



”Manufactured Litigation” and Other Frauds Trial Lawyers and In-House Counsel Face

John Fitzpatrick

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Manufactured Litigation & Other Frauds Trial Lawyers & In-House Counsel Face

Rich Vavra, Allstate

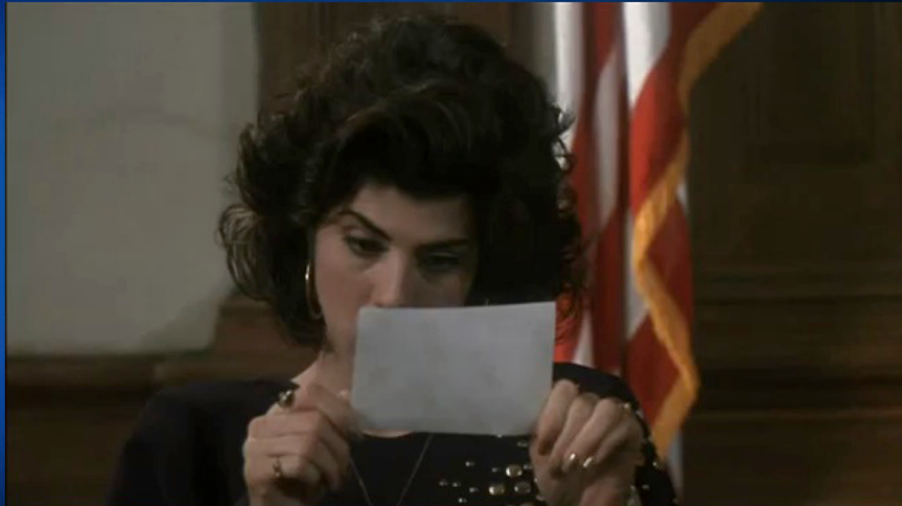
John Fitzpatrick, Wheeler Trigg O’Donnell

November 8, 2013

Bad Faith Litigation “Potential Land Mines” for All Insurance Companies

Plaintiffs’ Mantra: Defense can never prevail on a “set up” argument – to accuse plaintiff/lawyers/doctors of fraud & win - WRONG

Impossible to “set up” an Insurance Company
Endless resources – can hire best lawyers/doctors
If Jury finds huge verdict – too late to complain



Bad Faith Litigation

- Legal Background for Insurance “Set Up” Scheme
 - **Policy Limits:** Curse of PI Lawyers – regardless of real damages – case has no more value than policy limits if insured has limited assets
 - **Goal** – get around policy limits by manufacturing a claim for extra contractual liability
 - **Most States:** Majority of policy holders have minimum limits - \$15K in Arizona; \$25K in Colorado & many states
 - **How to “Bust” limits:** If Insurance Co “unreasonably failed to settle” w/in policy limits – 2 scenarios:
 - Non acceptance of a settlement offer by Plaintiff
 - “Unreasonable delay” by insurer in settling w/in limits
- **If “bust limits”** – get excess over limits – plus possibly **treble & punitive damages & attorney fees**

Mechanics of “Set Ups”

- Plaintiff makes **policy-limit demand immediately** – before knowing damages or policy limits, imposes arbitrary, short window of acceptance
- While offer “open” – plaintiff **w/holds critical evidence (medical & financial records)**
- Plaintiff makes offer **exclusively to insurer** – later accuses insurer of not communicating w/insured
- Plaintiff **refuses to settle** at any time after deadline
- After offer expires – **case goes “wild” w/damages** – plaintiff hires Bad-Faith lawyer as co-counsel
- After offer expires – plaintiff lines up **“litigation funding” or “free money” loans**

Excess Judgments & Value of Claim

- Plaintiff must obtain **excess judgment** – more than policy limits
- Some states allow **insurer & insured to “stipulate”** to a “reasonable amount” w/out trying PI case to determine damages
- Insured then **assigns his/her bad-faith claim** to plaintiff – so Insurance Company is fighting both plaintiff & now his insured
- Judgment enforceable against Insurer if found to have **unreasonably failed to settle case** – unless can show fraud, collusion or “reasonable conduct”
- Punitives always involved – generally no cap

“Set Up” turns Ordinary case into Titanic

- Many jurors have **no sympathy** for an insurance company that claims it was victimized
- If **Excess Judgment obtained** – powerful weapon for arguing Insurance company was unreasonable – could have avoided all if just settled early
- Some states **do not allow evidence** of an “intent to “set up” b/c doesn’t meet tests of legal materiality or logical relevance
- Some courts do not allow **necessary discovery** – such as requiring intent of insured’s attorney to produce fee documents or incentives for “set up”

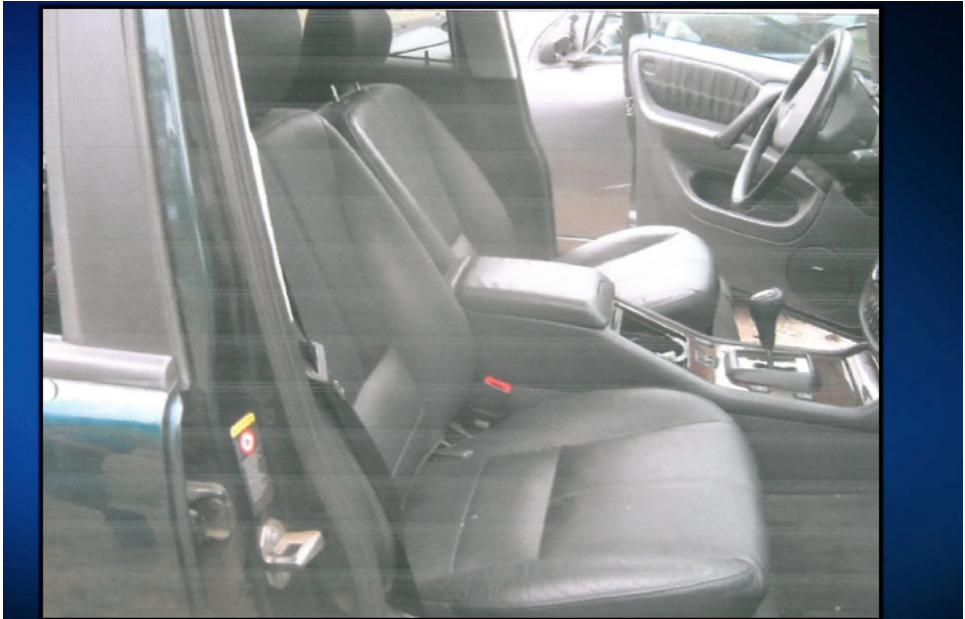
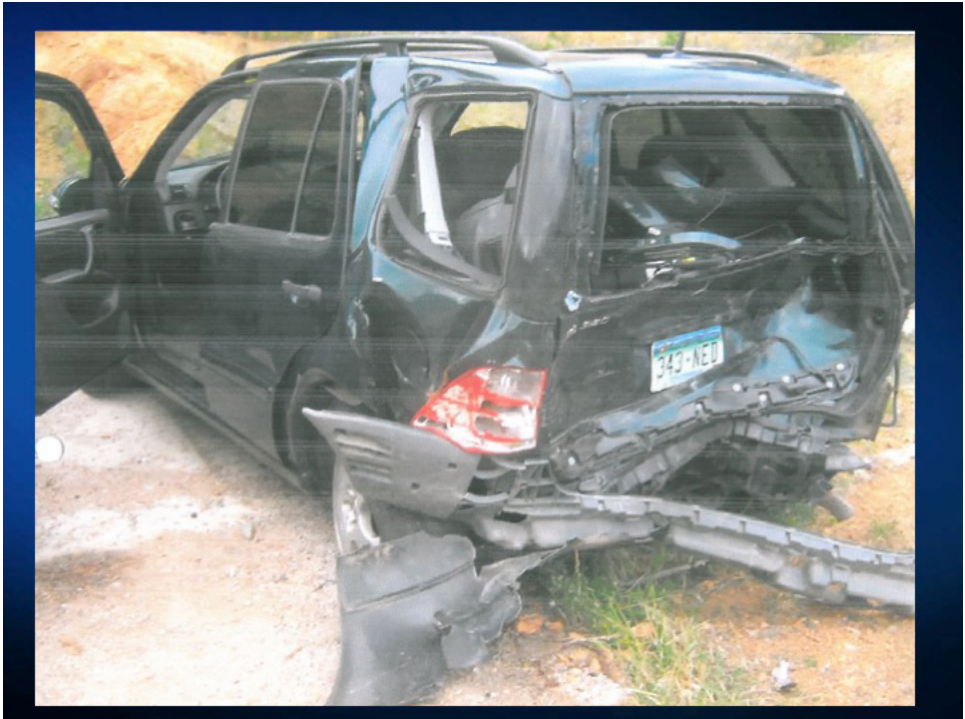
If Alleging Fraud – Go BIG

- Get **discovery of documents, emails and contracts**
- Be ready to **attack lawyers, insured & physicians involved**
- Appeal to Jury **“common sense”** – over paying claims impacts all “shareholders” and raises everyone’s premiums
- Dig **“deep”** in lawyer correspondence, retained experts; ask about litigation funding or “loan sharks”.

Not for the “Faint of Heart”

Facts of Case

- **8/24/08:** Allstate insured Sheri Lauk – going 55 mph – slams into back of Scott Martin’s Mercedes SUV while he was stopped – making a L turn
 - **She is 100% responsible**
- Martin pulled from SUV by bystanders – seen **walking** before EMTs arrived w/in mins of accident
 - Mercedes did its job – belted; no “starring of windshield”; no bent steering wheel; seat intact
 - **No LOC** - taken by ambulance to Swedish Hospital
- Lauk declined ambulance ride to hospital – told that Martin “would be fine”



Airbags Not Deployed; Seat Intact; Steering Wheel Intact;
Head Rest – Upright/Intact

Facts of Case: 3 Visits to ER

- **8/24/08:** 3 CTs – normal; head – normal - no bruising; Dx – concussion syndrome
 - Treated & released – apply ice
- **8/26/08:** Returned to ER - CT normal
 - Dx'd w/ post-concussion syndrome
 - Treated & released – apply ice
- **8/30/08:** Returns for pain in **leg only**; no complaints of head; released home – seen driving alone; no restrictions

Anatomy of a Fraud

- **Sept 3rd:** Martins meet **Richard Kaudy**, well-known plaintiff lawyer & “Set-Up Artist” of Insurance Companies at Starbucks - 9 days after accident
- **Scheme begins:** Kaudy’s client “self employed”
 - Allstate: young woman w/low limits - \$100K & makes \$14/hr as dog handler
 - Kaudy refers to friendly neuropsychologist – 9/10



Martins' Attorney: Richard Kaudy



Advertises Going After Insurance Companies for "more than policy limits"
DQ'd 2x for Violating Ethics in Fed Ct

- Knows **"Red Flags" of fraud** – advertises on web site
 - Medical records missing or not provided
 - Demands quick settlement of policy limits before enough info available about injuries
 - Marked inconsistency of claimant's version of crash w/ police reports & medical records
 - Place of contact is in a bar, coffee house
 - Unusually aggressive in pressing for a quick settlement within 30 days of crash

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Set-Up Begins

- **Sept 4th**: Kaudy sends "Demand Letter" to Allstate – pay policy limits **w/in 30 days**
 - Policy Limits: \$100K - clock starts ticking but not a single medical record produced
- **Sept 5th**: Kaudy calls Allstate – says Martin has a Traumatic Brain Injury ("TBI") – no doctor has yet made that diagnosis
 - Allstate Adjuster – Karla Cosgrove begins investigation

Kaudy's Motives

- Fee Agreement (Sept 3rd) :
 - Gets 25% if payment rec'd w/in 45 days (\$25K); 33% if payment rec'd before trial (\$33K); 50% if recovers more than \$100K - huge financial incentive (if \$3 million - \$1.5 million)
- Kaudy testified in deposition he didn't keep a copy...had standard agreement – but Allstate finally got it from 3rd party subpoena of his clients - OOPS
- Retains “Veto power” over settlement by clients
- Provides Allstate w/ limited info prior to Oct 6th that is misleading, incomplete, or false
- Why? Make it impossible for Allstate to meet his 30-day deadline to pay \$100,000 policy limits

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Kaudy Fee Agreement

The Kaudy Law Firm, L.L.C.
1016 Larimer Street, Suite 301
Denver, Colorado 80202

3. The contingency upon which the attorney's compensation is to be paid by the clients will be 25% of the Allstate Insurance Company policy limits, plus costs as described below, if tendered within 45 days from the date of request for such limits from Allstate. Then if the funds are not tendered within 45 days from the date of such demand, then the fees will be 33 and 1/3 % of any amounts recovered, plus costs and expenses as described below, up to the policy limits. If any recovery greater than the Allstate policy limits is recovered, then the attorney fees will total 50% of any amount recovered in excess of the Allstate policy limits. Any amounts recovered up to the policy limits after 45 days from the date of any policy limit demand will entitle the attorneys to fees of 33 and 1/3 % of any such amounts recovered, plus costs and expenses. In addition, the clients agree to pay from any Underinsured Motorist amounts recovered from any Underinsured Motorist insurance benefits arising from the above-described accident, incident or occurrence 25% of any amounts recovered if provided within 30 days of the demand for such benefits, 33 and 1/3 % of any amounts recovered after such demand, and 50% of any amounts recovered in excess of any Underinsured Motorist policy limits.

EXHIBIT 44
LAUK 10/14/11
THE EXHIBIT
A45

Kaudy Demand Letter

Sept. 4, 2008

The Kaudy Law Firm, L.L.C.
1416 Larimer Street, Suite 301
Denver, Colorado 80202
(303) 623-1885
Fax: (303) 623-1825

Richard M. Kaudy
rkaudy@kslawfirm.com

Mark A. Gould
mgould@kslawfirm.com

Sept. 4, 2008

Via Facsimile 1-866-440-6116

Linda May
Claims Representative
Allstate Insurance Co.
P.O. Box 6600



As I indicated, I have been engaged to help them obtain insurance benefits for Scott's injuries arising from this high-impact rear-end crash that hospitalized Scott.

Scott, a self-employed truck broker and father of five, and his wife Betsy, report that Scott has been experiencing considerable difficulty in resuming his business. They estimate his weekly earnings have decreased by an estimated \$50,000.

His home business that he operates from his computer grosses by their estimate some \$4 million. He arranges transportation for goods all over the country so requires considerable multi-tasking to perform those swift-moving demands.

They searched the internet and advised that they located Dr. Steven Schmitz to perform the neuro-psychological testing suggested by Swedish Medical Center to determine the nature and extent of his cognitive deficits.

Given the significant damages and high-impact, they are offering to release any and all claims against your insured if Allstate tenders to them the amount of the liability policy limits, including any umbrella coverages that may apply, if Allstate will provide those benefits within 30 days.

September 4th Demand Letter

- No MD dx'd Martin w/ any brain damage or disability; letter w/in 10 days of accident
- Lies/Misstatements:
 - Martin "hospitalized"
 - Martin losing \$50,000 per week; grossing \$4 million yr
 - Found Schmitz on internet
 - Fails to disclose ER records
- Oct 4th: Deadline

Kaudy 9/8/08 Letter

Sept. 8, 2008

The Kaudy Law Firm, L.L.C.
1416 Larimer Street, Suite 301
Denver, Colorado 80202
(303) 623-1885
Fax: (303) 623-1825

Richard M. Kaudy
rkaudy@klawfirm.com

Mark A. Gault
mgault@klawfirm.com

Sept. 8, 2008

Via Facsimile 1-866-440-6116
Karla Coogrove
Senior Staff Claims Representative
Allstate Insurance Co.
P.O. Box 6680
Englewood, CO, 80115

Re: Cheri Laak and Scott Martin

I forwarded your blank medical authorizations to Scott to sign and return. He also advised he has been provided care from Swedish Medical Center three times for injuries caused by this crash. You must have been misinformed that he has never been provided medical care at that facility. Enclosed please find a copy of the Aug. 26, 2008, report from Swedish Medical Center and Dr. Michael Hunt who treated Scott for his post-concussive injury.

Also enclosed find a Landstar commission statement reflecting year to date commissions paid totaling \$99,393.30 through August 30, 2008. The commission reflects a payment of \$2,785 for the week ending Aug. 30, 2008. The commission statement for the week ending Aug. 23, 2008 totaled \$3,964.64.

Please consider this information as part of your evaluation. Let me know if you want me to patch you in for a phone call to Scott so you can ask him questions. I will ask his wife Betsy to fax me any tax returns they have so I can get them to you.

TRIAL EX 0007 PAGE 1 OF 4

False Records

Aug 26, 2008 1:15PM No. 1025 P. 1

General Instructions
Swedish Medical Center
Emergency Department
501 East Hampden Avenue, Englewood, CO 80113 303-788-4911
08/26/2008 11:54

Patient: MARTIN, SCOTT
MRN: A0201202 ACCT: 001798298987
Sex: M DOB: [REDACTED] Age: 48y

Thank you for visiting the Swedish Medical Center Emergency Department. You have been evaluated today by Hunt, D. Michael, M.D. for the following condition(s):

Post concussive syndrome.

INSTRUCTIONS
Apply ice intermittently (15-20 minutes at a time 4-6 times daily).

Warnings: COMPLICATIONS: Complications from this condition are possible. It is important to follow up with a physician for further evaluation and treatment.
GENERAL WARNINGS: Return to the Emergency Department or contact your physician immediately if your condition worsens or changes unexpectedly, if not improving as expected, or if other problems arise.

Your Current Medications: Continue current medications. Your current home medications have been reviewed by the Emergency Department physician. No changes to your current home medications are recommended at this time.
Continue taking the following medications:
HCZ.

Follow-up:
Follow up with your doctor Scott. Follow up with Doctor Schires of Neuro Psychology in symptoms persist. 303-789-8393. Call for the next available appointment.

Understanding of the discharge instructions verbalized by patient and family.

Brain contusion

Patient Signature _____
Hospital Representative _____

08/26/2008

Def 1 Disc 0218

General Instructions
Swedish Medical Center
Emergency Department
501 East Hampden Avenue, Englewood, CO 80113 303-788-4911
08/26/2008 11:54

Patient: MARTIN, SCOTT
MRN: A0201202 ACCT: 001798298987
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Your Current Medications: Continue current medications. Your current home medications have been reviewed by the Emergency Department physician. No changes to your current home medications are recommended at this time.
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HCZ.

Follow-up:
Follow up with your doctor Scott. Follow up with Doctor Schires of Neuro Psychology in symptoms persist. 303-789-8393. Call for the next available appointment.

Understanding of the discharge instructions verbalized by patient and family.

Scott Martin

08/26/2008 1450 Hospital Representative

MRN: A0201202 ACCT: 001798298987

Def 1 Disc 0218

9/10/08 Schmitz Record



September 10, 2008
Neuropsychological Consultation
Re: Scott Martin

Accident History: August 24, 2008 automobile accident. The patient was stopped in traffic waiting to turn left on to a side when a car rear ended his vehicle at a high rate of speed. He said his last recollection was of seeing the car approximately 150 feet behind his and his next recollection after the accident was being pulled out of his car by the fire department. He estimated his period of LOC/PTA to be 15 and 20 minutes. He was apparently pushed across the highway and down into the embankment over 170 feet. His car did not roll over.

When he arrived at the emergency room, the noted he was injured. He was transported to the emergency room at Swedish Hospital and said that he was nauseous and vomited two to three times in the ambulance during the trip. He said he was experiencing cognitive difficulties in the ambulance. He said he was in and out of consciousness in the ambulance.

Mr. Martin reported today a cranial CT procedure completed at the time was negative, as was a follow-up a few days later. His wife corrected him, however, and mentioned that the CT scan actually showed some swelling of his brain. He

Disc 0240

9/10/08 Dr. Schmitz Record


Scott Martin
September 10, 2008
Page 4 of 4
re: Change the baseline testing in two weeks and will follow up with me in four weeks.
He could also benefit from some supportive psychological counseling. I will discuss this with him after we address his depressive mood issues.


undergo the baseline testing in two weeks and will follow up with me in four weeks.

Diagnoses: Traumatic brain injury.

Recommendations:

1. Obtain medical records.
2. TOVA baseline ASAP.
3. RTC four weeks.


Dr. Schmitz, Ph.D.
Psychologist
Dr. Esq and Mark Gould, Esq
303-429-1885
303-487-0932


Stephen P. Schmitz, Ph.D.
Clinical Neuropsychologist

cc: Rich Kaudy, Esq and Mark Gould, Esq
Phone #: 303-626-1885

Dr. Bennett
Phone #: 303-487-0932

Def 1 Disc 0243

A11_0004

Kaudy 9/25/08 Letter

The Kaudy Law Firm, L.L.C.
1416 Larimer Street, Suite 301
Denver, Colorado 80202
(303) 623-1885
Fax: (303) 623-1825

Richard M. Kaudy
rkaudy@ksudlaw.com

Mark A. Gould
mark@ksudlaw.com

Sept. 25, 2008

Via Facsimile 1-866-440-6116
Karla Congrove
Senior Staff Claims Representative
Allstate Insurance Co.
P.O. Box 6680
Englewood, CO, 80115

Re: Cheri Link and Scott Martin
Date of Loss: Aug. 24, 2008
Claim Number: 4471881633

Sept. 25, 2008

Dear Karla,

We have provided you with any and all records we have regarding Scott Martin. We have held nothing back. We have no records from Dr. Daniel Bennett. We have provided you with whatever income loss records provided to us to date.

Because of Scott's brain injury he is not equipped to withstand a recorded statement insurance interrogation. He is able to withstand an informal phone conversation with you that isn't recorded so he doesn't have to worry that whatever he says can be converted into ammunition to be used to attack him later. This should enable you to obtain whatever additional information you may need to investigate and evaluate the claim up to your insured's policy limits.

If that will be acceptable please let us know.

TRIAL EX 0010 PAGE 1 OF 1

9/9/08 Bennett Record

11/4/08 9:27 PM From: Jodi Wasserman

Page 20 of 36

BBH™ 2

Page 4

BBH™ 2
REDACTED

Page 4
Extended Report

CLINICAL SUMMARY

VALIDITY: Questionable

Item 50 was endorsed, which could suggest the possibility of careless or random responding or a problem with literacy.

DEFENSIVENESS: Low

This patient's psychological defensiveness score was unusually low, at a level seen in less than 4% of patients. His psychological defensiveness score was similar to the scores in an experimental sample of patients who were asked to magnify their difficulties. This lowering of defenses could be explained by an unusual degree of candor with the caregiver, as part of a cry for help, or by a propensity to complain. If psychosocial risk factors are present, the possibility that these difficulties are associated with symptom magnification should be considered.

SUMMARY OF FINDINGS:

If there is an objective basis for this patient's reports of localized severe pain and perceived disability, this profile suggests that he is coping with the emotional stress of this fairly well. If not, his profile may suggest that factors in his psychosocial environment (such as high levels of support or secondary gain) offset the emotional distress that might otherwise be expected and may reinforce his pain complaints. Psychological treatment for pain management and any exaggerated perception of disability should be considered.

Symptom
Magnification = Fraud

Wass, J080801

Def 1 Disc 0971

A24_0020

Cosgrove Letter
to Kaudy
Oct. 6, 2008



We are unable to meet your demand for policy limits at this time. We have not been provided with emergency room records; paramedic reports; or medical bills pertaining to this accident. We cannot evaluate Mr. Martin's injury without this information.

We again reiterate that if you chose to allow your client sign the medical authorization previously mailed to you, we will be happy to gather the needed information ourselves at our cost.



Kaudy Gets What He Wanted – Take Allstate to Trial

Kaudy would never again agree to
settle for policy limits

Deadline expired – Allstate is the
ultimate target &

Now we Have to Manufacture
Damages

Kaudy 10/20/08 Email

Cosgrove, Karla

From: Richard Kaudy [rkaudy@Kaudylaw.com]

Sent: Monday, October 20, 2008 1:54 PM

To: Cosgrove, Karla

Subject: scott martin

Attachments: 10-18-08 Swedish Medical Center - Martin.pdf; 2006 Individual Tax Return and 2007 1099 form.pdf; 8-26-08 Swedish Medical - General Instructions, Martin Scott.pdf; Swedish Med Center bill.pdf; Carepoint bill.pdf; Carepoint PC 8-24-08 to 8-30-08, \$664.00, Martin.pdf; EK Creek Fire Protection bill.pdf; Radiology Imaging 8-24-08, \$ 504.00, Martin.pdf; Radiology Imaging 8-26-08, \$132.00, Martin.pdf; Neurology Imaging bills.pdf; Swedish Hospital bill and collection notice.pdf

From: Richard Kaudy [rkaudy@Kaudylaw.com]

Sent: Monday, October 20, 2008 1:54 PM

To: Cosgrove, Karla

Karla,

Per your request I am enclosing the Swedish Medical Center records we just received today. I also am enclosing their 2006 income tax return showing considerably less in gross receipts than what they'd said earlier. They were not grossing an estimated \$50,000 per month. This return shows net income of some \$100k. This is provided for clarification and accuracy and not overstatement.

Dear Karla,

Per your request I am enclosing the Swedish Medical Center records we just received today. I also am enclosing their 2006 income tax return showing considerably less in gross receipts than what they'd said earlier. They were not grossing an estimated \$50,000 per month. This return shows net income of some \$100k. This is provided for clarification and accuracy and not overstatement. The Swedish medical records show normal CT and other imaging tests as well. Here also are all of the bills we've been able to gather.

10/23/2008

TRIAL EX 0016 PAGE 1 OF 62

Schmitz 12/17/08 Record

Martin Scott
December 17, 2008
Page 3 of 7

He has hired an assistant and that has greatly reduced his daily responsibilities in his job. In fact, Mr. Martin is now going to be handling all of the sales calls and the day to day operations will be the responsibility of the assistant.

He has recently begun driving and reports only a few occasional lapses. These are diminishing daily.

He has recently begun driving and reports only a few occasional lapses. These are diminishing daily.

The patient was referred for some psychological counseling but has not followed up on that referral.

of seven children and he denied any abuse history. He has been married for 20 years and they have five children, four of whom live at home. The eldest has just started college. His wife is supportive of him. They are experiencing stress due to his current level of dysfunction.

The patient denied any history of previous head injury, loss of conscious, seizure

Given the time since his injury, Mr. Martin may very well experience further spontaneous recovery over the next few months. He is to return to our office in May 2009 for a repeat neuropsychological evaluation.

difficulties prior to those following his accident.

Come Back in May?

Schmitz SubaDocx 0888

A37_0802

Witte Feb '09 Emails ADR – Rejected – still being treated?

Witte, Christopher

From: Witte, Christopher
Sent: Tuesday, February 17, 2009 11:22 AM
To: Kassing, Gabriel
Cc: Cosgrove, Karla
Subject: RE: Martin vs. Lauk - 4471881633.1 , Case Number: 2008CV4546

Please set the mediation in July.

Witte, Christopher

From: Witte, Christopher
Sent: Tuesday, February 17, 2009 11:22 AM
To: Kassing, Gabriel
Cc: Cosgrove, Karla
Subject: RE: Martin vs. Lauk - 4471881633.1 , Case Number: 2008CV4546

Please set the mediation in July.

Thank you.

From: Kassing, Gabriel
Sent: Friday, February 13, 2009 2:05 PM
To: Witte, Christopher
Subject: Martin vs. Lauk - 4471881633.1 , Case Number: 2008CV4546
Importance: High

Donna from QC cld back re stting ADR. Per Dorina it is premature to set ADR as the ptf has not finished treating. Thinks it is best to hold off setting ADR until he is done treating. Has no timetable when that will be but thinks ADR might happen in July. I can not set ADR at this time so I will be closing my task. Please let me know if I missed something or if I need do something else.

A30

March 18, 2009 Loan Sharks

TRANSFER AND CONVEYANCE OF
PROCEEDS AND SECURITY AGREEMENT
Agreement to CL 91-AD082408-F391
(Including Lien)

THIS TRANSFER AND CONVEYANCE OF PROCEEDS AND SECURITY AGREEMENT
(The "Agreement") is made this 18th day of MARCH, 2009, by and

THIS TRANSFER AND CONVEYANCE OF PROCEEDS AND SECURITY AGREEMENT
(The "Agreement") is made this 18th day of MARCH, 2009, by and
between INJURY MANAGEMENT FUNDING, LLC, dba IM FUNDING, ("Transferee"), and
Scott Denis Martin ("Transferor"), whose address is **25619 Pleasant Park Road, Conifer, CO
80433**.

RECITALS

WHEREAS, Transferor has a pending claim against **Allstate Insurance**, Claim
Number: **4471881633-ZKC**, arising out of an act of negligence, accident or other incident
occurring on or about August 24, 2008 in which Transferor was injured.

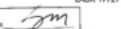
settlement or final judgment can be obtained.

WHEREAS, Transferee has made its own determination to make this advance and has
obtained its own advice from Transferor's counsel regarding the merits, value, risk, or validity of

4. This Agreement, and the obligation to pay over the Proceeds specified herein is totally
contingent, speculative and without recourse on the part of Transferee, except for the
security interest in the Litigation, and any successor claim(s) and/or litigation(s) arising out
of the same facts, or arising out of the conduct of the Litigation. If there is no recovery of
Proceeds by Transferor as specified herein, then Transferee shall receive **NOTHING**.

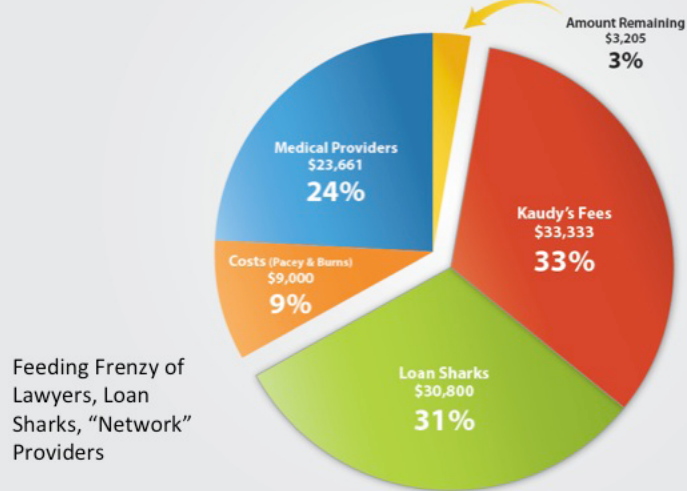
FINANCIAL INSTITUTIONS
PH: (303) 991-5750
FX: (303) 991-5750

Transferor's Initials

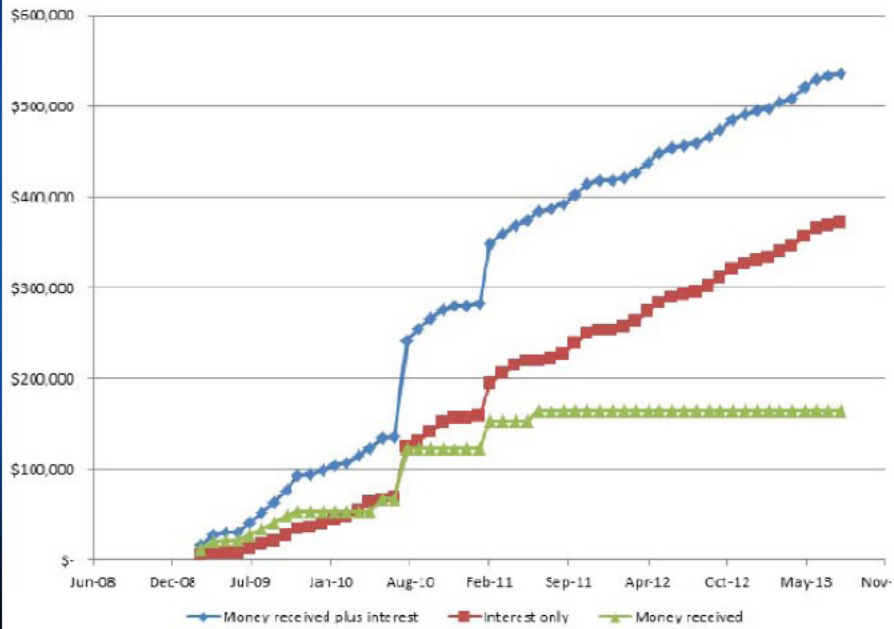
LAUK 17727


A56_009

Where would \$100K go in May 2009?



Free Money Received by the Martins



Ex. B4 Kaudy 4/14/09 Email

From: Richard Kaudy [mailto:rkaudy@Kaudylaw.com]
Sent: Tuesday, April 14, 2009 1:23 PM
To: Patricia Pacey
Cc: Betsy martin
Subject: scott martin

Paul Park
From: Amy Butler
Sent: Tuesday, April 14, 2009 2:15 PM
To: Paul Park
Subject: FW: scott martin
FYI

Patricia Pacey
From: Patricia Pacey
Sent: Tuesday, April 14, 2009 2:09 PM
To: Amy Butler
Subject: FW: scott martin

Richard Kaudy [mailto:rkaudy@Kaudylaw.com]
From: Richard Kaudy [mailto:rkaudy@Kaudylaw.com]
Sent: Tuesday, April 14, 2009 1:23 PM
To: Patricia Pacey
Cc: Betsy martin
Subject: scott martin

Dear Dr. Pacey,
Will you be able to provide us with a tentative or preliminary economic analysis in the next week or so? We're hoping your analysis will assist Allstate Insurance Company arrive at the proper evaluation for Scott and Betsy's injuries. The Allstate adjuster and supervisor earlier did not believe Scott's traumatic brain injury would cause many problems and would resolve shortly.

The Allstate policy limit was \$100,000 but Allstate rejected our earlier offers to accept that amount and release the Allstate insured. Allstate rejected all offers to settle within policy limits. According to Colorado case law, the insurer under that circumstance becomes responsible to pay the entire judgment even if that amount exceeds the insurance policy limits.

Please let us know if you need anything further so we can provide that to you. Thanks once again.

The Kaudy Law Firm, L.L.C.
1415 Launier St., Suite 300
Denver, CO 80202
Phone: 303-623-1885
Fax: 303-623-1825
rkaudy@kaudyllaw.com

4/14/2009

Doc. Exempt
B4

- Telling the Economist – “Sky is the Limit” – don’t hold back
- No dx yet
- Misstates Colorado Law

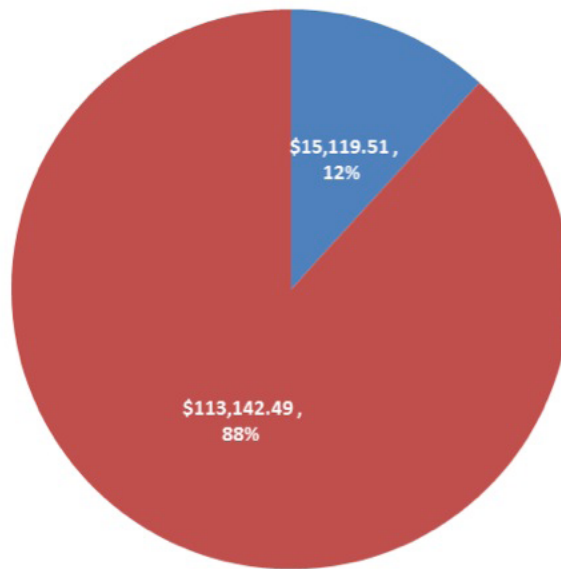
May 19, 2009 – Nine Months Post-Accident – Ms. Cosgrove Learns:

- 1st Dx that Martin cannot work; first driving restrictions; “totally & permanently disabled” by Stephen Schmitz – April 27th
- Ms. Cosgrove reviews, immediately recommends payment of limits of \$100,000 – 5 months before trial (no deps taken or experts disclosed)
- Wage loss information still not provided

Martins' Annual Income (tax returns)



Costs before and after May 21, 2009



■ Costs before May 21, 2009 ■ Costs from May 21, 2009

Kaudy Brings in Friedman

- Kaudy brings in nationally-known Plaintiffs' Lawyer from Alaska, Richard Friedman, to try admitted liability "car crash" case w/him?
- Never lost Bad Faith case – won millions
- **Oct 2009:** Verdict - \$3.3 million (asked for \$20 million & didn't bring client) – Allstate pays \$100K
- Lauk REFUSES to assign rights to plaintiff – files bankruptcy despite being offered \$50K by plaintiff
 - Bankruptcy Trustee hires Friedman – stands to gain \$\$\$
- **Oct 2010:** Suit filed against Allstate for Bad Faith

Rich Friedman: The "People's Lawyer"
Advocate of "Reptilian Theory"
Doesn't demonize Insurance Company – just a mistake



*"Trials are about telling right from wrong.
Our country depends on getting the answer right."*



Plaintiffs' Expert



Stephen Prater
Plaintiff's Insurance Expert
badfaith7@aol.com

It's Okay to Lie – All Plaintiff Lawyers Lie!

- Maybe why he was sanctioned by Federal Court for lying in 2006???
- “not the 1st time you sought to obfuscate financial info; not mistake or inadvertence; but an abuse of litigation process”



CREDENTIALS

- 30 yrs as Lawyer: Not 1 day in private practice
 - Never signed a pleading; Never represented a client
- 7 yrs: GC of Allied Mgmt (Holding co)
 - “GC” of himself – only lawyer when hired & left
- 30 yrs as “Adjunct Lecturer” at SC Law – one night/wk class a semester – Never on track for full-time tenured prof
- Wrote article on Bad Faith: “Black Monday” for plaintiff lawyers when unanimous Supreme Court (9-0) ruled in ERISA

Legal/Financial Bias

- 15-yr relationship w/ Friedman Law Firm
 - Paid over \$1 million
 - \$100K in this case alone
- Refuses to say how much he makes as legal expert
 - “None of your business”
 - “CA won't let you get it in”
 - Affidavit is wrong – someone else prepared it

**But, Mr. Prater... you signed the Affidavit...
OOPS!**

Stephen Prater
Plaintiffs' Insurance Expert

Legal/Financial Bias

- 40 hrs/wk x 50 wks/yr x hourly rate (\$300/hr) - **\$600,000 in 2001 (\$656,000)**
- Rate Today - \$650/hr – to \$1000/hr
 - Over \$1 million per yr last few yrs
 - **Over \$10 million last 10-15 yrs**
- **80 – 90% for plaintiff; 99% of testimony for plaintiff**



J. Kent Miller
Allstate's Insurance Expert

If We Followed Prater's Rules (Can't Believe Anything Plaintiffs' Lawyers Say) - Just Write a Check)

Former President of ATLA in Colorado

Would Destroy Insurance Industry – No One Could Afford It

Premiums Would Rise/Huge Fraud

Kaudy "set up" Insurancy Comp from Day 1

Conclusion

- Manufactured Litigation
 - By Lawyers
 - For Lawyers (and their Networks of Loan Sharks and MDs)
- SHOULD NOT BE TOLERATED

**DESTROY INSURANCE
RAISES EVERYONE'S RATES**

About John Fitzpatrick

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<http://www.wtotrial.com/john-m-fitzpatrick-1>

John Fitzpatrick (“Fitz”) is a “go-to” trial attorney for high-exposure cases. Whether the case involves allegations of product defects in medical devices, pharmaceuticals, asbestos, or aviation, birth trauma or other catastrophic medical malpractice claims, or chemical releases of toxic substances, Fitz has an unparalleled record of success. He has tried over 220 cases to verdict in more than 30 states and obtained defense verdicts in the vast majority of them.

Just since joining WTO in 2007, Fitz has tried 30 cases to verdict in 10 states, including many of the designated judicial hellholes for corporate America, including Philadelphia, Baltimore, Los Angeles, San Francisco, and Madison County, Illinois. He is national trial counsel to top companies such as General Electric, AT&T, Foster Wheeler, and Evenflo, and several major insurance companies in defending product liability, toxic tort, medical malpractice, and personal injury claims. Fitz lectures frequently to corporate counsel around the country on how to select experienced trial lawyers for high-exposure cases.

A former concert pianist and Army Airborne Ranger, Fitz began his legal career in 1981 with the U.S. Army JAG Corps as a prosecutor trying criminal cases in Colorado. He became the 8th Army Division’s Chief Prosecutor in South Korea in 1983. He was selected to be the senior medical malpractice attorney for the U.S. Army Tort Branch at the Pentagon in 1986 where he tried 12 civil cases to verdict in federal courts across the country before entering private practice in Richmond, Virginia in 1988.

Practice Areas

- Commercial
- Environmental Litigation
- Personal Injury Defense
- Product Liability
- Professional Liability
- Toxic Torts

Industries

- Asbestos
- Construction & Engineering
- Health Care
- Medical Devices & Pharmaceuticals

Education

- University of Notre Dame Law School, J.D., cum laude, 1981
- United States Military Academy, West Point, B.S., 1974