2022

237. On November 10, 2021, Rene Perez Rosario was involved in a staged automobile accident on the Van Wyck Expressway, at or near its intersection with Jewel Avenue, in Queens County.

238. According to the police report, Perez Rosario stated that he was driving straight when he was side swiped by another vehicle. The driver of the other vehicle reported that he did not know that he had hit Perez Rosario’s vehicle. There was no damage to the other driver’s vehicle.

239. Perez Rosario was not injured. On January 26, 2023, Perez Rosario was named as a defendant in an action filed by Progressive Max Insurance Company, Nassau County Index Number 601526/2023 alleging that he staged the November 10, 2021 car accident and obtained unnecessary and fraudulent medical treatment. Perez Rosario did not contest the allegations. On January 3, 2024, default judgment was entered against him.

240. On or about February 2, 2022, in furtherance of the fraud scheme, Tarasov electronically filed a complaint on behalf of Perez Rosario to initiate the lawsuit arising from the staged accident. The complaint falsely stated that as a result of the staged accident, Perez Rosario was “caused to sustain severe and serious injuries” and “[t]hat as a result of the aforesaid occurrence, the plaintiff, was rendered sick, sore, lame and disabled and has remained so since.” The complaint further stated that Perez Rosario “continues to suffer mental anguish and great physical pain. He has been compelled to undergo medical aid, treatment and attention and expend money and incur obligations for physicians' services, medical and hospital expenses for the care and treatment of his injuries.” The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendant via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

241. Perez Rosario disclosed in discovery that he received medical treatment from Gerling in connection with the staged accident. On information and belief, the Banilov Defendants directly or indirectly paid Gerling for medically unnecessary treatments and to influence his testimony.

242. On September 19, 2023, consistent with the general scheme, the Banilov Defendants referred the claim to the Wingate firm who appeared as counsel for Perez Rosario. The Wingate firm appeared *after* the Progressive Complaint was filed against Perez Rosario and knew that

Perez Rosario had staged the accident and was not injured. The Wingate firm nevertheless agreed to take on the representation.

243. On November 9, 2023, Wingate firm filed an order to show cause seeking to withdraw from the representation.

L. *Sukhrob Tagiyev v. NYC Transit Auth., et al.* – Supreme Court, Kings County – Index No. 506678/2018

244. On March 17, 2017, Sukhrob Tagiyev, who was driving using the Uber app, was double-parked in his vehicle on Manhattan Avenue in Brooklyn. The driver of a second vehicle—a New York City Transit bus—honked multiple times in an attempt to get Tagiyev to move and then proceeded to move around the left side of Tagiyev’s vehicle. When the driver of the bus was navigating around Tagiyev’s vehicle, Tagiyev moved his vehicle to the left, causing the bus to sideswipe it. The police report states that there were “no injuries.” The post-incident photographs of Mr. Tagiyev’s car reflect only that there were scrapes and scuff marks on the driver-side rear door.

245. Over the ensuing months, Tagiyev received an extensive range of medical treatments that were unnecessary and/or causally unconnected with the collision, including physical therapy, acupuncture, and massage. Upon information and belief, such medical treatment was directed by the Banilov Defendants.

246. On or about July 3, 2017—months after the accident—Tagiyev visited Coney Island Hospital’s emergency department, with a chief complaint of left arm/shoulder pain. The medical records from the hospital visit state that Tagiyev was “wrestling with his friends Sunday night and the pain is getting progressively worse since last night.”

247. On or about September 5, 2017, Tagiyev had an appointment at Gerling’s SpineCare NYC complaining of left arm pain—which was caused by his roughhousing, not the

slow-speed sideswipe six months prior. Gerling nevertheless ended up performing two medically unnecessary spinal surgeries on Tagiyev, a diskectomy and a spinal fusion.

248. On or about April 3, 2018, Tarasov electronically filed a complaint on behalf of Tagiyev to initiate the lawsuit against the bus driver, Cory Guy, and the New York City Transit Authority. The complaint falsely stated that, as a result of the vehicle collision, Tagiyev “was caused to sustain severe and serious injuries,” including “economic loss greater than basic economic loss as to satisfy the exceptions of Sections 5102 and 5104 of the Insurance Law.” The complaint further falsely stated that the accident rendered Tagiyev “sick, sore, lame and disabled and has remained so since the said occurrence.” These statements were knowingly false and were made for the purpose of advancing the lawsuit and defrauding defendants and the court. The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on the defendants via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

249. On or about July 23, 2018, Tarasov electronically filed a bill of particulars that contained numerous additional false statements in violation of 18 U.S.C. § 1343 (wire fraud). Specifically, among other similar statements, the bill of particulars stated that: “By reason of the subject occurrence, [Tagiyev] sustained the following personal injuries, all of which are alleged to be of a permanent nature:

Lumbar Spine

- L4/5, broad-based central disc herniation extending into the ventral epidural fat;
- L5/S1, annular disc bulging extending into the ventral epidural fat;
- Posterolisthesis of L4 upon L5;
- Posterolisthesis of L5 upon S1;
- Lumbar radiculopathy;
- Lumbosacral sprain/strain;
- Lumbar sprain/strain;
- Lumbosacral spine derangement/myofascial lower back pain syndrome.

Cervical Spine

- C5/6, annular disc bulging with an area of superimposed broad-based left central disc herniation with flattening of the ventral portion of the cervical cord;
- C5/6, posterior subluxation;
- Reversal of the cervical lordosis centered at C5 reflecting the presence of underlying muscle spasm;
- Cervical radiculopathy;
- Cervicalgia;
- Cervical disc disorder with myelopathy;
- Cervical spine derangement/myofascial neck pain syndrome;
- Cervical sprain/strain.

Other

- Sacroillitis;
- Chest contusion;
- Contusion of the left hip;
- Contusion of the upper arm.”

250. The bill of particular further falsely stated that Tagiyev’s injuries “will continue in the future to affect every facet of the Plaintiff’s pre-accident way of life with resultant damages and with advancing years there will be naturally and medically related complications and exacerbations becoming progressively disabling.”

251. These statements were knowingly false and were made with the intent to advance the litigation and defraud the defendants and the courts. The bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud).

252. On or about February 25, 2020, in furtherance of the scheme, Wechsler and the Wingate firm entered an appearance in the case and took over its prosecution. In violation of 18 U.S.C. § 1343 (wire fraud) and 18 U.S.C. § 1341 (mail fraud), Wechsler and the Wingate firm electronically filed and served via U.S. mail a number of false and fraudulent statements made to advance the litigation.

253. Specifically, on or about October 7, 2022, the Wingate Defendants electronically filed a supplemental verified bill of particulars, signed and verified by Wechsler, that stated that

on October 8, 2019, Tagiyev “underwent a surgical procedure performed by Michael Gerling.” The surgery was described as follows: “Transpedicular approach with decompression of the spinal cord, equina and/or nerve root, single segment; lumbar, left side; Discography, lumbar, radiological supervision and interpretation, L4-5; Endoscopic lumbar discectomy, L4-5; Annuloplasty, L4-5; Therapeutic intradiscal injection of Depomedrol medicated injection including Marcaine with epinephrine and antibiotic injected into the disk at L4-5.” The supplemental bill of particulars falsely stated that “all injuries and/or conditions were caused, aggravated, exacerbated and/or precipitated by the accident,” and further, that “[a]ll injuries and their effects . . . are permanent.” The supplemental bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and served via U.S. mail on defendants in violation of 18 U.S.C. § 1341 (mail fraud).

254. On or about October 7, 2022, the Wingate Defendants electronically filed a second supplemental verified bill of particulars, also signed and verified by Wechsler, in which it supplemented the injuries that Tagiyev allegedly sustained from the purported accident and included the following injuries concerning his left shoulder: Tear of supraspinatus tendon, tendinosis/tendinopathy, left shoulder hiking, positive supraspinatus test, positive Neer’s test, and positive Bear Hug Test. The Wingate Defendants again stated falsely that “all injuries and/or conditions were caused, aggravated, exacerbated and/or precipitated by the accident.” The second supplemental bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and served via U.S. mail on defendants in violation of 18 U.S.C. § 1341 (mail fraud).

255. On or about October 7, 2022, the Wingate Defendants electronically filed a third supplemental verified bill of particulars, again signed and verified by Wechsler, in which they provided information about an additional surgery performed by Gerling on Tagiyev. Specifically, Tagiyev underwent an “[a]nterior cervical discectomy and fusion (including discectomy,

arthrodesis, and anterior instrumentation)” at the C5-C6 cervical level. The Wingate Defendants reiterated their statement from all of the prior bills of particular, asserting that “all injuries and/or conditions were caused, aggravated, exacerbated and/or precipitated by the accident.” The third supplemental bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and served via U.S. mail on defendants in violation of 18 U.S.C. § 1341 (mail fraud).

256. On January 5, 2024, the defense in this case introduced two expert reports confirming that Tagiyev was not seriously injured. Specifically, the defense experts concluded:

- a. The subject collision can be described as a same-direction sideswipe between the right side of the transit bus and the driver side of the Infiniti. The Infiniti had been stopped and the driver had the brake applied, and the transit bus had an impact speed between 6 and 7 miles per hour.
- b. Based on the laws of physics, Mr. Tagiyev tended to move rearward and leftward relative to his original seating position in the interior of the vehicle as a result of this collision. Any motion was limited by the relatively small overall motion of the vehicle.
- c. Mr. Tagiyev’s cervical and lumbar spine pathologies, as identified in the available medical records, cannot be attributed biomechanically to the sideswipe accident of March 17, 2017.
- d. The loads experienced in Mr. Tagiyev’s cervical spine during the subject sideswipe collision were comparable to and less than cervical spine loads associated with vigorous activities and less than cervical spine loads associated with chiropractic manipulations.
- e. The loads experienced in Mr. Tagiyev’s lumbar spine during the subject sideswipe collision were substantially less than those he experienced during routine daily activities.
- f. The subject accident did not provide a mechanism for traumatic injury to Mr. Tagiyev’s left shoulder.

257. The Wingate Defendants nevertheless tried the case before a jury. On March 11, 2024, the jury returned a unanimous verdict finding that Tagiyev had not been seriously injured. In particular, the jury unanimously found that Tagiyev did not sustain a significant limitation of

use of his cervical spine or lumbar spine as a result of the accident on March 17, 2017. The Wingate Defendants knew that Tagiyev did not sustain serious injuries as a result of the accident, but nevertheless prosecuted the frivolous case all the way to trial, causing defendants to incur unnecessary legal expenses.

M. *Dewayne Currence v. Sheldon Wright, et al.* – Supreme Court, Kings County – Index No. 507701/2016

258. On October 5, 2015, Dewayne Currence was in a minor motor vehicle collision when another vehicle merged into the lane in which he was driving. As a result of the impact, Currence’s bumper, fender, headlight and hood suffered minimal damages. The airbags in Currence’s vehicle did not deploy. Currence testified that the other vehicle sustained only “[m]inor scratches.” He told the police at the scene that he was “fine” and that he did not need an ambulance. He drove away from the scene in the vehicle that was involved in the collision.

259. On or about May 10, 2016, the Lavelle Defendants filed a lawsuit on Currence’s behalf. The complaint falsely stated that as a result of the accident, Currence “was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature and duration, and [Currence] will be permanently caused to suffer pain, inconvenience and other effects of such injuries[.]” These statements were knowingly false when made. The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on defendants by U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

260. On August 16, 2016, in furtherance of the fraud scheme and in violation of 18 U.S.C. § 1343 (wire fraud), the Lavelle Defendants electronically filed a verified bill of particulars falsely stating that “[a]s a result of this accident, Plaintiff DEWAYNE CURRENCE sustained the following serious injuries:

- Posterior annular tears at the L4/L5 and L5/S1 levels;
- Disc herniation at L5/S1;
- Disc bulge at L4/5;
- Disc herniations at C4/5 and C5/6;
- Restricted range of motion, lumbar spine;
- Restricted range of motion, cervical spine;
- Future pain and suffering;
- Future lost wages and medical expenses;
- Future surgery;
- Future arthritis.”

261. The bill of particulars further falsely stated that “[a]ll of the aforementioned injuries are of a permanent nature and were proximately caused by the aforementioned motor vehicle accident or in the alternative, the injuries are of a pre-existing nature and were exacerbated or aggravated by this occurrence.” Upon information and belief, these statements were also knowingly false when made. The bill of particulars was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on defendants by U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

262. On or about November 4, 2016, Currence had his first appointment with Gerling. The medical records from the appointment stated that Currence “had injuries to the neck and lower back in an accident that occurred on October 5, 2015” and that he “was driving when another car struck his car on the right side in an attempt to pass him, injuring his neck and back.” Gerling’s assessment was “Lumbar Disk Herniation” and “Cervical Disk Herniation.”

263. On June 5, 2017, the Wingate Defendants entered an appearance in the case for Currence.

264. On or about September 7, 2017, Gerling performed surgery on Currence at Richmond University Medical Center. The operative report described the procedure as a left L5-S1 hemilaminotomy, partial medial facetectomy, foraminotomy and microdiscectomy. Upon information and belief, such surgery was performed as a result of advance payments, directly or

indirectly, by the Lavelle Defendants and/or the Wingate Defendants. Such payments were for the purposes of influencing Gerling's testimony.

265. The Wingate firm made a number of false and fraudulent statements to advance the litigation. Specifically, on or about February 26, 2018, the Wingate Defendants served a supplemental verified bill of particulars about the surgical procedure performed by Gerling. The supplemental verified bill of particulars falsely stated that “[a]ll of the above mentioned injuries and their natural sequelae, are claimed to be permanent” and “all injuries and/or conditions were caused, aggravated, exacerbated and/or precipitated by the accident[.]” Upon information and belief, these statements were also knowingly false when made. Upon information and belief, the supplemental verified bill of particulars was served on defendants via electronic mail in violation of 18 U.S.C. § 1343 (wire fraud) and/or via U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

266. This sworn statement was false because Currence was injured in two other accidents which the Wingate Defendants did not disclose—a second car accident on January 24, 2017, in which Currence rear-ended another vehicle, and a trip-and-fall on October 30, 2017 in which he broke his finger and hurt his back. These other incidents, and not Currence's 2015 car accident, caused the injuries described in the supplemental verified bill of particulars.

267. On or about April 19, 2019, in furtherance of the fraudulent scheme, and in violation of 18 U.S.C. § 1343 (wire fraud), the Wingate Defendants signed and electronically filed an affirmation in opposition to defendants' motion for summary judgment, in which they falsely stated: “As a result of the collision, Mr. Currence – who, at the time of the collision, was an otherwise healthy 38-year-old man with no significant past medical history – was caused to sustain numerous serious injuries to his cervical spine and lumbar spine. This included multiple intervertebral disc herniations with associated radiculopathy, which required extensive physical therapy

and then ultimately lumbar spine surgery, including an L5-S1 hemi-laminotomy, partial medial facetectomy, foraminotomy, and micro-discectomy.” (emphasis in original). The affirmation was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud).

268. In support of their opposition, the Wingate firm electronically filed an affirmation signed by Gerling appending his medical records for treatment of Currence. Gerling stated that the surgery he performed “was medically necessary and required due to the lumbar spine trauma that Mr. Currence suffered in the motor vehicle collision which he was involved in on October 5, 2015.” He also stated that “Mr. Currence’s injuries . . . and their resultant physical impairments and limitations, are all causally related to the motor vehicle collision which she [sic] was involved in on October 5, 2015.” Gerling stated further that, “[w]ithin a reasonable degree of medical certainty, Mr. Currence’s injuries . . . have caused him to suffer a permanent, significant, and consequential limitation/impairment in terms of the use and function of his spinal column and musculoskeletal system[.]” But Currence suffered no such impairment. He testified that since the October 5, 2015 accident, he has worked numerous jobs as a laborer. In fact, at the time of the deposition, he worked five days a week, eight hours a day, as a construction laborer and flag man for Quality Floor Shine, where he removes heavy debris and stands for up to two hours at a time holding a flag or stop sign to direct pedestrians.

269. Upon information and belief, Gerling knew that statements in his affirmation—which he purported to make pursuant to his specialized knowledge—were false when made. Gerling either did not subjectively believe such statements or, to the extent he did, such statements omitted material facts, including—among other things—the circumstances regarding the underlying incident and the October 2017 slip-and-fall incident about which Currence informed Gerling’s office. In violation of 18 U.S.C. § 1343 (wire fraud) and in furtherance of the scheme, Gerling

electronically transmitted the affirmation to the Wingate firm for electronic filing and the Wingate firm electronically filed it.

N. *Alisher Ikramov v. Benyahu Adinyayev, et al.* – Supreme Court, Kings County – Index No. 503653/2017

270. On March 4, 2016, Alisher Ikramov was involved in an accident at the intersection of 50th Street and 16th Avenue in Brooklyn. Ikramov had picked up a passenger through Uber’s ride matching service. When the ride was completed, Ikramov pulled over to let the passenger out. However, when the passenger opened the door to exit, an oncoming vehicle made contact with the door, side-swiping Ikramov’s vehicle.

271. The form MV-104 signed and filed by Ikramov in connection with the incident stated that no injuries had occurred, and that there had been “property damage only.”

272. Ikramov complained of chest pain at the scene and was transported by ambulance to the emergency room at Maimonides Medical Center. Medical records indicate that Ikramov did not complain of back pain or joint pain in the emergency room—he was only there about his heart. Nor did he undergo any x-rays.

273. Ikramov retained the Wingate Defendants to represent him in a personal injury suit. On February 23, 2017, the Wingate Defendants filed a complaint in King’s County Supreme Court, claiming that as a result of the accident, Ikramov sustained injuries to his back and right shoulder, prompting a “need for future surgery.” As of the date of this filing, there is no indication that Ikramov has undergone, or intends to undergo, surgery for his right shoulder. Despite his claim of injury to his right shoulder, during his deposition on March 11, 2019, Ikramov testified that it was his “left shoulder” that came into contact with the interior of his vehicle as a result of the accident. The complaint was electronically filed in violation of 18 U.S.C. § 1343 (wire fraud) and also served on defendants by U.S. mail in violation of 18 U.S.C. § 1341 (mail fraud).

274. The Wingate Defendants referred Ikramov to Gerling for treatment. On March 28, 2017, Gerling performed a lumbar discectomy and annuloplasty at L3-4 and L4-5 on Ikramov. This surgery was not medically necessary and did not treat any injury caused by the accident. Gerling performed the surgery because he was paid to do so by the Wingate Defendants and because surgery and resulting testimony would increase the settlement value of Ikramov's personal injury suit.

275. On October 21, 2020, the Wingate firm electronically filed an affidavit from Gerling, prepared on October 16, 2020, in which he attested that the accident was the root cause of Ikramov's injuries, and that "it is indisputable that as a result of the accident, Mr. Ikramov sustained serious injuries to his lumbar spine, cervical spine, right shoulder, and head." This statement was knowingly false when made. As an experienced physician, Gerling knew, or should have known, that Ikramov was not injured in the crash. Gerling accepted payment for the false affidavit in violation of N.Y. Penal Law § 215.05 (bribe receiving as a witness). In violation of 18 U.S.C. § 1343 (wire fraud) and in furtherance of the scheme, Gerling electronically transmitted the affidavit to the Wingate firm for electronic filing and the Wingate firm electronically filed it.

276. On November 19, 2021, the parties entered a stipulation of discontinuance. Upon information and belief, Ikramov's case settled for an amount greater than it would have had the Wingate Defendants not bribed the Gerling Defendants to perform medically unnecessary surgery and to render false testimony regarding Ikramov's supposed injuries and their causation.

III. RACKETEERING ALLEGATIONS

277. At all relevant times, Defendants' scheme was in violation of 18 U.S.C. §§ 1962(c) and/or (d) of the RICO statute as further set forth below.

A. Defendants' Respective Misconduct and Basis for Liability

1. The Wingate Defendants

278. As described above, the Wingate Defendants were a leading organizer of this scheme and took primary responsibility in pursuing fabricated claims against defendants, including Uber and many others. The Wingate Defendants have participated, continue to participate, and likely will in the future participate in the scheme by utilizing the Doctor Defendants' false statements regarding medical treatment to advance unfounded and/or inflated claims. The Wingate Defendants used the fraudulent documentation and testimony provided by Reyfman and Gerling to make numerous false statements to Uber and to the court in the course of personal injury litigation. Upon information and belief, the Wingate firm entered into fee-splitting agreements with the Banilov and Lavelle Defendants to further the goals of the scheme and share in its proceeds.

2. The Banilov Defendants

279. As described above, the Banilov Defendants have participated, continue to participate, and likely will in the future participate in the scheme by recruiting personal injury plaintiffs; orchestrating medical treatment for personal injury plaintiffs, including corruptly inducing Reyfman and Gerling to provide unnecessary medical treatment, false documentation, and false testimony through direct or indirect payments in excess of market rates; creating false evidence; and making false statements to initiate and advance personal injury claims.

280. The Banilov Defendants referred or caused to be referred potential plaintiffs to the Doctor Defendants for the purpose of manufacturing unfounded and/or inflated claims. The Banilov Defendants directly or indirectly paid the Doctor Defendants for such treatment and for the attendant false statements regarding necessity and causation.

281. The Banilov Defendants have filed or prosecuted dozens of lawsuits involving the Doctor Defendants and/or their respective medical practices.

3. The Lavelle Defendants

282. As described above, the Lavelle Defendants have conspired with the other Defendants and have carried out predicate acts in furtherance of the scheme. The Lavelle Defendants have orchestrated initial medical treatment for personal injury plaintiffs, and induced Gerling to provide unnecessary medical treatment, false documentation, and false testimony through direct or indirect payments. They have created false evidence and made false statements to advance personal injury claims.

283. The Lavelle Defendants referred or caused to be referred potential plaintiffs to the Doctor Defendants for the purpose of manufacturing unfounded and/or inflated claims. The Lavelle Defendants directly or indirectly paid the Doctor Defendants for such treatment and with the understanding that such payments would corruptly result in the attendant false statements regarding necessity and causation.

4. The Gerling Defendants

284. Gerling controlled and directed the operations of Gerling Institute at all relevant times.

285. As part of and in furtherance of the scheme, Gerling controlled and directed the provision of unnecessary medical treatment to personal injury plaintiffs. Gerling made false diagnoses, performed unnecessary treatment and procedures, and provided false documentation and testimony upon specialized knowledge in exchange for direct or indirect payments from the Law Firm Defendants, including through third-party funders, and with the understanding that in exchange for doing so, the Law Firm Defendants would continue to funnel patients to him.

286. In order to conceal the scheme, Gerling Institute maintains two sets of books. The Gerling Defendants use one system for their ordinary patients who pay using insurance. That billing system, for the legitimate portion of Gerling Institute's business, utilizes standard billing codes.

The Gerling Defendants track the lawyer-directed above-market payments received in connection with the scheme using an entirely separate set of books, which does not use any billing codes. The Gerling Defendants use this separate set of books for its illicit business to generate fraudulent invoices, at significantly above-market rates, to submit to no-fault carriers or for large up-front payments from attorneys or litigation funders.

287. In connection with the illicit portion of their business, the Gerling Defendants consistently bill at above the prevailing market rate. For example, although the median cost of a discectomy in New York City was less than \$20,000 in 2017, the Gerling Defendants billed the Banilov Defendants \$36,500 for Asamov’s 2019 discectomy. In another case from 2018, the Gerling Defendants billed the personal injury plaintiff \$48,750 for that same procedure (more than double the market rate) and received an “upfront payment” of \$20,750. The Gerling Defendants billed the lawyers for a third personal injury plaintiff an astonishing \$366,069.47 for a 2022 cervical fusion—far in excess of the \$41,871 median cost of a “major” cervical fusion operation in New York City in 2017. Both the excessive nature of the fees and the up-front payments from attorneys function as bribes to Gerling in exchange for his false testimony as part of the scheme.

288. Gerling’s pattern of unethical and fraudulent conduct is well known. Gerling has also been named as a defendant in a RICO lawsuit filed by GEICO insurance company alleging his participation in a fraudulent scheme of providing unnecessary medical treatment in exchange for kickbacks from referring attorneys. The complaint filed in *GEICO v. Michael Gerling, M.D., et al.*, No. 1:23-cv-7693-PKC-MMH (E.D.N.Y.), alleges that personal injury attorneys funneled kickback payments to Gerling by retaining a phony marketing firm called Campiro, Inc. Instead of providing any marketing services, Campiro made payments in the tens of thousands of dollars to Gerling’s businesses to corruptly induce them to perform medically unnecessary surgeries. The

phony marketing company wrote checks directly to NY Orthopedics, another medical institution owned and controlled by Gerling:

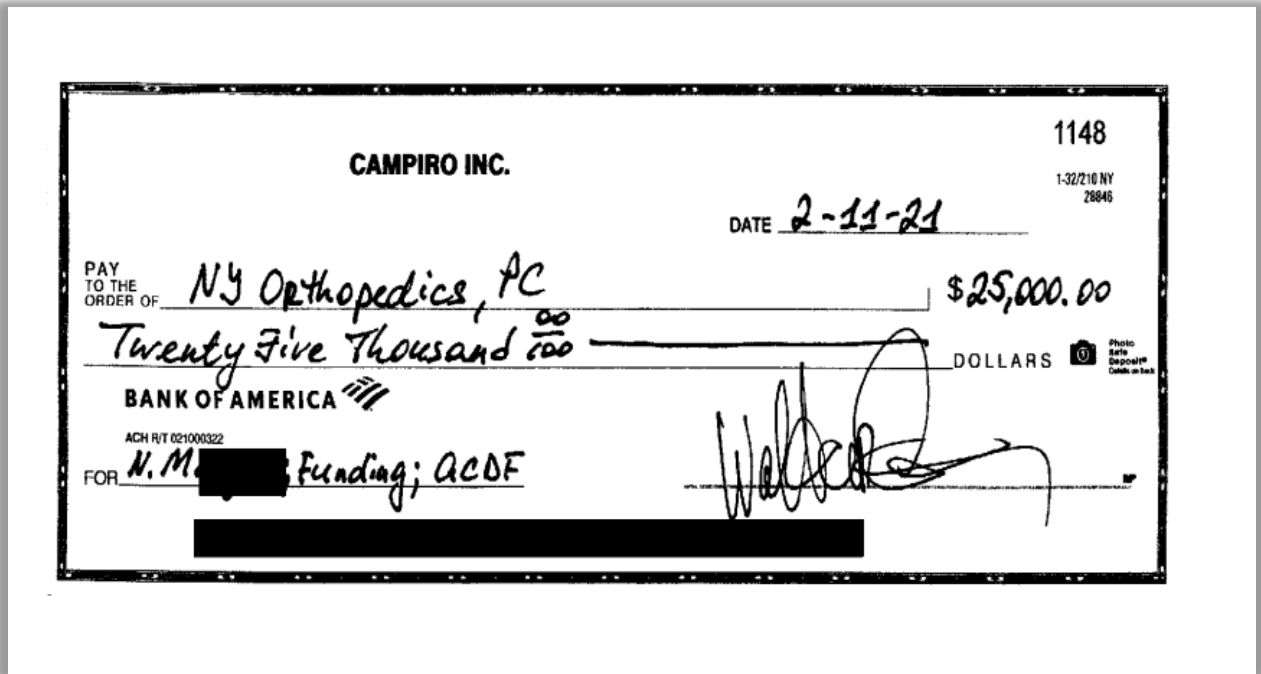


Figure 7.

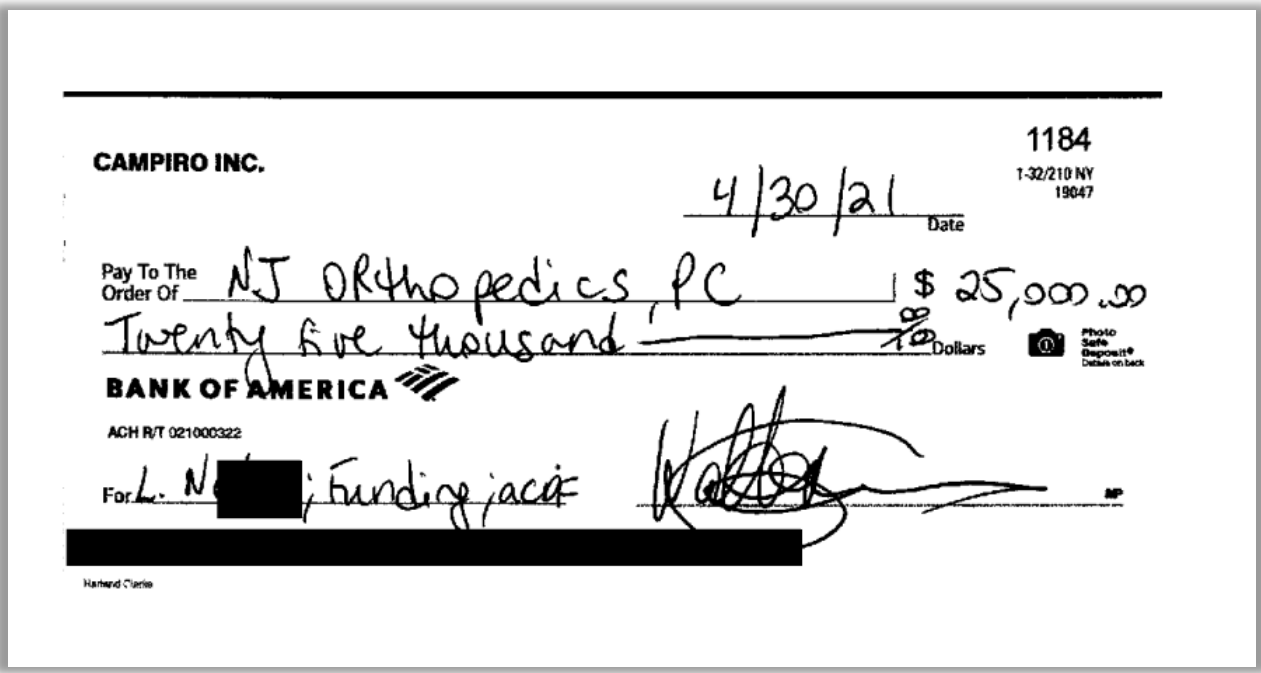


Figure 8.

289. Based on such evidence, this Court entered a preliminary injunction staying all pending collections arbitrations and lawsuits between Gerling and GEICO and barring Gerling from commencing any new claims against GEICO. The case was settled shortly thereafter.

290. More recently, during oral argument on a motion in limine in *Holton v. N.Y.C. Transit Authority*, Queens Cty. Index No. 710736/2019, Justice Joseph Esposito observed:

Quite frankly, just among us, I am very much anticipating [Gerling's] testimony because what I know about his background is disgraceful. Disgraceful. And I am going to give them a lot of leeway so that the jury understands the truth We are going to stop hiding behind legalities and fictions. I am going to unravel him at this trial. I just want you to be aware. I am going to be very hard on him because *I am sick and tired of certain medical people who come in here and who with unclean hands, mind you, and try to pull off what he is trying to do here. I'm insulted by it. ... I am insulted by Dr. Gerling.* ... I am not going to let him off the hook because he doesn't deserve to be let off the hook and to be presented to this jury like he's some kind of an expert medical person, *because to me he is bordering on criminality.*

291. Gerling continues to perform invasive and unnecessary surgeries on personal injury plaintiffs and provide false testimony at trial for the purpose of enriching himself and the other members of the RICO enterprise.

5. The Reyfman Defendants

292. Reyfman controlled and directed the operations of Pain Physicians NY at all relevant times.

293. As part of the scheme, and at the direction of the Law Firm Defendants, Reyfman controlled and directed the provision of unnecessary medical treatment to personal injury plaintiffs. This involved medically unnecessary treatments and false statements regarding the necessity of treatment and injury causation all upon specialized knowledge and made at the direction of the Law Firm Defendants.

294. Reyfman profited from the scheme through fraudulent insurance submissions and payments made or caused to be made by the Law Firm Defendants. Certain such payments were made through intermediate litigation funders. As but one example, on or about June 1, 2020, Reyfman performed a cervical percutaneous discectomy at C5/6 level on a personal injury plaintiff represented by the Banilov Defendants. Neither the plaintiff nor his insurer paid for the procedure. Rather, the Banilov Defendants directed compensation to Reyfman in the amount of \$8,358.70 through a payment made by a third-party litigation funder. Upon information and belief, such funding was provided to Reyfman with the understanding that it would influence his testimony regarding the necessity for such medical treatment and/or whether it was caused by the accident in question. That case settled before Reyfman had the opportunity to submit his planned false testimony.

295. Reyfman made false diagnoses, performed unnecessary treatment and procedures, and provided false documentation and testimony with the understanding that in exchange for doing so, the Law Firm Defendants would continue to funnel patients to him.

B. Uber Is a Victim of the Scheme and Has Suffered Injury

296. Uber is a victim of Defendants' RICO scheme because it has incurred substantial expense in defending these false or inflated claims, including responding to claims that would otherwise be barred by operation of New York State Insurance Law § 5104, that it would not otherwise have incurred but-for Defendants' fraud.

297. The unnecessary medical treatments provided through Defendants' scheme of bribery and fraud, and the false statements supporting the necessity of those treatments, allowed the Law Firm Defendants to fraudulently induce significantly larger settlement payments out of Uber in personal injury lawsuits or attempt to do so. As such, Uber has been forced to incur legal costs in defending these lawsuits in excess of what would have otherwise been required. These inflated

costs damaged Uber in its business or property. This damage was the direct result of Defendants' pattern of racketeering activity.

298. Uber is not the only victim of this scheme. As demonstrated in Part II, Defendants' widespread scheme also targets other personal injury defendants and has injured them in their business or property. The courts of the State of New York, whose resources have been wasted by Defendants in adjudicating frivolous and fraudulent claims, are also victims. Even the personal injury plaintiffs themselves have suffered from unnecessary surgery and medical treatment resulting from Defendants' greed. They receive little in exchange. The proceeds of the scheme are instead split between the Doctor Defendants, the Law Firm Defendants, and the litigation funders who help provide above-market payments to the Doctor Defendants in exchange for a lien on the personal injury plaintiffs' recovery typically at exorbitant interest rates.

C. The RICO Enterprise

299. The Wingate Defendants, the Banilov Defendants, and the Doctor Defendants are a group of persons associated together in fact for the common purpose of carrying out the ongoing fraudulent course of conduct directed at Uber and others described above. Each of these Defendants understood that their ability to extract financial rewards from pursuit of fraudulent claims against Uber and others—whether through the lawyers' recovery of litigation settlements or the doctors' receipt of inflated medical payments—depended on (i) manufacturing unnecessary and/or causally unconnected medical treatment for potential personal injury plaintiffs, (ii) creating associated medical records that could be used in resulting litigation for the purpose of establishing necessity and causation, and (iii) generating and propounding false and misleading testimony from the medical providers to advance such litigation claims. These Defendants worked together and functioned as a unit to achieve that purpose and shared a common intent to act unlawfully in furtherance of the common goal of extracting ill-gotten gains from the personal injury defendants.

300. The Wingate Defendants, the Banilov Defendants, and the Doctor Defendants shared long-standing relationships with each other, acted for each other's common benefit, and depended on one another and their respective activities for such benefit:

- a. The Banilov Defendants each shared relationships with each of the Doctor Defendants. They referred patients to Reyfman, Gerling, and their associated medical practices in the cases described above and in numerous other cases. The relationship was cemented by payments made directly or indirectly by the Banilov Defendants to each of the Doctor Defendants.
- b. The Wingate Defendants shared a relationship with each of the Doctor Defendants. In the cases described above as well as in other cases, the Wingate Defendants worked with the Doctor Defendants to utilize their false or misleading medical records and/or testimony to litigate the fraudulent claims against Uber or others. The relationship was cemented by payments made directly or indirectly by the Wingate Defendants to each of the Doctor Defendants.
- c. The Banilov and Wingate Defendants shared a relationship with each other and have worked together on these and other cases. Where claims arose involving Uber or other ride matching defendants, the Banilov firm referred cases to the Wingate firm, which was larger and had more resources to litigate against a corporate defendant. In each case, the relationship was cemented through fee-sharing arrangements as discussed above.
- d. The Doctor Defendants shared a relationship with each other. Gerling and Reyfman had a long-standing professional relationship extending back to 2007, referred numerous patients to one another, and had worked together on numerous personal

injury cases, including the ones described above. During the relevant period, both Gerling and Reyfman regularly performed medically unnecessary surgeries and procedures at Island Ambulatory Surgery Center in Brooklyn, New York, a facility owned and operated by Reyfman. A portion of the above-market fees charged by Gerling for procedures at Island Ambulatory Surgery Center were thus funneled to Reyfman. Reyfman and Gerling are also equal partners in 23rd Street SC, LLC d/b/a Hudson Surgery Center, a special purpose vehicle that they created to operate Hudson Surgery Center, an ambulatory surgery center in Manhattan, New York.

- e. Each of these Defendants share geographical proximity in that their respective legal and medical practices are concentrated in Kings County and the surrounding area. They came to work together as a result of their long involvement in representing or treating personal injury plaintiffs in that jurisdiction.

301. The acts of wire and mail fraud described above could not have been accomplished without the participation and assistance of each of the members of the enterprise. Each party played a critical role and depended on the others to carry out their respective roles in furtherance of the scheme, including the initial intake and referral work of the Banilov firm; the delivery of medical treatment, creation of medical records, and provision of testimony by the Doctor Defendants; and the added scale and resources to litigate claims against ride matching defendants provided by the Wingate firm.

302. The Wingate Defendants, the Banilov Defendants, and the Doctor Defendants constitute an association-in-fact enterprise within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c). Each of these Defendants participated in the operation or management of the enterprise. The enterprise itself is distinct from the culpable persons of Banilov, Tarasov, Wechsler, Reyfman, and

Gerling and their respective corrupt activities. Banilov, Tarasov, Wechsler, Reyfman, and Gerling are employees or partners of their own respective law firms and medical practices, and each worked to operate the larger association-in-fact enterprise and manage its affairs through their corrupt patterns of referrals, making and accepting bribery payments, and false statements. The Lavelle Defendants conspired with such Defendants as set forth above.

303. The enterprise was of sufficient duration to accomplish its purposes, originating at least as early as 2019 and threatening to continue into the future.

304. In the alternative, each of the Doctor Defendants' respective medical practices, namely Gerling Institute and Pain Physicians NY with their affiliates, constitutes an enterprise. Gerling and Reyfman each operated, managed and controlled their respective medical practices directly and/or indirectly through an ongoing referral relationship in furtherance of the scheme. The Law Firm Defendants participated in the management and control of each such enterprise through the corrupt referrals and payments described above.

305. At all relevant times, the enterprise was engaged in, and its activities affected, interstate commerce within the meaning of 18 U.S.C. § 1962(c) through its use of mail and interstate wires and because its activities were directed at and intended to influence an out-of-state corporation.

D. Pattern of Racketeering Activity

306. Defendants' scheme constitutes a pattern of racketeering activity. The pattern of racketeering activity includes, among others, commission of the predicate acts and specific statutes violated described above.

307. Defendants committed these acts willfully and knowingly.

308. The predicate acts relate to each other as a part of a common plan. The Defendants' roles in the scheme all depended on each other—the Doctor Defendants accepted bribes in the

form of client referrals and illegal payments to provide unnecessary treatments and false documentation and testimony. The Law Firm Defendants then used this false testimony to fraudulently attempt to induce larger settlement payments. Each Defendant was aware of its respective role within the larger scheme.

309. The predicate acts further relate to the association-in-fact described above as well as to each of the Doctor Defendants' respective medical practices. The Law Firm Defendants referred clients and made, directly or indirectly, corrupt payments to the Doctor Defendants in exchange for the provision of unnecessary medical treatment and false testimony and documentation. The Law Firm Defendants then used these false statements and unnecessary treatment to initiate and advance litigation against Uber and fraudulently attempt to induce larger settlements. A specific threat of repetition exists with respect to such acts. Such predicate acts are a regular way of conducting the ongoing medical practices at issue herein. Such acts are also attributable to the Law Firm Defendants and Doctor Defendants operating as part of the long-term association-in-fact that exists for criminal purposes as described herein. Hence, the pattern of activity is part of an open-ended and ongoing scheme.

310. The acts also occurred over a substantial period of time and hence constitute a pattern of activity even if the scheme were not ongoing.

E. Equitable Tolling

311. Defendants also wrongfully concealed material facts relating to their scheme. Such concealment included Defendants' failure to disclose the causes and extent of the personal injury plaintiffs' claimed injuries and the necessity of treatment resulting from the alleged accidents. Indeed, Defendants actively misled Uber about the cause and extent of injury and the necessity of treatment through the numerous false statements described above.

312. Uber exercised due diligence by investigating the circumstances of the claim it asserts here. In particular, Uber diligently used the disclosure tools available to it in the underlying personal injury litigation. However, Defendants' ongoing concealment and affirmative false statements in response to such disclosure requests prevented Uber from discovering the nature of the scheme. Although Uber brings this claim within the applicable statute of limitations, any such statute is in any event tolled as a result of Defendants' fraudulent concealment.

CAUSES OF ACTION

COUNT I

Civil RICO (18 U.S.C. § 1962(c))

Association-in-Fact Enterprise

(Against the Wingate Defendants, the Banilov Defendants, and the Doctor Defendants)

313. Uber incorporates herein by reference each and every allegation in paragraphs 1 through 312 above.

314. At all relevant times herein, the Wingate Defendants, the Banilov Defendants and the Doctor Defendants constituted an "enterprise" as that term is defined in 18 U.S.C. § 1961(4). These Defendants constituted a group of individuals and legal entities associated in fact, which was engaged in, and the activities of which affected, interstate commerce. Each of these Defendants participated in the operation or management of the enterprise.

315. The enterprise's racketeering activities, as described throughout this Amended Complaint, included:

- a. Violations of the federal wire fraud statute, 18 U.S.C. § 1343, based upon voluntarily and intentionally devising and/or participating with knowledge of its fraudulent nature in a scheme to defraud Uber and others out of money or property by means of materially false representations;

- b. Violations of the federal mail fraud statute, 18 U.S.C. § 1341, based upon voluntarily and intentionally devising and/or participating with knowledge of its fraudulent nature in a scheme to defraud Uber and others out of money or property by means of materially false representations and use of the mail for the purpose of executing these fraudulent representations; and
- c. Violations of the New York State witness bribery statute, N.Y. Penal Law §§ 215.00 and 215.05, based upon agreeing to confer benefits on medical providers with the understanding that such benefits would influence the testimony of the medical providers and the acceptance of such bribes.

316. Each of these Defendants knowingly and willfully associated with the association-in-fact and conducted and participated in the conduct of the enterprise's affairs through a pattern of racketeering activity.

317. Uber has been injured in its business and property by reason of the above-described conduct.

318. By reason of its injury, Uber is entitled to equitable relief under 18 U.S.C. § 1964(a). It is also entitled to treble damages, costs, and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

COUNT II
RICO Enterprise Violation (18 U.S.C. § 1962(c))
Gerling Institute Enterprise
(Against Gerling, Reyfman, and the Law Firm Defendants)

319. Uber incorporates herein by reference each and every allegation in paragraphs 1 through 312 above.

320. Gerling Institute is an ongoing “enterprise,” as that term is defined in 18 U.S.C. § 1961(4), that engages in activities which affect interstate commerce.

321. Gerling, Reyfman, the Wingate Defendants, the Lavelle Defendants, and the Banilov Defendants knowingly conducted and/or participated, directly or indirectly, in the conduct of Gerling Institute’s affairs through a pattern of racketeering activities, as defined in 18 U.S.C. § 1961(1)(A).

322. Defendants’ racketeering activities, as described in detail in this Amended Complaint, included:

- a. Violations of the federal wire fraud statute, 18 U.S.C. § 1343, based upon voluntarily and intentionally devising and/or participating with knowledge of its fraudulent nature in a scheme to defraud Uber and others out of money or property by means of materially false representations;
- b. Violations of the federal mail fraud statute, 18 U.S.C. § 1341, based upon voluntarily and intentionally devising and/or participating with knowledge of its fraudulent nature in a scheme to defraud Uber and others out of money or property by means of materially false representations and use of the mail for the purpose of executing these fraudulent representations; and
- c. Violations of the New York State witness bribery statute, N.Y. Penal Law §§ 215.00 and 215.05, based upon agreeing to confer benefits on medical providers with the understanding that such benefits would influence the testimony of the medical providers and the acceptance of such bribes.

323. Each of the Defendants knowingly and willfully associated with the association-in-fact and conducted and participated in the conduct of the enterprise's affairs, through a pattern of racketeering activity.

324. Uber has been injured in its business and property by reason of the above-described conduct.

325. By reason of its injury, Uber is entitled to equitable relief under 18 U.S.C. § 1964(a). It is also entitled to treble damages, costs, and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

COUNT III
RICO Enterprise Violation (18 U.S.C. § 1962(c))
Pain Physicians NY Enterprise
(Against Gerling, Reyfman, and the Law Firm Defendants)

326. Uber incorporates herein by reference each and every allegation in paragraphs 1 through 312 above.

327. Pain Physicians NY is an ongoing "enterprise," as that term is defined in 18 U.S.C. § 1961(4), that engages in activities which affect interstate commerce.

328. Reyfman, Gerling, and each of the Law Firm Defendants knowingly conducted and/or participated, directly or indirectly, in the conduct of Pain Physicians NY's affairs through a pattern of racketeering activities, as defined in 18 U.S.C. § 1961(1)(A).

329. Defendants' racketeering activities, as described in detail in this Amended Complaint, included:

- a. Violations of the federal wire fraud statute, 18 U.S.C. § 1343, based upon voluntarily and intentionally devising and/or participating with knowledge of its fraudulent nature in a scheme to defraud Uber and others out of money or property by

means of materially false representations and use of the mail for the purpose of executing the scheme;

- b. Violations of the federal mail fraud statute, 18 U.S.C. § 1341, based upon voluntarily and intentionally devising and/or participating with knowledge of its fraudulent nature in a scheme to defraud Uber and others out of money or property by means of materially false representations and use of the mail for the purpose of executing the scheme; and
- c. Violations of the New York State witness bribery statute, N.Y. Penal Law §§ 215.00 and 215.05, based upon agreeing to confer benefits on medical providers with the understanding that such benefits would influence the testimony of the medical providers and the acceptance of such bribes.

330. Each of the Defendants knowingly and willfully associated with the association-in-fact and conducted and participated in the conduct of the enterprise's affairs, through a pattern of racketeering activity.

331. Uber has been injured in its business and property by reason of the above-described conduct.

332. By reason of its injury, Uber is entitled to equitable relief under 18 U.S.C. § 1964(a). It is also entitled to treble damages, costs, and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

COUNT IV
RICO Conspiracy Violation (18 U.S.C. § 1962(d))
(Against All Defendants)

333. Uber incorporates herein by reference each and every allegation in paragraphs 1 through 312 above.

334. For at least the time period referenced herein, Defendants did unlawfully, knowingly, and intentionally combine, conspire, and agree together with each other, and with others whose names are known or unknown, to conduct and participate, directly and/or indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity set forth herein in violation of 18 U.S.C. § 1962(d).

335. This pattern of racketeering activity in which the Defendants intentionally conspired to engage involved the specific acts as described in detail in this Amended Complaint constituting wire fraud in violation of 18 U.S.C. § 1343, mail fraud in violation of 18 U.S.C. § 1341, and witness bribery in violation of N.Y. Penal Law §§ 215.00 and 215.05.

336. All of these predicate acts constituted “racketeering activity” as defined in 18 U.S.C. § 1961(1)(A).

337. Uber has been injured in its business and property by reason of the above-described conduct.

338. By reason of its injury, Uber is entitled to equitable relief under 18 U.S.C. § 1964(a). It is also entitled to treble damages, costs, and reasonable attorneys’ fees pursuant to 18 U.S.C. § 1964(c).

COUNT V
N.Y. Judiciary Law § 487
(Against the Law Firm Defendants)

339. Uber incorporates herein by reference each and every allegation in paragraphs 1 through 312 above.

340. In the course of the pattern of conduct described herein, the Law Firm Defendants colluded with each other, with the other Defendants, and with other known and unknown individuals to intentionally deceive the courts of the State of New York, Uber, and the other defendants

in the above cases concerning the cause and severity of their personal injury clients' injuries and such clients' entitlement to litigate vehicle negligence claims pursuant to the requirements of New York no-fault insurance law.

341. As discussed herein, the Law Firm Defendants' intentional deceit includes filing of false and/or frivolous complaints, affirmations, and other pleadings and motions made in the course of the above-referenced litigations.

342. As a result of this deceit and collusion, Uber has been injured as alleged above because it has been required to incur substantial legal expenses in an amount in excess of \$75,000.

343. By reason of its injury, Uber is entitled to treble damages and reasonable attorneys' fees.

COUNT VI
Unjust Enrichment
(Against the Doctor Defendants)

344. Uber incorporates herein by reference each and every allegation in paragraphs 1 through 312 above.

345. The Doctor Defendants have been and will continue to be unjustly enriched by benefits received pursuant to the fraudulent scheme, including through payments derived directly or indirectly from the Law Firm Defendants. Such benefit was received at Uber's expense given that Uber has been required to incur substantial legal expense as a result of the scheme.

346. Principles of equity and good conscience require restitution of any such benefits received by the Doctor Defendants.

347. Uber demands judgment against the Doctor Defendants, jointly and severally, for restitution of all such benefits received.

PRAYER FOR RELIEF

1. For general damages according to proof at trial, trebled according to statute;
2. For restitution;
3. For prejudgment interest;
4. For reasonable attorneys' fees and costs;
5. For punitive damages;
6. For equitable relief as appropriate pursuant to applicable law, including but not limited to issuance of a temporary restraining order, a preliminary and permanent injunction, disgorgement, imposition of a constructive trust, and appointment of a monitor and/or receiver;
7. For an order under 18 U.S.C. § 1964(a) preventing and restraining violations of 18 U.S.C. § 1962 by directing Defendants to divest themselves of any interest, direct or indirect, in the above enterprises; imposing restrictions on the future activities of such Defendants, including, but not limited to, prohibiting Defendants from engaging in the same type of endeavor as the above enterprises engaged in; and dissolving or reorganizing the above enterprises;
8. For such other relief as the Court may deem appropriate.

Dated: New York, New York.
July 23, 2025

Respectfully submitted,
PERKINS COIE LLP

By: /s/ David W. T. Daniels
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JURY DEMAND

Uber demands a trial by jury on all issues so triable.

Dated: New York, New York.
July 23, 2025

Respectfully submitted,

PERKINS COIE LLP

By: /s/ David W. T. Daniels

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May 12, 2026

Hon. Orelia E. Merchant
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**Re: *Uber Technologies, Inc. v. Wingate, Russotti, Shapiro, Moses & Halperin, LLP, et al.*, Case No. 1:25-cv-00522-OEM-VMS
Supplemental Authority: Decision denying defendants' motion to dismiss in *Uber Technologies, Inc. v. Simon & Simon P.C.*,
No. 25-cv-5365 (E.D. Pa.)**

Dear Judge Merchant:

As was discussed at the hearing on Defendants' pending motions to Dismiss the Amended Complaint, Uber Technologies, Inc. ("Uber") is currently pursuing similar federal civil RICO actions in some other jurisdictions concerning the manufacture of false medical records by corrupt enterprises of attorneys and doctors. One such action is *Uber Technologies Inc., et al. v. Simon & Simon P.C., et al.*, No. 25-cv-5365, pending in the Eastern District of Pennsylvania. Uber respectfully wishes to call this Court's attention to the recent decision of the district court in *Simon & Simon* denying the defendants' motion to dismiss. See ECF No. 99 (May 11, 2026), attached hereto as **Exhibit A**. In his well-reasoned decision, Judge Kearney considered and rejected many of the same arguments advanced by Defendants here, including arguments based on *Kim v. Kimm*, the *Noerr-Pennington* doctrine, RICO standing, and other substantive elements of a RICO claim. Judge Kearney's order is thus highly relevant to the pending Motions to Dismiss in this action.

First, the *Simon & Simon* decision explained why defendants' wire and mail fraud related to litigation activity may constitute RICO predicate acts. Exhibit A at 27–31. Applying "*Kim v. Kimm* and related Second Circuit authority," *id.* at 30, the *Simon & Simon* court sustained Uber's RICO complaint because it alleged a "coordinated, multi-actor scheme spanning dozens of lawsuits over several years, supported by the repeated creation and transmission of materially false medical and billing records." *Id.* at 30–31. Those allegations—which also exist in the complaint in this action—are entirely unlike the "single lawsuit supported by allegedly false filings with no broader pattern of fraudulent activity" at issue in *Kim*. *Id.* The *Simon & Simon* court further explained that the "policy concerns underlying *Kim* are not implicated" in RICO

actions like this one: “Recognizing liability [in this action] does not risk transforming every unsuccessful lawsuit into a racketeering claim or a retaliatory action.” *Id.* at 31. Nor does it risk displacing state-court sanctions for litigation misconduct, because “Uber alleges a systemic mass scheme across numerous cases and actors, for which case-by-case sanctions would not provide a meaningful remedy.” *Id.*

Second, Judge Kearney thoroughly dismantled the defendants’ *Noerr-Pennington* arguments (*id.* at 8–22), which are similar to those advanced by Defendants here. The court held that “pre-filing conduct,” including “the lawyers’ direction to the doctors to create false medical records and reports,” is neither petitioning activity nor incidental thereto and is *not* protected by the First Amendment. *Id.* at 11. The court also found that the sham litigation exception is not foreclosed by the fact that some claims were settled by Uber; parties often settle “because of factors independent of the merits, such as ... reliance on allegedly fabricated evidence.” *Id.* at 16.

Third, the *Simon & Simon* decision rejected RICO standing arguments similar to the ones that defendants raise in this case. Judge Kearney held that first person reliance is not required for RICO standing and that proximate causation has been plausibly pleaded where a complaint alleges “the lawyers and doctors created and transmitted false records and reports for the purpose of inflating personal injury claims ...” *Id.* at 35. He observed that “[t]he pleaded injuries,” including “defense costs” and “settlement amounts it would not have paid, or would have paid in lower amounts,” “flow directly from the alleged scheme.” *Id.* at 34–35.

Fourth, the *Simon & Simon* decision rejected the defendants’ other arguments that Uber’s RICO claims were insufficiently pleaded. The court held that Uber’s “numerous specific examples identifying the participants in the scheme, the nature of the records, each professional’s role, and the mechanism by which the doctors transmitted records through interstate wires” provided “the requisite precision” and “sufficient substantiation to satisfy Rule 9(b).” *Id.* at 26. The court also found that Uber’s complaint plausibly alleged the existence of both legal entity and association-in-fact enterprises, rejecting the defendants’ “characterization of the allegations as mere referral relationships.” *Id.* at 32–33.

Judge Kearney allowed Uber’s RICO claims in *Simon & Simon* to proceed to discovery based on a detailed complaint identifying a broad, fraudulent scheme between attorneys and doctors that uses litigation as a tool to extract inflated settlements from Uber (and forces Uber to incur substantial defense costs). The Amended Complaint in this action similarly pleads precisely such a RICO claim. *Simon & Simon* demonstrates that Defendants’ motions in this action should be denied.

Respectfully submitted,

/s/ David W. T. Daniels
David W. T. Daniels

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UBER TECHNOLOGIES, INC., *et al.* : CIVIL ACTION
:
v. : NO. 25-5365
:
SIMON & SIMON P.C., *et al.*

MEMORANDUM

KEARNEY, J.

May 11, 2026

Two transportation companies known for their drivers being on the roads throughout our District, Uber and FedEx, became frustrated with paying lawyers to defend and settle lawsuits brought against them by one local law firm on behalf of persons claiming Uber or FedEx drivers caused them severe personal injuries over the past few years. The companies claim a personal injury lawyer and his firm direct their new clients to chiropractors, pain specialists, and other medical professionals who in turn create fraudulent medical records for those clients. The records serve as a basis to sue in Philadelphia state court, seek more than \$50,000 in damages, and then persuade Uber’s and FedEx’s lawyers and risk evaluators to defend the claims or pay more in settlements. So, in addition to disputing each claim in the Philadelphia courts on its merits (or alleged lack of merit), Uber and FedEx now sue the lawyers suing them and treating doctors for racketeering activities. Uber and FedEx seek, among other things, to recover the wide variety of costs defending the underlying Philadelphia court cases, other losses, and remove the law firm’s management.

The lawyers and doctors move to dismiss. They first argue their conduct is immune from liability because all they are allegedly doing is proceeding as advocates consistent with their clients/injured persons’ right to petition the courts for personal injury recovery under the First Amendment’s Petition Clause. We do not agree Petition Clause immunity bars the claims at this

stage as we cannot say now whether Uber and FedEx will prove a fraudulent scheme not immunized from suit. We find Uber and FedEx sufficiently pleaded the lawyers directed the doctors to produce fraudulent medical records which informed their demands for compensation far beyond the actual injuries. The lawyers and doctors also argue the doctrine of res judicata requires we dismiss based on the settlement agreements and orders in the pleaded Philadelphia state court cases and the *Rooker-Feldman* doctrine precludes relitigating earlier fully-resolved disputes. We do not agree these doctrines require dismissal at this stage given the exhaustive allegations. The lawyers and doctors also challenge the pleaded facts claiming no basis for racketeering including how their alleged conduct proximately caused Uber and FedEx to pay fees and costs and voluntarily settle claims at an agreed number. They may be shown correct soon enough. But we are reviewing allegations and today allow the parties to proceed with discovery including into the extent the doctors' reports informed the lawyers' decision to bring these cases and then seek more than \$50,000 in their complaints. And whether these lawyers' statements of "severe" injuries and "disfigurement" are fraudulent. We also need to understand if the lawyers' and doctors' conduct caused Uber and FedEx to pay legal fees and settlements rather than continue disputing the underlying claims on the merits.

I. Alleged Facts & Public Record

Philadelphia lawyer Marc Simon and the law firm Simon & Simon, P.C. filed dozens of identified lawsuits in the last four years in Philadelphia County against Uber Technologies, Inc. and Federal Express Corporation on behalf of persons involved in motor vehicle accidents with their drivers.¹ The Simon & Simon clients in these cases typically suffered minimal or no injuries from the accident.² Many clients also purchased "limited tort" motor vehicle insurance limiting recovery to minimal out-of-pocket medical expenses.³ But upon retention, Simon & Simon

directed their new clients to “a conveyor belt of preselected treatment providers and medical experts.”⁴ These medical providers included Ethel Harvey and Daniel Piccillo at Philadelphia Spine Associates, Clifton Burt at Premier Pain & Rehab Center, and Lance Yarus.⁵ Drs. Harvey and Piccillo are chiropractors.⁶ Dr. Burt is a pain management physician.⁷ Dr. Yarus is a physician who performs medical examinations and prepares reports used in litigation.⁸

Directed medical treatment leading to filed complaints in Philadelphia courts.

The course of treatment for the Simon & Simon clients followed a consistent sequence—“referrals to a discrete set of chiropractors or physical therapists, subsequent MRIs, and, ultimately, purported radiofrequency ablation procedures.”⁹ Clients first attended chiropractic or physical therapy appointments, often with Drs. Harvey or Piccillo.¹⁰ Drs. Harvey and Piccillo referred clients for MRIs, which were performed by a designated radiologist at Open MRI of Bala Cynwyd.¹¹ The lawyers instructed Drs. Harvey and Piccillo to make these referrals.¹² The MRI results were negative or “essentially” negative, showed only mild degenerative changes, or revealed no objective evidence of traumatic or accident-related injury.¹³ Drs. Harvey and Piccillo then continued a regimen of repeated chiropractic treatment visits also at the lawyers’ direction which generated a high volume of treatment records reflecting extensive care.¹⁴ In several instances, Drs. Harvey and Piccillo did not deliver chiropractic treatment as described in the records or generated treatment reports for a client using cut-and-pasted boilerplate statements and verbatim recitations.¹⁵ Drs. Harvey and Piccillo also signed treatment records within minutes of a scheduled appointment time, despite logs reflecting care which would have required more time, or created and signed records before the appointment was scheduled to occur.¹⁶ Drs. Harvey and Piccillo then transmitted the treatment records through an electronic patient records portal to the lawyers.¹⁷

The lawyers also directed their clients to Dr. Burt for pain management treatment before filing a complaint.¹⁸ The lawyers sent scheduling emails to Dr. Burt identifying the clients to be seen on a given day and instructing Dr. Burt on the procedures to be performed on each client before any independent examination.¹⁹ These emails directed treatment of many of the lawyers' clients on the same day.²⁰ The lawyers also provided Dr. Burt with their clients' medical records in advance of the appointments.²¹ The lawyers controlled the logistics of its clients' appointments with Dr. Burt, arranging transportation to and from Premier Pain & Rehab Center, and requiring clients to participate in video calls with the lawyers' staff following their appointments.²²

Dr. Burt typically performed radiofrequency ablations, a procedure more invasive than other forms of pain management and involving the use of a needle to heat and destroy nerve tissue, on these clients at the lawyers' direction.²³ Dr. Burt relied on clients' MRI results (often ordered by Drs. Harvey and Piccillo) in forming diagnoses and treatment recommendations.²⁴ Dr. Burt then created treatment records stating his "decision to deliver such ablation treatment was the result of his observations of the patient's pain levels and responses to treatment at the appointment."²⁵ These records included repeated and standardized language across patients and used pre-typed statements and fill-in-the-blank fields rather than individualized clinical observation.²⁶ The records also included identical or substantially similar statements attributing the client's symptoms to a motor vehicle accident and deeming the procedures medically necessary.²⁷ In many instances, the treatment records described procedures and clinical observations inconsistent with the timing and details reflected in the underlying imaging and appointment data.²⁸ Dr. Burt then transmitted the treatment records to the lawyers over interstate wires.²⁹ The lawyers compensated Dr. Burt and Premier Pain & Rehab Center on a flat fee, per-procedure basis for radiofrequency ablations performed on its clients.³⁰ The lawyers structured these payments through a third-party funder as

purchases of receivables rather than direct payments for treatment.³¹ Premier Pain & Rehab Center did not otherwise bill insurers or patients for this work.³²

The lawyers next directed their clients to Dr. Yarus or another medical expert for an independent medical examination and directed the expert to prepare reports projecting their clients' future medical care needs and damages.³³ Simon & Simon provided Dr. Yarus with the medical records generated by Drs. Burt, Harvey, and Piccillo as the bases for his reports.³⁴ Dr. Yarus typically met with the clients in an office located in the same building as Simon & Simon's Philadelphia office.³⁵ Dr. Yarus's reports "confirm[ed] the existence of serious, permanent injuries caused by the subject accident and recommend extensive, lifelong medical care."³⁶ He identified serious injury, causation, and the need for lifetime care in "100% of the hundreds of cases in which he has testified for Simon & Simon clients."³⁷ The reports used nearly identical language in attributing causation, describing the injuries, and concluding the injuries were permanent regardless of the client's age, medical history, or the nature of the accident.³⁸ The reports helped "convert[] low-value cases that would not have otherwise been brought or that would have been resolved through compulsory arbitration into million-dollar-plus litigation claims by creating the appearance of independent medical validation for non-existent serious injuries in cases where actual out-of-pocket costs were minimal."³⁹ Dr. Yarus did not assign dollar amounts to the future care needs identified in his reports.⁴⁰ Dr. Yarus transmitted the reports to the lawyers over interstate wires.⁴¹ The lawyers forwarded Dr. Yarus's reports to a second expert who assigned dollar figures to the future treatments Dr. Yarus recommended.⁴²

The lawyers then "assemble[d] a comprehensive but fraudulent record" from the medical records and expert reports prepared by Drs. Harvey, Piccillo, Burt, and Yarus and used the record to file lawsuits against Uber, FedEx, and other corporations.⁴³ These lawsuits relied on the

treatment histories, radiofrequency ablation procedures, and future-care reports to support claims for substantial damages, including “artificially inflated lifetime damages estimates.”⁴⁴ The high volume of chiropractic treatments from Drs. Harvey and Piccillo created the appearance of a serious injury, suggested conservative care had been attempted, and supported the use of more invasive procedures.⁴⁵ Their MRI referrals supported the ablation procedures and provided the “appearance of legitimacy” for those procedures.⁴⁶ Dr. Burt’s ablation procedures then supplied a foundation for identifying serious injury and future treatment.⁴⁷ Dr. Yarus’s reports presented the findings as independent medical evaluations and projected extensive future care needs.⁴⁸

Use of medical records in complaints and settlement demands.

The lawyers structured their damages claims based on the directed medical records. It relied on projected future expenses, which are not subject to statutory limits on incurred medical costs, and also used the face value of receivables associated with Dr. Burt’s procedures in presenting damages claims.⁴⁹ The diagnosis of a serious injury further allowed Simon & Simon to seek non-economic damages in cases involving limited tort coverage.⁵⁰ The records and reports allowed Simon & Simon to allege damages exceeding \$50,000 which placed the cases outside the Philadelphia Court of Common Pleas’ compulsory arbitration program.⁵¹ Absent these materials, the lawyers’ claims “would have been resolved through Pennsylvania’s no-fault system or, if brought at all, through compulsory arbitration” or “limited to recovery of minimal out-of-pocket medical expenses.”⁵²

The lawyers used the “artificially inflated lifetime damages estimates” to “induce large settlements from Uber, FedEx, and others.”⁵³ They presented the medical records and expert reports as “objective evidence” of ongoing care needs to support its settlement demands.⁵⁴ The lawyers “used [these materials] to pressure insurers and [Uber] into paying artificially inflated

settlements, despite the absence of any real need for the extensive future care described.”⁵⁵ Uber relied on the representations made by Attorney Simon, Simon & Simon, and Drs. Harvey, Piccillo, Burt, and Yarus in evaluating and resolving the claims against it.⁵⁶ In the cases Uber settled, it paid “substantially higher” amounts than it otherwise would have and, in some instances, made payments it would not have made at all.⁵⁷ The lawyers also dismissed Uber from approximately thirty cases involving Dr. Burt with similar claims after Uber sought subpoenas and depositions of Dr. Burt and Premier Pain & Rehab Center.⁵⁸

Uber and FedEx claim racketeering in addition to disputing the claims in state court.

Uber sued Marc Simon, Simon & Simon, Clifton Burt, Premier Pain & Rehab Center, Ethel Harvey, Daniel Piccillo, Philadelphia Spine Associates, and Lance Yarus under the Racketeer Influenced and Corrupt Organizations Act. It alleges these lawyers and doctors orchestrated a scheme to generate and litigate fraudulent personal injury claims in Philadelphia courts arising from motor vehicle accidents involving Uber and FedEx drivers.⁵⁹ Uber asserts multiple racketeering theories: an enterprise involving Attorney Simon, an enterprise involving the Simon Defendants and Dr. Burt, an association-in-fact enterprise involving the Simon Defendants, Dr. Burt, and Premier Pain & Rehab, and a conspiracy involving the trial lawyers and all named medical professionals.⁶⁰ It alleges injury to business and property arising from lawyers’ and doctors’ conduct, including expenses incurred in defending and resolving purportedly fraudulent personal injury claims.⁶¹ Uber further alleges the scheme increases its operating costs and affects pricing, service costs, and earnings.⁶² Uber seeks compensatory damages; prejudgment interest; attorney’s fees; punitive damages; equitable relief, including orders requiring the lawyers and doctors to divest interests in the alleged enterprises, imposing restrictions on future activities, and

dissolving or reorganizing the enterprises; and disgorgement, imposition of a constructive trust, and appointment of a monitor or receiver.⁶³

II. Analysis

The lawyers and doctors jointly move to dismiss arguing: (1) *Noerr-Pennington* bars these racketeering claims; (2) Uber lacks standing because it fails to plead proximate causation; (3) lawyers' litigation activities are not predicate acts and the doctors' alleged acts are not wire or mail fraud; (4) Uber fails to plead conduct of an enterprise; (5) *res judicata* bars Uber's claims; (6) *Rooker-Feldman* bars Uber's claims; and (7) Uber fails to state a conspiracy claim under the Act.⁶⁴

We first address the threshold legal defenses affecting the claims against all the lawyers and medical professionals. We then study the sufficiency of the pleaded racketeering claims. We deny the Motion to dismiss after finding no bar or immunity on all claims subject to proofs and later study and find Uber sufficiently pleaded racketeering activity. Discovery will aid us, and possibly the jury, to better evaluate if the trial lawyers' advocacy is based on a fraudulent scheme of predicate wire and mail fraud.

A. Uber pleads fraudulent activity excluded from *Noerr-Pennington* immunity.

The lawyers and doctors move to dismiss all claims arguing they are simply petitioning courts for redress arising from Uber's negligence.⁶⁵ The First Amendment Petition Clause protects their right to zealously advocate for their allegedly injured clients. The question is whether the lawyers and doctors contrived the extent of the injuries which then caused Uber to hire lawyers and pay settlement in some cases based on medical records it now believes are fraudulent across a repeated pattern of claims. The immunity, known as the *Noerr-Pennington* doctrine, may bar Uber's claims if all alleged conduct constitutes protected petitioning activity protected by the First Amendment right to petition and thus cannot support liability for racketeering.

The *Noerr-Pennington* doctrine “provides broad immunity from liability to those who petition the government, including administrative agencies and courts, for redress of their grievances.”⁶⁶ The doctrine originated in the context of antitrust litigation but our Court of Appeals has expanded it to other areas of the law.⁶⁷ Protection extends to citizens’ petitioning activities generally, including the filing of a lawsuit.⁶⁸ But it “does not immunize ‘every concerted effort that is genuinely intended to influence governmental action.’”⁶⁹ There must be “some sort of ‘valid petitioning activity’” and the scope of immunity “depends ‘on the source, context, and nature of the competitive restraint at issue.’”⁷⁰

Noerr-Pennington immunity also does not extend to petitioning activity which constitutes a “sham.”⁷¹ This exception applies where the litigation “is a mere sham to cover what is actually nothing more than an attempt to interfere directly with the business relationships of a competitor . . .”⁷² In other words, “[t]here is no immunity under *Noerr-Pennington* . . . where the petitioning is merely a ‘sham’ designed solely as a form of harassment.”⁷³ The inquiry “hinges on whether the petitioner sought to use the invocation of governmental process—as opposed to the result of that process—to harm competition. If the former, the petition is a sham, and no immunity attaches. If the latter, the petition is not a sham, and the sham exception does not apply.”⁷⁴

The lawyers contend “[t]he only ‘predicate acts’ allegedly committed by [them] are ‘fil[ing] a complaint and initiat[ing] a lawsuit’ and/or ‘caus[ing] said complaint to be served’” which is “undeniably protected petitioning activity.”⁷⁵ The doctors argue alleged pre-filing predicate acts are protected petitioning activity because Uber describes the medical records and reports as “litigation documents” which “appear to represent a litigation strategy essentially admitting the medical professionals prepare the records “in anticipation of petitioning activity” so

any “alleged ‘misrepresentations’ constitute ‘petitioning’ whether made before or after litigation is filed.”⁷⁶

The lawyers and doctors also argue the sham litigation exception to *Noerr-Pennington* does not apply. They emphasize the exception is “very narrow” and requires Uber to plead both objective and subjective baselessness.⁷⁷ They allege underlying lawsuits are not objectively baseless because many resulted in settlements or favorable outcomes and Uber fails to plead subjective baselessness because the lawsuits sought the ordinary goal of litigation—monetary recovery—and do not reflect misuse of the process.⁷⁸ The lawyers and medical professionals further argue Uber’s allegations of fraud cannot establish objective baselessness absent facts showing the misrepresentations “alter[ed] the ‘core’ of the negligence actions or otherwise deprive[d] them of their legitimacy.”⁷⁹ They argue alleged misrepresentations at most concern the extent of injury or damages and do not go to the “core” of the claims.⁸⁰

Uber counters argues the doctors’ treatment, referrals, and creation of medical records and reports are not petitioning activity and the lawyers’ directing and facilitating the fraud scheme likewise fall outside protected petitioning.⁸¹ Uber also emphasizes the First Amendment does not protect fraud making *Noerr-Pennington* inapplicable and the sham litigation exception otherwise applies.⁸²

1. *Noerr-Pennington* immunity does not extend to the alleged pre-filing conduct.

Let’s start with the obvious. The lawyers’ filing and serving complaints constitute classic petitioning activity and fall squarely within *Noerr-Pennington* immunity. They cannot be sued for racketeering for filing and serving complaints absent the sham exception for a pattern or practice of successive fraudulent filings undertaken to harass and extract settlement value through the process of litigation.

But we have much more. The dispute instead centers on the alleged pre-filing conduct—the lawyers’ direction to the doctors to create false medical records and reports and, in required return, the doctors’ alleged unnecessary treatment creating records furthering the fraud. We do not treat this conduct as petitioning activity merely because the lawyers later used the medical record in setting demands. We instead ask whether the pre-filing conduct is sufficiently “incidental” to protected petitioning to warrant immunity.

Noerr-Pennington immunity may apply “to activities ‘incidental’ to litigation, like sending ‘presuit letters’ to a would-be defendant that ‘threaten[] legal action and mak[e] legal representations.’”⁸³ But our Court of Appeals “has never opined on when conduct is ‘incidental’ enough to litigation to be covered by *Noerr-Pennington*, noting only that ‘prelitigation threat letters’ sent to a potential defendant might qualify.”⁸⁴ The scope of what qualifies as “incidental” remains unsettled.

Judge Bibas, sitting by designation a couple of months ago in the District of Delaware, declined to extend *Noerr-Pennington* immunity in an anti-competitive litigation context to “communications with third parties that do not threaten litigation” in *Montway LLC v. Navi Transport Services LLC*.⁸⁵ Montway reported a competitor to a private industry board for fraud and misconduct, ultimately “alert[ing the board] to the conduct giving rise to [its] claim [against the competitor] for trade secret misappropriation.”⁸⁶ The competitor then countersued Montway based on those communications and Montway asserted *Noerr-Pennington* immunity on the grounds its communications were “incidental” to its suit against the competitor.⁸⁷

Judge Bibas rejected this argument and drew a distinction between conduct directed to the government and communications with third parties.⁸⁸ He explained *Noerr-Pennington* protects petitioning activity and certain conduct closely tied or “incidental” to it because withholding

protection in such a context could burden access to the courts.⁸⁹ But this rationale does not extend to communications with third parties who are not themselves threatened with litigation.⁹⁰ Such conduct is not directed to the government and is “unrelated to [a party’s] ability to petition a court.”⁹¹ Judge Bibas reasoned where “Montway and [the third party] did not have a dispute,” allowing suit based on those communications “cannot burden Montway’s right to petition a court to remedy such a dispute.”⁹² Extending immunity to such conduct would “stretch[] the word ‘incidental’ beyond recognition.”⁹³

The lawyers and doctors argue Uber admits the challenged conduct falls squarely within protected petitioning activity by pleading the medical records are not merely “related to” litigation but are alleged to be “*essential* to” the underlying lawsuits themselves.⁹⁴ They contend the alleged prelitigation conduct and records contain the same substantive assertions later “asserted in a petition” and are therefore “sufficiently related” to the ability to petition.⁹⁵ Uber counters its allegation the lawyers’ direction to create and transmit false records is not protected petitioning because it is neither directed to the government nor involves communications with an opposing party threatened with litigation.⁹⁶ It maintains extending immunity to such conduct would stretch the “incidental” to petitioning doctrine “beyond recognition” by transforming a narrow protection for demand letters into sweeping immunity for the manufacture of false evidence.⁹⁷

The alleged conduct here differs in meaningful ways from the types of prelitigation activity traditionally afforded protection. It involves directing medical providers to render treatment and generate records, along with communications among alleged participants in a scheme. It does not involve communications directed to a court or opposing party. The conduct occurred outside the litigation process and involved third parties who were not themselves the subject of a threatened suit. This distinction bears on whether the conduct invokes the protections of the Petition Clause

at all. Extending *Noerr-Pennington* protection to conduct of this nature risks expanding the doctrine beyond its intended scope. If we deemed conduct undertaken to generate evidence or support a future claim “incidental” to petitioning solely because it later appears in a complaint, the doctrine could reach virtually all prelitigation activity undertaken by a party or its agents. Such an approach would blur the distinction between petitioning activity and antecedent conduct and allow immunity for a broad range of behavior simply because a lawsuit follows. As Judge Bibas cautioned, such an approach would stretch the concept of “incidental” conduct “beyond recognition.” We do not find *Noerr-Pennington* immunity extends to the pleaded pre-filing conduct.

We need not further define the precise boundary of *Noerr-Pennington* protection outside of the pleaded facts before us.

2. Uber plausibly pleads the sham litigation exception applies.

But even assuming the lawyers’ and doctors’ challenged pre-filing conduct constitutes protected petitioning activity or conduct sufficiently incidental to it, Uber plausibly pleads the sham litigation exception to *Noerr-Pennington* immunity applies to both the alleged filing and pre-filing conduct.

Our Court of Appeals instructs we must apply one of two tests to determine whether the litigation activity is a sham—the framework detailed in *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.* for a single petition and *California Motor Transportation Company v. Trucking Unlimited* for a series of petitions.⁹⁸ When an claimant alleges one sham petition, we apply a two-step test: (1) “the lawsuit must be objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits;” and (2) if so, “the baseless lawsuit conceals an attempt to interfere *directly* with the business relationships of a competitor . .

. through the use [of] the governmental *process*—as opposed to the *outcome* of that process—as an anticompetitive weapon.”⁹⁹ Step two addresses “the litigant’s subjective motivations.”¹⁰⁰ “Only if the underlying litigation is objectively meritless do[we] address the second factor.”¹⁰¹

“In contrast, a more flexible standard is appropriate when dealing with a pattern of petitioning.”¹⁰² The inquiry asks whether the series of lawsuits “were filed with or without regard to merit and for the purpose of using the governmental process (as opposed to the outcome of that process) to harm a market rival and restrain trade.”¹⁰³ A series of lawsuits “often involve[s] more complex fact sets and a greater risk of [] harm, but the reviewing court sits in a much better position to assess whether a defendant has *misused the governmental process* . . .”¹⁰⁴ “[T]he question is not whether any one [lawsuit] has merit—some may turn out to, just as a matter of chance—but whether they are brought pursuant to a policy of starting legal proceedings without regard to the merits and for the purpose of injuring a market rival.”¹⁰⁵ The “inquiry is prospective and asks whether the legal filings were made, ‘not out of a genuine interest in redressing grievances, but as part of a pattern or practice of successive filings undertaken essentially for purposes of harassment.’”¹⁰⁶

We must perform a holistic review when assessing whether a lawyer filed a series of without regard to merit.¹⁰⁷ Our holistic review “may include looking at the defendant’s filing success—i.e., win-loss percentage—as circumstantial evidence of the defendant’s subjective motivations” and “other evidence of bad-faith as well as the magnitude and nature of the collateral harm imposed on plaintiffs by defendants’ petitioning activity (e.g., abuses of the discovery process and interference with access to governmental agencies).”¹⁰⁸ “The question whether a petition is a sham is generally a question of fact for the jury.”¹⁰⁹

Uber argues the sham litigation exception applies “given [it has pleaded] a series of lawsuits without regard to the merits for the improper purpose of extracting out-of-court settlements.”¹¹⁰ It pleads the lawyers “go beyond their role as legal counsel” and “take an active role in directing” the doctors “to create fraudulent documents” which are then used to file lawsuits in the Philadelphia Court of Common Pleas seeking over \$50,000.¹¹¹ It alleges the lawyers identify claimants involved in motor vehicle accidents with minimal injuries or limited tort coverage and refer them to Drs. Burt, Harvey, and/or Piccillo. These providers then perform examinations and administer unnecessary or preselected procedures, generating fraudulent medical records which are subsequently provided to the lawyers. The lawyers then direct Dr. Yarus to review those records and prepare reports attributing the injuries to the accidents and projecting costly future care and then use these materials to support demand packages and litigation filings seeking substantial recoveries. Uber alleges the lawyers repeated this process across numerous claimants and cases over several years. “Each participant in the scheme acts with the understanding and agreement that their fraudulent medical records will be used as a basis to demand substantial settlements and assert sham claims in litigation.”¹¹²

Uber contends this concerted practice transforms otherwise marginal claims into “million-dollar-plus lawsuits” to drive inflated settlement demands.¹¹³ Uber further alleges when it sought discovery from Dr. Burt in underlying actions, the lawyers “quickly dismissed Uber from each of the then-pending nearly thirty cases involving [Dr.] Burt . . . so as to avoid discovery and conceal the scheme” while continuing to pursue those same actions against other defendants.¹¹⁴ Uber maintains these claims would not have been filed at all—or would have been resolved through no-fault processes or compulsory arbitration—absent the alleged fabrication of medical records.¹¹⁵

These allegations, if true, support a plausible inference the lawyers and doctors misused the governmental process and pursued a policy of starting legal proceedings without regard to merit. The dismissal of claims against Uber (seemingly the alleged primary tortfeasor) immediately following discovery requests permits the inference the lawyers did not intend the filings to adjudicate claims on the merits but to leverage the litigation process itself. Taken together, these allegations place in dispute whether the lawyers filed the cases not out of a genuine interest in redressing grievances, but as part of a pattern or practice of successive filings undertaken for purposes of harassment and to extract settlement value through the process of litigation. Uber plausibly alleges a pattern of litigation aimed at obtaining settlements rather than securing relief based on the underlying merits.

The lawyers and doctors rely on the two-step test applicable to a single petition although their arguments also invoke considerations relevant to a series of filings.¹¹⁶ We address those arguments to the extent they bear on whether the lawyers filed cases without regard to merit. The existence of settlements does not resolve the inquiry today.¹¹⁷ “[O]rdinarily, settlement on terms favorable to a plaintiff suggests a suit is not objectively baseless.”¹¹⁸ But we do not find it dispositive where a person plausibly alleges she settled because of factors independent of the merits, such as litigation costs or reliance on allegedly fabricated evidence.¹¹⁹ “Parties often settle litigation for a variety of reasons independent of the merits of the claims. . . . Even frivolous lawsuits can be very costly to defend and to take to trial, especially when plaintiffs, such as the defendants here, extensive resources.”¹²⁰ And “[e]ven if [a] settlement [is] favorable,” it may “not [be] dispositive” if “the record is clear that [the party] did not settle because it doubted its litigation position.”¹²¹ We are instructed to “only rule on the objective baselessness prong as a matter of law ‘[w]here there is no dispute over the predicate facts of the underlying [petitions].’”¹²² At this stage

without a developed record, we cannot conclude the lawyers filed objectively baseless lawsuits “in the sense that no *reasonable* litigant could *realistically* expect success on the merits” nor can we determine whether the lawyers filed the lawsuits without regard to merit.¹²³

The lawyers and doctors also argue the lawsuits cannot be subjectively baseless because the lawyers “are attempting to obtain the remedy they are seeking in court”—“financial recovery for their clients.”¹²⁴ The subjective prong turns on the litigant’s “subjective motivation, not its subjective belief about the merits of its claims.”¹²⁵ The inquiry asks “whether the actual motivation is to dragoon the ‘governmental process’ itself into use as a competitive tool.”¹²⁶ “[T]his often means examining ‘evidence of the suit’s *economic* viability,’” including whether the litigant “was indifferent” to the outcome on the merits or sought to obtain the collateral advantages the litigation process affords.¹²⁷ We again need not resolve whether the lawyers and doctors acted with such a purpose at this stage. Uber plausibly pleads the lawyers filed the cases without regard to merit as to the amount of damages claimed. The lawyers and doctors’ subjective motivations render the litigation a sham presents a fact question not appropriate for our decision today.¹²⁸

3. Uber pleads facts allowing us to plausibly infer the fraudulent misrepresentation exception to *Noerr-Pennington*.

The lawyers and doctors further argue the alleged fraudulent misrepresentations cannot trigger the sham exception because they do not “infect the core” of the underlying claims.¹²⁹ They contend the alleged misrepresentations at most inflate the extent of injury but do not alter the negligence theory underlying the claims or deprive the litigation of legitimacy.¹³⁰ Uber counters “the First Amendment does not protect fraud” and “the petitioning ‘protection afforded by *Noerr-Pennington* is no more absolute or extensive than that provided by other First Amendment guarantees.”¹³¹ It further emphasizes our Court of Appeals has not addressed whether fraudulent conduct in litigation falls outside *Noerr-Pennington* protection outside the antitrust context.¹³²

Our Court of Appeals has not recognized a standalone “fraudulent misrepresentation” exception to *Noerr-Pennington* immunity but “recognized that a party’s knowing fraud or intentional misrepresentation may be sufficient to trigger the sham exception.”¹³³ It explained “[i]f the alleged misrepresented facts do not infect the core of [the] claim and the government’s resulting actions, then the petition had an objective basis and will receive *Noerr-Pennington* immunity.”¹³⁴ But “a *material* misrepresentation that affects the very core of a litigant’s [] case will preclude *Noerr-Pennington* immunity, [though] not every misrepresentation is material to the question of whether a petition . . . had an objective basis.”¹³⁵ “This exception is based on the idea that a party does not have a First Amendment right to misrepresent material facts while petitioning for government action during a [] proceeding.”¹³⁶

Uber plausibly alleges material misrepresentations as to the amount of damages—including whether to even bring the case—affected the core of the underlying claims. It alleges the lawyers and doctors did not merely exaggerate the severity of injuries but instead directed the creation of false medical records and reports attributing injuries to the accidents and prescribing unnecessary or preselected procedures. The lawyers then used fraudulent records to file lawsuits, support demand packages, and project costly future care. Uber argues these alleged misrepresentations concern the claims, including the existence, cause, and medical necessity of the claimed injuries, rather than the extent of damages.¹³⁷

We also find the facts reviewed by our Court of Appeals in *In re Merck Mumps Vaccine Antitrust Litigation* distinguishable. Our Court of Appeals rejected a misrepresentation exception in the antitrust context absent an allegation of “injury from the process at all” and failed to show the invocation of governmental process itself caused harm.¹³⁸ Uber, by contrast, alleges injury from the process itself—the use of allegedly fabricated evidence to file and maintain a case to

extract settlements. This case also arises at the pleading stage not on summary judgment with a developed record as presented in *In re Merck Mumps Vaccine*.

Uber's extensive allegations suffice to place in dispute whether the alleged misrepresentations "infect the core" of the underlying claims at this stage.

4. We are not persuaded by the reasoning in *Ford*.

The lawyers and doctors largely ask us to wholesale adopt Judge Court's reasoning as to a wider scope of petitioning activity in *Ford Motor Company v. Knight Law Group*.¹³⁹ We are not persuaded to apply her reasoning today. Ford sued lawyers who prosecuted California Lemon Law cases against it, alleging they created inflated billing records and used those records in fee petitions after prevailing or resolving the underlying cases.¹⁴⁰ Ford alleged the lawyers billed impossible or inflated time entries and used the fee process to extract inflated payments.¹⁴¹

Judge Court found the challenged conduct constituted petitioning activity because the lawyers "prepared the allegedly false billing statements both based on litigation activity and in anticipation of submitting fee petitions."¹⁴² She reasoned protected petitioning activity includes "bringing a lawsuit, defending a lawsuit brought by another, and filing papers with a court" and also includes documents "in which plaintiffs or defendants make representations and present arguments to support their request that the court do or not do something."¹⁴³ Judge Court found the challenged conduct "directly connected to litigation" and "incidental to the prosecution of the suit" because the alleged mail and wire fraud consisted of billing records and fee petitions submitted in identified cases.¹⁴⁴

Judge Court also rejected Ford's effort to characterize the case as one about billing fraud rather than litigation activity. She explained Ford's theory "ignore[d] the activities for which Defendants were billing: litigation" and the fact the lawyers submitted fee petitions to courts in

nearly all referenced cases.¹⁴⁵ Unlike cases involving fraud before any relevant proceeding began, the billing in *Ford* “stemmed from ongoing litigation or preparation for litigation.”¹⁴⁶

Judge Court also found the sham exception did not apply. She first concluded neither the Lemon Law suits nor the fee petitions were objectively baseless because the lawyers and their clients had prevailed in the underlying litigation and fee proceedings and explained “[a] winning lawsuit is by definition a reasonable effort at petitioning for redress and therefore not a sham.”¹⁴⁷ She then rejected Ford’s series-of-petitions theory because Ford had not plausibly shown the lawyers filed cases without a genuine interest in redressing grievances or as a pattern of harassment.¹⁴⁸ She distinguished a case in our Court of Appeals where the tactics suggested delay rather than redress; by contrast, the complaint in *Ford* alleged the lawyers had an interest in prevailing in the Lemon Law suits and fee petitions.¹⁴⁹ Judge Court lastly rejected Ford’s fraud-based sham theory because the alleged fee inflation did not deprive the underlying Lemon Law litigation or fee proceedings of legitimacy.¹⁵⁰ Ford did not allege the inflated fee petitions undermined the clients’ substantive Lemon Law claims, and even as to fees, it alleged inflated fee requests rather than no entitlement to fees at all.¹⁵¹ Judge Court concluded the alleged fictitious work did not deprive “the entire fee petition process—let alone the entire lawsuit—of legitimacy.”¹⁵²

The lawyers and doctors before us almost wholly rely on *Ford* to argue the challenged medical records and reports constitute protected petitioning activity because they allegedly prepared them in anticipation of litigation later used to support court filings and settlement demands.¹⁵³ They analogize the medical records to the billing records in *Ford*, which Judge Court found protected because the lawyers prepared them based on litigation activity and “in anticipation of submitting [the] fee petitions.”¹⁵⁴ The lawyers and doctors emphasize Uber’s own allegations

describing the records as documents created to support lawsuits and demand substantial settlements.¹⁵⁵ They argue the alleged misrepresentations are “fraudulent” only because the lawyers later used them for litigation purposes against Uber and therefore the same alleged misrepresentations constitute petitioning activity whether made before or after litigation began.¹⁵⁶ The lawyers and doctors before us further invoke Judge Court’s fraud-based sham analysis, arguing the alleged misrepresentations at most inflated the claimants’ injuries or damages and did not deprive the underlying negligence claims of legitimacy.¹⁵⁷

But we face materially different facts than Judge Court. Her analysis in *Ford* involved lawyers’ billing records and fee petitions arising from litigation work in Lemon Law cases after the clients prevailed or resolved their claims. The challenged conduct involved lawyers seeking fees through court filings. It did not involve prelitigation communications with third parties or the creation of non-litigation records by medical providers. The alleged fraud concerned payment for legal work after the clients had claims capable of adjudication on their own merits.

Uber alleges a different kind of conduct. It alleges the lawyers and doctors manufactured medical evidence needed to create, support, and maintain the personal injury claims in the first instance. It alleges the lawsuits depended on the challenged conduct because the medical records supplied the serious-injury, causation, treatment, and future-care predicates used to avoid ordinary resolution and extract inflated settlements.

This core fact distinction is critical to the sham exception analysis. In *Ford*, the alleged fee inflation did not undermine the clients’ substantive Lemon Law claims or show the lawyers lacked entitlement to any fees. Uber distinctively alleges the misrepresentations went to the factual predicate of the underlying negligence claims themselves: whether the claimants suffered serious accident-related injuries, whether the treatment was medically necessary, whether future care

would be required, and whether the claims belonged in litigation rather than no-fault resolution or compulsory arbitration. If proven, those alleged misrepresentations could deprive the litigation of legitimacy in a way inflated fee petitions in otherwise viable Lemon Law cases did not. We do not read *Ford* to require *Noerr–Pennington* immunity here.

B. Res judicata does not bar Uber’s claims.

We are also mindful we are now reviewing the merits of resolutions in some but not all of the pleaded Philadelphia court cases. The lawyers and doctors argue the doctrine of res judicata bars Uber’s claims arising from concluded litigations involving the same underlying events, involve the same parties or their privies, and could have been raised in those earlier proceedings.¹⁵⁸ Uber counters res judicata does not apply because there is no final judgment in several of the underlying actions, those lawyers and doctors were not parties to those cases and could only have been joined through permissive impleader, and this action arises from a distinct racketeering scheme rather than the personal injury claims litigated in state court.¹⁵⁹ We disagree with the lawyers and doctors.

Res judicata bars a claim where there has been “(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action.”¹⁶⁰ Our Court of Appeals “disavow[s] attempts to create a simple test for determining what constitutes a cause of action for res judicata purposes.”¹⁶¹ We are to focus on the “essential similarity of the underlying events giving rise to the various legal claims” and relevant factors include “(1) whether the acts complained of were the same; (2) whether the material facts alleged in each suit were the same; and (3) whether the witnesses and documentation required to prove such allegations were the same.”¹⁶²

This action does not arise from the same cause of action as the underlying personal injury cases. The underlying lawsuits concerned liability for injuries arising from motor vehicle accidents. This case concerns an alleged racketeering scheme involving the creation and use of fraudulent medical records and reports to generate and inflate claims. Although the underlying events provide factual context, the acts complained of, the material facts alleged, and the proof required differ in meaningful ways. The racketeering claims turn on the existence of an alleged scheme, the roles of multiple participants, and the use of interstate mail and wires, none of which resolved in the underlying personal injury actions. Res judicata does not apply.

C. *Rooker-Feldman* doctrine does not bar Uber’s claims.

The lawyers and doctors argue the *Rooker-Feldman* doctrine deprives us of subject matter jurisdiction because Uber “complain[s] of injuries caused by state-court judgments” and seeks relief which “requires setting aside the final judgments and undoing the settlements that are now part of final judgments.”¹⁶³ Uber counters *Rooker-Feldman* does not apply because it is not a state court “loser” and does not seek to overturn a state-court judgment but instead challenges an independent fraud scheme.¹⁶⁴

The *Rooker-Feldman* doctrine instructs “federal district courts lack jurisdiction over suits that are essentially appeals from state-court judgments.”¹⁶⁵ *Rooker-Feldman* applies where: “(1) the federal plaintiff lost in state court; (2) the plaintiff ‘complains of injuries caused by the state-court judgments’; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments.”¹⁶⁶ But “the federal court has jurisdiction as long as the federal plaintiff presents some independent claim, even if that claim denies a legal conclusion reached by the state court.”¹⁶⁷ “In other words, if the federal court’s review does not concern the bona fides of the prior judgment, the federal court is not conducting

prohibited appellate review even if the claim for relief if granted would as a practical matter undermine a valid state court order.”¹⁶⁸

Uber does not invite us to review or reject a state-court judgment. Uber instead challenges the lawyers’ and doctors’ conduct in pursuing and resolving the underlying actions and seeks damages for an alleged fraud scheme. We may adjudicate these claims without overturning a state-court judgment even if relief may as a practical matter undermine those outcomes.¹⁶⁹ Prong four is not met. *Rooker-Feldman* does not apply.

D. Uber sufficiently pleads racketeering claims.

The lawyers and doctors next turn to challenge the factual and legal sufficiency of Uber’s amended and exhaustive detailed allegations. They argue Uber did not plead predicate racketeering acts, the conduct of an enterprise, proximate causation of their alleged injuries, or a racketeering conspiracy. Uber responds it specifically pleads extensive facts meeting the applicable pleading standards.

Congress through the Act prohibits “any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity. . . .”¹⁷⁰ An injured party must plead “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity, plus (5) an injury to business or property, and (6) the racketeering activity must have been the ‘but for’ cause as well as the proximate cause of the injury” to establish civil liability.¹⁷¹ A “pattern of racketeering activity” requires “at least two” predicate racketeering acts.¹⁷² Predicate acts include mail fraud and wire fraud.¹⁷³ Congress also makes it “unlawful for any person to conspire to violate any of the provisions” of the Act.¹⁷⁴

“[E]ach element of a conspiracy ‘may [be] prove[n] . . . solely through circumstantial evidence.’”¹⁷⁵

Uber pleads ample facts, mindful of our required deference to their allegations at this stage, to allow us to infer a plausible basis for their varied racketeering claims.

1. Uber pleads predicate racketeering acts.

The lawyers and doctors argue Uber fails to plead the required predicate acts for a racketeering claim because fraudulent litigation activity cannot serve as a predicate offense and Uber otherwise does not satisfy the pleading standards under Rules 8 and 9.¹⁷⁶ Uber responds the alleged racketeering conduct is not confined to litigation filings but includes the creation and transmission of false records and maintains its allegations plausibly plead mail and wire fraud with particularity.¹⁷⁷

We begin with whether Uber plausibly pleads predicate acts of mail and wire fraud. “Mail or wire fraud consists of (1) a scheme to defraud, (2) use of the mail or interstate wires to further that scheme, and (3) fraudulent intent.”¹⁷⁸ Fraud may be “measured in a particular case by determining whether the scheme demonstrated a departure from fundamental honesty, moral uprightness, or fair play and candid dealings in the general life of the community.”¹⁷⁹ “A scheme to defraud may be adequately pled by alleging ‘some sort of fraudulent misrepresentation or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension.’”¹⁸⁰

Allegations of racketeering activity based on mail or wire fraud as the predicate act “are subject to the heightened pleading standard set forth in Federal Rule of Civil Procedure 9(b), which states that ‘a party must state with particularity the circumstances constituting fraud.’”¹⁸¹ The Rule 9(b) requirements “may be satisfied if the complaint describes the circumstances of the alleged fraud with ‘precise allegations of date, time, or place’ *or* by using some means of ‘injecting

precision and some measure of substantiation into their allegations of fraud.”¹⁸² “Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally” and we may “rely on circumstantial evidence to infer a defendant’s knowledge.”¹⁸³

The lawyers and doctors argue Uber fails to sufficiently plead mail and wire fraud “because there are no allegations of *when* each Defendant used mailings or wires to transmit their allegedly fraudulent documents” and the allegations of fraudulent intent are “entirely conclusory.”¹⁸⁴ Uber responds it pleads the participants, the nature of the allegedly fraudulent records, and the manner in which those records were created, transmitted, and used and Rule 9(b) does not require the precise date and time of every communication.¹⁸⁵

We disagree with the lawyers and doctors. Uber’s allegations readily exceed Rule 9(b)’s pleading standard and we need not recite them in full. It alleges the lawyers operated a “conveyor belt” referring claimants to Drs. Harvey, Piccillo, and/or Burt and directing these providers to generate fraudulent medical records reflecting serious and permanent injuries.¹⁸⁶ It further alleges the lawyers directed Dr. Yarus to prepare reports based on the fraudulent records attributing those injuries to the underlying incidents and recommending future treatment.¹⁸⁷ Uber pleads numerous specific examples identifying the participants in the scheme, the nature of the records, each professional’s role, and the mechanism by which the doctors transmitted records through interstate wires and incorporated those records into demands and litigation filings.¹⁸⁸ It further alleges this conduct occurred repeatedly over a defined period, including dozens of lawsuits filed in 2022 through 2024 based on those records.¹⁸⁹ These allegations provide the requisite precision and provide sufficient substantiation to satisfy Rule 9(b)’s particularity requirement.

We are also not persuaded by the lawyers’ and doctors’ arguments claiming the fraud allegations are conclusory. Mail and wire fraud “require proof of specific intent.”¹⁹⁰ Specific intent

“may be found from a material misstatement of fact made with reckless disregard for the truth.”¹⁹¹ Rule 9(b) permits intent to be alleged generally. Uber’s pleaded facts viewed in their totality support a reasonable inference the lawyers and doctors acted with fraudulent intent, or at minimum reckless disregard for the truth, in using the mails and interstate wires to transmit false or misleading medical documents in furtherance of the alleged scheme. These allegations are sufficient at this stage to plausibly plead fraudulent intent.

We next address the lawyers’ and doctors’ argument the pleaded litigation activity cannot be a predicate act. They rely on a decision of our Court of Appeals almost four years ago in *Applebaum v. Fabian* affirming dismissal of a predicate act “premised on . . . alleged misrepresentations throughout state court proceedings,” concluding such allegations do not state a claim because “it is well established that fraudulent litigation activity ‘cannot act as a predicate offense for a civil-[racketeering] claim.’”¹⁹² But we do not read this one-sentence disposition to impose a categorical bar on all claims involving litigation-related conduct. The underlying allegations in *Applebaum* consisted of assertions of “litigation fraud” and perjury tied to filings in a single probate dispute.¹⁹³ The allegedly injured party did not identify a cognizable predicate offense nor did she plead conduct constituting mail or wire fraud or facts supporting a broader scheme to defraud.¹⁹⁴

So, in this challenge to the pleading, the lawyers and doctors characterize all of their alleged conduct as litigation activity and argue the only predicate acts attributed to the lawyers are the filing and serving complaints and, as to the doctors, the “preparation of medical reports in anticipation of and used in those litigations.”¹⁹⁵ We agree (as we did in reviewing *Noerr-Pennington* immunity earlier) the lawyers filing and serving complaints constitutes litigation activity. We also agree the filing of complaints alone cannot support a racketeering predicate act.

But Uber contends its claims do not rest solely on litigation activity but instead arise from a broader fraudulent scheme involving predicate acts of mail and wire fraud in the creation and transmission of false medical and billing records.¹⁹⁶ It alleges the lawyers “orchestrated and directed” the doctors to generate the false records and arranged for them to be transmitted through interstate mail and wires and their subsequent use in demand letters and litigation, and the doctors knowingly created and transmitted those records to further the scheme.¹⁹⁷

Our Court of Appeals in *Applebaum* did not resolve this dispute. It does not address whether alleged acts of mail and wire fraud may constitute predicate acts where an allegedly injured party pleads a coordinated scheme extending beyond the litigation itself. Nor does it hold conduct otherwise qualifying as mail or wire fraud cannot serve as a predicate act because it is committed in connection with litigation. Neither party identifies, and we have not identified, precedential guidance from our Court of Appeals addressing this issue.¹⁹⁸

We then looked to the out-of-Circuit cases cited by our Court of Appeals in *Applebaum*. We do not find *Snow Ingredients, Inc. v. SnowWizard, Inc.* analogous. The plaintiff in *Snow Ingredients* alleged a series of obstructive acts across multiple proceedings but did not plead conduct constituting a predicate offense.¹⁹⁹ The Court of Appeals for the Fifth Circuit affirmed dismissal because the plaintiff did not allege “actual criminal activity” as required to state a racketeering claim.²⁰⁰ It relied in part on its earlier decision in *St. Germain v. Howard*, where the plaintiff alleged mail and wire fraud but conceded the challenged conduct did not satisfy the criminal elements of those offenses and instead amounted only to violations of professional obligations.²⁰¹ Here, by contrast, Uber sufficiently pleads conduct which, if proven, satisfies the elements of mail and wire fraud rather than merely improper litigation activity or violations of professional obligations.

The Court of Appeals in *Snow Ingredients, Inc.* also cited a distinguishable district court decision permitting a racketeering claim to proceed. Judge Sullivan in *Feld Entertainment v. American Society for the Prevention of Cruelty to Animals* recognized a critical distinction: “courts have refused to allow ‘litigation activities’ such as filing fraudulent documents or engaging in baseless litigation to serve as predicate acts for [racketeering], but only in circumstances where such acts constitute ‘the only allegedly fraudulent conduct.’”²⁰² “On the other hand, where ‘additional allegations of extortion or some other pattern of racketeering activity’ are involved, courts ‘have found that alleged mail and wire fraud violations arising out of malicious prosecution or abuse of process could be [racketeering] predicate acts.’”²⁰³ Judge Sullivan allowed the claim to proceed because the allegations were “not limited to claims that defendants filed false documents with the Court or otherwise engaged in frivolous and harassing litigation; they claim the entire lawsuit was based on bribery of the lead plaintiff and witness.”²⁰⁴ This distinction underscores the relevant inquiry turns on whether our colleagues reviewed alleged additional racketeering conduct beyond litigation activity alone.

Our Court of Appeals in *Applebaum* also cited *Deck v. Engineered Laminates* and *Raney v. Allstate Insurance Company* but we do not find the analysis in those cases persuasive today.²⁰⁵ Both cases involved racketeering claims premised on extortion theories arising from litigation conduct. The Court of Appeals for the Tenth Circuit in *Deck* found bad-faith or fraudulent litigation does not constitute “wrongful” conduct under the Hobbs Act and therefore cannot support an extortion-based predicate.²⁰⁶ But it separately recognized adequately pleaded allegations of mail and wire fraud based on misrepresentations in a settlement agreement.²⁰⁷ The Court of Appeals for the Eleventh Circuit in *Raney* likewise rejected an extortion predicate because “neither the

threat to litigate nor the fabrication of evidence behind the lawsuit made the action ‘wrongful’ within the meaning of’ the Hobbs Act.²⁰⁸

We find *Kim v. Kimm* and related Second Circuit authority most instructive. The alleged scheme in *Kim* arose from a single lawsuit supported by allegedly false filings with no broader pattern of fraudulent activity leading the Court of Appeals to hold “frivolous, fraudulent, or baseless litigation activities—*without more*—cannot constitute a [racketeering] predicate act.”²⁰⁹ It “decline[d] to reach the issue of whether all [racketeering] actions based on litigation activity are categorically meritless.”²¹⁰ It also emphasized “compelling policy arguments” against treating litigation activity as racketeering predicates, citing risks of retaliatory suits, disruption of existing sanctions regimes, comity concerns, and chilling access to the courts.²¹¹

Our colleagues applying *Kim* “have generally required that, for a litigation activity to serve as a [racketeering] predicate act, a plaintiff allege facts beyond that a lawsuit was brought by legitimate means. Rather, a complaint must allege more concerted abuse of the legal system.”²¹² For example, Judge McAvoy found a plausible racketeering claim where the plaintiff alleged a pattern of mail and wire fraud supporting “a large-scale fraud scheme” and the “predicate acts [were] not limited to fraudulent activities in [an individual case], but rather include those activities necessary to support the massive fraud scheme he contends existed.”²¹³ And the Court of Appeals has since reinforced this distinction, explaining litigation “involving hundreds of baseless state-court proceedings that are part of a massive fraudulent scheme [] may itself further a [racketeering] violation, which . . . consist[ed] of alleged repeated violations of the federal mail fraud statute,” while declining to decide “whether the state-court proceedings . . . constitute predicate acts.”²¹⁴ It found “[t]he instant action is distinguishable from *Kim*” because the plaintiff did not “contend that the state-court proceedings [were] predicate acts . . . but instead that they

help[ed] further the [racketeering] violation, which consist[ed] of a pattern of racketeering activity under the mail fraud statute through other fraudulent activities alleged in the complaint.”²¹⁵ “In other words, the issue is not whether the state-court proceedings are *themselves* predicate acts, but rather that they are allegedly designed to perpetuate and monetize the [racketeering] scheme.”²¹⁶

Uber alleges a scheme extending beyond litigation activity alone. This is not a case involving a single lawsuit supported by allegedly false filings. Accepting the pleaded facts as true, Uber alleges a coordinated, multi-actor scheme spanning dozens of lawsuits over several years, supported by the repeated creation and transmission of materially false medical and billing records. The alleged conduct includes directing claimant referrals, controlling medical treatment, and generating standardized or fabricated records for use across numerous claims. These allegations describe coordinated conduct occurring before, during, and outside litigation. Uber alleges the filing and serving of lawsuits serve to further and monetize a scheme predicated on independently actionable conduct—repeated use of the mails and interstate wires to transmit fraudulent records—making litigation one component of the scheme, not its entirety. These allegations plausibly describe “more concerted abuse of the legal system” rather than isolated litigation misconduct.

The Court of Appeals’s policy concerns underlying *Kim* are not implicated in these allegations. Recognizing liability here does not risk transforming every unsuccessful lawsuit into a racketeering claim or a retaliatory action. Nor does it displace existing sanctions regimes governing ordinary litigation misconduct. Uber alleges a systemic mass scheme across numerous cases and actors, for which case-by-case sanctions would not provide a meaningful remedy.

The lawyers’ and doctors’ characterization of their alleged conduct as mere litigation activity does not allow us to dismiss Uber’s claim at this stage. Uber plausibly alleges the requisite predicate acts to support a racketeering claim.

2. Uber sufficiently pleads the enterprises necessary for racketeering.

The lawyers and doctors argue Uber does not plead facts allowing us to plausibly infer the existence of a racketeering enterprise. They contend the alleged “Simon & Simon” and “Premier Pain & Rehab Center” enterprises “are not [racketeering] enterprises because those entities are themselves ‘persons’ alleged to have conducted the racketeering activity” and liability therefore fails as a matter of law.²¹⁷ They further argue the alleged association-in-fact lacks the structure, continuity, and separateness required to constitute a racketeering enterprise.²¹⁸

An “enterprise” includes “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.”²¹⁹ “[W]hen the enterprise asserted is a legal identity, such as ‘a legitimate business or organization . . . , the need to allege and prove the existence of enterprise structure can be met without great difficulty, since all aspects of the enterprise element . . . are satisfied by the mere proof that the entity does in fact have a legal existence.’”²²⁰ “An association-in-fact enterprise may be pled by showing: ‘(i) that there exists an ongoing organization, formal or informal; (ii) that the various associates of the organization function as a continuing unit; and (iii) that the organization has an existence separate and apart from the alleged pattern of racketeering activity.’”²²¹ “The existence of the enterprise may be inferred ‘from the evidence showing that persons associated with the enterprise engaged in a pattern of racketeering activity.’”²²²

“[T]o establish liability under [the Act] one must allege and prove the existence of two distinct entities: (1) a ‘person’; and (2) an ‘enterprise’ that is not simply the same ‘person’ referred to by a different name.”²²³ Uber alleges Simon & Simon is the “enterprise” and Attorney Simon is the “person” who conducted its affairs through a pattern of racketeering activity in Count I.²²⁴ Uber likewise alleges in Count II Premier Pain & Rehab is the “enterprise” and Attorney Simon,

Dr. Burt, and Simon & Simon conducted its affairs.²²⁵ These theories satisfy the distinctness requirement because the alleged enterprises are legal entities separate from the individuals and entities alleged to have conducted their affairs.²²⁶ Uber may also “allege alternative enterprise theories in [its] complaint without limit.”²²⁷

Uber also sufficiently alleges an association-in-fact enterprise conducted by Attorney Simon, Simon & Simon, Dr. Burt, and Premier Pain & Rehab. An association-in-fact enterprise “must have at least three structural features: (i) a purpose, (ii) relationships among those associated with the enterprise, and (iii) longevity sufficient to permit these associates to pursue the enterprise’s purpose.”²²⁸ The enterprise need not possess a formal hierarchy, chain of command, fixed roles, regular meetings, or other formal structural features traditionally associated with an organization.²²⁹ Uber asserts it pleads each of these elements and we agree. It alleges (1) a shared purpose—manufacturing fraudulent evidence of accident-induced serious injuries to enable [the lawyers] to extract artificially inflated settlements;” (2) relationships among the relevant defendants, including describing how they communicate and coordinate;” and, (3) “longevity, describing the association’s conduct back to 2020.”²³⁰ These allegations plausibly plead an enterprise functioning as a continuing unit and involving “interpersonal relationships and a common interest.”²³¹

The lawyers’ and doctors’ characterization of the allegations as mere referral relationships or parallel conduct does not warrant dismissal at this stage. Viewing the pleaded facts in the light most favorable to Uber, it alleges more than independent actors pursuing their own business interests. It alleges repeated coordination among the same participants in furtherance of a shared objective, including recurring referrals to Dr. Burt, Dr. Burt’s standardized reporting practices, and repeated use of the same procedures and fraudulent records to support claims. Nor does the

involvement of additional nonparty actors defeat the existence of an enterprise.²³² We are likewise not persuaded by the lawyers' and doctors' separateness argument. An association-in-fact enterprise need not possess a "purpose or economic significance beyond or independent of the group's pattern of racketeering activity."²³³ Uber plausibly alleges three racketeering enterprises.

3. Uber sufficiently pleads the proximate cause necessary for standing.

The lawyers and doctors also argue Uber lacks standing because the alleged racketeering activity did not proximately cause its asserted injuries.²³⁴ They contend the alleged predicate acts of mail and wire fraud require some form of reliance but Uber "defied" the alleged misrepresentations rather than relied on them.²³⁵ They argue any settlement-related injury fails because the settlement agreements allegedly contain fraud-insulating integration clauses, Uber does not plausibly allege it paid the settlements, and Uber settled with knowledge of the facts it now calls fraudulent.²³⁶ And the lawyers and doctors finally assert damages cannot be apportioned without speculation, insurers or drivers are more immediate victims better positioned to sue, and no third-party reliance plausibly caused Uber's harm.²³⁷

"Any person *injured in his business or property* by reason of a violation of [the Act] may sue."²³⁸ "The meaning of the relevant phrase is therefore straightforward: A plaintiff has been 'injured in his business or property' if his business or property has been harmed or damaged."²³⁹ The Act "requires nothing more."²⁴⁰ "In order to have standing to litigate a civil [racketeering] claim, a plaintiff must show that [he] suffered an injury to [his] business or property and that the injury was proximately caused by the defendant's racketeering activities."²⁴¹ Proximate cause requires a showing there is "some direct relation between the injury asserted and the injurious conduct alleged."²⁴² "The focus [of proximate causation] is on the directness of the relationship between the conduct and the harm" rather than "the concept of foreseeability."²⁴³ We are to

consider three factors when determining proximate cause: “(1) the directness of the injury, (2) the difficulty of apportioning damages, and (3) whether there are direct victims of the alleged violation that could better vindicate the policies underlying [the Act].”²⁴⁴

We are not persuaded by the lawyers’ and doctors’ threshold reliance argument. The proximate causation element of a racketeering claim “[do] not necessitate first-party reliance on the alleged misrepresentations.”²⁴⁵ We also find Uber plausibly pleads proximate causation. It alleges the lawyers and doctors created and transmitted false records and reports for the purpose of inflating personal-injury claims against it. It further alleges the lawyers and doctors used those materials to create litigation leverage, increase the apparent value of the underlying claims, cause Uber to incur defense costs, and induce inflated settlements. The pleaded injuries flow directly from the alleged scheme. It alleges the lawyers and doctors intended it to be the target of the scheme and paid defense costs and settlement amounts it would not have paid, or would have paid in lower amounts, absent the lawyers’ and doctors’ alleged fraud.

The lawyers’ and doctors’ settlement-agreement, knowledge, apportionment, insurer, and third-party-reliance arguments do not defeat proximate cause at the pleading stage. Their settlement arguments ask us to resolve fact questions about what Uber knew, why it settled, who paid, and what effect the settlement terms have on causation. Their apportionment argument likewise depends on a damages record not yet developed. Uber need only plausibly allege a direct relation between the predicate acts and its injury. It has done so by alleging the lawyers and doctors manufactured and transmitted false medical materials to inflate claims against Uber and thereby caused Uber to incur legal fees and inflated settlement costs. We decline to dismiss for lack of standing based on fact issues on proximate causation.

4. Uber pleads a conspiracy.

The lawyers and doctors argue Uber does not plead facts allowing us to plausibly infer a racketeering conspiracy claim. They first argue the conspiracy claim fails because the substantive racketeering claims fail.²⁴⁶ This derivative argument is not persuasive because Uber adequately pleads substantive racketeering claims.²⁴⁷ The lawyers and doctors further argue Uber does not plausibly allege facts showing knowledge of the alleged racketeering scheme or an agreement to facilitate it.²⁴⁸ They contend the doctors rendered lawful professional services, there are “no allegations plausibly demonstrating that the Simon Defendants knew information in any of the” doctors’ records and reports “were false,” and the allegations amount to nothing more than parallel conduct and conclusory assertions of agreement unsupported by facts plausibly demonstrating coordinated action or a shared conspiratorial objective.²⁴⁹

An injured party must plead “(1) agreement to commit the predicate acts of fraud and (2) knowledge that those acts were a part of a pattern of racketeering activity conducted in such a way as to violate” the Act to state a conspiracy claim.²⁵⁰ “There is no requirement of an overt act and, thus, ‘a defendant may be held liable for conspiracy to violat[e the Act] if he knowingly agrees to facilitate a scheme which includes the operation or management of a [racketeering] enterprise.’”²⁵¹

Uber plausibly alleges the doctors knew the lawyers “le[d] a corrupt enterprise to fraudulently manufacture evidence of non-existent serious injuries that could be used to extract artificially inflated settlements, and that they agreed to facilitate the scheme.”²⁵² For example: the lawyers repeatedly referred claimants to the same medical providers over several years—Drs. Harvey, Piccillo, and Burt; the doctors generated records and reports used to support serious-injury claims; Dr. Yarus prepared causation reports and future care projections based on those materials; and the resulting records and reports were repeatedly transmitted and used in demand packages

and litigation filings. These allegations plausibly suggest coordinated participation in a shared scheme rather than isolated professional services or unrelated parallel conduct.

Uber's allegations also support a plausible inference of knowledge. Uber alleges the records and reports followed recurring templates across numerous clients, attributed serious accident-related injuries despite allegedly minimal injuries, documented unnecessary or unperformed treatment, and projected false extensive future care repeatedly over several years. These alleged patterns, together with the repeated involvement of the same participants, support a reasonable inference the lawyers and doctors understood their conduct played a central part of an ongoing scheme rather than a series of isolated transactions.

The lawyers' and doctors' contrary arguments largely ask us to draw competing factual inferences from the pleadings and materials outside the amended Complaint. Whether the lawyers and doctors acted innocently, exercised legitimate professional judgment, or lacked awareness of the alleged scheme presents fact disputes not appropriately resolved today. Drawing all reasonable inferences in Uber's favor, Uber plausibly pleads a racketeering conspiracy claim.

III. Conclusion

We find no basis to dismiss Uber and FedEx's racketeering claims based upon *res judicata* or *Rooker-Feldman*. Immunity under the *Noerr-Pennington* doctrine designed to protect the right to petition the courts poses an interesting issue addressed by our colleagues now outside of the historical antitrust context from which it arose. We recognize petitioning activities are generally entitled to immunity under the Petition Clause as we do not want to chill rights to seek remedies. But this immunity to freely petition has limits like most First Amendment rights. Not all conduct leading to a lawsuit can be litigation activity with immunity. And a lawyer and his experts cannot create false documents under the guise of the Petition Clause and then be immune for their fraud.

The question before us – and eventually to be resolved after discovery and possibly by the jury – is whether the lawyers’ identified filed complaints in Philadelphia courts undisputedly constituting petitioning activity fraudulently misrepresent the lawyers’ view of their clients’ case including damages. But Uber and FedEx sufficiently pleaded these state court allegations are fraudulent subject to our review following discovery. Uber and FedEx pleaded details allowing us to plausibly infer each element of its racketeering claims. It will now need to adduce evidence to support its liability and damages theories.

¹ ECF 71 ¶ 32. We will refer to only Uber for ease of reference although all claims and allegations are asserted by both Uber and FedEx.

Simon & Simon, P.C. is a personal injury law firm with its principal place of business in Pennsylvania. *Id.* ¶ 19. Marc Simon is a member of the Pennsylvania Bar and the managing partner at Simon & Simon. *Id.* ¶ 20. Attorney Simon founded Simon & Simon in 2010 and “serves as its [Chief Executive Officer] and full owner.” *Marc I. Simon, Simon & Simon*, <https://www.gosimon.com/about/attorneys/marc-i-simon/> [<https://perma.cc/FAC8-CKJR>].

² *Id.* ¶ 33.

³ *Id.* ¶ 96.

⁴ *Id.* ¶ 63.

⁵ *Id.*

⁶ *Id.* ¶¶ 24–25.

⁷ *Id.* ¶¶ 21–22.

⁸ *Id.* ¶ 26.

⁹ *Id.* ¶ 36.

¹⁰ *See, e.g., id.* ¶¶ 64, 103, 121, 152, 170, 215, 279, 377, 407.

¹¹ *See, e.g., id.* ¶¶ 70, 105, 123, 156, 173, 218, 280, 378, 409.

¹² *Id.* ¶ 71.

¹³ *See, e.g., id.* ¶¶ 105, 123, 156, 218, 254, 267, 280, 335, 378.

¹⁴ See, e.g., *id.* ¶¶ 103, 121, 152, 170, 216, 279, 289, 377, 407–08.

¹⁵ See, e.g., *id.* ¶¶ 104, 122, 153, 170-71, 179, 217, 291.

¹⁶ See, e.g., *id.* ¶¶ 104, 154.

¹⁷ See, e.g., *id.* ¶¶ 175, 220, 462, 466, 472, 475, 482, 489, 490.

¹⁸ See, e.g., *id.* ¶¶ 44, 106, 124, 141, 157, 176, 193, 221, 240, 255, 268, 286, 299, 318.

¹⁹ *Id.* ¶¶ 45–46.

²⁰ *Id.* ¶ 45.

²¹ *Id.* ¶ 46.

²² *Id.* ¶¶ 46–49.

²³ See, e.g., *id.* ¶¶ 40–41, 107, 125, 142, 158, 177, 194, 222, 240, 256, 269, 290, 291.

²⁴ See, e.g., *id.* ¶¶ 69, 107, 125, 142, 158, 177, 194, 222, 256, 269, 287, 290.

²⁵ *Id.* ¶ 51.

²⁶ See, e.g., *id.* ¶¶ 51, 53–56, 107, 125-26, 142-43, 159, 195, 223, 301.

²⁷ See, e.g., *id.* ¶¶ 54–56, 107, 125, 142, 158, 177, 205, 222, 291, 320.

²⁸ See, e.g., *id.* ¶¶ 126, 143, 159-61, 178, 195, 206, 223, 301, 320.

²⁹ See, e.g., *id.* ¶¶ 461, 465, 469, 471, 474, 478, 481, 485, 491, 493, 496.

³⁰ *Id.* ¶¶ 58, 196.

³¹ *Id.*

³² *Id.* ¶ 58.

³³ See, e.g., *id.* ¶¶ 73–75, 108, 127, 180, 198, 224, 242, 257, 270, 302.

³⁴ See, e.g., *id.* ¶¶ 73, 110, 130, 180, 305.

³⁵ *Id.* ¶ 76.

³⁶ *Id.* ¶ 77.

³⁷ *Id.*

³⁸ See, e.g., *id.* ¶¶ 78–81, 109, 129, 198, 208, 225, 245, 258, 271, 304

³⁹ *Id.* ¶ 86.

⁴⁰ *Id.* ¶ 94.

⁴¹ *See, e.g., id.* ¶¶ 463, 467, 476, 479, 483, 486, 494.

⁴² *See, e.g., id.* ¶¶ 94, 114, 134, 182, 201, 228, 246, 261, 274, 309.

⁴³ *Id.* ¶¶ 92, 95; *see also id.* ¶¶ 115, 135, 147, 165, 184, 210, 231, 248, 262, 274, 292, 310, 324

⁴⁴ *Id.* ¶¶ 73, 92; *see also id.* ¶¶ 115, 135, 147, 165, 184, 210, 231, 248, 292, 310.

⁴⁵ *Id.* ¶ 438.

⁴⁶ *Id.* ¶¶ 72, 438.

⁴⁷ *Id.* ¶ 40.

⁴⁸ *Id.* ¶ 84.

⁴⁹ *Id.* ¶¶ 59, 87.

⁵⁰ *Id.* ¶ 87.

⁵¹ *Id.* ¶ 33.

⁵² *Id.* ¶ 96.

⁵³ *Id.* ¶ 73.

⁵⁴ *Id.* ¶ 84.

⁵⁵ *Id.* ¶ 92.

⁵⁶ *Id.* ¶ 98.

⁵⁷ *Id.* ¶¶ 97–98.

⁵⁸ *Id.* ¶ 99.

⁵⁹ *Id.* ¶¶ 4–9.

⁶⁰ *Id.* ¶¶ 514–39.

⁶¹ *Id.* ¶¶ 519, 526, 532, 538.

⁶² *Id.* ¶¶ 1–3.

⁶³ *Id.* at 137.

⁶⁴ See generally ECF 82-1.

⁶⁵ *Id.* at 7–9.

⁶⁶ *Hanover 3201 Realty, LLC v. Vill. Supermarkets, Inc.*, 806 F.3d 162, 178 (3d Cir. 2015).

⁶⁷ See, e.g., *Campbell v. Pa. Sch. Bds. Ass’n*, 972 F.3d 213, 220 (3d Cir. 2020) (“For instance, [the doctrine] shields constitutionally protected protesters from civil suits. It has also been applied . . . to bar § 1983 claims by state actors based upon constitutionally protected conduct.”); *Barnes Found. v. Twp. of Lower Merion*, 242 F.3d 151, 159–61 (3d Cir. 2001) (summarizing *Noerr-Pennington*’s applicability to various areas of law); *Brownsville Golden Age Nursing Home, Inc. v. Wells*, 839 F.2d 155, 160 (3d Cir. 1988) (finding *Noerr-Pennington* immunized defendants in civil conspiracy action).

⁶⁸ See *We, Inc. v. City of Phila.*, 174 F.3d 322, 326–27 (3d Cir. 1999) (The doctrine “offer[s] protection to citizens’ petitioning activities. . . . Thus, the purpose of *Noerr-Pennington* as applied in areas outside the antitrust field is the protection of the right to petition.”); *Pro. Real Est. Invs., Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 57 (1993) (“*PRE*”) (recognizing *Noerr-Pennington* extends to “the approach of citizens . . . to administrative agencies . . . and to courts”) (quoting *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972)).

⁶⁹ *In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, 622 F. Supp. 3d 22, 76 (E.D. Pa. 2022) (quoting *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 503, 497 (1988)).

⁷⁰ *Id.* (first quoting *Hill v. Borough of Kutztown*, 455 F.3d 225, 243 (3d Cir. 2006); then quoting *Allied Tube*, 486 U.S. at 499).

⁷¹ *Campbell*, 972 F.3d at 219.

⁷² *Hanover 3201 Realty*, 806 F.3d at 178.

⁷³ *Cap. Builders, Inc. v. Twp. of Robinson*, No. 21-1069, 2024 WL 1285776, at *10 (W.D. Pa. Mar. 26, 2024) (citing *City of Columbia v. Omni Outdoor Advert., Inc.*, 499 U.S. 365, 380 (1991) (“A classic example is the filing of frivolous objections to the license application of a competitor, with no expectation of achieving denial of the license but simply in order to impose expense and delay.”)).

⁷⁴ *In re Merck Mumps Vaccine Antitrust Litig.*, No. 23-3089, 2024 WL 4432076, at *4 (3d Cir. Oct. 7, 2024), *cert. denied sub nom., Chatom Primary Care, P.C. v. Merck & Co.*, 146 S. Ct. 325 (2025).

⁷⁵ ECF 82-1 at 7.

⁷⁶ *Id.* at 8–9.

⁷⁷ *Id.* at 9–10.

⁷⁸ *Id.* at 10–13.

⁷⁹ *Id.* at 11.

⁸⁰ *Id.*

⁸¹ *Id.* at 4–9.

⁸² *Id.* at 10–13.

⁸³ *Montway LLC v. Navi Transp. Servs. LLC*, No. 25-381, 2026 WL 866290, at *3 (D. Del. Mar. 30, 2026) (first quoting *Sweet Street Desserts, Inc. v. Chudleigh's, Ltd.*, 655 F. App'x 103, 110 (3d Cir. 2016); then quoting *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 940 (9th Cir. 2006)).

⁸⁴ *Id.* (quoting *A.D. Bedell Wholesale Co. v. Philip Morris Inc.*, 263 F.3d 239, 252 (3d Cir. 2001)).

⁸⁵ *Id.* at *2.

⁸⁶ *Id.* at *1, *3.

⁸⁷ *Id.* at *2.

⁸⁸ *Id.* at *3–4.

⁸⁹ *Id.* at *3 (“*Noerr-Pennington* immunizes actions ‘incidental’ to filing a lawsuit because holding a plaintiff liable for ‘prelitigation conduct when the same demands asserted in a petition to the court [would be] protected would render the entire litigation process more onerous,’ indirectly burdening the plaintiff’s rights under the Petition Clause.”) (quoting *Sosa*, 437 F.3d at 936).

⁹⁰ *Id.* at *4 (collecting cases).

⁹¹ *Id.* at *3 (quoting *Inline Packaging, LLC v. Graphic Packaging Int’l, Inc.*, 164 F. Supp. 3d 1117, 1132 (D. Minn. 2016)).

⁹² *Id.* at *4

⁹³ *Id.* at *3.

⁹⁴ ECF 95 at 3–4 (emphasis in original).

⁹⁵ *Id.* at 5–6.

⁹⁶ ECF 96 at 3–5.

⁹⁷ *Id.* at 5–6.

⁹⁸ *Hanover 3201 Realty*, 806 F.3d at 180 (citing *PRE*, 508 U.S. 49; *California Motor*, 404 U.S. 508).

⁹⁹ *Id.* at 179 (quoting *PRE*, 508 U.S. at 60–61) (emphasis in original).

¹⁰⁰ *Id.*

¹⁰¹ *Id.* (quoting *PRE*, 508 U.S. at 60); *see also id.* at 180 (“Thus, *Professional Real Estate* requires a showing of objective baselessness before looking into subjective motivations in order to prevent any undue chilling of First Amendment activity.”).

But the objective and subjective baselessness prongs “are interrelated. To see how, consider the following syllogism: (1) A lawsuit is objectively baseless if no reasonable litigant could realistically expect success on the merits; (2) and a litigant who files an objectively baseless lawsuit must have had some subjective motivation for suing; (3) but because the lawsuit was objectively baseless, the litigant’s subjective motivation could not have been success on the merits, unless the litigant was unreasonable; (4) thus, a reasonable litigant’s subjective motivation for filing an objectively baseless lawsuit must be something besides success on the merits.” *Fed. Trade Comm’n v. AbbVie Inc.*, 976 F.3d 327, 370 (3d Cir. 2020) (“*AbbVie II*”) (citation omitted).

¹⁰² *Hanover 3201 Realty*, 806 F.3d at 180.

¹⁰³ *Id.*

¹⁰⁴ *Id.* (emphasis added).

¹⁰⁵ *Id.* (quoting *USS–POSCO Indus. v. Contra Costa Cnty. Bldg. & Constr. Trades Council, AFL–CIO*, 31 F.3d 800, 811 (9th Cir. 1994)).

¹⁰⁶ *Id.* (quoting *USS–POSCO Indus.*, 31 F.3d at 811). “The word ‘genuine’ has both objective and subjective connotations. On one hand, ‘genuine’ means ‘actually having the reputed or apparent qualities or character.’” *PRE*, 508 U.S. at 61 (quoting Webster’s Third New International Dictionary 948 (1986)). “‘Genuine’ in this sense governs Federal Rule of Civil Procedure 56, under which a ‘genuine issue’ is one ‘that properly can be resolved only by a finder of fact because [it] may reasonably be resolved in favor of either party.’” *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)) (emphasis in original). “On the other hand, ‘genuine’ also means ‘sincerely and honestly felt or experienced.’ To be sham, therefore, litigation must fail to be ‘genuine’ in both senses of the word.” *Id.* (quoting Webster’s Dictionary at 948).

¹⁰⁷ *Hanover 3201 Realty*, 806 F.3d at 180.

¹⁰⁸ *Id.* at 180–81 (citing *PRE*, 508 U.S. at 68 (Stevens, J., concurring)); *see also Bayer Healthcare LLC v. Second Stone Enters. LLC*, No. 24-7618, 2025 WL 1531237, at *3–4 (D.N.J. May 29, 2025).

¹⁰⁹ *In re Flonase Antitrust Litig.*, 795 F. Supp. 2d 300, 310 (E.D. Pa. 2011) (citation omitted); *see also, e.g., Burke v. Bachert*, 702 F. Supp. 3d 347, 359 (E.D. Pa. 2023) (finding the sham litigation exception “better resolved at the summary judgment stage due to its fact-intensive nature”); *Fed. Trade Comm’n v. Shire ViroPharma Inc.*, No. 17-131, 2018 WL 1401329, at *7 (D. Del. Mar. 20, 2018), *aff’d*, 917 F.3d 147 (3d Cir. 2019) (Whether the litigation “was in fact a sham under either standard is a factual inquiry, which cannot be resolved at the motion to dismiss stage.”); *Otsuka*

Pharm. Co. v. Torrent Pharms. Ltd., 118 F. Supp. 3d 646, 657 (D.N.J. 2015) (denying motion to dismiss where baselessness determinations “require[d] inquiry into issues of fact, which [could not] be resolved in the context of a motion to dismiss, and prior to discovery”); *S3 Graphics Co. v. ATI Techs. ULC*, No. 11-1298, 2014 WL 573358, at *3 (D. Del. Feb. 11, 2014) (finding resolution of *Noerr-Pennington* immunity “not proper before discovery”).

¹¹⁰ ECF 86 at 11.

¹¹¹ ECF 71 ¶¶ 31–32.

¹¹² *Id.* ¶ 37

¹¹³ *Id.* ¶¶ 95–97.

¹¹⁴ *Id.* ¶ 99. For example, the lawyers allegedly filed suit in one case on December 30, 2024, demanded “more than \$600,000” at an unpleaded time, and then voluntarily dismissed Uber on May 12, 2025 after Uber served discovery subpoenas on Dr. Burt, while continuing the litigation against remaining defendants. *Id.* ¶¶ 115–17. The lawyers and doctors advise the case settled in February 2026 but at this stage we accept the allegations as pleaded. ECF 82-1 at 23 n.21. The lawyers filed another suit on June 20, 2024, demanded \$1,500,000 at an unpleaded time, voluntarily dismissed Uber on May 12, 2025 after Uber served similar discovery subpoenas, and the case later ended in a full defense verdict as to the remaining defendant. ECF 71 ¶¶ 135–37.

¹¹⁵ *Id.* ¶ 96.

¹¹⁶ ECF 82-1 at 9–13.

¹¹⁷ *See id.* at 10–11 (“Of the 13 suits against Uber and FedEx that are actually detailed in the Amended Complaint, Plaintiffs plead that 7 have resulted in settlements for the Simon Defendants’ clients. . . . This itself shows the suits were not objectively baseless.”) (citing *Mover’s & Warehousemen’s Ass’n of Greater New York, Inc. v. Long Island Moving & Storage Ass’n, Inc.*, No. 98-5373, 1999 WL 1243054, at *6 (E.D.N.Y. Dec. 16, 1999)); *see also id.* at 10–11 n.13.

¹¹⁸ *AbbVie II*, 976 F.3d at 367 (citing *Theme Promotions, Inc. v. News Am. Mktg. FSI*, 546 F.3d 991, 1008 (9th Cir. 2008); *New W., L.P. v. City of Joliet*, 491 F.3d 717, 722 (7th Cir. 2007)).

¹¹⁹ *See, e.g.*, ECF 71 ¶¶ 9–10 (“The phantom damages reflected in [Dr. Yarus’s expert] reports [based on the fraudulent medical records produced by any of the doctors] allow Simon & Simon to maximize their leverage to demand large settlements. . . . The scheme is intended to and does in fact result in litigation costs and expenses, including settlement costs, that would not have otherwise been incurred by its targets.”); *see id.* ¶ 14 (Uber’s “reliance [on Defendants’ misrepresentations] resulted in, among other things, settlement payments that would not have been made or that would have been made in a lesser amount but for the fraud.”).

¹²⁰ *Fed. Trade Comm’n v. AbbVie Inc.*, 329 F. Supp. 3d 98, 123 (E.D. Pa. 2018) (“*AbbVie I*”), *aff’d in part, rev’d in part and remanded on other grounds, AbbVie II*.

¹²¹ *AbbVie II*, 976 F.3d at 367–68; *see id.* at 368 (The settling party “estimated it had a 75 percent chance of victory, which, given the uncertainties inherent in litigation, is a strong probability. Thus, as the District Court found, [the party] settled for reasons ‘independent of the merits of [the underlying] claims,’ including especially the cost of litigating.” (citing *AbbVie I*, 329 F. Supp. 3d at 123)).

¹²² *In re Flonase Antitrust Litig.*, 795 F. Supp. 2d at 310 (quoting *PRE*, 508 U.S. at 60–61).

¹²³ *See AbbVie II*, 976 F.3d at 367 (affirming finding of objective baselessness where the district court “assessed whether a reasonable litigant would believe it had a chance of winning” and concluded “any reasonable person who reads the prosecution history . . . can reach no other conclusion . . .”).

¹²⁴ ECF 82-1 at 12.

¹²⁵ *AbbVie II*, 976 F.3d at 369 (citing *PRE*, 508 U.S. at 60–61; *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 556 (2014)).

¹²⁶ *Campbell*, 972 F.3d at 219 (quoting *Omni Outdoor Advert.*, 499 U.S. at 380); *see also AbbVie II*, 976 F.3d at 360 (“[A] plaintiff must show the defendant ‘brought baseless claims in an attempt to thwart competition (*i.e.*, in bad faith).’”) (quoting *Octane Fitness*, 572 U.S. at 556).

¹²⁷ *Campbell*, 972 F.3d at 219 (quoting *PRE*, 508 U.S. at 61) (emphasis in original); *see also AbbVie II*, 976 F.3d at 360–61 (“Some factors relating to a defendant’s ‘economic motivations’ in bringing suit include whether the defendant was ‘indifferent to the outcome on the merits of the . . . suit, whether any damages for infringement would be too low to justify . . . investment in the suit, or whether [the defendant] had decided to sue primarily for the benefit of collateral injuries inflicted through the use of legal process.’”) (quoting *PRE*, 508 U.S. at 65–66)).

¹²⁸ *See e.g., Mylan Pharms. Inc. v. Sanofi-Aventis U.S. LLC*, No. 23-836, 2026 WL 201152, at *17 (W.D. Pa. Jan. 27, 2026) (“Considering the overarching standard in this Circuit for resolving motions to dismiss, the Court is to consider whether further factual development via discovery is appropriate to determine whether the litigation was in fact objectively baseless and motivated by anticompetitive intent. The Court concludes that it is.”); *ADP, LLC v. Ultimate Software Grp., Inc.*, No. 16-8664, 2018 WL 1151713, at *4 (D.N.J. Mar. 5, 2018) (“At the motion-to-dismiss stage and without the benefit of discovery . . . , it is too early to decide whether the series of litigations . . . constitute ‘sham litigation.’ So far, [the plaintiff] has sufficiently pled claims . . . that fall outside the immunity granted by the *Noerr–Pennington* doctrine, as it has alleged both that [the defendant] had the subjective intent and that the litigation, as a series of actions, was a sham.”).

¹²⁹ ECF 82-1 at 11.

¹³⁰ *Id.*

¹³¹ ECF 86 at 11 (citing *We, Inc.*, 174 F.3d at 327).

¹³² *Id.* at 12–13.

¹³³ *Cap. Builders*, 2024 WL 1285776, at *10 (citing *Cheminor Drugs, Ltd. v. Ethyl Corp.*, 168 F.3d 119, 123–24 (3d Cir. 1999)); see also *In re Flonase Antitrust Litig.*, 795 F. Supp. 2d at 310 (Our Court of Appeals “has created a test for the subset of petitioners who misrepresented facts at the core of their petition.”).

¹³⁴ *Cheminor Drugs*, 168 F.3d at 123.

¹³⁵ *Id.* at 124 (emphasis in original); see also *Indivior Inc. v. Alvogen Pine Brook LLC*, 681 F. Supp. 3d 275, 298 (D.N.J. 2023) (“[A] plaintiff loses *Noerr-Pennington* immunity when it makes misrepresentations that pertain to the ‘very core’ of the case.”).

¹³⁶ *In re Merck Mumps Vaccine Antitrust Litig.*, No. 23-3089, 2024 WL 4432076, at *10 (3d Cir. Oct. 7, 2024), cert. denied sub nom. *Chatom Primary Care, P.C. v. Merck & Co.*, 146 S. Ct. 325, 223 L. Ed. 2d 162 (2025) (Schwartz, J., dissenting) (citing *Kottle v. Nw. Kidney Ctrs.*, 146 F.3d 1056, 1062–63 (9th Cir. 1998) (A petitioner’s misrepresentations to a government agency “deprive[s] the entire [adjudicative] proceeding of its legitimacy.”); *Cal. Motor*, 404 U.S. at 513 (“Misrepresentations . . . are not immunized when used in the adjudicatory process.”); *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 843 (7th Cir. 2011) (For the exception to apply, the misrepresentation must have been (1) “intentionally made, with knowledge of its falsity[,]” and (2) “material, in the sense that it actually altered the outcome of the proceeding.”)).

¹³⁷ See, e.g., *Cap. Builders*, 2024 WL 1285776, at *11 (denying summary judgment where the evidence permitted a finding the defendant’s “misrepresentations go to the heart of [the] petitions as they directly relate to the relief [he] was seeking” and “a reasonable jury could conclude that at least some of the [government]’s actions towards [p]laintiffs were directly induced by [the defendant]’s misrepresentations, and therefore, could also conclude that his actions were not valid petitioning activity”); see also *United States v. Koziol*, 993 F.3d 1160, 1172 n.12 (9th Cir. 2021) (The petitioner’s “falsified evidence, if included in a filed complaint or otherwise submitted to the court, would certainly qualify as intentional misrepresentations to the court. And even if [the petitioner] had filed a complaint omitting the falsified evidence, the incongruity between his settlement demands and the complaint would be probative evidence of sham litigation as well, especially when considered with the evidence that [the petitioner] knew he had no lawful claim to the settlement he demanded.”).

¹³⁸ *In re Merck Mumps Vaccine Antitrust Litig.*, 2024 WL 4432076, at *6.

¹³⁹ *Ford Motor Co. v. Knight L. Grp.*, No. 25-4550, 2025 WL 3306280 (C.D. Cal. Nov. 24, 2025).

¹⁴⁰ *Id.* at *5–6.

¹⁴¹ *Id.* at *2–5.

¹⁴² *Id.* at *8.

¹⁴³ *Id.* (first quoting *Cisco Sys., Inc. v. Beccela’s Etc., LLC*, 403 F. Supp. 813, 825 (N.D. Cal. 2019); then quoting *Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180, 1184 (9th Cir. 2005)).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at *9 (quoting *White v. Lee*, 227 F.3d 1214, 1232 (9th Cir. 2000)).

¹⁴⁸ *Id.* at *10.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at *10–11.

¹⁵¹ *Id.* at *11.

¹⁵² *Id.*

¹⁵³ ECF 82-1 at 8.

¹⁵⁴ *Id.* (quoting *Ford*, 2025 WL 3306280, at *8).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 9.

¹⁵⁷ *Id.* at 11.

¹⁵⁸ *Id.* at 36–38.

¹⁵⁹ ECF 86 at 42-43.

¹⁶⁰ *In re Mullarkey*, 536 F.3d 215, 225 (3d Cir. 2009).

¹⁶¹ *Marmon Coal Co. v. Dir., Off. of Workers' Comp. Programs*, 726 F.3d 387, 394 (3d Cir. 2013) (quoting *Duhaney v. Att'y Gen.*, 621 F.3d 340, 348 (3d Cir. 2010)).

¹⁶² *Id.* at 394–95 (citation omitted).

¹⁶³ ECF 82-1 at 38–39.

¹⁶⁴ ECF 86 at 44–45.

¹⁶⁵ *Great W. Mining & Min. Co. v. Fox Rothschild LLP*, 615 F.3d 159, 165 (3d Cir. 2010); *see also Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (explaining the doctrine bars review of “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments”).

¹⁶⁶ *Pilchesky v. Henry*, No. 25-1811, 2026 WL 473510, at *2 (3d Cir. Feb. 19, 2026) (quoting *Great W. Mining*, 615 F.3d at 166 (3d Cir. 2010)).

¹⁶⁷ *Vuyanich v. Smithton Borough*, 5 F.4th 379, 387 (3d Cir. 2021) (quoting *In re Phila. Ent. & Dev. Partners*, 879 F.3d 492, 500 (3d Cir. 2018)).

¹⁶⁸ *Id.* (citation modified).

¹⁶⁹ *See, e.g., Vuyanich*, 5 F.4th at 387 (Plaintiffs “did not ask the District Court to overturn the . . . state-court order, but rather sought damages for the actions Defendants took under the guise of implementing that order.”); *see also Great W. Mining*, 615 F.3d at 173) (“[W]hile [plaintiff’s] claim for damages may require review of state-court judgments and even a conclusion that they were erroneous, those judgments would not have to be rejected or overruled for Great Western to prevail.”); *Dockery v. Heretick*, No. 17-4144, 2019 WL 2122988, at *10 (E.D. Pa. May 14, 2019) (Plaintiff’s “claims turn on a determination of whether Defendants acted in concert to pursue a pattern of racketeering activity that ultimately mistreated Plaintiff, the putative class members, and the state court itself. Although Plaintiff’s [racketeering] . . . claims may raise issues that were considered by the state court, they do not require this Court to decide the state judges’ decisions anew.”).

¹⁷⁰ 18 U.S.C. § 1962(c).

¹⁷¹ *LabMD Inc. v. Boback*, 47 F.4th 164, 179 (3d Cir. 2022) (citation modified).

¹⁷² 18 U.S.C. § 1961(5).

¹⁷³ *See id.* § 1961(1)(B) (“‘[R]acketeering activity’ means . . . any act which is indictable under any of the following provisions of title 18, United States Code: . . . section 1341 (relating to mail fraud), section 1343 (relating to wire fraud) . . .”).

¹⁷⁴ *Id.* § 1962(d).

¹⁷⁵ *AR Network, LLC, et al. v. Wireless Guardian, et al.*, No. 25-1447, 2026 WL 973498, at *35 (E.D. Pa. Apr. 10, 2026) (quoting *United States v. Williams*, 974 F.3d 320, 370 (3d Cir. 2020)).

¹⁷⁶ ECF 82-1 at 27–33.

¹⁷⁷ ECF 86 at 27–34.

¹⁷⁸ *Jaye v. Oak Knoll Vill. Condo. Owners Ass’n, Inc.*, 751 F. App’x 293, 297 (3d Cir. 2018) (citing *United States v. Pharis*, 298 F.3d 228, 233-34 (3d Cir. 2002)).

¹⁷⁹ *In re Insulin Pricing Litig.*, No. 23-20932, 2025 WL 3773210, at *8 (D.N.J. Dec. 30, 2025) (quoting *United States v. Riley*, 621 F.3d 312, 327 n.19 (3d Cir. 2010)).

¹⁸⁰ *Katz v. DeLuca*, No. 23-1188, 2024 WL 2188905, at *6 (E.D. Pa. May 15, 2024), *appeal dismissed sub nom. Katz v. Great Am. Abstract LLC*, No. 24-2026, 2025 WL 1589263 (3d Cir. Apr. 24, 2025), and *reconsideration denied sub nom. Katz v. Great Am. Abstract, LLC*, No. 23-1188, 2025 WL 2318931 (E.D. Pa. July 9, 2025) (quoting *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1415 (3d Cir. 1991)).

¹⁸¹ *Jaye*, 751 F. App'x at 297–98 (quoting Fed. R. Civ. P. 9(b)).

¹⁸² *AR Network*, 2026 WL 973498, at *41 (quoting *Bd. of Trs. of Teamsters Loc. 863 Pension Fund v. Foodtown, Inc.*, 296 F.3d 164, 172 n.10 (3d Cir. 2002)) (emphasis in original).

¹⁸³ Fed. R. Civ. P. 9(b); *AR Network*, 2026 WL 973498, at *31 (citing *Liberty Bell Bank v. Rogers*, 726 F. App'x 147, 154–55 (3d Cir. 2018); *Weiner v. Quaker Oats Co.*, 129 F.3d 310, 318 n.8 (3d Cir. 1997)).

¹⁸⁴ ECF 82-1 at 31–32 (emphasis in original). The Medical Defendants also contend their conduct is too attenuated to qualify as predicate acts. *Id.* at 30–31. This argument invokes proximate cause principles rather than Rule 9(b)'s pleading requirements and we address it in our causation analysis.

¹⁸⁵ ECF 86 at 32–34.

¹⁸⁶ ECF 71 ¶¶ 30–31, 36–38, 40–51, 63–85.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* ¶¶ 101–329, 460–513.

¹⁸⁹ *Id.*

¹⁹⁰ *Funari v. Funari*, No. 19-2833, 2022 WL 990871, at *13 (E.D. Pa. Mar. 31, 2022) (citation modified).

¹⁹¹ *Id.*; see also *Sunlight Elec. Contracting Co. v. Turchi*, 918 F. Supp. 2d 392, 402 (E.D. Pa. 2013) (“The scheme ‘must involve some sort of fraudulent misrepresentations or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension.’” (quoting *United States v. Pearlstein*, 576 F.2d 531, 535 (3d Cir. 1978))); accord *Kehr Packages, Inc.*, 926 F.2d at 1415 (“The scheme need not involve affirmative misrepresentation, but the statutory term ‘defraud’ usually signifies the deprivation of something of value by trick, deceit, chicane or overreaching.” (citation modified)).

¹⁹² *Applebaum v. Fabian*, No. 22-1049, 2022 WL 17090172, at *1 (3d Cir. Nov. 21, 2022) (“*Applebaum I*”) (quoting *Snow Ingredients, Inc. v. SnowWizard, Inc.*, 833 F.3d 512, 525 (5th Cir. 2016)).

¹⁹³ *Applebaum v. Fabian*, No. 18-11023, 2021 WL 5833454, at *9 (D.N.J. Dec. 9, 2021) (“*Applebaum I*”), *aff'd*, *Applebaum II*.

¹⁹⁴ See *id.* (“First, litigation fraud and perjury are not listed as eligible predicate racketeering acts under the [racketeering] statute. 18 U.S.C. §§ 1961–64. Second, despite twenty pages of rambling accusations, the Second Amended Complaint does not set forth actual fraudulent activity in relation to these filings; it merely asserts that standard filings in a contested probate case were nefarious.”).

¹⁹⁵ ECF 82-1 at 27–28.

¹⁹⁶ ECF 86 at 27–31.

¹⁹⁷ *Id.* at 28; ECF 71 ¶¶ 455–58.

¹⁹⁸ Our colleagues within this Circuit have rejected racketeering claims premised on litigation activity in circumstances not before us today. Judge Jones III held “the filing of court documents [in a single action] *alone* does not constitute mail fraud for reasons of public policy.” *Meade v. Guar. Bank*, No. 12-1559, 2013 WL 5438750, at *10 (M.D. Pa. Sept. 27, 2013) (emphasis added). Judge Vazquez, relying on out-of-circuit authority, rejected “the theory that the filing of complaints, along with other litigation activity, can be the basis of wire or mail fraud” and distinguished the facts before him from a case involving attorneys “going far beyond their role as legal representatives in perpetuating their fraud scheme,” noting plaintiffs had not plausibly alleged facts “Defendants paid witnesses to testify falsely, paid unfavorable witnesses to not testify, or created false evidence for use [in] their cases.” *Winters v. Jones*, No. 16-9020, 2018 WL 326518, at *9–10 (D.N.J. Jan. 8, 2018). Judge Vazquez also rejected a claim based on a certification submitted in a patent invalidation petition where the alleged conduct fell within traditional attorney advocacy. *Verify Smart Corp. v. Bank of Am., N.A.*, No. 17-4248, 2019 WL 1594474, at *11 (D.N.J. Apr. 15, 2019). Judge Shipp dismissed claims where plaintiffs failed to plausibly allege criminal conduct constituting racketeering activity and instead relied on two tax lien foreclosure actions filed in a court without jurisdiction as the predicate acts. *Irene Schneider Fam. Tr. v. Christiana Tr.*, No. 23-1980, 2024 WL 4263309, at *7 (D.N.J. Sept. 23, 2024). And Judge Cecchi rejected an obstruction-based predicate act where the alleged conduct arose from a divorce proceeding and did not involve a recognized racketeering predicate offense, leaving no viable predicate act beyond insufficient litigation-related fraud allegations. *Matta v. Kaur*, No. 24-5743, 2025 WL 2987103, at *4 (D.N.J. Oct. 23, 2025). Each of these cases addressed allegations limited to litigation conduct alone or failed to identify a cognizable predicate offense.

¹⁹⁹ *Snow Ingredients, Inc.*, 833 F.3d at 524–25.

²⁰⁰ *Id.* at 525.

²⁰¹ *Id.* (citing *St. Germain v. Howard*, 556 F.3d 261, 263 (5th Cir. 2009)).

²⁰² *Feld Ent. Inc. v. Am. Soc’y for the Prevention of Cruelty to Animals*, 873 F. Supp. 2d 288, 318 (D.D.C. 2012) (quoting *Daddona v. Gaudio*, 156 F. Supp. 2d 153, 162 (D. Conn. 2000)).

²⁰³ *Id.* at 318–19 (quoting *Daddona*, 156 F. Supp. 2d at 163 (collecting cases)). Judge Arterton noted the Court of Appeals for the Second Circuit acknowledged “tension” between including mail fraud and excluding perjury as predicate acts but found “where a fraudulent scheme falls within the scope of the federal mail fraud statute and the other elements of [racketeering] are established, . . . it will not be the fact of the perjuries alone that suffices to bring the matter within the scope of [the Act].” *Daddona*, 156 F. Supp. 2d at 163 (quoting *United States v. Eisen*, 974 F.2d 246, 254 (2d Cir. 1992) (emphasis in original)). The Court of Appeals in *Eisen* held mail and wire fraud violations arising from a coordinated scheme by a law firm to deprive civil defendants and their insurers of money through fraudulent lawsuits, including bribery and intimidation of witnesses and

the creation of false photographs, documents, and other evidence for use at trial, could constitute predicate acts under the Act. *Eisen*, 974 F.2d at 251–54.

²⁰⁴ *Feld Ent. Inc.*, 873 F. Supp. 2d at 319.

²⁰⁵ *Deck v. Engineered Laminates*, 349 F.3d 1253 (10th Cir. 2003); *Raney v. Allstate Ins. Co.*, 370 F.3d 1086 (11th Cir. 2004).

²⁰⁶ *Deck*, 349 F.3d at 1257–58.

²⁰⁷ *Id.* at 1258–59; *see id.* at 1258 (“Defendant Illig ‘made false and material representations in the form of one or more proposed settlement agreements promising payment over a four year period in order to induce Plaintiff into accepting the settlement agreement.’ Before executing the settlement agreement, Illig and Defendant McCallum had ‘agreed to a plan wherein they would be able to liquidate [EL] without paying its obligation to [Plaintiff].’ Thus, Illig and McCallum knew that EL would be unable to make payments over the four years promised in the proposed settlement agreement. They concealed this information from Plaintiff, intending that he ‘rely upon [their] misrepresentations.’ As a result, Plaintiff was “fraudulently induc[ed] to dismiss valid claims.”) (citation modified).

²⁰⁸ *Raney*, 370 F.3d at 1087–88.

²⁰⁹ *Kim v. Kimm*, 884 F.3d 98, 104–05 (2d Cir. 2018) (emphasis added).

²¹⁰ *Id.* at 105.

²¹¹ *Id.* at 104.

²¹² *Black v. Ganieva*, 619 F. Supp. 3d 309, 342 (S.D.N.Y. 2022), *aff’d*, No. 22-1524, 2023 WL 2317173 (2d Cir. Mar. 2, 2023) (collecting cases).

²¹³ *Carroll v. U.S. Equities Corp.*, No. 18-667, 2020 WL 11563716, at *9 (N.D.N.Y. Nov. 30, 2020) (citing *Sykes v. Mel Harris & Assocs., LLC*, 757 F. Supp. 2d 413, 425 (S.D.N.Y. 2010) (“[P]laintiffs have pleaded with particularity a pattern of racketeering activity, including at least twenty allegedly fraudulent statements and eighteen acts involving use of the mail and wires over three years, in furtherance of the alleged fraud.”)); *see also id.* (“[S]ome of the acts of this scheme, such as buying uncollectable debts that lacked proof that the debts were owed, conspiring to use a process serving firm that engaged in sewer service to ensure that defendants would not contest the debt-collection actions, using an individual who filed false affidavits of merit in every case, and pressuring defendants to compromise on illegally obtained default judgments were actions external to the individual suits in the state courts, involved matters beyond proper legal representation and went beyond any of the particular disputes between the litigants in the underlying debt collection actions.”).

²¹⁴ *State Farm Mut. Auto. Ins. Co. v. Tri-Borough N.Y. Med. Prac. P.C.*, 120 F.4th 59, 98 & n.14 (2d Cir. 2024).

²¹⁵ *Id.* at 98 n.14.

²¹⁶ *Id.* (emphasis in original).

²¹⁷ ECF 82-1 at 33.

²¹⁸ *Id.* at 33–36.

²¹⁹ 18 U.S.C. § 1961(4).

²²⁰ *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 364 (3d Cir. 2010).

²²¹ *AR Network*, 2026 WL 973498, at *23 (quoting *Schwartz v. Laws. Title Ins. Co.*, 680 F. Supp. 2d 690, 706 (E.D. Pa. 2010)).

²²² *Funari*, 2022 WL 990871, at *11 (quoting *Boyle v. United States*, 556 U.S. 938, 947 (2009)).

²²³ *AR Network*, 2026 WL 973498, at *24 (quoting *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 161 (2001)).

²²⁴ ECF 71 ¶¶ 514–20.

²²⁵ *Id.* ¶¶ 521–27.

²²⁶ *See Funari*, 2022 WL 990871, at *12 (“[C]ourts often find the distinctiveness requirement met when the plaintiff alleges that the ‘enterprise’ is a corporation and the ‘person[s]’ are the owners of that corporation.”) (quoting *Cedrick Kushner Promotions, Ltd.*, 533 U.S. at 162)).

²²⁷ *Kyko Glob., Inc. v. Prithvi Info. Sols. Ltd.*, No. 18-1290, 2020 WL 1159439, at *21 (W.D. Pa. Mar. 10, 2020) (quoting *Schwartz v. Lawyers Title Ins. Co.*, 970 F. Supp. 2d 395, 403 (E.D. Pa. 2013)).

²²⁸ *Boyle*, 556 U.S. at 946.

²²⁹ *AR Network*, 2026 WL 973498, at *27 (quoting *Boyle*, 556 U.S. at 948).

²³⁰ ECF 86 at 37 (citing ECF 71 ¶¶ 9, 30, 36, 39, 40, 43, 45–49, 58–60, 68–72, 110, 113, 244, 305, 308, 324, 354, 401, 420, 415, 433, 438, 439, 447).

²³¹ *See Zakheim v. Curb Mobility LLC*, No. 22-4594, 2023 WL 5339606, at *2 (E.D. Pa. Aug. 18, 2023) (The enterprise “must at the very least function as a ‘continuing unit’ and involve ‘interpersonal relationships and a common interest.’”) (quoting *Boyle*, 556 U.S. at 946, 948).

²³² *See United States v. Urban*, 404 F.3d 754, 782 (3d Cir. 2005) (“[A]n enterprise “may be comprised only of defendants, or of defendants and non-defendants.”).

²³³ *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d at 368.

²³⁴ ECF 82-1 at 13–14.

²³⁵ *Id.* at 14–18.

²³⁶ *Id.* at 18–23

²³⁷ *Id.* at 23–27.

²³⁸ *Med. Marijuana, Inc. v. Horn*, 604 U.S. 593, 600–01 (2025) (quoting 18 U.S.C. § 1964(c)) (emphasis in original).

²³⁹ *Id.* at 601.

²⁴⁰ *Id.*

²⁴¹ *Fata, v. Young, et al.*, No. 26-828, 2026 WL 949103, at *5 (E.D. Pa. Apr. 8, 2026) (quoting *Miller v. Pocono Ranch Lands Prop. Owners Ass’n Inc.*, 557 F. App’x 141, 145 (3d Cir. 2014)); see also *St. Luke’s Health Network, Inc. v. Lancaster Gen. Hosp.*, 967 F.3d 295, 300 (3d Cir. 2020) (“As distinct from Article III standing, a plaintiff bringing a civil [racketeering] claim must additionally state an injury to business or property and that a [racketeering] predicate offense not only was a ‘but for’ cause of injury, but was the proximate cause as well.”) (citation omitted).

²⁴² *In re Avandia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 804 F.3d 633 (3d Cir. 2015) (internal citation omitted).

²⁴³ *St. Luke’s Health Network*, 967 F.3d at 300 (quoting *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 12 (2010)).

²⁴⁴ *Knopick v. UBS Fin. Servs., Inc.*, 121 F. Supp. 3d 444, 460 (E.D. Pa. 2015) (citing *Holmes v. Sec. Inv. Prot.*, 503 U.S. 258, 269–70 (1992)).

²⁴⁵ *Humana, Inc. v. Indivior Inc.*, No. 20-4602, 2021 WL 3101593, at *9 (E.D. Pa. July 22, 2021), *aff’d*, No. 21-2573, 2022 WL 17718342 (3d Cir. Dec. 15, 2022) (citing *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 649 (2008)); see also *Bridge*, 553 U.S. at 649 (Under the racketeering statute, “no showing of reliance is required to establish that a person has violated § 1962(c) by conducting the affairs of an enterprise through a pattern of racketeering activity consisting of acts of mail fraud.”).

²⁴⁶ ECF 82-1 at 39.

²⁴⁷ Uber pleads substantive racketeering claims against Marc Simon and the law firm, Dr. Burt, and Premier Pain & Rehab. “Without adequately pleading a substantive violation under § 1962(c), a plaintiff proceeding under § 1962(d) must allege ‘an endeavor which, if completed, would satisfy all of the elements of a substantive [racketeering] offense.’” *AR Network*, 2026 WL 973498, at *34 (quoting *In re Ins. Brokerage Litig.*, 618 F.3d at 383). Drs. Harvey, Piccillo, and Yarus do not separately develop any argument on this issue beyond a single passing assertion the conspiracy claim necessarily fails if the substantive claims fail. See ECF 82-1 at 39. We do not separately address whether the amended Complaint sufficiently alleges a substantive racketeering violation as to those doctors for purposes of the conspiracy claim.

²⁴⁸ *Id.*

²⁴⁹ *Id.* at 39–45.

²⁵⁰ *AR Network*, 2026 WL 973498, at *34 (citation modified).

²⁵¹ *Humana, Inc.*, 2021 WL 3101593, at *7 (quoting *Smith v. Berg*, 247 F.3d 532, 538 (3d Cir. 2001)).

²⁵² ECF 86 at 39.

The Industry Under Attack *Using AI*



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ARTIFICIAL INTELLIGENCE

FRIEND OR FOE?

I. Use of AI

- a. Legal Research
- b. Summarizing Documents and Depositions
- c. Summarizing Medical Records
- d. Drafting Documents and Pleadings
- e. *Pro Se* Litigants
- f. Certifications and Sanctions
- g. Unfortunately Lawyers Are Human

II. Legal Research

- a. Chat GPT (Open AI), Claude (Anthropic), Gemini (Google)
 - i. Search the entire Internet for answers
 - 1. Accuracy
 - 2. Sourcing
 - 3. Opinion vs. fact
 - 4. Editorialization
 - 5. Missing Context
 - ii. Hallucinations
 - 1. Make up an answer
 - 2. Provide citations for cases that do not exist
 - 3. Cannot be relied upon for legal guidance
 - iii. Will not say “there is no answer”
 - iv. Inputting may expose privileged or confidential information
 - v. May be used to provoke ideas

- b. Westlaw CoCounsel (Example)**
 - i. Searches a limited library**
 - ii. Will report that there is no answer**
 - iii. Provides confidentiality**

III. Summarizing Documents and Depositions

- a. Claims file**
 - i. Confidentiality concerns**
 - ii. Summarize the file**
 - iii. Scope of what needs to be done per the law**
 - iv. Draft reports and correspondence**
 - v. Links to information in file**
- b. Depositions (Veritext for example)**
 - i. Summarizes the testimony**
 - ii. Links to information in transcript**
 - iii. Does not provide insights (witness crying or laughing)**
 - iv. Does not prioritize parts of testimony**

IV. Summarizing Medical Records

- a. HIPPA concerns**
- b. Not convinced that it makes associations**
 - i. Fracture versus bone density versus medications**
 - ii. Human factors**
- c. Provides links to portions of records**

V. Drafting Documents and Pleadings

- a. Standard pleadings (Florida automobile accident case example)**
 - i. Complaint**

- ii. Answer and Defenses
 - iii. Interrogatories
 - iv. Request to Produce
 - v. Initial Disclosures
- b. Will create pleadings and discovery in complex cases
 - i. What should I ask?
 - ii. How should I defend?
 - iii. What law applies?
- c. Can be employed to create responses and objections to discovery

VI. Pro Se Litigants

- a. Major problem
- b. AI does not follow the Rules of Civil Procedure
 - i. Complaints with hundreds of pages
 - ii. Multiple causes of action
 - iii. Not a plain and simple statement of the facts and a basis for entitlement to relief
- c. Means to avoid communications and confrontations
- d. ADA Requirements, language barriers, other excuses

VII. Certifications and Sanctions

- a. Identify that AI was used
- b. Must independently verify the accuracy of citations and references
 - i. Law
 - ii. Record
 - iii. Quotations
- c. Rule 2.515 (2)(D) On filing, each signor represents: “the legal authorities identified exist and are accurately cited” (Florida example)

- d. Referral to a State Bar Disciplinary Committee**
 - i. Immediate and unqualified acceptance of responsibility**
 - ii. Minimize potential prejudice to client**
 - iii. May require attendance at CLE or other discipline**
- e. Sanctions imposed against a client**
 - i. Striking of pleadings and other filings**
 - ii. Monetary fines**
 - iii. Contempt**
 - iv. Imposition of attorney's fees**

VIII. Unfortunately Lawyers Are Human

- a. We are sometimes too busy, but often understandably lazy**
 - i. If AI produces a document you need to check all references**
 - ii. If you do not check all references you are responsible**
 - iii. Potential exposure to legal malpractice**
- b. Assigning cases to Associates**
 - i. Lawyers must delegate work**
 - ii. Court schedules can be onerous**
 - iii. All signors on pleadings are potentially liable**
 - iv. Can you absolutely trust your associates and paralegals?**
 - v. What about that pleading that must be filed on Friday?**
 - 1. Cases called in on the last minute to avoid a Default**
 - 2. Unexpected emergencies**
- c. An attorney cannot trust AI per the Rules**
- d. Who will ultimately independently verify all AI-generated content?**