

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

ALLSTATE INSURANCE COMPANY : CIVIL ACTION
 :
v. :
 :
ARIE OREN, M.D., C.H. MEDICAL :
CENTER, INC., ALEXANDER ZAVERUKHA, :
and VICTOR TSAN : No. 97-2511

Decision Under Fed.R.Civ.P. 52(a)

Ludwig, J.

September __, 1998

This non-jury decision follows a hearing to assess damages against defendant Arie Oren, M.D., pro se, defendant C.H. Medical Center, Inc., which was not present or represented, and defendant Alexander Zaverukha, pro se, held August 5, 1998.¹

Background

On April 16, 1997, summary judgment was entered against defendant Oren² based on his guilty plea to four counts of a criminal RICO indictment arising out of the same conduct as this

¹ On May 15, 1997 the Clerk of Court entered defaults against all defendants for not responding to the complaint. This was followed by the entry of defaults by the Court as to defendants C.H. Medical Center, Inc. and Alexander Zaverukha. Order of December 12, 1997. Defendant Tsan was dismissed. Order of July 17, 1997. Defendant Oren objected to the entry of default against him because of lack of notice.

² The claims in the complaint upon which the summary judgment was based include: civil RICO, 18 U.S.C. §1962 et seq. (Counts I and II), civil conspiracy (Count III), and fraud (Count IV), 18 Pa. C.S. §4117 et seq. (Counts V-X).

action. United States v. Oren, Cr. No. 94-515-02 (E.D. Pa) (18 U.S.C. §§1862(2),1863 two counts each).

According to Dr. Oren's guilty plea agreement, the charges stemmed from his "participation in two separate schemes to defraud insurance companies by submitting fraudulent and inflated medical bills to insurance companies on behalf of patients who were pursuing false and fraudulent personal injury claims." Plea agreement at 1.³ In this lawsuit, plaintiff Allstate Insurance Company asked to be reimbursed for 30 payments, totaling \$177,701.50, made as "a direct result of the fraudulent activities of defendants Alexander Zaverukha and Arie Oren, M.D...." Pl. sugg. findings ¶ 18, exh. C.⁴ Treble damages are sought under civil RICO. 18 U.S.C. §1964(c). Id., at ¶21. As additional damages, plaintiff requests \$13,107 in "internal operating expenses attributable to the fraud," and \$29,352.77 in attorney's fees. Id. ¶¶ 19, 20.

At the assessment of damages hearing, plaintiff called one witness, its special investigation analyst, who testified that he had reviewed the 30 payments and that they all were attributable to the criminal RICO activities to which defendant Oren had pleaded guilty. Defendant Oren testified that he was not involved in the

³ The "racketeering acts" as charged in the indictment included eight "staged accidents" in which he participated. Gov't. plea mem. at 9.

⁴ Summaries listing the recipients of plaintiff's payments were submitted as plaintiff's trial exhibits "P-1" and "P-2".

staging of any accidents or in the submission of claims to insurance companies.⁵ In effect, he contested his causal responsibility for any of plaintiff's losses.

I. Findings of Fact

1. The entry of judgment against defendant Oren in this action arose from his guilty plea, supra, at 2, the fact basis of which is set forth in the government's guilty plea memorandum. Those facts identify eight of the 30 payments listed in plaintiff's summary of damages exhibit. They are: Stella Engelshteyn, \$5,000; Leonid Tysh, \$4,626.68; Faith Tysh, \$6,075.53; Dimitri Tysh, \$4,484.13; Alex Gitsis, \$4,858.69; Lioubov Gitsis, \$5,000; Mikhaie Khazanov, \$15,952.84; and Sherman Soloman, \$7,181.75. These payments total \$53,179.62. Trebled, they are \$159,538.86.

2. The other 22 payments are not evidenced in the government's guilty plea memorandum, and the conclusory testimony of plaintiff's witness was insufficient to prove the assessability of those claims.

3. The amounts proven, \$53,179.62, represent 29.9% of the amounts claimed, \$177,701.50. Lacking any other information as to an appropriate allocation, that percentage will be applied to plaintiff's claims for expenses - internal operating costs and

⁵ See Order of May 6, 1998 denying defendant Oren's "request for reconsideration." On April 16, 1998 he had applied to the Court of Appeals for permission to file a second §2255 petition to challenge his criminal conviction and withdraw his guilty plea.

attorney's fees in the total amount of \$42,459.77. Under this formula, plaintiff is entitled to an additional \$12,695.47.

II. Conclusions of Law

1. This Court has jurisdiction over the subject matter of this action and over the parties.

2. Plaintiff sustained its burden of proof as to eight of the 30 claims listed in its summary. The total amount proven is \$53,179.62.

3. Under the civil RICO statute, defendant Oren is liable for treble damages, or \$159,538.86

4. Plaintiff did not prove that the total amount of damages claimed in its summary chart resulted from defendant's conduct.

5. Applying the percentage of 29.9% - the ratio of the amounts proven to the amounts claimed - to the plaintiff's claims for expenses, plaintiff is entitled to \$3918.99 for internal operating expenses and \$8776.48 for attorney's fees.

An order setting forth the amounts assessed accompanies this memorandum of decision.

Edmund V. Ludwig, J.

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O R D E R

And now, this ____ day of September, 1998, upon hearing, damages are entered in favor of plaintiff Allstate Insurance Company against defendants Arie Oren, M.D., C.H. Medical Center, Inc., and Alexander Zaverukha as follows:

1. compensatory damages of \$53,538.86, as trebled for RICO violations:	\$159,538.86
2. internal operating expenses:	\$3,918.99
3. attorney's fees:	<u>\$8,776.49</u>
	\$177,234.33

Additionally, there is interest, as appropriate, and costs.

See Decision entered this date.

Edmund V. Ludwig, J.