

# Preface

At first blush, no-fault insurance anti-fraud litigation may seem like a narrow and prosaic topic. No-fault fraud lacks the glamor of sophisticated Wall Street swindles, its primary victims are automobile insurance companies, and the damages in any individual case are usually relatively low—rarely amounting to more than \$10,000,000.

Nonetheless, no-fault insurance fraud has meaningful consequences for society. Those of us who have moved from states without a no-fault fraud problem to states where no-fault fraud is endemic can testify to large increases in our automobile insurance premiums. While increased insurance rates may not take much of a bite out of the wealthier segments of society, they make life that much more difficult for the rest of us. Indeed, no-fault insurance fraud amounts to a significant “fraud tax” on consumers, estimated at billions of dollars each year. For example, the Insurance Information Institute, an industry group, reported that in 2011 Florida drivers paid more than \$650,000,000, or almost \$58 per vehicle, as the result of no-fault insurance fraud.<sup>1</sup> The Insurance Information Institute also calculated that in New York, policyholders paid the equivalent of a \$229,000,000 fraud tax on the automobile insurance policies as the result of no-fault fraud.<sup>2</sup>

What is more, the most typical forms of no-fault insurance fraud—such as inflated billing for medically useless or illusory health-care services, often submitted through healthcare practices that illegally are owned and controlled by unlicensed nonprofessionals—display a cynicism and lawlessness that chip away at societal norms

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<sup>1</sup> See Insurance Information Institute, *Fraud and Abuse in No-Fault Auto Insurance System Results in a Substantial “Fraud Tax” for Florida’s Drivers*, I.I.I. FINDS (March 6, 2017), <http://www.iii.org/press-release/fraud-and-abuse-in-no-fault-auto-insurance-system-results-in-a-substantial-fraud-tax-for-floridas-drivers-iii-finds-120611>.

<sup>2</sup> See Insurance Information Institute, *No-Fault Insurance Fraud in New York State Is Ramping Up Premiums*, I.I.I. FINDS (March 6, 2017), <http://www.iii.org/article/no-fault-insurance-fraud-new-york-state-ramping-premiums>.

and create an environment where ever more egregious corruption is accepted. These types of fraudulent practices, in which the independent medical judgment of healthcare providers is subordinated to their pecuniary interests—or worse, the pecuniary interests of unlicensed nonprofessionals—put the public at significant risk, and they actually exacerbate the injury compensation problems that no-fault systems were intended to remediate.

Over the course of litigating hundreds of no-fault insurance anti-fraud cases, we have consistently been surprised at the limited extent to which no-fault fraud is criminally prosecuted relative to the overall prevalence of the problem. Evidently, we are not alone: More than a few federal and state court judges have asked us, from the bench or in chambers, whether our insurer-clients have made law enforcement aware of one fraud ring or another. Even when the answer is yes, prosecutors seem to have an unfunded mandate to tackle the issue, and criminal prosecutions rarely ensue.

Even state regulatory authorities, such as professional licensing and disciplinary boards, appear unable to take any significant and consistent steps to address the issue. Oftentimes, in the course of an anti-fraud lawsuit we will learn that a defendant healthcare provider previously lost his professional license as the result of some prior, fraudulent conduct. Yet, after a course of pro forma “rehabilitation,” the provider successfully petitioned for the reinstatement of his license and either set up shop committing some new kind of fraud or brazenly recommenced the same type of fraud that resulted in the loss of his license in the first place.

Against this backdrop, at least at the present, automobile insurance companies are the primary actors in the fight against no-fault fraud. The primary vehicle for their action is civil litigation against no-fault insurance fraud rings. This book is intended as a general guide to no-fault insurance anti-fraud litigation from the perspective of a plaintiff-insurer, from inception through summary judgment. We should emphasize at the outset that this book is not intended as a trial manual. While some no-fault insurance anti-fraud cases occasionally do go to trial, such trials are relatively rare. Rather, the vast majority of these types of lawsuits are resolved through settlement or, less frequently, via dispositive motion practice. In any case, the potentially large number of discrete issues that could arise in a trial of a no-fault anti-fraud lawsuit, and the very fact-intensive nature of such issues, necessarily places them beyond the scope of this book.