

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ALLSTATE FIRE & CASUALTY INSURANCE §
COMPANY, ALLSTATE INDEMNITY §
COMPANY, and ALLSTATE COUNTY §
MUTUAL INSURANCE COMPANY, §
Plaintiffs §

vs. §

Civil Action No. 3:25-cv-2984

FOUNDATION PHYSICIANS GROUP, INC., §
PRIME IMAGING PARTNERS, LLC, §
THOMAS HELLMAN, §
JAIME HELLMAN, NATHAN MELTZER, §
BRADLEY EAMES, D.O., RALPH STEIN, §
D.O., ANTHONY ERIC GIOIA, M.D., §
DOROTHY VINTON, F.N.P., JOEL §
BRANDON BROCK, F.N.P., D.C., §
COMPLETE PAIN SOLUTIONS, PLLC, and §
MEMORIAL MRI & DIAGNOSTIC, PLLC §
Defendants §

**PLAINTIFFS DEMAND TRIAL
BY JURY**

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Come now Allstate Fire & Casualty Insurance Company, Allstate Indemnity Company, and Allstate County Mutual Insurance Company, hereinafter referred to as “Plaintiffs” and file this Original Complaint and complain of Foundation Physicians Group, Inc., Prime Imaging Partners, LLC, Thomas Hellman, Jaime Hellman, Nathan Meltzer, Bradley Eames, D.O., Ralph Stein, D.O., Anthony Eric Gioia, M.D., Dorothy Vinton, F.N.P., Joel Brandon Brock, F.N.P., Complete Pain Solutions, PLLC, and Memorial MRI & Diagnostic, PLLC (collectively, “Defendants”) and for such action would show the Court as follows:

**I.
PREDICATE**

1. Plaintiffs seek to recover sums fraudulently procured by Defendants from Plaintiffs for treatment from mid-2019 through 2023, by means of bodily injury claims based on medical billings for unnecessary and unreasonable services such as examinations and injection procedures. These medical bills, with related reports and other treatment documents, were submitted to Plaintiffs as part of claims for personal injuries.

2. Defendants are associated with Foundation Physicians Group, Inc. (“Foundation”), a pain management practice. Prior to 2019, a number of physicians including orthopedic surgeons, pain management physicians, and neurologists saw various types of patients at Foundation. However, by mid-2019, only a limited number of part-time physicians saw patients there, nurse practitioners performed the majority of examinations and made determinations for injection procedures, the patient population became more limited to automobile accident patients, and the types of treatment for these patients became more limited. Texas delegation requirements for the nurse practitioners were not followed.

3. Plaintiffs would show that in the period at issue particular law offices, directly or in coordination with chiropractic and multidisciplinary clinics associated with these law offices, referred automobile accident patients to Defendants’ Enterprise. Defendants converted otherwise soft-tissue bodily injury claims into major medical claims by conducting unnecessary injection procedures. Generally, patients were referred for MRIs, to a limited number of MRI facilities including ones of Prime Imaging Partners, LLC (“Prime”). Prime is a co-owned entity of Foundation, and their respective main offices are located in the same building along Loop 635 in north Dallas.

4. The patients were then referred to Foundation. At times, when the patients had not yet had MRIs, Foundation issued findings that the patient needed such imaging and referred them to

Prime. Foundation also issued findings the patients needed injection procedures, such as spinal epidural steroid injections. Foundation performed these procedures, under general IV anesthesia, at the main Prime location. At times, Foundation performed procedures such as joint injections in its own office space. Foundation and Prime, and later Complete Pain Solutions, PLLC (“Complete Pain”) issued billings for the unnecessary procedures, further increasing the costs for the procedures by utilizing numerous improper facility fees as unbundled medical charges, and billing for some services that were not rendered.

5. No physician evaluated the need for or otherwise approved the injection procedures ordered by the nurse practitioners. However, in Texas state court testimony, Dr. Anthony Gioia, Dr. Bradley Eames, and two Foundation nurse practitioners have testified the patient’s personal injury attorney had to authorize all injection procedures recommended by any Foundation providers before the procedures were performed. One nurse practitioner testified attorneys also had to authorize recommended diagnostic testing.

6. Defendants produced limited treatment records, both in regard to documents provided to law offices to enclose in settlement demand packets sent to Plaintiffs, and in response to subpoenas for patient files in cases where Foundation patients filed personal injury litigation. In particular regard to the injection procedures, the only documentation produced in almost every case were templated one-page procedure reports. Anesthesia records, patient procedure and anesthesia consents, pre-and post-operative documents, or fluoroscopic images were not produced. In an April 2024 Texas state court deposition, Dr. Eames stated fluoroscopic images of the procedures were not retained.

7. As a result of Defendants’ conduct, Plaintiffs have been damaged by the payment of sums related to the claims at issue, which are identified in Appendix A to this Complaint. To obtain just compensation for this organized fraudulent activity, Plaintiffs seek treble damages, plus interest thereon, and the costs of this suit, including reasonable attorneys’ fees, pursuant to Title 18, United

States Code, Sections 1962 (c) and (d), and Section 1964 (“RICO”). Plaintiffs also seek compensatory and exemplary damages under applicable Texas state law.

II. JURISDICTION AND VENUE

8. Pursuant to Title 28, United States Code, Section 1331, this Court has subject matter jurisdiction over the claims alleged in Counts One and Two because such claims arise under the laws of the United States, specifically Title 18, United States Code, Sections 1962(c) and (d), and Section 1964(c). Pursuant to Title 28, United States Code, Section 1367, this Court has subject matter jurisdiction over the state common law fraud, conspiracy, unjust enrichment, and money had and received claims alleged in Counts Four through Seven, because they are so related to the RICO claims they form part of the same case or controversy.

9. Venue is proper in this District pursuant to Title 28, United States Code, Section 1391(b) in that a substantial part of the events or omissions giving rise to the claims alleged herein occurred within this District, and a number of the Defendants reside in this District. Venue is also proper pursuant to Title 18, United States Code, Section 1965.

III. PARTIES

A. Plaintiffs

10. Plaintiff **Allstate Fire & Casualty Insurance Company** is a corporation incorporated under the laws of Illinois, with its principal place of business in Illinois.

11. Plaintiff, **Allstate Indemnity Company**, is a corporation incorporated under the laws of Illinois, with its principal place of business in Illinois.

12. Plaintiff, **Allstate County Mutual Insurance Company**, is a corporation incorporated under the laws of Texas, with its principal place of business in Texas.

B. Defendants

13. Defendant, **Foundation Physicians Group, Inc.**, is a non-profit corporation organized under the laws of the State of Texas, with its principal place of business in Dallas, Texas. Foundation Physicians Group, Inc. may be served through its registered agent for service Patrick Souter, 1601 Elm Street, ste. 4600, Dallas, Texas.

14. Defendant, **Prime Imaging Partners, LLC** is a limited liability company organized under the laws of the State of Nevada and registered as a foreign limited liability company in the State of Texas, with its principal place of business in Dallas, Texas. Prime Imaging Partners, LLC may be served through its registered agent for service Jaime Hellman, 12870 Hillcrest Plaza Drive, ste. 120, Dallas, Texas.

15. Defendant, **Thomas Hellman** is a citizen and resident of the State of Texas, and may be served at 12870 Hillcrest Plaza Drive, ste. 120, Dallas, Texas, or wherever he may be found.

16. Defendant, **Jaime Hellman** is a citizen and resident of the State of Texas, and may be served at 12870 Hillcrest Plaza Drive, ste. 120, Dallas, Texas, or wherever she may be found.

17. Defendant, **Nathan Meltzer** is a citizen and resident of the State of Texas, and may be served at 12870 Hillcrest Plaza Drive, ste. 120, Dallas, Texas, or wherever he may be found.

18. Defendant, **Bradley Eames, D.O.** is a citizen and resident of the State of Texas, and may be served at 12870 Hillcrest Plaza Dr., ste. H103, Dallas, Texas, or wherever he may be found.

19. Defendant, **Ralph Stein, D.O.** is a citizen and resident of the State of Texas, and may be served at 12870 Hillcrest Plaza Dr., ste. H103, Dallas, Texas, or wherever he may be found.

20. Defendant, **Anthony Eric Gioia, M.D.** is a citizen and resident of the State of Texas, and may be served at 12870 Hillcrest Plaza Dr., ste. H103, Dallas, Texas, or wherever he may be found.

21. Defendant, **Dorothy ‘Liz’ Vinton, F.N.P.**, is a citizen and resident of the State of Texas, and may be served at 12870 Hillcrest Plaza Dr., ste. H103, Dallas, Texas, or wherever she may be found..

22. Defendant, **Joel Brandon Brock, F.N.P.**, is a citizen and resident of the State of Texas, and may be served at 10260 N. Central Expressway, ste. 210, Dallas, Texas, or wherever he may be found..

23. Defendant, **Complete Pain Solutions, PLLC** is a professional limited liability company organized under the laws of the State of Texas, with its principal place of business in Houston, Texas. Complete Pain Solutions, PLLC may be served through its registered agent for service Fred Huang, at 11740 Katy Fwy, ste. 1300, Houston, Texas.

24. Defendant, **Memorial MRI & Diagnostic, PLLC** is a professional limited liability company organized under the laws of the State of Texas, with its principal place of business in Houston, Texas. Memorial MRI & Diagnostic, PLLC may be served through its registered agent for service Fred Huang, at 11740 Katy Fwy, ste. 1300, Houston, Texas..

IV.
STATEMENT OF FACTS COMMON
TO ALL CAUSES OF ACTION

A. Establishment of Prime Imaging Partners, LLC in Texas

25. On June 20, 2006, Prime Imaging Partners, LLC (“Prime”), a Nevada company, filed an application for registration of a foreign limited liability company with the Texas Secretary of State. Jaime Hellman was identified as sole governing person. Prime’s 2006 Texas Franchise Tax Public Information Report (“annual report”) listed Nathan Meltzer as member and director. Prime began doing business under the fictitious business name “Prime Diagnostic Imaging, LLC.”

26. Subsequent annual reports have listed Meltzer as member and director. Thomas and Jaime Hellman are also owners. On his LinkedIn Page, Thomas Hellman states he has been Prime

Diagnostic Imaging's owner and CEO since 2002. In a September 2009 "Ennis Now" article, he stated, "My wife and I own Prime Diagnostic."¹

27. Prime's principle office and facility became 12840 Hillcrest Plaza Dr., suite E100, Dallas. Other Prime facilities were opened, including ones in Duncanville around 2011 and Fort Worth (Benbrook) around 2014.

28. On March 10, 2009, the Certificate of Formation for JTP Diagnostics, LLC was filed with the Texas Secretary of State. Thomas and Jaime Hellman were identified as the managers. Subsequently, JTP Diagnostics at times billed for services at Prime facilities rather than Prime.

B. Formation of Foundation Physicians Group, Inc.

29. On January 11, 2010, the Certificate of Formation for Foundation Physicians Group, Inc. ("Foundation"), a Texas Non-Profit Corporation, was filed with the Texas Secretary of State. The sole member was Progressive Healthcare Alliance, Inc., an assumed business name of Houma PHA, LLC, at a Colleyville P.O. Box address. The listed initial directors were Gary Ogin, M.D. of Irving, Robert Bloom, M.D. of Lubbock, and Oscar Lightner, M.D. of Laredo. They did not appear in any subsequent corporate filing. Foundation was certified by the Texas Medical Board as a §162.001(b) Non-Profit Health Organization three months later on April 9, 2010. In 2011, Houma PHA forfeited its charter for failure to pay franchise taxes. In February 2012, Foundation forfeited its certificate for failure to pay franchise taxes.

30. Foundation was apparently acquired by the Hellmans and Meltzer around 2012. In May 2012, Meltzer signed an Application for Reinstatement on Foundation's behalf. Foundation's 2012 annual report listed Meltzer and Jaime Hellman as its officers. Foundation's annual reports filed in 2012 and subsequent years have listed Jaime Hellman as President and Meltzer as Secretary.

¹ <https://nowmagazines.com/onlineeditions/editions/909ennis.pdf>

C. Operations of Foundation Physicians Group from 2012 through 2018

31. By early 2012, Foundation was operating as a medical and pain management practice. Its principle office became 12870 Hillcrest Plaza Dr., suite H103, Dallas, in the same building as the Prime facility. Hillcrest Plaza runs east-west along the south side of the building. The north side of the building is alongside the access road of Loop 635. Foundation's entrance is in an interior hallway, down the hall from the southern public entrance into Prime.²



² Dated October 2019.



32. Huntley Chapman, M.D., began seeing patients at Foundation by mid-2012. On information and belief, Dr. Chapman was also an owner of Foundation. Dr. Chapman was a well-known and respected Dallas orthopedic surgeon, including having served on the Board for Orthopedic Surgery at Baylor University Medical Center. Prior to Foundation, he had been a partner and the managing director of North Texas Spinecare, LLP, an orthopedic group including three other physicians officing at the Baylor University Medical Center complex. At Foundation, Dr. Chapman performed examinations and pain management injections such as epidural steroid injections (“ESIs”).

33. Dr. Chapman brought nurse practitioner Dorothy “Liz” Vinton with him to Foundation. Vinton was born in 1945, and had worked with Dr. Chapman several years. Vinton had also formed Texas Life Care Planning, LLC in 2008, and actively worked outside of Foundation as a life care planner for non-Foundation patients in the 2010s.

34. In 2013, nurse practitioner Curtis Adams began to work part-time at Foundation. In a November 2023 state court deposition, Adams stated an owner of Prime and Foundation

approached him to work for Dr. Chapman. Adams stated Dr. Chapman was another owner of Foundation. Adams worked at Foundation under Dr. Chapman one day a week into 2015.

35. Bradley Eames, D.O. was performing examinations and pain management injections at Foundation by 2013. Dr. Eames was born in 1959, and graduated from the Texas College of Osteopathic Medicine in 1985. He completed an anesthesiology residency there in 1992. However, he never had a residency, fellowship, or board certification in pain management.

36. Dr. Eames also practiced at Beach Pain Center, a Fort Worth chiropractic office, and its associated Azur Pain Management, LLC.³ In February 2016, he formed Eames Pain and Anesthesia Management, LLC. Its National Provider Identification registration listed its primary practice address as Beach Pain's address.

37. By 2014, Ralph Stein, D.O. was providing anesthesia services at Foundation. Dr. Stein was born in 1950 and completed an anesthesiology residency in 1984.

38. Other physicians also provided services at Foundation in the mid-2010s. James Stanley, M.D., an orthopedic surgeon, saw patients at Foundation starting by early 2014 and continued to around the end of 2015. Dr. Stanley was born in 1970, completed a fellowship in spine surgery at Brown University in 2002, and also practiced at a separate orthopedic surgery group in Dallas.

39. Louis Degironemo, M.D., a pain management physician, started seeing patients at Foundation for examinations and injection procedures around the beginning of 2016. Dr. Degironemo was born in 1979 and had completed a pain management fellowship at Texas Tech University Health Science Center in 2014. He continued to see patients at Foundation into 2018.

40. Albert Vu, D.O., another pain management physician, was seeing Foundation patients and performing injections and also EMG/NCV testing by 2018. Dr. Vu was born in 1988, and

³ Azur Pain Management, LLC was formed in 2013 by Anis Noorani, D.C., the owner of Beach Pain.

completed a fellowship in pain medicine at UCLA and obtained board certification in pain medicine in 2016.

41. Other physicians seeing patients at Foundation in the latter half of the 2010s included, pain management physicians Sankar Pemmaraju, M.D., and Aleksandr Goldvekht, M.D., and neurologists Nathaniel Kho, M.D. and Henry Raroque, M.D. John Tenny, M.D., an orthopedic surgeon with his own practice specializing in extremities such as the shoulder and hip, would come to Foundation on occasions to conduct consultations ordered by Foundation providers.

42. Dr. Chapman died in April 2016. Anthony Eric Gioia, M.D. became the designated delegating physician for nurse practitioner Vinton on May 23, 2016. Dr. Gioia was a neurosurgeon with his own practice, North Texas Spine, at the Dallas Medical Center complex. He began to perform some orthopedic consultations at Foundation on referral from other Foundation providers.

43. Joel B. Brock, D.C., F.N.P. obtained his nurse practitioner's license in 2011. He began to regularly see patients at Foundation in 2017. In a 2023 state court deposition, Brock stated the office manager, Bonnie Cano, helped recruit him and he was thereafter introduced to two of the owners, Tom and Jaime Hellman. Dr. Gioia became his delegating physician for Foundation. Brock continued to also see patients at other practices.

44. Around Spring 2018, Aimee Schimizzi, M.D., an orthopedic surgeon specializing in upper extremity surgery, began coming to Foundation on occasions to see patients concerning extremity issues. Dr. Schimizzi had her own practice, Precision Hand and Upper Extremity Center, in Frisco.

45. By 2018, Foundation also had offices at 1034 E. Highway 67, Duncanville and 6491 Southwest Boulevard, Fort Worth (Benbrook). These offices were within Prime facilities.

46. In this period, Foundation treated a variety of patients. Foundation advertised its services to patients with work injuries including "DOL, DOT, and Workers Compensation" patients.

Foundation also offered services for sports injuries and chronic pain conditions including pain from failed surgical interventions.

47. Foundation's website had sections for Neurology, Orthopedic, Pain Management, and Regenerative Injections. The Orthopedic section began:

Foundation Physicians Group specializes in orthopedic diseases of bones and joints, fractures, ligament, cartilage, or tendon Injuries, platelet rich plasma injection (PRP), and arthroscopy for knees, shoulders, hips, ankles, and elbows.

48. Foundation stated its medical doctors could assist with traumatic brain injuries. It treated conditions such as arthritis pain, fibromyalgia, multiple sclerosis, neuromuscular disorders, Achilles tendonitis, osteoarthritis, golfer's elbow, tennis elbow, and Iliotibial band syndrome. It offered four types of regenerative injection therapy (RIT) under medical insurance, and offered one type – platelet rich plasma (PRP) injections - to patients treating for automobile accidents. Various arthroscopic surgeries were offered in outpatient surgical suites. Rotator cuff surgery, ACL reconstruction, release of carpal tunnel, repair of torn ligaments, and removal of loose bone or cartilage in the joints, rhizotomies and various nerve blocks were also listed as services.

49. Foundation's website stated medical doctors made treatment decisions and administered treatment. For example, "Our physicians are headache specialists trained to inject Botox and occipital nerve blocks to help alleviate headache related pain and discomfort," "Our physicians offer four types of RIT," and "Our physicians understand that pain management can be simple or complex,".

50. Foundation also frequently performed transforaminal epidural steroid injections (ESIs) of the lumbar spine, including for automobile accident patients. Interlaminar ESIs of the lumbar spine were not as commonly performed in this period.

51. EMG/NCV testing was also performed at Foundation. At times, this testing was the only service provided by Foundation for the patient, on referral from other healthcare providers.

D. Foundation from Summer 2019 to Fall 2021

52. However, by mid-2019 when the period at issue began, the number of physicians providing services at Foundation significantly decreased. Generally, only Dr. Eames, Dr. Gioia, and Dr. Schimizzi provided any services at Foundation by this point. All three continued to practice elsewhere. Dr. Gioia still had his separate neurosurgery practice, and Dr. Schimizzi her separate orthopedic practice, and both maintained hospital privileges. Dr. Stein also came to Foundation, to provide anesthesia for injection procedures done by Dr. Eames.

53. Dr. Tenny also came to Foundation to see a few extremity patients for consultation and Dr. Vu occasionally performed NCV/EMG testing and injections, both into around 2020.

54. Nurse Practitioners Vinton, by then age 74, and Brock now performed the majority of initial examinations. On some occasions, Dr. Eames conducted an initial examination.

55. Vinton worked at Foundation most days. In a 2023 state court deposition, Vinton testified she still did some life care planning for non-Foundation patients and generally devoted Tuesday afternoons to that business, and had every other Friday off. She saw about 19 patients a day at the Hillcrest Plaza office.

56. Brock performed some work outside of Foundation through his Brock Integrative Medicine, PLLC, which he formed on July 18, 2019. In a 2023 state court deposition, Brock testified he saw 30 to 40 patients per day at Foundation. He worked at the Hillcrest Plaza and Duncanville offices, and sometimes at Fort Worth.

57. Vinton and Brock also performed the majority of follow-up examinations. Dr. Schimizzi and Dr. Gioia continued to, on occasion, do consultations for patients on referral from Vinton or Brock.

58. On information and belief, the patient population also changed at this time. The large majority of the patients were now automobile accident patients treating under letters of

protection.⁴ In a 2023 state court deposition, Vinton testified 80-90 percent of the patients she saw at Foundation were automobile accident patients.

59. Services became more limited, at least for automobile accident patients, to examinations and certain steroid injections. The more precise transforaminal lumbar ESIs, commonly done through 2018, became very rarely performed. Lumbar ESIs were now virtually always interlaminar ESIs. Also, these interlaminar lumbar ESIs were now virtually always performed at spinal level L5-S1.

60. EMG/NCV testing decreased, with Dr. Vu occasionally performing some testing into 2020.

61. Dr. Eames was left as Foundation's only regular pain management physician. Of the more credentialed physicians who had been at Foundation, Dr. Degironemo left at some point in 2018, and Dr. Vu performed injections procedures at Foundation only occasionally after 2018. With few exceptions, Dr. Eames became the sole physician performing injection procedures such as ESIs and SI joint injections in the Prime facility.

62. However, Dr. Eames also continued to actively practice at Beach Pain in Fort Worth. Historical street view images show Dr. Eames's name still displayed on the doors with Chiropractor Noorani's name in 2022. When Noorani converted his Azur Pain Management, LLC into a PLLC in February 2022, Eames Pain & Anesthesia Management, LLC became one of its members. Beach Pain's website stated it had procedure rooms for injections such as ESIs, and identified Dr. Eames as its Medical Director and the only physician performing injections there:

Injections are performed by Dr. Eames under fluoroscopic guidance or ultrasound guidance, in the comforts of a private procedure room located on-site in the office.

⁴ A letter of protection is a written agreement by a patient's personal injury attorney, promising to pay a healthcare provider from the proceeds of any settlement or recovery of the patient's tort claim or lawsuit.

In a 2024 state court deposition, Dr. Eames confirmed he performed injection procedures at Beach Pain into the 2020s. He ceased working at Beach Pain on December 31, 2022.

63. In the 2024 deposition, Dr. Eames stated he performed injection procedures at Foundation on Monday afternoons and all day on Thursdays. He performed about 20 injection procedures in a full day there.

64. The injection procedures such as ESIs were done under anesthesia by Dr. Stein. Dr. Stein also worked at other unrelated practices, including on information and belief offices in Arlington and Grapevine. While Dr. Stein listed his secondary practice area with the Texas Medical Board as pain management, he apparently did not perform examinations or injections at Foundation.

65. Brock and to a lesser degree Dr. Eames would at times perform joint injections or trigger point injections (“TPIs”) at Foundation’s office. Dr. Schimizzi also sometimes performed joint injections at Foundation.

E. Foundation Changes in Summer 2021

66. In July 2021, Brock left Foundation. Due to his departure, Foundation’s office manager Bonnie Cano approached Curtis Adams, a nurse practitioner and chiropractor with his own practice who had worked part-time at Foundation under Dr. Chapman in 2013-2015. Adams agreed to return part-time, and by August 2021 was seeing patients at the Fort Worth and Duncanville offices.

67. Dr. Gioia closed his neurosurgery practice and relinquished his hospital privileges at the end of 2020, at age 69. With Brock’s departure, Dr. Gioia began to conduct initial examinations and follow-up examinations of patients at Foundation. He saw patients two half-days a week, on Monday afternoons and Friday mornings, always at the Hillcrest Plaza office. In a 2023 state court deposition, he stated he saw about ten patients on each of those half-days.

F. Acquisition by Memorial MRI/Complete Pain Solutions in September 2021

68. Memorial MRI & Diagnostics, LLC (“Memorial MRI”) was formed in 2001. In 2015, Complete Pain Solutions, LLC (“Complete Pain”) was formed, and began to see patients at Memorial MRI facilities in the Houston area. On September 25, 2019, both Complete Pain and Memorial MRI filed restated certificates changing to PLLCs. Memorial MRI has been the 100 percent owner of Complete Pain since that time.

69. Around September 2021, Memorial MRI acquired Prime and Foundation. On September 8, 2021, Complete Pain filed an assumed name certificate to do business as “Foundation Physicians Group, ” and Memorial MRI filed one to do business as “Prime Diagnostic Imaging.” Kim Tran signed these assumed name certificates.

70. However, this acquisition did not signal a change in what was by then Foundation’s personal injury business model. Memorial MRI already conducted a similar personal injury practice through Complete Pain. This included, like Foundation, treating patients referred by attorneys, with attorney approval necessary to perform any injection procedures.

71. On July 23, 2020, two State Farm insurance companies (“State Farm”) had sued Complete Pain and others in U.S. District Court in Houston alleging violations of the RICO statute.⁵ Deposition testimony of Memorial MRI officers and employees filed with a State Farm December 2023 summary judgment response establishes Complete Pain is a branch of Memorial MRI and was formed to provide services for personal injury claimants.

- a. Keith Sparenberg testified Memorial MRI formed Complete Pain as a separate company for “personal injury pain management” cases. Complete Pain does not have its own employees. Checks from patients’ attorneys are deposited into

⁵ This action remains pending. Case No. 4:20-cv-02606. S.D. Texas – Houston Division.

a Complete Pain account, then transferred daily into a Memorial MRI account.

Prime was “fully acquired” by Memorial MRI and Complete Pain.

- b. Kim Tran testified attorneys requested particular radiologists to evaluate their client’s MRIs, and they fulfilled these requests as a “customer service.” Tran agreed she viewed attorneys as Complete Pain’s “customers.”
- c. Dina Reyes testified she worked in “LOP verification.” Attorney approval was required before doing a consultation or injection. As Reyes also stated, “We needed approval for everything.”

72. Complete Pain began to bill Foundation services. This included charges previously billed separately by Prime for injection procedures. Memorial MRI began to bill Prime imaging services.

73. At some point in 2022, the Memorial MRI and Complete Pain websites began to include Prime and Foundation locations.

74. However, Foundation and Prime maintained some separateness. They continued to have their own websites, adding only inconspicuous references to being a Complete Pain Solutions Company or Memorial MRI & Diagnostic Company.



75. Foundation providers remained Dr. Eames, Dr. Gioia, Dr. Stein, Vinton, and Adams. Foundation or Prime employees continued to execute medical records affidavits, Texas Civil Practice & Remedies Code section 18.001 billing affidavits, and responses to written depositions subpoenaing records for Foundation, identifying themselves as custodians of records for Foundation.

76. Foundation and Prime continued to file annual reports; Foundation listing Jaime Hellman and Meltzer as its officers. In a state court deposition, Dr. Gioia stated Thomas Hellman continued to “still be on the board” after Memorial MRI bought Foundation. Foundation recertified as a §162.001(b) Non-Profit Health Organization on March 4, 2022. County Appraisal Districts show Memorial MRI became owner of the business personal property at Prime locations, but Foundation remained the owner of the business personal property at the Foundation Hillcrest Plaza office.

77. There was little apparent change in Foundation operations. The form of Vinton’s examination reports and Dr. Eames’s procedure reports did not change. Foundation report letterhead just added a notation it was a Complete Pain Solutions Company.



In a 2023 state court deposition, Vinton stated the only difference she noticed at Foundation was now her checks came from Memorial MRI.

78. In state court depositions, Dr. Gioia, Dr. Eames, Vinton, and Adams stated they did not know of Complete Pain. Dr. Eames noted “A Complete Pain Solution Company” was added to reports at some point, but he believed it was just a description of what Foundation did, not another company. They understood Memorial MRI purchased Foundation. Dr. Gioia, Dr. Eames and Vinton stated they were now paid by Memorial MRI.

G. Foundation in 2022 to Spring 2024

79. Dr. Schimizzi ceased doing consultations at Foundation by around the end of 2021. She closed her Precision Hand and Upper Extremity Center in June 2022, announcing she was retiring from private practice.⁶

⁶ <https://communityimpact.com/dallas-fort-worth/frisco/impacts/2022/05/06/precision-hand-upper-extremity-center-in-frisco-announces-closure-date/>

80. Around late 2022, Foundation obtained several part-time physicians: orthopedic surgeons John Tenny, Charity Ogunro, and Olabisi Ogunro, and neurosurgeon Francisco Batlle. Dr. Tenny previously did consultations at Foundation in the 2010s. These physicians had their own practices, and began doing a few consultations at Foundation. A few examination reports were also generated under the name of Alj Sparrow, M.D., a Houston physician who worked for Complete Pain.

81. Adams ceased his part-time work at Foundation around the end of 2022.

82. In mid-2023, the Foundation website added nurse practitioner Brock back in the “Meet our Doctors” section. The website also now listed only the main Foundation location at Hillcrest Plaza.

83. Dr. Stein ceased working at Foundation around February 2024. Dr. Eames ceased working at Foundation in March 2024.

H. Diagnostic Imaging Centers of Texas

84. On April 12, 2024, MMRI & Diagnostic Holdings, LLC registered as a foreign limited liability company and filed a certificate to do business as “Diagnostic Imaging Centers of Texas.” Its website states it has a “family of companies” -- Memorial MRI, Signature Rx, Prime, and Foundation.

85. Foundation’s website was totally changed in September 2024. It now lists fifteen Texas locations and nine physicians including Dr. Gioia. Vinton is the only nurse practitioner. The website is centered on accident patients. Unlike the prior website of the period at issue, it openly references treatment under letters of protection, referrals to attorneys, providing documentation to assist attorneys in settling claims or obtaining judgments, and has a “For Attorneys” FAQ section regarding personal injury attorneys “partnering with us.”

V.
DEFENDANTS' OPERATIONS

Relevant to all Causes of Action

86. In the period at issue, concerning treatment from mid-2019 through 2023, Foundation still treated a variety of patients although with greater emphasis on automobile accident patients. In a 2023 state court deposition, Vinton stated about 80-90 percent of the patients were automobile accident patients. The remainder came in for reasons such as falls and dog attacks. Some patients treated under healthcare insurance. Foundation's website continued to state through September 2024 that it accepted all PPO major medical insurance, and treated patients for chronic pain conditions, osteoarthritis, sports injuries, etc.

87. Automobile accident patients were treated under letters of protection ("LOPs") A LOP is a written agreement by a patient's personal injury attorney, promising to pay a healthcare provider from the proceeds of any settlement or recovery from the patient's tort claim or lawsuit. As recognized by the Texas Supreme Court, a provider treating a patient under a LOP has "a direct financial stake in the resolution" of and has "invested themselves in the outcome" of the claim.⁷

88. In the period at issue, concerning the patients treating under LOPs, Foundation basically operated as a business supporting personal injury claims. The part-time physicians and nurse practitioners worked for lay persons, and were largely disconnected from one another. There was no medical professional overseeing them, and Dr. Gioia did not properly supervise the nurse practitioners. The goal was the ordering of injection procedures which would inflate the patient's personal injury claim and enrich the defendants. However, the final decision of whether the injections were actually done was made by the patient's attorney, based on their determination of whether the procedure would benefit the claim.

⁷ *In re K&L Auto Crushers, LLC*, 627 S.W.3d 239, 254 (Tex. 2021).

89. This personal injury treatment became largely ‘cookie-cutter’ in nature. This was likely due to the lack of providers and patient volume. In 2023 and 2024 state court depositions, Vinton stated she saw about 19 patients and Brock stated he saw 30-40 patients a day. Dr. Gioia stated he saw about 10 patients on his half-days at Foundation. Dr. Eames stated he did about 20 injection procedures a day. ESIs were apparently ordered on mere findings of herniations or bulges in MRI reports, even with no radicular complaints. For lumbar ESIs no directions were given in the examination reports as to what type of ESI was to be done or at what spinal level. Lumbar ESIs came to be done by the less precise and simpler interlaminar method, virtually always at level L5-S1. As no fluoroscopic images of procedures such as ESIs and medial branch blocks (MBBs) were retained, it cannot be confirmed if any of these injection procedures were done, or done properly. The billing department generated the same CPT codes and charges for examinations and procedures, with no input from the providers.

A. Structure Of Foundation

90. Aside from Dr. Chapman, who died before the period at issue, Foundation’s identified owners, officers, and operators have been lay persons, such as the Hellmans and Meltzer.

91. Foundation was formed as a non-profit corporation. It is certified by the Texas Medical Board as a §162.001(b) Non-Profit Health Organization, in the period at issue listing Jamie Hellman as contact person as its president. Pursuant to Texas Occupations Code §162.001(b), a non-profit health organization must be organized and incorporated solely by persons licensed by the board and its directors and trustees must be licensed by the board and actively engaged in the practice of medicine. Pursuant to Texas Occupations Code §§162.0021 and 162.0022, the organization may not interfere with, control, or otherwise direct a physician’s professional judgment in violation of the subchapter or any other provision of law, and the board of trustees or directors must adopt,

maintain, and enforce policies to ensure the physicians exercise independent medical judgment when providing care to patients.

92. Foundation's renewal applications to the Texas Medical Board concerning its non-profit health organization in the period at issue were submitted by Jaime Hellman as president. They listed One Healthcare Alliance, Inc. as its member. One Healthcare Alliance, Inc. is a Nevada corporation located in Silver Springs, Nevada, whose corporate status was revoked about late 2022. Its only listed officer and director was "D. Shoaf" at a Silver Springs P.O. Box address. It filed an Application for Registration of a Foreign For-Profit Corporation with the Texas Secretary of State on July 12, 2021, but this registration was forfeited in 2023 for failure to pay franchise taxes. Dr. Gioia and Dr. Marlon Padilla, M.D. were listed as directors throughout the period at issue.⁸ Dr. Eames was also a director from April 1, 2018 to around June 2021, when he was replaced by Dr. Ravi B. Patel, M.D.⁹ However, in state court depositions when asked their positions with Foundation, neither Dr. Gioia or Dr. Eames stated they were a director. No Foundation physician or nurse practitioner referenced any of these four physicians as being a supervisor or in an oversight position, aside from Dr. Gioia's titular role as delegating physician to the nurse practitioners. In the Director's Statements signed by them submitted with the applications, under affirmation that the information was "true and correct in every detail," Dr. Gioia and Dr. Eames stated they had no financial relationship with the non-profit health organization (Foundation). While directors are to adopt, maintain, and enforce policies to ensure the physicians exercise independent medical judgment when providing care to patients, Dr. Gioia and Dr. Eames testified that attorneys had to approve any injection procedure, i.e., that these attorneys made the determination of whether a procedure would or would not be done. They disavowed any knowledge of Foundation billing. The

⁸ Pursuant to the Texas Medical Board website, Dr. Padilla list his specialties as Emergency Medicine and Urgent Care Medicine. Dr. Padilla practiced at Hillcrest Medical, an urgent care office, during the period at issue.

⁹ Dr. Patel is an internal medicine physician.

non-profit health organization status was clearly maintained as a mechanism to violate the Texas prohibition against the corporate practice of medicine.

93. Prime is also a lay entity. In the words of Dr. Gioia, “Foundation is intimately related to Prime Diagnostic.” Foundation did not have its own administrative staff, and used Prime staff for management, billing, records, and marketing to attorneys. For example:

- a. Bonnie Cano was identified as Foundation’s office manager by physicians and nurse practitioners in state court depositions. Cano identifies herself in LinkedIn as “Manager at Prime Diagnostic Imaging.”
- b. Amy Murguia was identified in Foundation “Estimates of Care” as its Billing Supervisor. She describes her job on LinkedIn as “billing at Prime Diagnostic Imaging.”
- c. Rene Escobedo was identified in Foundation’s social media as one of its “marketing reps.” He identified himself in his social media as Foundation’s “Business Development Director” and Prime’s “LOP Marketing Director” or “Personal Injury Marketing Director.”
- d. Bonita Pargas, who answered written depositions subpoenaing records on Foundation’s behalf, at times identified herself as an employee of Foundation, and at other times Prime.
- e. Often, the same person will execute business or billing records affidavits for Foundation and Prime in a claim or case, identifying themselves as the custodian of records for Foundation in one, and Prime in the other.

94. In late 2022 to 2024 depositions, physicians and nurse practitioners characterized themselves as ‘independent contractors’ of Foundation, except Brock who stated he had been an employee. Dr. Eames stated he was paid a percentage of what Foundation collected for the patient, when Foundation obtained the payment. Memorial MRI continued this payment method

for about six months (about March 2022), then started to pay him per service; \$200 for an initial examination, \$100 for a follow-up examination, and \$280 for an ESI.¹⁰

95. There was no medical director, compliance officer, chief medical officer or similar overseeing physician between the lay persons owning and operating Foundation and the physicians and nurse practitioners working there. Largely unknown laypersons handled the billing and coding of their services with no input from them. Vinton characterized office manager Cano as her superior at Foundation.

96. Given Dr. Eames and Dr. Gioia were at Foundation only limited times during the week, clearly there were many times that there was not a physician at the Foundation office.

B. Use of Nurse Practitioners at Foundation

97. Foundation reports were unsigned. Reports were issued under the printed name of a physician such as Dr. Eames or Dr. Gioia, or the names of a nurse practitioner and Dr. Gioia.

ERIC GIOIA, M.D.
cm
FINAL

LIZ VINTON, FNP-C
ERIC GIOIA, M.D.
mw
FINAL

98. However, as revealed in 2023 state court depositions of Vinton, Brock, and Adams, when Dr. Gioia's name was included with their name in a report, he was not present during the examinations. As Vinton testified, Dr. Gioia had "zero" participation in all these examinations.

Q And finally, just looking at this report again, just want to make it clear, it's under your name and Dr. Gioia's name. But Dr. Gioia didn't participate in this examination?

A Zero.

Q Okay. Would it be correct that any report that we see of yours that has both of your names on it, you were the person that actually examined the patient?

¹⁰ In her deposition testimony presented in State Farm's December 2023 summary judgment response, in *State Farm v Complete Pain et al*, Kim Tran stated Dr. Sparrow was paid \$200 for an initial examination, \$100 for a follow-up. Presumably this is Memorial MRI's payment rate for physicians.

A One hundred percent, yes.

Brock and Adams testified when Dr. Gioia's name was included with their name on a joint injection or TPI report he had in fact not been present.

99. There was no reference in reports that the nurse practitioner solely performed the examination or procedure and solely made treatment decisions ordering injections. An uninformed person would believe both Dr. Gioia and the nurse practitioner participated.

100. Similarly, when a nurse practitioner ordered an MRI or procedure such as an ESI, Prime bills did not state they were the referring provider. However, Prime bills often stated Dr. Gioia made these referrals, representing he made the determination the service was necessary.

101. Organizations such as the American Association of Nurse Practitioners note Texas is one of the more restrictive states concerning nurse practitioner practice. The Texas Medical Board reflects a physician's delegation to a nurse practitioner, including the location, hours per week, and authority to prescribe drugs. For example, concerning Dr. Gioia's delegations to Vinton and Adams:

[DOROTHY VINTON](#)

APN License Number: [AP100081](#)

Begin Date: 05/23/2016

Prescriptive Delegation: YES

Hours Delegated: 24

Dangerous Drugs: NO

Controlled Substances: YES

Delegation Location Type: Primary Practice Site

Delegation Address:

12840 Hillcrest Road Suite #100 none
Dallas TX 75230

[CURTIS ADAMS](#)

APN License Number: [AP123038](#)

Begin Date: 07/29/2021

Prescriptive Delegation: YES

Hours Delegated: 20

Dangerous Drugs: YES

Controlled Substances: YES

Delegation Location Type: Primary Practice Site

Delegation Address:

12870 hillcrest plaza dr
dallas TX 75230

102. Texas Occupations Code §157.001(a) states, "A physician may delegate to a qualified and properly trained person acting under the physician's supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate....".

103. 22 Tex. Admin. Code §221.13(d) states advanced practice nurses (nurse practitioners) shall, when providing medical aspects of care, "utilize mechanisms which provide authority for

that care.” These may include, but are not limited to, protocols or other written authorization. No alternative is stated. Section 221.13(d)(2) states the protocols or written authorization:

- should be jointly developed by the advanced practice nurse and the appropriate physician(s),
- shall be signed by both the advanced practice nurse and the physician(s),
- shall be reviewed and re-signed at least annually,
- shall be maintained in the practice setting of the advanced practice nurse, and
- shall be made available as necessary to verify authority to provide medical aspects of care.

104. Texas Occupations Code §157.0512 and 22 Tex. Admin. Code §222.5 concern Prescriptive Authority Agreements (“PAAs”).¹¹ Both require the delegation by the physician to the nurse practitioner to prescribe drugs to be through a PAA.¹² PAA requirements include:

- It be in writing and signed and dated by the nurse practitioner and physician.
- Identify either the types or categories of drugs or devices that may be ordered or prescribed or may not be ordered or prescribed.
- Provide a general plan for addressing consultation and referral.
- Provide a plan for addressing patient emergencies.
- State the general process for communication and the sharing of information between the nurse practitioner and the physician related to the care and treatment of patients.
- Describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that includes: chart review, with the number of charts to be reviewed determined by the nurse practitioner and physician; and periodic meetings between the nurse practitioner and the physician.¹³

¹¹ The provisions refer to nurse practitioners as advanced practice registered nurses.

¹² Tex. Occ. Code §157.0512(a); 22 Tex. Admin. Code §222.5(a).

¹³ Tex. Occ. Code §157.0512(e); 22 Tex. Admin. Code §222.5(c).

The PAA may include other agreed provisions, including ones previously contained in protocols or other written authorization.¹⁴ A PAA must be reviewed at least annually, dated, and signed by the parties. The nurse practitioner and physician each must keep a copy until the second anniversary of the date the agreement is terminated.¹⁵

105. The periodic meetings must include sharing of information relating to patient treatment and care, needed changes in care plans, issues relating to referrals, and discussion of patient care improvement.¹⁶ The meetings must be documented.¹⁷ They must take place at least monthly.¹⁸

106. The delegation requirements were not followed at Foundation. There were no periodic meetings. There were no treatment protocols or similar written documents and no PAAs between Dr. Gioia and the nurse practitioners he purportedly supervised. Dr. Gioia did not practice any actual oversight over the nurse practitioners.

107. Tellingly, in an October 2022 deposition, Dr. Gioia questioned why he was being deposed as plaintiff was “not my patient” but Vinton’s. He appeared just vaguely familiar with Adams -- there was “another nurse practitioner that I supervise;” “Somebody named Curtis Adams,” who he believed worked at the Duncanville office. In a 2023 deposition, Adams stated he *never* saw Dr. Gioia during the time he worked at Foundation.

108. Dr. Gioia admitted he had no written guidelines with Vinton concerning prescriptions. Vinton prescribed drugs through the authority the nursing board granted her as a nurse practitioner, and not any guidelines from him. He admitted he did not have periodic meetings with Vinton or Brock, and only saw them if he was at the Hillcrest Plaza office when they were.

For example:

¹⁴ Tex. Occ. Code §157.0512(g); 22 Tex. Admin. Code §222.5(e).

¹⁵ Tex. Occ. Code §157.0512(j); 22 Tex. Admin. Code §222.5(k).

¹⁶ Tex. Occ. Code §157.0512(f)(1); 22 Tex. Admin. Code §222.5(d)(1).

¹⁷ Tex. Occ. Code §157.0512(f)(2); 22 Tex. Admin. Code §222.5(d)(2).

¹⁸ Tex. Occ. Code §157.0512(f)(3); 22 Tex. Admin. Code §222.5(d)(3).

Q In that period, did you ever periodically meet with Ms. Vinton and Mr. Brock?

A Yeah, they were there on alternating days and so I would see them and, you know, say something to them. Sometimes they came in and asked me some information.

Q Did you ever have, aside from simply meeting them because you were there at the same time, did you ever schedule conferences with them to discuss Foundation treatment?

A I did not.

Dr. Gioia admitted he had no treatment protocols with the nurse practitioners and had never signed any document with them concerning patient treatment. For example:

Q Did you ever work with them on developing any treatment plans or protocols?

A I didn't.

Q You sort of faded out. What was the answer?

A I said no. I did not -- protocols.

Q Were there any documents that were ever developed that you would jointly sign with them about protocols or how to treat patients?

A Not to my recollection. Brock had me co-sign some stuff that he needed to show towards getting, I think, his PhD.

Q Okay. Like a recommendation?

A Yeah, or you know, saying that I had witnessed him in his capacity at work.

109. In a 2023 state court deposition, Vinton testified she saw Dr. Gioia "every once in a while," in passing if they were at Hillcrest Plaza at the same time. Dr. Gioia did not provide her any guidelines or restrictions on when to proscribe drugs. Vinton claimed she did not need any delegation from Dr. Gioia to proscribe drugs like Robaxin and tramadol. Rather she claimed she did it under authority of her nurse practitioner license.

“I - I do that through my nurse practitioner. That’s why I have 300 hours of continuing education to keep up with how to behave, yeah.

When later asked if there was any state requirement that a physician issue prescriptive authority, Vinton testified “when he took me on,” Dr. Gioia “sign[ed] that.” That was in 2016, after Dr. Chapman died. In the errata sheet, Vinton wrote, “We signed a collaborating agreement for me to remain within my scope of practice *yrs ago*.” (emphasis added). If there was such a document, it did not comply with the yearly requirement. Vinton testified Dr. Gioia never had any written treatment plans or protocols with her, nor discussed with her when to recommend an ESI. Vinton claimed there was no need for Dr. Gioia to do so; she could work totally independent from him.

Q Has Dr. Gioia ever worked out any type of written treatment plans or protocols with you?

A Didn’t I answer that?

Q I think so. I just want to be sure.

A No.

Q Okay.

A No. There’s – there’s no reason. I’ve never had that. I’ve been -- yeah, I’ve been nursing since ‘77. I’ve never had -- had -- other than as a nurse practitioner, you -- you don’t -- you -- you function independently using your -- your area of expertise.

I’m – I’m board – I’m double board certified as a nurse practitioner. I’m board certified as a -- as a -- a orthopedic nurse. I -- I got the 100 Great Nurse for Dallas Fort Worth. They – they’ve never put -- they never told me don’t do this or do it this way.

Q Okay.

A Never.

110. In a 2023 deposition, Adams stated he had never seen Dr. Gioia while working for Foundation. They had “telephone meetings from time to time.” He never worked with Dr. Gioia on protocols. When asked if Dr. Gioia issued any written PAA, Adams claimed they had a

written agreement like ones he had with other overseeing physicians. This obviously was contradicted by Dr. Gioia's own testimony.

C. Referral of Automobile Accident Claimants to Foundation

111. Foundation marketed to personal injury attorneys to obtain patient referrals. In social media posts starting in 2019, Foundation sometimes provided the e-mail address "lop@foundationpg.com." In a June 2021 social media post, Foundation stated it was "looking to hire a full-time Case Manager/Attorney Liaison for our Dallas office." In a July 2021 social media post, Foundation welcomed Sandra Martinez (photographed wearing a Prime shirt) to "our amazing LOP Marketing Team," and in a later post identified her and two other individuals, including Rene Escobedo, as its "Marketing Reps." In his own social media, Escobedo identified himself as both Foundation's "Business Development Director" and Prime's "LOP Marketing Director" or "Personal Injury Marketing Director" in the period at issue through March 2023.

112. During the period at issue, automobile accidents patients were referred to Foundation by their attorneys or by chiropractic or 'multidisciplinary' clinics cooperative with the attorney.

- a. In a 2022 state court deposition, Dr. Gioia stated the patients "come through various attorneys' offices ... generally speaking they're referred either by the attorneys or the chiropractors that are seeing the patients."
- b. In a 2024 state court deposition, Dr. Eames stated, "almost always it's referred by an attorney. Patients just don't walk in the door. Sometimes they're referred by a chiropractor. Sometimes it's a combination of those two."
- c. In other 2023 state court depositions, Vinton and Adams also stated that attorneys referred patients to Foundation.

113. On information and belief, the patient is generally referred to the initial clinic by their personal injury attorney. In the 2024 deposition, Dr. Eames stated sometimes Foundation refers

patients to a chiropractic office, but “more commonly the attorney has already directed the patient to a chiropractor.”

114. Chiropractic clinics which saw many of these patients included Accident Centers of Texas, All Injury Rehab, DFW Pain & Injury (l/k/a Texas Pain & Injury Centers), Texas Healthcare Neck & Back, and Premier Injury Clinics of DFW. These chiropractic entities had multiple offices and treated many automobile accident patients.

115. The initial clinic generally initiated a conservative course of treatment. Treatment generally consisted of chiropractic modalities.

116. The patient was routinely referred for an MRI or MRIs, purportedly by the clinic. The MRI referrals were often made soon after first presenting to the clinic, and at times performed within four weeks of the accident. Interestingly, in a 2024 deposition, Dr. Eames opined MRIs should not be *ordered* until after the patient had unresolved pain for six to eight weeks. Dr. Eames noted “a lot” of accident patients get them earlier but “that’s usually attorney-driven and not medical driven.”

117. Often, these MRI referrals were to Prime facilities. Up to the acquisition by Memorial MRI, Dr. Nicholas Iwasko in Dallas and Dr. R. Craig Platenberg in Virginia were the primary radiologists reviewing these MRIs. Afterwards, Dr. Rodolfo Garcia of Edenburg and Dr. Michael Davis of San Antonio reviewed these MRIs. At other times, the referrals were to facilities such as those of MRI Centers of Texas which also perform imaging under LOPs. In a 2023 deposition, Adams stated the attorney selects the facility, and it can be Prime or one of the “other imaging centers that work in the personal injury world in the Dallas, Fort Worth area.” MRI reports were issued, generally finding spinal herniations, protrusions, or bulges.

118. Foundation providers other than Dr. Gioia looked only at the MRI reports in regard to recommending injections. Dr. Gioia’s reports state he reviewed the images. Interestingly, Dr.

Gioia testified he did not trust the MRI reports and therefore reviewed the images. In a 2022 deposition, he stated “the radiology reports are often misleading.” In a 2023 deposition, he stated, “A lot of radiologists over-read stuff” and “The radiologists often find things that they report that, for me, as a surgeon, don’t fit with what’s going on.”

D. Initial Consultation Reports and “Followup” Reports

119. The initial reports for Foundation new patient office visits were generally titled “Orthopedic Consultation” or “Medical Consultation,” or later “Pain Management Consultation.” There was no distinction within the reports, so a Vinton or Brock “Orthopedic Consultation” followed the same form as their “Medical Consultations.” Reports for subsequent visits were titled “Followup.” Subsequent internally referred visits to Dr. Gioia, Dr. Schimizzi, etc. were also titled “Orthopedic Consultation.” Reports did not identify at which Foundation office the examination was done.

120. Foundation, Prime, and later Complete Pain billed services using Current Procedural Terminology (CPT) codes. The CPT coding system was developed and is published by the American Medical Association (“AMA”). The 5-digit codes allow providers to identify services and level of service and are commonly utilized in medical billings. The AMA defines the criteria to bill the service, such as the components of the service, anticipated time, etc.

121. The examination coding was arbitrarily assigned by the Prime/Foundation billing department. The examining physicians and nurse practitioners provided nothing to the billing department, including any information regarding the level of examination service provided.

122. Vinton initial visits were coded mostly as CPT 99203, and at times CPT 99204. Brock, Eames, and later Adams initial visits were almost always coded as CPT 99204. When Dr. Gioia began seeing patients for initial visits, they were virtually always coded as CPT 99205.

Consultations by Dr. Gioia, Dr. Schimizzi, etc. ordered by the nurse practitioners were also generally coded as new patient CPT 99205 examinations.

123. The fact there was no variance in the coding of initial examinations calls into question the veracity of the represented services. It would be clinically impossible that almost every patient for a particular provider required the same level of service in the initial examination. Only Vinton's initial examinations had some variance, but there was no apparent distinction in her standard reports between ones billed as CPT 99203 and ones billed as CPT 99204.

124. In 2019-2020, CPT 99203 represented a detailed history, a detailed examination and medical decision making of at least low complexity were done and presenting problems were of moderate severity. Typically, 30 minutes were spent with the patient. Beginning in 2021, CPT 99203 represented "the evaluation and management of a new patient, which requires a medically appropriate history and/or examination and low level of medical decision making," with 30-44 minutes of total time spent on the day of the encounter.

125. In 2019-2020, CPT 99204 represented a comprehensive history, comprehensive examination, and medical decision making of moderate complexity were done and presenting problems were of moderate to high severity. Typically, 45 minutes were spent with the patient. Starting in 2021, CPT 99204 represented "the evaluation and management of a new patient, which requires a medically appropriate history and/or examination and moderate level of medical decision making," with 45 to 59 minutes of total time spent on the day of the encounter.

126. In 2019-2020, CPT 99205 represented a comprehensive history, a comprehensive examination, and medical decision making of high complexity were done and presenting problems were of moderate to high severity. Typically, 60 minutes were spent with the patient. Starting in 2021, CPT 99205 represented "evaluation and management of a new patient, which

requires a medically appropriate history and/or examination and high level of medical decision making,” with 60 minutes or more total time spent on the day of the encounter.

127. The CPT requirements were cited in the Foundation bills for the examinations, further representing the service was performed. For example:

11/17/2020	Office or other outpatient visit for the evaluation and management of a new patient, which requires these 3 key components: A comprehensive history; A comprehensive examination; Medical decision makin (99204)	\$1,369.00
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128. Follow-up examinations were generally billed as CPT 99213, and at times CPT 99214. There appears to be no distinction in Followup reports in cases where one follow-up examination was coded as CPT 99213 and another CPT 99214. In a November 2023 state court deposition, Adams agreed the follow-up examinations he did were comparable to one another, although one was billed as CPT 99213 and another as CPT 99214.

129. If the patient had not been to a chiropractor before presenting to Foundation, the Foundation provider would generally have them referred to a chiropractor. Foundation generally did not obtain records of prior or concurrent treatment from chiropractic clinics or other providers who had already seen the patient. Thus, matters such as the length of time that elapsed after the accident before the patient sought treatment, type of treatment the patient had already received, if there were gaps in treatment, and whether the patient had been improving were generally not known to Foundation’s providers or noted in Foundation reports. The exception was that MRI reports for imaging ordered by the chiropractic clinic were always obtained.

130. If the patient had not had MRIs before arriving at Foundation, or if Foundation was the first provider to whom the patient presented, Foundation referred them for MRIs. These referrals were mostly, if not always, to a Prime facility. At times, if a patient had MRIs prior to presenting at Foundation, Foundation providers would order additional MRIs. In a November 2023 state

court deposition, Adams stated diagnostic testing as well as injections had to be approved by the patient's attorney. For example:

Q What's the process for getting approval?

A So, physician's management would say, you know, "Patient was seen by Dr. Adams today. He is recommending this diagnostic test or trigger point injections" or whatever. And then, you know, that would go to, usually, a legal assistant, and they would have to get that approved or denied by the attorney. And sometimes, they'd want to know the cost of these procedures, things like that.

131. Foundation initial reports often represent the patient complained of high levels of pain on a 1-10 scale, such as level 8, 9, or 10. At times, this conflicted with pain levels reported by the chiropractic clinic.

132. Often, degenerative conditions reported in the MRI reports are not referenced in the Foundation examination reports.

- a. In a 2024 deposition, Dr. Eames was shown Vinton's report, which noted bulges found in the cervical ESI report but was silent as to degenerative conditions stated in the report. Dr. Eames opined it was not important for her to note the degenerative changes.
- b. In a 2023 deposition, Adams agreed multiple degenerative conditions were shown on the CT and x-ray reports that were not noted in his reports. He stated he generally does not document such conditions.

133. Spurling's and straight leg raise (SLR) tests were often referenced in Foundation reports. Spurling's test is an orthopedic test for cervical radiculopathy, and a positive test of pain radiating down an arm indicates nerve root irritation, and may be an indication for an ESI. SLR is a test for lumbar radiculopathy, and a positive test for pain may be an indication for an ESI. However, ESIs were often ordered despite negative Spurling's and SLR tests.

134. In a 2023 state court deposition, Vinton testified that a medical assistant would take the patient's vital signs, then leave her the chart. Vinton typically then did the examination alone.

She filled out a “sheet” in pen during the examination. She claimed she did not provide the sheet to the report writer but used the sheet to orally dictate to the report writer.

And I'll dictate on a Dictaphone on my -- on my telephone to -- to a -- a girl who does transcription, and I read off this sheet that I saw the patient today on 9/18, and then date of injury five -- and I dictate that off my sheet.

Vinton did not typically review the written reports. Sometimes, she would “glance” at one.

135. Initial reports under Vinton’s name were almost always two-pages long and followed the same pattern, regardless of patient age, reported pre-existing conditions, co-morbidities, etc. This pattern, including largely the same reported findings and commonalities amongst a diverse patient population are clinically improbable, if not outright impossible.

136. Vinton initial reports had near identical “Physical Examination” sections, other than vital signs. Her Followup reports often had similar “Objective” sections. Respirations were *virtually always recorded as 16*, a clinical impossibility. The patient’s body type was characterized as endomorphic or mesomorphic, which at times conflicted with those patients’ height and weight findings. The patient was reported as having, “Normal gait. Oriented to person, place and time. Mood and affect normal. Coordination normal.”

137. The Physical Examination sections had “Neck & Arms” and/or “Back & Legs” parts. These virtually always stated Hoffman’s and Spurling’s tests were negative bilaterally. Sitting straight leg raise was negative bilaterally at 90 degrees. Upper extremity, quadriceps strengths, and ankle dorsiflex were 5/5. Reflexes were symmetrical. There were no abnormalities in the skin, hair, or nails. The reports routinely stated cervical palpation was nontender, although this at times conflicted with other reported findings of alleged limited range of motion with pain. The only variances in these sections appear to be cervical range of motion pain and stiffness, and degree before pain in lumbar flexion.

138. For example, the 2019 Orthopedic Consultation for J.R. [Patient 39], the 2020 Medical Consultation for C.C. [Patient 102], and a 2021 Followup for M.M. [Patient 209] respectively read:

GENERAL: Endomorphic. Normal gait. Oriented to person, place and time. Mood and affect normal. Coordination normal.

NECK & ARMS: Radial pulses are palpable bilaterally. No nodes are palpable about the head and neck. No abnormalities are found in the skin, hair or nails. Skin is warm and dry to touch with good skin turgor. Sensation is fully intact to sharp and dull. Reflexes are symmetrical. Cervical range of motion is full with pain and stiffness in all planes. Gross muscle strength is 5/5 for the biceps bilaterally, 5/5 triceps bilaterally. Hoffman's negative bilaterally. Cervical paravertebral musculature is nontender to palpation. Spurling's is negative.

BACK & LEGS: Dorsalis pedis and posterior tibialis pulses palpable. No abnormalities noted of the skin, hair or nails. Sensation is fully intact to sharp and dull. Reflexes are symmetrical. Lumbar flexion until pain is 90° with no pain on extension. Quadriceps strength is 5/5 bilaterally and ankle dorsiflexion is 5/5 bilaterally. Sitting straight leg raise is negative bilaterally at 90°. The lumbar paravertebral musculature is nontender to palpation.

GENERAL: Endomorphic. Normal gait. Oriented to person, place and time. Mood and affect normal. Coordination normal.

NECK & ARMS: Radial pulses are palpable bilaterally. No nodes are palpable about the head and neck. No abnormalities are found in the skin, hair or nails. Skin is warm and dry to touch with good skin turgor. Sensation is fully intact to sharp and dull. Reflexes are symmetrical. Cervical range of motion is one-half of full with pain and stiffness in all planes. Gross muscle strength is 5/5 for the biceps bilaterally, 5/5 triceps bilaterally. Hoffman's negative bilaterally. Cervical paravertebral musculature is nontender to palpation. Spurling's is negative.

BACK & LEGS: Dorsalis pedis and posterior tibialis pulses palpable. No abnormalities noted of the skin, hair or nails. Sensation is fully intact to sharp and dull. Reflexes are symmetrical. Lumbar flexion until pain is 20° with pain on extension. Quadriceps strength is 5/5 bilaterally and ankle dorsiflexion is 5/5 bilaterally. Sitting straight leg raise is negative bilaterally at 90°. Thoracic and lumbar paravertebral musculature is nontender to palpation.

GENERAL: Mesomorphic. Normal gait. Oriented to person, place and time. Mood and affect normal. Coordination normal.

NECK & ARMS: Radial pulses are palpable bilaterally. No nodes are palpable about the head and neck. No abnormalities are found in the skin, hair or nails. Skin is warm and dry to touch with good skin turgor. Sensation is fully intact to sharp and dull. Reflexes are symmetrical. Cervical range of motion is full with pain and stiffness in flexion and extension only. Gross muscle strength is 5/5 for the biceps bilaterally, 5/5 triceps bilaterally. Hoffman's negative bilaterally. Cervical paravertebral musculature is nontender to palpation. Spurling's is negative.

BACK & LEGS: Dorsalis pedis and posterior tibialis pulses palpable. No abnormalities noted of the skin, hair or nails. Sensation is fully intact to sharp and dull. Reflexes are symmetrical. Lumbar flexion until pain is 30°, pain on extension. Quadriceps strength is 5/5 bilaterally and ankle dorsiflexion is 5/5 bilaterally. Sitting straight leg raise is negative bilaterally at 90°. Thoracic and lumbar paravertebral musculature is nontender to palpation.

139. Vinton claimed she typically sees 19 patients a day. It would seem improbable she could perform such examinations and tests on all the daily patients.

140. A positive Hoffman's test indicates a possible nervous system disorder. In a 2023 state court deposition, Vinton was asked about the negative Hoffman's finding in her report in that case and basically opined the test was almost useless. However, she claimed she performed Hoffman's on all patients and reported the results as negative.

Q And for the jury's sake "negative" in regard to one of these tests is good; correct?

A Yes. And also any -- and then -- and another thing that I do take into consideration, the person has to be totally relaxed for this to be a one indicator -- one indicator. And if you want to know more about that, you can ask Dr. Gioia. But if the patient is in a lot of pain and has numbness, I'll do it, but I'm -- I don't hang my hat by any means because if you're at all tense, this isn't going to work.

Q Okay. But I mean you -- you thought it was important enough to record it as negative?

A I do everybody.

Q Okay.

A I do everybody.

Q You do this test on all the patients?

A I do all of it on everybody -- everybody.

141. The Vinton report's Plan section generally had statements of discussing "steroid injections," most often, "We discussed the injections in detail." The patient was noted as wanting to schedule the injection or to put it "on hold." Often, when the initial report stated the patient wanted to put the injection on hold, a follow-up report stated they now wanted to schedule it.

142. The "sheets" referenced by Vinton were rarely if ever included in the Foundation records presented in demand packages in personal injury claims. At times, they were produced in response to subpoenas of records in litigated claims. The single-page sheet has a pain diagram in the upper left and is otherwise completed mainly by circling selections. The "Neck & Arms" and "Back & Legs" portions of the written reports, as well as statements concerning if MRIs have

been done or are ordered, drugs, discussing injections, etc., are drawn from the lower half of the sheet. For example:

No Studies

NECK & ARMS

Observ/inspec/palpation: radial pulse N ABN
 Lymphatics: Cervical / Axilla N ABN
 Hair / Nails / Tattoos / Rash / Bruise N ABN
 Sensation Intact N ABN c/o nnn xxx
 Reflexes symmetrical () Spurlings: N / pos.: () ()
 AROM Full without pain Full with pain and stiffness ()
 1/4 1/2 3/4 of Full with pain and stiffness: F E Rt Lt
 Biceps (R) 5 Triceps (R) 5
 Biceps (L) 5 Triceps (L) 5
 Hoffman's: (R) (L) Palpation: (-) Para Vertebral
 (R) (L) Spinous Process

UPPER & LOWER BACK

Dorsalis pedis (R) (L) post. tib. (R) (L) N ABN
 Nails / Tattoos / Rash / Bruise / Swelling N ABN
 Sensation Intact N ABN c/o nnn xxx
 Reflexes symmetrical N ABN
 Lumbar flex. till pain 30 Ext: 3+ SLR (-) (-)
 Quad (R) 5 Quad (L) 5
 Ankle dorsiflexion (R) 5 (L) 5
 T (-) L (-) Para Vert. / SP
 *Patient informed of unrelated cyst/lesion
 understands need to follow-up with PCP/specialist

Studies MRI CT

NECK & ARMS

Observ/inspec/palpation: radial pulse N ABN
 Lymphatics: Cervical / Axilla N ABN
 Hair / Nails / Tattoos / Rash / Bruise N ABN
 Sensation Intact N ABN c/o nnn xxx (R) arm now
 Reflexes symmetrical () Spurlings: N / pos.: () ()
 AROM Full without pain Full with pain and stiffness
 1/4 1/2 3/4 of Full with pain and stiffness: F E Rt Lt
 Biceps (R) 5 Triceps (R) 5
 Biceps (L) 5 Triceps (L) 5
 Hoffman's: (R) (L) Palpation: (-) Para Vertebral
 (R) (L) Spinous Process

UPPER & LOWER BACK

Dorsalis pedis (R) (L) post. tib. (R) (L) N ABN
 Nails / Tattoos / Rash / Bruise / Swelling N ABN
 Sensation Intact N ABN c/o nnn xxx (R) leg only now
 Reflexes symmetrical N ABN
 Lumbar flex. till pain 15 Ext: 0- SLR (-) (-)
 Quad (R) 5 Quad (L) 5
 Ankle dorsiflexion (R) 5 (L) 5
 T (-) L (-) Para Vert. / SP
 *Patient informed of unrelated cyst/lesion
 understands need to follow-up with PCP/specialist

No pain with 180 abduction (R) (L)

(R) (L) KNEE: No pain with palpation (R) (L)
 Anterior globally over patella popliteal M/L L/L
 MCL LCL Quadriceps / Patella Tendon
 No / Pain FWE (R) Knee / 10 (L) / 10
 No / Pain NWE (R) Knee / 10 (L) / 10
 Full Exten./Flexion: (R) (L) Limited Exten./Flexion (R) (L)

No meds

PLAN PMP
 Robaxin 500 750
 Flexeril 10 Refilled Spanish

Warnings

MRI: C T L (R) (L) Knee (R) (L) Shoulder
 (R) (L) Elbow (R) (L) Wrist (R) (L) Knee / Foot / Ankle
 X-ray: Ribs C T L Shoulder () Elbow () Knee ()
 Ankle () Hand () Finger/s ()
 EMG: UE LE CT: Ultrasound:

Discussed Injections in detail: Schedule Hold for now ()
 Hold till patient calls () TP injections
 Cervical / Lumbar EST's Cervical / Lumbar: MMB / Facets
 Start Chiropractor
 Refer: Neurosurgeon Pain Management: Meds / Chronic Pain
 Specialist: Shoulder Elbow Wrist / Hand Knee Foot / Ankle
 Neurologist: HA's Vision Dizziness Memory Balance
 Follow-up: PRN (1) month after testing / injectic 00021

Unable beyond: (R) (L)

No pain with 180 abduction (R) (L)

Positive

(R) (L) KNEE: No pain with palpation (R) (L)
 Anterior globally over patella popliteal M/L L/L
 MCL LCL Quadriceps / Patella Tendon
 No / Pain FWE (R) Knee / 10 (L) / 10
 No / Pain NWE (R) Knee / 10 (L) / 10
 Full Exten./Flexion: (R) (L) Limited Exten./Flexion (R) (L)

PLAN
 Tramadol 50 Robaxin 500 750
 Tylenol #3 Flexeril 10 Refilled Spanish

Warnings

MRI: C T L (R) (L) Knee (R) (L) Shoulder
 (R) (L) Elbow (R) (L) Wrist (R) (L) Knee / Foot / Ankle
 X-ray: Ribs C T L Shoulder () Elbow () Knee ()
 Ankle () Hand () Finger/s ()
 EMG: UE LE CT: Ultrasound:

Discussed Injections in detail: Schedule Hold for now ()
 Hold till patient calls () Steroid information TP injections
 Cervical / Lumbar EST's Cervical / Lumbar: MMB / Facets
 Occipital blocks () Start Continue Chiropractor
 Refer: Neurosurgeon Pain Management: Meds / Chronic Pain
 Specialist: Shoulder Elbow Wrist / Hand Knee Foot / Ankle
 Neurologist: HA's Vision Dizziness Memory Balance
 Follow-up: PRN ___ month after testing after injection/s

143. The sheet provides only for the three orthopedic tests reflected in the printed Vinton reports - Spurling's, Hoffman's, and SLR. Other orthopedic tests are not an option. ESIs or medial branch block injections are selected by circling cervical or lumbar and "ESIs" or "MMB/Facets." The ESI selection has no distinction for transforaminal, interlaminar, or caudal ESIs. There is no place to indicate the spinal level at which injections are to be performed.

144. Diagnosis such as "C. Disc Displacement M50.20," "C. Stenosis M48.02," "Lumbar sprain/strain S33.5xxA," and "Lumbar Disc Displacement M51.26" could be circled. The sheet did not have a selection for herniation or bulge, although in copies produced there are numbers such as "2m" or "2" written to the side of some of the circled entries. Level of the pathology is not indicated. Presumably, the report writer enters information from the MRI report when generating the Foundation examination report.

145. There are intake documents patients complete. These were usually not in the Foundation records presented in demand packages in personal injury claims. At times, these records were produced in response to subpoenas of records in litigated claims. These include selections for the patient to circle concerning "What makes pain worse" (standing, walking, coughing, etc.) and to explain the pain ("Dull," "sharp," "burning," etc.), and blanks to write current medications. As the Vinton sheet does not provide for this information, presumably the report writer enters it into the examination report's history from the intake documents. Likewise, the sheet has no sections for past medical or surgical history, family history, social history, etc., and presumably the report writer pulls that information from the intake documents.

146. Brock's initial consultation reports, other than examinations performed via telemedicine, were almost always three-pages long and followed the same pattern to one another. Like Vinton's reports, Brock reports *virtually always reported the patient's respirations as 16*, a clinical impossibility.

147. While facially appearing more detailed than Vinton reports, several of the sections in Brock initial reports were the same or nearly always the same. The General section almost always read:

General: The patient upon general observation has no findings currently of loss in muscle size, shape or tone in the upper or lower extremities or the midline. There are no signs of tremor, fasciculations, alterations in gait or limb movement. There is normal behavior of the patient given circumstances and memory recall, conversational skills, attention and gross cognition all appear to be intact. The patient is completely responsive and oriented as to person place and time.

The Neurologic section generally stated the following, and when there was variation from the example below it was usually only in the Sensation portion. At times the Cognition, Cerebellum and Cranial nerves sections were not listed:

NEUROLOGIC:

Cognition: The patient is coherent, attentive and oriented as to person, place and time with no changes in speech, expression or adequate thought making capabilities. There are no findings of facial masking nor any symptoms of resting tremor.

Cerebellum: The patient has normal finger-to-nose, rapid alternating movements and dexterity of both the upper and lower extremities with normal gait, stance and movement. There are no findings of cerebellar based tremor at this time. Standing with eyes open and closed is intact.

Cranial nerves: Cranial nerves II-XII are intact.

Sensation: The patient has normal sensation with large and small fiber testing in a dermatomal, cutaneous and long tract distribution. There are no findings of asymmetry left compared to right, proximal to distal or upper compared to lower. The patient has intact joint position sense and graphesthesia.

Motor function: The patient has 5/5 strength in motor function related to the upper and the lower extremities both proximally and distally as well as in the core musculature.

Reflexes: Myotactic stretch responses are at 2/2+ bilaterally in the upper and the lower extremities. There are no findings of spasticity or rigidity. Babinski and Hoffman are not present at this time.

The Skin section reads: The patient has good capillary refill, normal nailbeds with no findings of skin discoloration.” Brock initial reports conclude:

The patient was told that if they have any exacerbation, problems, difficulties or issues related to their current chief complaints to please contact their treating or rendering providers, contact our office if necessary or go to the emergency room or call 911. The patient was also told to please get and maintain regular visits with their family doctor for their overall health and wellness. The patient should participate in any referral, treatment and therapy as deemed necessary by the treating or rendering practitioner.

148. The above sections were also often included in whole or part in Brock Followup reports.

149. The twelve review of systems listed in initial reports were usually described as unremarkable other than the musculoskeletal entry, which would note reported complaints from the history (back pain, etc.) followed by "... which were not present before the time of the accident." At times, the entry simply read: "MUSCULOSKELETAL: The aforementioned musculoskeletal complaints which were not present before the time of the accident."

150. In some cases where records were subpoenaed in litigation, the same one-page form used by Vinton was produced. However, in these examples the forms' preprinted sections were left blank except for what MRIs had been done, and Brock or the assistant only used the pain diagram and wrote a few notes down the upper left margin. These notes typically concerned gender, age, accident date, that they were a restrained driver, if chiropractic treatment had commenced, etc. The notes did not reflect orthopedic tests, palpation, medical history, etc.

151. In a 2022 state court deposition, Brock testified he provided dictation to the report writer. However, the dictation was not made during the examination. Brock claimed the dictation was "usually right after the visit."

152. In that same deposition, Brock stated he saw *30-40 patients a day* at Foundation. With such a patient volume, Brock could not do detailed examinations or dictation. Presumably, report writers used the intake documents and MRI reports to complete parts of the Brock reports.

153. Dr. Gioia's initial examination reports were generally one-page in length and followed the same format. The "Diagnostics Studies" section states he reviewed the MRIs. Notably, at

times Dr. Gioia *did not* confirm the conditions represented in the MRI reports and instead stated the images showed only spondylitic change and no significant herniation or stenosis.

154. In the “Physical Examination” section, gait was normal. For the Neck there was usually reasonable range of motion, no pain on extension or rotation or minimal pain on extension and Spurling’s test was negative. The Back section generally stated the patient had excellent forward bending and straight leg raise was negative. The Neurologic section generally stated deep tendon reflexes were hypoactive and symmetric, and there was no focal motor deficit.

155. The Impression segment often, if not usually, stated the patient presented with lumbar and/or cervical strain vs. disc syndrome. However, the Plan then generally stated the patient would benefit from lumbar and/or cervical ESIs.

156. Dr. Gioia’s Followup reports are brief to the extreme, with no indication of any real examination. For example, the Followup reports for M.B. [Patient 188] and U.O. [Patient 201] read, in their respective entirety:

The patient returns having had his lumbar epidural steroid injection with definite improvement. He is functional at work and feels he can live with his symptoms the way they are. At this point I think we can release him from the Foundation Clinic and see him in the future on an as-needed basis.

The patient has definitely improved with the lumbar epidural steroid injection and feels significantly better after. I think with time her symptoms will likely resolve. At this point, I think she can be seen back in the Foundation Clinic in the future on an as-needed basis.

157. Dr. Gioia’s reports for referral consultations by the nurse practitioners were also generally one page in length. Dr. Schimizzi’s reports for referral consultations followed the same pattern format, and were generally just over one page in length, often with only the plan extending into the second page. However, as with other Foundation reports, much of the page was taken up by section headings, etc., so there was far less than a page of actual verbiage. These

consultations by Drs. Gioia and Schimizzi were generally billed as CPT 99205, representing the highest-level examination was performed.

158. On occasion, Foundation billed CPT 99456 as a final examination, at a charge of \$1,500. The code represents a work related or disability examination by a provider other than the treating physician that includes completion of a medical history and examination commensurate with the patient's condition. However, there is rarely, if ever, documentation of such examinations. Instead, the only document with the date of the supposed CPT 99456 examination is a "To Whom it May Concern" letter, under Vinton's printed name, giving a proposed surgery charge for a procedure previously recommended by Dr. Schimizzi or another physician.

159. Starting in Spring 2020, Foundation providers began performing telemedicine examinations. These continued past 2020 and were common through the period at issue into 2024. These examinations were coded (CPT 99203, 99204, 99213, etc.) and charged as the in-person examinations, even though reports were generally abbreviated.

160. On some occasions, test and examination findings were entered into telemedicine reports that could not have been done in a telemedicine encounter, such as vitals, palpation, and orthopedic tests. In one Eames Followup, concerning H.M. [Patient 104], the report stated the patient was driving during the telemedicine encounter!

161. In some cases, injections such as ESIs and MBBs were ordered during telephonic examinations. At times, injections were ordered when the patient had never been seen in person.

E. Injection Procedures

162. The goal of the enterprise was for the initial examination, or first examination following MRIs, to result in the ordering of some type of injection procedure. This can be seen, for example, in the examination template sheet's emphasis on injections and lack of other types of treatment options such as physical therapy.

Discussed Injections in detail: Schedule Hold for now ()
Hold till patient calls () Steroid information TP injections
Cervical / Lumbar ESI's Cervical / Lumbar: MMB/Facets
Occipital blocks () Start / Continue Chiropractor
Refer: Neurosurgeon Pain Management: Meds/Chronic Pain
Specialist: Shoulder Elbow Wrist/Hand Knee Foot/Ankle
Neurologist: HA's Vision Dizziness Memory Balance
Follow-up: PRN ___month after testing after injection/s

It can also be seen in Dr. Gioia's reports finding only spondylitic change and no significant herniation or stenosis -- but recommending ESIs. These injection procedures would build up the patient's personal injury claim and enrich the enterprise.

163. The injection procedures in the cases at issue were not reasonable or necessary. These injection procedures were ordered, and ultimately performed when authorized by the attorney, solely to inflate the value of the patient's personal injury claim for Defendants' ultimate financial gain. Defendants made the representations of the need of the services and performed the procedures with the intent to have their records and billings included in demand packages to Plaintiffs, and to obtain money through the settlement of the patients' personal injury claims.

164. Through at least the time of Brock's departure, most of the injection procedures at Foundation were ordered by nurse practitioners, including the procedures such as ESIs that would be performed by Dr. Eames. The nurse practitioners made the determination of need for these injections. There was no subsequent review by a physician, either by the 'delegating physician' Dr. Gioia or by Dr. Eames, as to the need for the injection before it was done.

165. While the Foundation examination reports clearly centered on ordering injections, or repeat injections, at times no injections were subsequently done. Before the ordered injections could be performed on an automobile collision patient, the patient's personal injury attorney had to approve the injection. The request to proceed with the injection was sent by Foundation to the attorney's office. If the attorney did not approve the injection, it was not done.

166. Thus, while Foundation would order unnecessary injection procedures to bolster the patient's personal injury claim, the attorney selected the procedures to be done based on personal injury claim considerations. Even had a recommended injection been reasonable, whether the patient received the injection would not have been based on a physician's opinion of medical necessity but on the attorney's decision of whether it would benefit the personal injury claim.

167. Foundation providers other than Brock admitted in depositions from late 2022 to 2024 that authorization by the patient's attorney was required. This included further authorization for repeat injections. Adams stated attorney authorization was necessary even for the TPIs he performed. Both Dr. Eames and Dr. Gioia indicated the attorney's decision on whether to approve a procedure was based on financial considerations concerning the policy at issue.

- a. Vinton testified "I submit the request and either it's denied or approved." The front desk sends the request to the attorney's office. It was possible the patient did not have the second lumbar ESI she ordered because the patient's attorney did not approve it.
- b. Adams testified that at Foundation, "All procedures have to be authorized by the patient's attorney in a car wreck case." A Foundation employee would forward a form with any procedure or diagnostic test he ordered to the attorney's office for approval.
- c. Dr. Gioia testified any recommendation he made for injections had to be approved. "I just make the recommendations and the girls at Foundation send it to the attorney."
- d. Dr. Eames testified he had an "educated guess" why an ESI was not done until six weeks after Vinton ordered it: "That there was a delay being approved by the attorney. That's almost always the reason." He saw the patient on her final visit, and stated he was having facet MMBs scheduled "as soon as possible." He would have filled out an order sheet stating what he wanted to do and provided it to the "front desk."

168. In the same 2024 deposition, Dr. Eames stated he believed the front desk kept records of whether the injection procedures were approved.

Because if they were approved, then they'd go ahead and schedule them so -- and if they're not approved, then they usually make a note that it's not approved so we can go back later and say well, why didn't we do them, you know?

Dr. Eames believed this note was in a section in the computer called patient notes or scheduling notes, that was "not necessarily part of the medical record."

169. While Brock acknowledged approval was needed for injections ("That -- that goes through, you know, when they get scheduled, they get approved. I don't do the approval, and the assumption is made that if they get scheduled, there's approval"), he stated he had "no idea" if this approval came from the patient's law office.

1. Injection Procedures Performed at Prime

170. Injections requiring fluoroscopic guidance were done in a procedure suite at the Prime facility at Hillcrest Plaza. The bulk of these injections were ESIs. Other injections done to a lesser degree included medical branch block, and sacroiliac ("SI") joint injections. In the period at issue, with very rare exception, these injections were done by Dr. Eames.

(a) Ordering Injection Procedures

171. ESIs are a minimally invasive spinal injection procedure used to treat radiculopathy, i.e. pain radiating from the neck into the arms or from the back into the legs. Conditions such as nerve root impingement or compression, or neural foraminal stenosis causing the radiating pain can be treated with an ESI. An ESI involves the injection of a steroid or corticosteroid, often with an anesthetic, to reduce swelling causing the impingement of a nerve, etc.

172. ESIs are not considered to be medically indicated just for complaints of neck or back pain.

173. The orders for ESIs at Foundation were based on the MRI reports findings of herniations or bulges, even if there was no accompanying pathology such as nerve root impingement, and no radicular symptoms such as pain radiating down an extremity. Dr. Gioia, the only provider who stated he reviewed the images, at times concluded there was no significant herniation or stenosis – although he then ordered ESIs.

174. Cervical ESIs are generally performed by pain management providers at spinal levels C6-C7 or C7-T1. These lower levels provide a wider epidural space and are considered safer to perform the ESI. Dr. Eames typically performed cervical ESIs in the period at issue at C7-T1.

175. There is not a similar concern with lumbar ESIs. There are three types of ESIs – transforaminal, interlaminar, and caudal. A transforaminal ESI is the most precise and effective. The needle is placed through the neural foramen, and the injection of the steroid is concentrated to the affected nerve root, etc. An interlaminar ESI is less precise. The needle is inserted between two laminae to reach the epidural space. The injected steroid can spread to the epidural spaces near the injected space. A caudal ESI is the simplest ESI. The needle is placed through the sacral hiatus, at the bottom of the sacrum and just above the tailbone.

176. Prior to 2019, Foundation pain management physicians routinely performed transforaminal lumbar ESIs. Transforaminal ESIs appear to have been the preferred form of lumbar ESI done at Foundation in that period. Recommendations for lumbar ESIs in Foundation examination reports would specify the type of ESI to be performed and the level or levels of the lumbar spine (L2-L3, L3-L4, etc.) at which the ESI was to be performed.

177. However, this changed by the period at issue. Foundation examination reports, with extremely few exceptions, did not specify the type of lumbar ESI ordered or at what level it was to be performed. The reports stated simply a lumbar ESI was recommended. For example, typical Vinton referrals for lumbar ESIs read “we discussed steroid injections in detail” and the

patient wished to schedule the ESI. Typical Brock referrals read “Lumbar epidural steroid injection is recommended,” “Epidural steroid injection of the lumbar spine,” etc. Dr. Gioia’s reports were similar, just stating the patient was being referred for lumbar ESI.

178. With almost no exception, the only lumbar ESIs done in the period at issue were interlaminar ESIs or, at times, the even simpler caudal ESIs. The lumbar interlaminar ESIs were virtually always done at level L5-S1. This was the case even when Foundation examination reports recited findings from the MRI reports of herniations, etc., at higher spinal levels and an interlaminar ESI at L5-S1 would have little or no therapeutic effect - assuming there had been radicular symptoms justifying the ESI.

179. For example, cases where a “lumbar ESI” was ordered by Vinton or Brock, without stating the type of ESI to be done or the lumbar level for the ESI include:

- a. M.K. [Patient 54]. The Vinton initial report stated the MRI showed a 2.2 mm herniation at L4-5 and a 2 mm herniation at L3-4. A Brock Followup report noted “disc pathology” at L3-4 and L4-5 and ordered a lumbar ESI. Dr. Eames performed an interlaminar ESI at L5-S1.
- b. S.P. [Patient 88]. The initial Brock report stated the MRI showed herniations at L3-4 and L4-5. Brock also stated, “At L5 S1 there is also pathology” with no elaboration. His follow-up report ordering lumbar MRI noted “disc pathology” at L4-5 including possible nerve root compromise.” Dr. Eames performed an interlaminar ESI at L5-S1.
- c. M.M. [Patient 209]. The Vinton report noted the MRI showed 2mm herniations and bilateral foraminal stenosis at L4-5 and L5-S1. Vinton ordered a lumbar ESI. Dr. Eames performed a caudal ESI.
- d. U.O. [Patient 201]. The Gioia report stated his review of the MRI showed some mild spondylitic change and disc protrusion at L4-5, but no significant stenosis or disc

herniation. Gioia ordered a lumbar ESI. Dr. Eames performed an interlaminar ESI at L5-S1.

180. One of the very few exceptions concerns A.K. [Patient 74]. The MRI Centers of Texas lumbar MRI report stated there were 4-5 mm left foramina discal substance herniations at L3-4 and L4-5. Brock's initial report recommended a "*transforaminal epidural steroid injection into the lumbar spine at the area of the interspace between L3-4 and L4-6.*" Dr. Eames's Procedure Report stated he did a "Transforaminal ESI at L3-4 and L4-5 on the Left." This Brock report shows that a specific lumbar ESI could be ordered, and it is inexplicable why other cases of the time merely ordered a 'lumbar ESI.' Brock later referred A.K. to Dr. Gioia who, after criticizing the MRI quality and having the lumbar MRI redone at Prime, found no overt disc herniation or significant stenosis, thus calling into question the need for the ESIs that had been performed.

181. Little if any indication was stated for ordering procedures. Often, the examination reports ordering ESIs did not indicate any radicular complaints or symptoms. Often, orthopedic tests for radiculopathy or nerve root irritation such as Spurling's test (cervical) or SLR (lumbar) were reported negative. In the case of Vinton reports, the tests were virtually always reported negative. At times, examination reports ordering ESIs affirmatively stated *there were no radicular complaints*. Also, at times the patient encounter in which the procedure was ordered was telephonic, allowing for no actual physical examination or orthopedic tests. For example:

- a. A Vinton report for D.F. [Patient 49] stated MRIs showed various levels of herniations or extrusions, but D.F. had no complaints of upper or lower extremity radiculopathy. Orthopedic tests were negative. A Followup report repeated these findings, including no radiculopathy. Vinton's diagnosis did not include radiculopathy. However, cervical and lumbar ESIs were ordered and performed.

- b. A Vinton report for J.R. [Patient 39] reported the cervical MRI showed herniations at three cervical levels. However, J.R. had no complaints of upper or lower extremity radiculopathy. Orthopedic tests were negative. Vinton's diagnosis did not include radiculopathy. However, cervical ESI was ordered and performed.
- c. A Vinton report for M.K. [Patient 54] stated the MRI showed herniations at L4-5 and L3-4. But M.K. had "no complaints of lower extremity radiculopathy." Straight leg test was negative. A Brock Followup reported no lower extremity complaints and SLR was still negative, although Kemp's test was positive.¹⁹ Brock's impression included "no radiculopathy noted." However, lumbar ESI was ordered and performed.
- d. A Brock report for E.F. [Patient 66] stated MRIs showed herniations at C3-4, C4-5, L4-5, and L5-S1. However, E.F. had no lower extremity complaints. Straight leg raise was negative. There was normal sensation. Brock's lumbar impression included "no findings of radiculopathy." However, lumbar ESI was ordered and performed.
- e. A Vinton *telemedicine* report for M.C. [Patient 123] stated the MRI findings, but "no complaints of radiculopathy" and no numbness or tingling in the lower extremities. All subsequent follow-ups were by telemedicine; Vinton *never saw M.C. in person*. Vinton reported "He continues to have no lower extremity radiculopathy." Subsequently, Vinton stated M.C. reported some numbness on the left thigh. Lumbar ESI was ordered and performed.
- f. A Vinton report for M.M. [Patient 209] stated the MRI findings including 2mm herniations and foraminal stenosis at L4-5 and L5-S1. However, M.M. "continues to have no upper or lower extremity radiculopathy." SLR was negative, sensation was

¹⁹ However, Kemp's test is used to assess facet joint pain, and not radiculopathy.

intact. Her impression did not include radiculopathy. Lumbar ESI was ordered and Dr. Eames performed a caudal ESI.

- g. A Vinton report for D.B. [Patient 106] stated D.B. “denies any upper extremity radiculopathy,” reflexes and sensation were normal, and Hoffman’s and Spurling’s tests were negative. Cervical ESI was ordered and performed.
- h. A Gioia report for U.O. [Patient 201] stated his review of the MRI showed some mild spondylitic change and disc protrusion at L4-5, but no significant stenosis or disc herniation. SLR was negative, there was no focal motor deficit, and U.O. “represents lumbar strain vs. lumbar disc syndrome.” Lumbar ESI was ordered and performed.

182. Dr. Eames’s lumbar ESI reports in the period at issue into mid-2021 listed preoperative and postoperative diagnosis of “Lumbar radiculitis,” as the basis for lumbar ESI. This diagnosis was listed even if the examining provider did not make that diagnosis or even found there was no radiculopathy in their examination reports. After mid-2021, Dr. Eames’s lumbar ESI reports no longer listed any diagnosis.

183. The other injections ordered by nurse practitioners or Dr. Gioia, such as MBBs and SI joint injections, were also unnecessary. For example, MBBs are used to diagnose the cause of pain, by injection of an anesthetic near the medial branch nerve to temporarily block pain the pain signal from the facet joints. This can allow for determination of further treatment such as radiofrequency ablation (RFA). However, Foundation negated the diagnostic effect by also injecting a steroid. And RFA procedures were only very rarely performed in the period at issue.

(b) Procedure Days

184. While Dr. Eames was the only regular pain management injection physician at Foundation in the period at issue, he was also working at Beach Pain through the very end of 2022. He did injection procedures for Foundation, at Prime, just one full day and one half day a

week. Obviously, procedures such as ESIs, MBBs, and SI joint injections had to all be scheduled on the limited days he was at Foundation.

185. Patient volume was high on these days. Per Dr. Eames 2024 deposition testimony, he performed about 20 injection procedures on a full day at Prime.

186. Once the attorney approved the procedure, the patient was scheduled for the procedure at Prime. Generally paramedics rather than nurses performed the pre-injection functions such as directing the patients to change, putting them on a gurney, and starting an IV.²⁰

187. Dr. Eames claimed he would come to talk to the patient and confirm the procedure they were there for, and tell the patient some of the risks, complications and side effects. Then he left, and later Dr. Stein or a medical assistant fetched the patient when they were ready for them and brought the patient to the procedure suite.

188. Dr. Eames did not perform an evaluation himself before doing the procedure ordered by a nurse practitioner. As set forth above, he followed the injection orders by Vinton, claiming Dr. Gioia was supervising her and he considered an order from her to be from Dr. Gioia. In the case in which he was deposed in 2024, Dr. Eames performed the last patient examination, after previously having done an ESI. He noted, “And this is the first time I’ve seen her as a patient and not just to do a procedure that somebody else ordered.”

189. Per Eames testimony, the patient was taken to the recovery room after the injection was completed. Paramedics, rather than nurses, also manned the recovery room.

(c) Unnecessary Utilization of IV Anesthesia

190. Authorities such as the International Pain and Spine Intervention Society (IPSIS) and the American Society of Anesthesiologists have promulgated positions that pain management procedures such as ESIs and MBBs require only local anesthetic numbing the tissue. Local

²⁰ According to the 2024 deposition testimony of Dr. Eames.

anesthetic is also preferable as it allows the patient to be sufficiently alert to be able to communicate any unusual sensation, etc., they feel during the procedure. The use of general or IV anesthesia/sedation for pain management injections is not necessary or desired and should be limited to patients with a comorbid condition or due to other documented need on a case by case determination. Anxiety or apprehension should not be an automatic indication for sedation. Also, for diagnostic procedures such as MBBs, use of deep sedation defeats the purpose of the study.

191. Tellingly, *Complete Pain's* website during the period at issue advised patients sedation was "seldom needed" for procedures and referenced only use of local anesthetic. The website's "Exam Preparation" section included:

When you arrive at the office the nurse/paramedic may place an intravenous (IV) line in your arm to deliver a relaxation medication during the procedure; this is seldom needed but will be available if required. You will be situated on your stomach or on your side on a table in the fluoroscopic room.

Depending on the type of procedure performed, the doctor will identify where the injection should be given and will sterilize the skin with an antiseptic solution. He or she will then inject a local anesthetic to help numb the area before the procedure is performed.

The website's cervical ESI section referenced only local anesthetic: "Before the injection procedure begins, topical anesthesia is applied to the skin." In a linked video of a cervical ESI, the physician states the tissue is numbed with lidocaine, and later states he does all his procedures in office *without* conscious sedation and talks with patients during the procedure.²¹ The website's lumbar ESI section stated,

Local anesthetic is used to numb the treatment area so discomfort is minimal throughout the procedure. The patient remains awake and aware during the injection to provide feedback to the physician.

²¹ www.youtube.com/watch?v=WtvQ-JhxxoA&t=1s

The linked lumbar ESI video noted, “The procedure is done under local anesthetic.”²² The Complete Pain website’s descriptions of sacroiliac joint steroid injections and facet joint injections also did not reference sedation, only local anesthetic.

192. However, in injections performed by Dr. Eames at Prime, anesthesia was done as a matter of routine. In a 2024 state court deposition, Dr. Eames acknowledged ESIs could be done using only local anesthetic. But their practice was to sedate the patient. Patients were not provided an option. Dr. Eames stated he just told the patients the injection would be done under IV sedation and only discussed the issue further if the patient asked if they needed sedation. He confirmed the only time he did an injection using only local anesthetic was if *the patient* initiated the issue on their own:

A We only did it without anesthesia if the patient brought up a concern or didn’t want it, yes.

Q Okay.

A Our routine was to use it.

193. The procedure reports for the injections performed at Prime by Dr. Eames throughout the period at issue stated anesthesia was provided by Ralph Stein, D.O. The body of the report stated IV anesthesia was administered and monitored by Dr. Stein. Dr. Eames’ procedure reports did not document any need for the IV anesthesia.

194. Notably, in his profile with the Texas Medical Board, Dr. Stein listed his secondary specialty as pain management. Therefore, he was aware that anesthesia beyond local anesthetic was not routinely necessary in these procedures in which he provided the IV anesthesia.

195. Through September 2021, Foundation billed the anesthesia as CPT 01992, representing it was performed by a separate anesthesia provider. Prime billed for anesthesia drugs such as

²² www.youtube.com/watch?v=f4f4XaCiIto&t=3s

fentanyl. After September 2021, Complete Pain did not charge an anesthesia code. However, it did bill for drugs such as fentanyl, at a higher charge than Prime. Dr. Eames's procedure reports continued to state Dr. Stein provided and monitored IV anesthesia.

196. In the few cases at issue when Dr. Vu performed the ESI, a different report form was used. The Vu reports did not list anesthesia being done by Ralph Stein, D.O. There was no reference in the body of Vu reports to IV anesthesia, Dr. Stein, or any other anesthesia provider. Only utilization of a local anesthetic was noted in the reports. However, Foundation billed for CPT 01992 anesthesia, and Prime billed for medications such as fentanyl and services such as IV injections and an IV start kit for these ESIs.

197. The routine use of anesthesia by Foundation was unnecessary, and increased the cost of the unnecessary injections. Concerning Dr. Vu, who performed injections under only local anesthetic as his reports clearly indicate, Foundation and Prime billed for services not rendered.

(d) Documentation of the Procedures

198. The single-page printed procedure reports were with very rare exception the only documentation of the injection procedure produced in the claim demand. In the 2024 deposition Dr. Eames testified he did not generate any hand-written documents during the procedures.

199. The reports did not have an actual signature. Through Spring 2021, there was a statement at the bottom of the page, "Electronically signed by Bradley Eames DO on...". For example:

Electronically signed by Bradley Eames DO on 03/01/2021 at 1:41 PM

Thereafter, there was an unsigned printed name as in the examination reports.

200. However, it seems highly unlikely Dr. Eames ever reviewed the reports, as they were identical throughout the period at issue. Type and amount of medication, the patient's

“excellent” condition following the injection, etc. were the same. The reports could be run from a computer, basically adding only the patient’s name and the injection date.

201. The only variance in Dr. Eames’s cervical ESI reports was in the earlier part of the period a 17-gauge Tuohy needle was reported, and later an 18-gauge Tuohy needle, and the earlier reports generally stated the patient was to be seen in 7-14 days, and later reports stated 7-10 days. This standard report read:

PROCEDURE REPORT

OPERATIVE PROCEDURE: CERVICAL EPIDURAL STEROID INJECTION

ANESTHESIA: Ralph Stein, DO

PROCEDURE: After informed consent was obtained and all questions answered to the patient’s satisfaction, the patient was taken to the procedure room and placed in the prone position. After adequate IV anesthesia and monitoring by the anesthesiologist cervicothoracic spine was prepped with Betadine and sterilely draped in the usual manner. Utilizing C-arm fluoroscopy the C7-T1 interspace was identified. A skin wheal was raised with 1% lidocaine and the deeper tissues further anesthetized. A 17-gauge Tuohy needle was then inserted through the skin wheal and directed toward the interspace under fluoroscopic guidance. Upon engagement of the ligamentum flavum the needle was further advanced into the epidural space using loss of resistance technique. An epidurogram was then performed with 2-3 mL of Isovue-200 contrast. A normal appearing epidurogram ensued. The therapeutic injectate consisting of 9 mL of preservative free normal saline and 40 mg Kenalog was then injected after negative aspiration for CSF or blood. Further spread of the contrast dye under fluoroscopic guidance indicated good delivery of the medication to the target area. The injection was completed, the needle was withdrawn, a sterile dressing was placed and the patient was taken to the recovery room in excellent condition. The patient is to follow up with myself or their treating doctor in the next 7-10 days.

202. Dr. Eames’s lumbar ESI reports through around Spring 2021 gave preoperative and postoperative diagnosis of “Lumbar radiculitis,” even if the nurse practitioner had not made such a diagnosis or noted no radicular symptoms. Otherwise, the body of Dr. Eames’s lumbar ESI reports were the same during the period at issue, other than the change to an 18-gauge Tuohy needle later in the period:

PROCEDURE REPORT

PREOPERATIVE DIAGNOSIS: Lumbar radiculitis

POSTOPERATIVE DIAGNOSIS: Lumbar radiculitis

OPERATIVE PROCEDURE: LUMBAR EPIDURAL STEROID INJECTION L5-S1 WITH FLUOROSCOPY AND ANESTHESIA

ANESTHESIA: Ralph Stein, DO

PROCEDURE: After informed consent was obtained and all questions answered to the patient's satisfaction, the patient was taken to the procedure room and placed in the prone position. IV anesthesia was administered by Dr. Stein with appropriate monitors. The lumbosacral spine was prepped with Betadine and sterilely draped in the usual manner. After adequate sedation the C-arm fluoroscopy unit was utilized to visualize the L5-S1 interspace and a skin wheal was raised with 1% lidocaine and the deeper tissues further anesthetized. A 17-gauge Tuohy needle was then inserted through the skin wheal and directed under fluoroscopic guidance, upon reaching ligamentum flavum the needle was further advanced into the epidural space using loss of resistance technique. The epidural space was then confirmed by an epidurogram utilizing 2-3 mL of Isovue-M 200 contrast. After a normal appearing epidurogram the therapeutic injectate consisting of 40 mg of Kenalog and 9 mL of preservative free normal saline was then injected in an incremental fashion with negative aspiration of CSF or blood after every 3-4 mL. The epidurogram dye was further spread within the epidural space indicating good delivery of the medication to the target area. Injection was completed, the needle was withdrawn, a sterile dressing was placed and the patient was taken supine to the recovery room in excellent condition. The patient will follow up with myself or the treating physician in the next 7-14 days.

203. Other procedure reports were the same. For example, the reports for lumbar MBBs remained the same throughout the period at issue, differing only in number of levels listed.

PROCEDURE REPORT

OPERATIVE PROCEDURE: BILATERAL LUMBAR MEDIAL BRANCH BLOCKS AT L3, L4 AND L5

ANESTHESIA: Ralph Stein, DO

PROCEDURE: After informed consent was obtained and all questions answered to the patient's satisfaction, the patient was taken to the procedure room and placed in the prone position. After adequate IV sedation the lumbosacral spine was prepped with Betadine and sterilely draped in the usual manner. Utilizing C-arm fluoroscopy and an oblique position of approximately 12°, the left side lumbar facet joints were visualized. A 22-gauge curved spinal needle was inserted through each skin wheal and directed toward the L5 medial branch location. Upon reaching the target area needles were similarly placed at L4 and L3. After negative aspiration for CSF or blood each location was injected with 1 mL of injectate consisting of 5 mL of 0.25% bupivacaine and 40 mg of Kenalog. After all three sites were injected the needles were withdrawn and the procedure was repeated in an identical fashion on the right hand side. The needles were withdrawn after all had been injected and a sterile dressing was placed. The patient was taken supine to the recovery room in excellent condition. The patient is to follow up with myself or the treating doctor in the next 7-14 days.

204. As noted in these reports, fluoroscopy was reportedly used in injections such as ESIs and MBBs to verify proper needle placement for the injection of the steroid. It is the standard of care in guided injection procedures to retain some fluoroscopic images taken during the procedure. Recognized societies such as IPSIS hold that sufficient fluoroscopic images of a procedure should be retained for the patient's record, to show the procedure was effectively performed.

205. Interestingly, Vinton testified in a 2023 state court deposition that when she had assisted Dr. Chapman in performing such injections, fluoroscopic images were *always* maintained. Vinton correctly explained that retention of the images was necessary "to show where the needles were and to verify placement to exactly where you were and that they dye was there."

206. However, in the period at issue, no fluoroscopic images were preserved or maintained. Images were not included in Foundation or Prime records produced in demand packages in personal injury claims. In Texas state court cases subpoenaing Foundation's complete file for patients, even if specifically including requests for fluoroscopic images, Foundation consistently did not produce them. The representative answering the written depositions stated there were no images. For example, in the case in which Dr. Eames was deposed in 2024, the Foundation representative, Ms. Pargas, had attested earlier in 2024:

11. Were there fluoroscopy images pertaining to the interventional procedures performed on dates of services 7/7/2022?

Answer: YES NO FILMS

12. Did you produce in response to this subpoena Fluoroscopy images of treatment provided on 7/7/2022?

Answer: YES NO FILMS

In several other written deposition responses since 2022, Foundation or Prime gave similar answers, stating there were no images and at times striking through "yes" responses, or completed a certificate that no records were found.

207. In the 2024 state court deposition, Dr. Eames confirmed Foundation *does not* retain any fluoroscopic images for the patient's record. He stated he did not think it was considered

standard practice in the pain management field to retain several images to show the needle was correctly placed. When asked if there was any way to verify if an injection was done properly without having any retained fluoroscopic images, Dr. Eames replied, “No, I guess not.”

208. Foundation/Prime also should have secured written consents for both the injection procedures and use of anesthesia. Given the bills for anesthesia and recovery room expenses, there should also be anesthesia records as well as pre- and post-operative records that include vitals taken while patients were in the waiting area for the procedure and later recovery room, and documentation detailing the patients’ release following the procedures.

209. However, in the period at issue Foundation/Prime/Complete Pain almost always produced only the printed one-page procedure reports in regard to procedure dates, with documents provided in attorney demand packages and in records affidavits provided to plaintiffs’ attorneys in litigation. The report was also almost always the only document produced in response to subpoenas of patient files in cases where the patient filed a tort suit. Any other documents concerning the injection date were very rarely provided.

210. Withholding, or not preserving, such information concealed the full nature of the injection procedures. Most importantly, there is no way to verify if an ESI, etc. was done properly without having any retained fluoroscopic images. Other records such as anesthesia records, pre- and post- operative records, supply sheets, etc. would presumably have information confirming drugs used, the time expended, and whether IV anesthesia was in fact utilized.

(e) Billing of the Procedures, Misrepresentation of Services, and Unbundling of Services.

211. Through September 2021, both Foundation and Prime charged for the ESIs and other procedures done at Prime. Foundation charged for three services in its bill for an ESI: (1) the ESI, either cervical as CPT 62321 26 at \$2,103.00 or lumbar as CPT 62323 26 at \$2,101.00, (2) Epidurography as CPT 72275 26 at \$647.00, and (3) Anesthesia as CPT 01992 at \$2,000.00.

212. Prime billed a number of additional charges for the same ESI. The Prime bill for a cervical ESI included representations of services and charges for:

Cervical ESI	CPT 62321 TC	\$2,313.30	
Recovery room, 1 hour	CPT 99499	\$910.00	
Epidurography	CPT 72275 TC	\$647	(later \$947.00)
Injection, triamcinolone acetonide	J3301	\$300.00	(4 units x \$75)
Surgical tray	A4550	\$227.00	
Injection, intravenous push	CPT 96374 59	\$191.00	
Needles	A4215	\$60.00	
Injection, midazolam	J2250	\$29.65	
Gloves	A4930	\$19.75	
Swabs/wipes (box)	A4247	\$37.50	
IV start kit	A9999	\$35.00	
Contrast material	Q9966	\$29.00	(10 units x \$2.90)
Ear or pulse oximetry	CPT 94760	\$25.00	
Applied modality (hot/cold pack)	CPT 97010	\$25.00	
Injection fentanyl citrate .1 mg	J3010	\$12.00	
Surgical mask	A4928	\$23.00	
Injection mepivacaine	J0670	\$18.75	
Lidocaine 50cc	J2001	\$10.27	
Gauze	A6216	\$ 4.73	

Prime bills for lumbar ESIs were the same, except the ESI was billed as CPT 62323 TC at \$2,311.10, and there were no charges for ear or pulse oximetry and the IV start kit.

213. The billings for other injection procedures done at Prime were similar. Foundation billed lumbar MBBs as CPT 64493 at \$1,375 for the initial level, and CPT 64494 at \$636 for each additional level. It billed cervical MBBs as CPT 64490 at \$532 for the first level, CPT 64491 at \$553 for the second level, and CPT 64492 at \$579 for additional levels. Anesthesia was also billed using CPT 01992 at \$2,000.00.

214. Prime bills for the same MBB procedures charged the levels of injection and were otherwise identical to Prime bills for cervical ESIs, including the same recovery room, supply, and drug charges, in the same amounts or units, except epidurography was not charged.

215. For SI joint injections, Foundation billed the injection (CPT 27096), fluoroscopy (CPT 77003), and anesthesia (CPT 01992). Prime also billed for the injection and fluoroscopy and

billed the same additional charges as for facet injections and cervical ESIs (other than epidurography), including the same recovery room, supply, and drug charges, in the same amounts or units except doubling the units for midazolam, fentanyl, and gloves.

216. The bills included improper charges. Neither Foundation nor Prime was a licensed ambulatory surgical center (ASC) or hospital. Therefore, Prime should not have billed for any facility fees or supply charges, and all the additional charges by Prime for these injection procedures were improper.

217. Also, epidurography as represented by CPT 72275 is a diagnostic procedure used when an epidurogram is medically necessary and performed. Typically, an epidurogram is performed to examine the spinal canal for obstructions. Per AMA standards for CPT 72275, fluoroscopic images were required to be documented and a report issued. Both Foundation and Prime represented this service was done in their bills, and Dr. Eames's template ESI reports stated an epidurogram was performed. However, there is no documentation of an actual epidurogram. It appears Foundation and Prime billed epidurography to charge for fluoroscopy, which should have been 'bundled' in the ESI charge and not billed separately. Likewise, Foundation and Prime billing fluoroscopy separately in other procedures was an improper unbundling of the procedure.

218. Further, while Prime's bills were not proper as it was not an ASC, there is no documentation of an hour of recovery room time justifying the charge. Likewise, it is not credible that every ESI and MBB procedure would require the same drugs and services, in the same unit amounts. No supply sheets were produced showing the actual drugs and materials used, and it is clear the same standard bill was generated regardless of services or supplies actually provided.

219. The later Complete Pain bills for the procedures also contained improper charges. For a cervical ESI, Complete Pain billed:

99211	OFFICE O/P EST 5 MIN	\$140.00
99499	RECOVERY ROOM	\$420.00
A4215	STERILE NEEDLE	\$200.00
A4550	SURGICAL TRAYS	\$200.00
Q9967	1ML	\$33.00
62321	INJ CERVICAL ESI	\$5,511.00
J1100	DEXAMETHASONE SODIUM PHOS	\$210.00
J3490	DRUGS UNCLASSIFIED INJECTION	\$710.00
J2001	LIDOCAINE INJECTION	\$210.00
77003	FLUOR GID & LOCLZJ NDL/CATH SPI DX/THER NJX	\$945.00
J2250	INJ MIDAZOLAM HYDROCHLORIDE	\$210.00
J3010	FENTANYL CITRATE INJECITON	\$210.00

For a lumbar ESI, Complete Pain issued the same bill substituting “Injec ESI Lumbar Spine” (CPT 62323) instead of the cervical ESI CPT 62321. Other injection billings were similar. For lumbar MBBs, Complete Pain billed:

77003	FLUOR GID & LOCLZJ NDL/CATH SPI DX/THER NJX	\$945.00
99499	RECOVERY ROOM	\$420.00
99211	OFFICE O/P EST 5 MIN	\$140.00
J2001	LIDOCAINE INJECTION	\$210.00
J3301	KENALOG	\$210.00
A4215	STERILE NEEDLE	\$200.00
64493	FL Facet Injection Lumbar 1 Level	\$5,710.00
64494	LUMBAR FACET 2	\$5,710.00
J2250	INJ MIDAZOLAM HYDROCHLORIDE	\$210.00
J3010	FENTANYL CITRATE INJECITON	\$210.00

220. However, neither Foundation nor the Prime facility at which the procedures were performed was a licensed ASC. Therefore, there should have been no Foundation charge beyond the injection charges, and the facility fees and supply charges were improper. Further, fluoroscopy is a necessary part of injection procedures such as ESIs and MBBs and should not have been billed as a separate charge. There is no documentation of recovery room services, a CPT 99211 office examination, or the “unclassified” drug injection.

2. Injection Procedures Performed at Foundation

221. Injections such as joint injections of the shoulder or knee, and TPIs were performed in the Foundation Hillcrest Plaza office. At least in the case of TPIs, they were also performed at other Foundation offices.

222. In the period at issue, joint injections were done by Brock and on occasions by Dr. Schimizzi or Dr. Eames. TPIs were done by Brock and Dr. Eames, and later Adams.

223. The only documentation for these joint injections or TPIs was a one-page report. When done by a nurse practitioner, Dr. Gioia’s name was also included on the report, representing he had participated. However, Dr. Gioia was not present for the injections.

224. These injections were billed by Foundation, and after September 2021 by Complete Pain. Foundation’s bills included, in addition to the injection, various drug and supply charges which should have been included in the CPT 20610 injection service. The bills also included a CPT 99213 examination and an additional IV injection. There is no examination report or other documentation of an examination or IV. Foundation billed the shoulder and knee injections at a total of \$2,830.73.

Injection, major joint or bursa	CPT 20610	\$1,652.50	
Office visit, established patient	CPT 99213	\$585.00	
Injection, triamcinolone acetonide	J3301	\$300.00	(4 units x \$75)
Injection, intravenous push	96374 59	\$191.00	
Needles	A4215	\$60.00	
Swabs/wipes	A4247	\$37.50	
Gauze	A6216	\$ 4.73	

The standard wrist injection bill was the same, except the injection was billed as CPT 20605 at \$1,275.32. TPI bills were also the same, other than billing CPT 20552 or 20553 as the injection charge at \$975.00. However, when joint injections or TPIs were done by Dr. Eames, at least at times Foundation did not bill for the CPT 99213 examination.

225. In a 2023 state court deposition, Brock testified he made “landmarks” for injection points and then did the shoulder injection. They monitored the patient a “short period to make sure there’s no complications” before releasing him. When later asked about the CPT 99213 examination charge, Brock claimed it was justified because he had to palpate the shoulder and do movements to mark the landmarks. When asked if a separate examination was documented,

Brock claimed an examination was documented within the procedure report as, “I demonstrated the landmarks in the report.”²³ Brock was asked if making the landmarks was a part of the injection procedure, and he ultimately stated the billing department made the decision to charge CPT 99213.

Q Well, isn’t part of finding the landmarks just part of the injection procedure?

A Well, I would assume that doing the examination part and going over those landmarks like was put right here is part of the procedure, which is why they did it.

Q Okay. “They did it,” meaning the billing office.

A Yeah. I mean, they -- they know that I’m going to go through all this stuff.

Q So is this a billing office decision that while there was an injection procedure done and as part of the injection procedure, we’re going to bill for this 99213 examination?

A I think you should get the billing office, and I think you should ask them.

Brock stated Jaime Hellman would be the person to whom to direct billing questions.

226. Complete Pain also billed joint injections and TPIs differently, but including charges such as recovery room and fluoroscopic guidance. For example, concerning M.M. [630932705], the TPIs done by Dr. Eames included charges for a lidocaine injection, presumably to numb the tissue for the TPIs, and recovery room.

20553	INJECTION SINGLE/MLT TRIGGER POINT 3/> MUSCLES	\$775.00
99499	RECOVERY ROOM	\$420.00
J3301	KENALOG	\$210.00
J2001	LIDOCAINE INJECTION	\$210.00
A4215	STERILE NEEDLE	\$200.00
99211	OFFICE O/P EST 5 MIN	\$140.00

²³ At the time of that shoulder injection in 2021, a CPT 99213 coding represented the evaluation and management of an established patient, which requires a medically appropriate history and/or examination and low level of medical decision making, with 20-29 minutes of total time spent on the day of the encounter.

227. In the case in which Adams was deposed in November 2023, he did three sets of TPIs.

For two of dates, Complete Pain included recovery room and fluroscopy charges. For example:

20552	INJECTION SINGLE/MLT TRIGGER POINT 1/2 MUSCLES	\$542.00
77003	FLUOR GID & LOCLZJ NDL/CATH SPI DX/THER NJX	\$945.00
99211	OFFICE O/P EST 5 MIN	\$140.00
99499	RECOVERY ROOM	\$420.00
A4550	SURGICAL TRAYS	\$200.00
A4215	STERILE NEEDLE	\$200.00
J3301	KENALOG	\$210.00

In the deposition, Adams explained he finds the knot in the muscle and does the TPI there. He did the TPIs in a normal exam room at Benbrook (Fort Worth). On the first occasion, it probably took three minutes to do all six TPIs. Then, “you watch them for a couple minutes afterwards, and let them go home.” He did not see the bills issued for his services at Foundation. When shown the Complete Pain bills for the TPIs, Adams testified the charges for fluoroscopy, recovery room, and a lidocaine injection were erroneous as those services were not provided. He did not provide anything to Foundation stating these services had been provided. Adams also testified the charge for a surgical tray was incorrect as the needle should have been included in the injection charge.

F. Prescriptions

228. The prescriptions by the nurse practitioners, Dr. Gioia, and Dr. Eames were generally sent to a limited set of LOP pharmacies, primarily ASP Cares, that mailed or otherwise delivered the medication to the patient. This was the case even when the patient was reported as stating a high level of pain and presumably would have wanted to obtain the medication immediately.

229. The decision of which pharmacy to send a prescription was made by the patient’s attorney. Dr. Eames noted in his 2024 state court deposition, “Well, again, it’s attorney-driven.” In that case, prescriptions by Dr. Eames were sent to ASP Cares, and earlier prescriptions by

Vinton were sent to a Signature RX pharmacy *in Houston*.²⁴ Vinton's initial report stated the patient complained of up to 9/10 and 10/10 levels of pain.

230. In a 2023 state court deposition, Vinton was shown the ASP Cares bill for the Robaxin and Tramadol she prescribed the patient, each billed at \$199. She opined the charges sounded high. She had reported the patient complained of up to 9/10 neck and back pain. In the 2024 deposition, Eames recognized ASP Cares charges were far higher than what would have been paid at a local pharmacy, but claimed the \$249 charge for meloxicam and \$249 charge for Voltaren gel he prescribed were justified because ASP Cares had to wait for payment under an LOP.

G. Estimates of Future Care

231. In some claims, an "Estimate of Care" on Foundation letterhead was forwarded to the patient's law office providing estimated amounts for Foundation and Prime for recommended procedures such as ESIs and joint injections.

232. The Estimates of Care were under the printed name of Amy Murguia, identified as "Billing Supervisor." Presumably, these estimates concerned injections that had not been approved, but which the attorney wanted to present in demand packages as possible future medical costs.

H. Billing of Services

233. On information and belief, Foundation did not have a separate billing office from Prime. Amy Murguia, identified in Foundation's Estimates of Care as its Billing Supervisor, identifies herself in her LinkedIn as being with "billing at Prime Diagnostic Imaging."

234. Foundation/Prime rarely if ever issued CMS 1500 bills for automobile accident patients. Instead, they issued a general itemized bill. CMS 1500 billing forms are the industry standard

²⁴ The 100 percent owner of Signature RX, LLC was Memorial MRI & Diagnostic MSO, LLC.

used by healthcare providers, including physicians and chiropractors. CMS 1500 forms include detailed information that is not included in the bills issued by Foundation/Prime in automobile accident cases, such as the address where the service was provided, and place of service codes. Complete Pain also generally just issued a general itemized bill. In one case where a Complete Pain CMS 1500 bill was provided, including an injection by Dr. Eames, the place of service address was listed as 12840 Hillcrest Plaza, E100, and the place of service code was 11, signifying the service was provided in a physician office setting. An ambulatory surgical center would be code 24.

235. The billing department coded and billed Foundation and Prime services in a cookie-cutter pattern with no input from the physicians or nurse practitioners concerning time spent with the patient, drugs and supplies used in procedures, etc. For example, as set forth previously, certain physicians' and nurse practitioners' initial examinations were almost always billed as CPT 99204 or CPT 99205, and Prime's injection procedure bills billed the same services and supplies and in the same amounts.

236. Complete Pain bills for Foundation services again billed per a pattern, which did not correspond to actual or individualized services.

237. It is not known if the Complete Pain bills were generated by Prime's billing department, or by a Memorial MRI office in Houston.

238. In state court depositions in 2022-2024, Foundation physicians and nurse practitioners testified they played no part in the selection of CPT codes or the amounts charged for services. They did not provide anything to the billers for them to determine level of service, etc. The physicians and nurse practitioners generally stated they did not see the bills issued for their services, outside of being shown the bills in a deposition.

- a. Dr. Gioia stated he never saw the bills for his services and played no role in CPT coding or charges.
- b. Vinton, who had worked with Foundation for a decade at the time of her deposition, stated she did not know what was charged and claimed she had *never seen a Foundation bill before that deposition*; it would be the “First time I’ve ever seen one.”
- c. Adams stated he did not provide any documentation to the billers from which they billed for services that were not actually rendered (fluoroscopy, lidocaine injections, recovery room fees) during the TPIs he performed.
- d. Brock ultimately stated the billing department made the decision to include a CPT 99203 examination charge with other charges for the shoulder injection he performed.

239. In a 2024 state court deposition, Dr. Eames stated he only saw bills on some occasions when deposited. Bills were not sent to him for approval. He never had any input concerning charges. When he did examinations or injections, he did not select the CPT codes, and did not provide anything to the biller so they would know what to bill. He did not know who was in charge of the billing department. Dr. Eames believed a limited number of codes were used, and consultations and follow-ups were just always billed the same:

Q But how would the biller know what services or level of service had been provided that day?

A I think they -- well, we only do two or three things. It’s either a follow-up, or a consult, or a specific injection. So she can get that off of the medical record pretty easy.

Q Okay. So for like, the final examination you did, would the biller have had to have looked at your report and then interpreted your report him or herself to determine to bill it as a 99204?

A I don’t know if they do it that way or if they do it by what the patient was scheduled for in the first place. I don’t think they probably -- I don’t think they probably look at a report and try to interpret that. They just -- this is the code we use for a consult, and this is, you know, that’s how they do it, I think, but I have no input.

Dr. Eames understood consultations codes were 99201-99205, with five being the highest level of service. He believed all Foundation initial consultations were billed as CPT 99204.

240. In a 2023 state court deposition, Brock identified Jaime Hellman and “Amy” as the persons in charge of billing. He did not see the bill for the shoulder injection he performed. He did not have time to review bills due to the number of patients he was seeing. Brock testified he asked Jaime Hellman and Amy about billing as a part of his “due diligence,” and believed they told him charges were based on a percentage of Medicare standards and standard fees for the area code. Brock also testified he told Foundation’s management to be sure to bill everything under reasonable and standard rates, but just trusted them to do so and did not verify the issue.

Q Okay. No one ever asked you for your advice on what to charge things for Foundation or?

A I just said I wanted reasonable and standard stuff whenever I -- you know, whenever I was asked. Or actually, I told management, I told them to make sure that everything’s billed reasonable and standard rates.

Q And you just trusted them to do that.

A Well, I mean, I -- I would ask, “Is everything going okay? Is there any problems? Do I need to look at anything?” And I was told, “No, everything’s fine.” Just like I said, I can’t go sign everything.

241. In fact, the charges for Foundation services were not reasonable. As set forth above, none of the charges by Prime and Complete Pain for injection procedures were reasonable as the injections were done in a physician’s office setting and not an ASC or hospital. Therefore, no Prime charges were reasonable, and the Complete Pain bills should have charged only the injection itself and not additional facility and supply fees. There was additional unbundling of fluoroscopy charges, as either fluoroscopy or in the guise of “epidurography.”

I. Lack of Coordination with Other Providers

242. As noted above, Foundation is typically provided with MRI reports prior to the patient's arrival for initial examination and incorporates the supposed findings of spinal disc injuries in its own reports. At times, treatment at the initial clinic ceased prior to completion of injections and examinations at Foundation. Foundation records typically do not reflect the nature of the treatment the patient has supposedly received at the initial clinic, even when the treatment was concurrent. At times, Foundation reports recommended the patient continue chiropractic treatment, when the chiropractic treatment had already concluded.

J. Claim Presentation

243. Upon the completion of the Foundation treatment, Foundation or Prime, or later Memorial MRI or Complete Pain forwarded selected medical records and billings to the patient's personal injury attorney. These records included Foundation printed examination reports and printed procedure reports, and itemized billings for Foundation services by Foundation and Prime, and later Complete Pain. They generally withheld other documents such examination report template sheets and, if the documents were actually generated, almost always withheld anesthesia records, pre-operative and post-operative documents, supply sheets, and any other documents concerning injection procedures. Any such documents were rarely provided. They also did not produce any fluoroscopic images for the injection procedures although, as set forth above, Dr. Eames has testified no fluoroscopic images were saved.

244. Defendants provided these records to the law offices, knowing the documents would be included in settlement demand packages forwarded to Allstate, for executing the scheme, in violation of 18 U.S.C. §1341. Defendants understood the records falsely inflated the value of the patient's claim.

245. The law offices then prepared settlement demand letters. The law offices enclosed these letters and provider records, including Foundation printed reports, bills, and other records provided to them by Defendants into demand packages, and forwarded these demand packages to Plaintiffs.

246. The attorney demand letters generally invoked the Texas *Stowers* doctrine. *G.A. Stowers Furniture Co. v American Indemnity Co.*, 15 S.W.2d 544, 547 (Tex. Comm'n App. 1929, holding approved). Pursuant to *Stowers*, an automobile insurer has a common-law duty to settle third-party claims against its insureds when it is reasonably prudent to do so. *In re Farmers Tex. Cty. Mut. Ins. Co.*, 621 S.W.3d 261, 264 (Tex. 2021). The duty arises when (1) the third party's claim against the insured is within the scope of coverage; (2) the settlement demand is within policy limits; and (3) the terms of the demand are such that an ordinarily prudent insurer would accept it, considering the likelihood and degree of the insured's potential exposure to an excess judgment. *Id.* An automobile insurer can be subject to substantial liability if it fails to accept such a demand. The demand letters generally state a limited time for Plaintiff's to accept the demand and settle the claim, such as 10, 14, 20, or 30 days, before the offer expires.

247. In cases in which the patient's attorney filed a tort lawsuit on their behalf, Foundation and Prime would generally produce the same types of records provided for demand packages with business records affidavits and Texas Civil Practice & Remedies Code section 18.001 billing records affidavits. In the section 18.001 affidavits, Foundation and Prime custodians of records would attest the services provided were necessary and the charges were reasonable.²⁵ After September 2021, Foundation or Prime employees sometimes identified themselves as custodians of record for Complete Pain in these affidavits.

²⁵ Pursuant to Texas Civil Practice & Remedies Code §18.001(b), unless such affidavits are controverted, they are sufficient evidence to support a finding of fact by the judge or jury that the amount charged was reasonable and the service was necessary.

248. In litigated cases in which the complete patient file was subpoenaed, Foundation would sometimes add patient intake documents and the examination template form(s) used by Vinton or Brock. Any documentation of injection procedures other than the printed reports were very rarely produced, even if the subpoena specifically requested such documents and fluoroscopic images. No communications between Foundation and attorneys were produced, even if requested, other than occasional production of a LOP. Requests for authorization to perform procedures and attorney responses to the requests were not produced.

249. The Foundation records that were produced in these demand packages or in litigation, including the printed reports and bills, made misrepresentations concerning the patients, including:

- a. The patients sustained severe injuries in the accidents at issue, beyond soft tissue injuries;
- b. Referrals to Foundation were reasonable and necessary;
- c. The patient's conditions were such that high complexity medical examinations were required, and Foundation spent considerable amounts of time examining and evaluating the patient;
- d. That medical examinations were performed by physicians or nurse practitioners performing the examination with Dr. Gioia or otherwise properly supervised by Dr. Gioia.
- e. Foundation injection procedures were reasonable and necessary;
- f. Foundation injection procedures were performed as represented in the procedure reports;
- g. Prime imaging services were reasonable and necessary;

- h. IV anesthesia was reasonable and necessary;
- i. IV anesthesia was provided (in cases when it was not);
- j. Facility and supply fees were properly charged separate from the injection; and
- k. Other services such as epidurography, interavenous injections, lidocaine injections, fluoroscopy, recovery room, and follow-up examinations were provided during injection procedures, when those services were not provided; and
- l. CPT 99456 final examinations were performed when they were not.

250. The Defendants also employed fraudulent billing practices, that greatly inflated the charges of the unnecessary injection procedures, as outlined in paragraphs 211 through 227 above. This included additional charges for services and supplies which should be inclusive in the CPT code charge for the injection procedure, and the addition of recovery room services and other facility fees and anesthesia charges.

251. Allstate issued checks in settlement of these claims. These checks were forwarded to the patients' law offices by U.S. Mail. In litigated claims, at times the checks were forwarded to defense counsel by U.S. Mail, to be forwarded to the patient's law office.

**VI.
CAUSES OF ACTION**

COUNTS ONE and TWO

Violation of Title 18, United States Code, Sections 1962(c) (RICO Statute)

252. Plaintiffs incorporate as though fully set forth herein, each allegation contained in paragraphs 1 through 251 above.

A. COUNT ONE -- THE ASSOCIATION-IN-FACT ENTERPRISE
(Against All Defendants for Violation of Title 18, United States Code, Section 1962 (c))

253. As set forth herein below, Defendants Foundation Physicians Group, Inc., Prime Imaging Partners, LLC, Thomas Hellman, Jaime Hellman, and Memorial MRI & Diagnostic, PLLC are an association-in-fact Enterprise, as that term is defined in Title 18, United States Code, Section 1961(4). The Enterprise has functioned as a continuing unit since mid-2019, with Memorial MRI joining around September 2021 and performing similar roles as Foundation and Prime. The Enterprise has an identifiable structure, with each person fulfilling a specific role to carry out and facilitate its purpose.

254. The Enterprise exists separate and apart from the pattern of racketeering activity alleged herein. Throughout the period at issue, the Enterprise continued to evaluate and treat and administer the treatment and billing of patients other than automobile accident patients treating under letters of protection. These include patients treating under private health insurance, and treating for pain or conditions unassociated with any traumatic automobile accident event.

255. The Enterprise functioned as a continuing unit over the course of over four years (2019 – 2024). It has continued thereafter to the present, under a new ‘umbrella’ entity with the addition of new physician providers and locations. Also, the Enterprise continues to provide business records affidavits and §18.001 affidavits in pending automobile collision lawsuits.

256. The Enterprise has an identifiable structure, with each person fulfilling a specific role to carry out and facilitate its purpose. For example:

- a. Defendants Thomas Hellman, Jaime Hellman, Nathan Meltzer, Prime and Foundation, later joined by Defendants Complete Pain and Memorial MRI, have established, financed, owned, operated, and/or participated in the management of the Foundation and Prime offices in the Dallas/Tarrant County area. Imaging used

as a supposed basis for injection procedures was often performed at the Prime offices. Examinations were performed at the Foundation offices, and injection procedures were performed at the Prime Hillcrest Plaza office (ESIs, MBBs, etc.) or Foundation offices (joint injections and TPIS).

- b. Defendants Bradley Eames, Anthony Gioia, Dorothy Vinton, Joel Brock, and (through other employed or contracted physicians and nurse practitioners) Foundation, Prime and later Complete Pain and Memorial MRI performed examinations falsely finding that MRIs or injection procedures were necessary.
- c. Defendants Bradley Eames, Anthony Gioia, Joel Brock, and (through other employed or contracted physicians and nurse practitioners) Foundation, Prime and later Complete Pain and Memorial MRI performed unnecessary injection procedures.
- d. Defendant Ralph Stein performed anesthesia services for surgical injection procedures conducted by Foundation and Prime, including unnecessary IV or general anesthesia.
- e. Defendants Foundation, Prime, Complete Pain, and Memorial MRI marketed the examination and injection services of Foundation provided under LOPs to personal injury attorneys.
- f. Defendants Foundation, Prime, Complete Pain, and Memorial MRI withheld complete Foundation and Prime records (such as pre- and post-injection documents, anesthesia records, and fluoroscopic images) from both documents ultimately to be presented in demand packages to automobile insurers such as Plaintiffs, and in response to subpoenas for IST's patient records in personal injury lawsuits filed by patients.

- g. Alternatively, Foundation, Prime, Complete Pain, and Memorial did not generate or did not maintain complete Foundation and Prime records (such as pre- and post-injection documents, anesthesia records, and fluoroscopic images).
- h. Defendants Foundation, Prime, Complete Pain, and Memorial MRI generated and provided examination reports, procedure reports, treatment records and bills to the law offices or attorneys referring the patients to Foundation, for inclusion in demand packages to be sent to Plaintiffs.
- i. Defendants Foundation and, later Memorial MRI, paid physicians and nurse practitioners used by the Enterprise.

257. The Enterprise engages in, and its activities affect, interstate commerce. (See paragraphs 272 through 274 below).

258. The Enterprise Persons have been employed by and/or associated with the Enterprise, have participated in the management and operation of the Enterprise, and deliberately caused a fraud to be perpetrated upon Plaintiffs and other automobile insurers.

259. The Enterprise Persons operated the Enterprise to inflate automobile accident claims through a ‘build up’ of the claim by unnecessary pain management services. This was accomplished through repeated violations of Title 18, United States Code, section 1341. As a direct and proximate result of the Defendants’ conduct as set forth herein, Plaintiffs were injured by paying sums in payment of fraudulently inflated bodily injury claims, arising from the pattern of racketeering activity. This injury is set forth more fully in paragraphs 86 through 251, and 268 through 271 and 309 through 310 below. The predicate acts are set forth fully in paragraphs 268 through 271 herein below and the attached and incorporated Appendix A.

B. COUNT TWO -- THE CENTER ENTERPRISE

(Against Defendants Prime Imaging Partners, LLC, Thomas Hellman, Jaime Hellman, Nathan Meltzer, Bradley Eames, D.O., Ralph Stein, D.O., Anthony Gioia, M.D., Dorothy Vinton, Joel Brock, Complete Pain Solutions, PLLC, and Memorial MRI & Diagnostic, PLLC for Violation of Title 18, United States Code, Section 1962 (c))

260. Pleading in the alternative, and in addition to the association-in-fact Enterprise alleged herein, Foundation Physicians Group, Inc. is an “enterprise” as that term is defined in 18 U.S.C. 1961(4). It is hereinafter referred to as “the Center Enterprise.” Defendants are all “persons” within the meaning of 18 U.S.C. §1961(3). They are hereinafter referred to as the Center Enterprise Persons.

261. The Center Enterprise Persons are all employed by or associated with the Center Enterprise, and conducted its affairs through a pattern of racketeering activity. For example:

- a. Defendants Thomas Hellman, Jaime Hellman, Nathan Meltzer, and Prime, later joined by Defendants Complete Pain and Memorial MRI, have established, financed, owned, operated, and/or participated in the management of the Foundation and Prime offices in the Dallas / Tarrant County area. Imaging used as a supposed basis for injection procedures was often performed at the Prime offices. Examinations were performed at the Foundation offices, and injection procedures were performed at the Prime Hillcrest Plaza office (ESIs, facet injections, etc.) or Foundation offices (joint injections and TPIs).
- b. Defendants Bradley Eames, Anthony Gioia, Dorothy Vinton, Joel Brock, and (through other employed or contracted physicians and nurse practitioners) Prime and later Complete Pain and Memorial MRI performed examinations falsely finding injection procedures were necessary.

- c. Defendants Bradley Eames, Anthony Gioia, Dorothy Vinton, Joel Brock, and (through other employed or contracted physicians and nurse practitioners) Prime and later Complete Pain and Memorial MRI performed unnecessary injection procedures.
- d. Defendant Ralph Stein performed anesthesia services for surgical injection procedures conducted by Foundation and Prime, including unnecessary IV or general anesthesia.
- e. Prime, Complete Pain, and Memorial withheld complete Foundation and Prime records (such as pre- and post-injection documents, anesthesia records, and fluoroscopic images) from both documents ultimately to be presented in demand packages to automobile insurers such as Plaintiffs, and in response to subpoenas for IST's patient records in personal injury lawsuits filed by patients.
- f. Alternatively, Prime, Complete Pain, and Memorial did not generate or did not maintain complete Foundation and Prime records (such as pre- and post-injection documents, anesthesia records, and fluoroscopic images).
- g. Defendants Prime, Complete Pain, and Memorial MRI generated and provided examination reports, procedure reports, treatment records and bills to the law offices or attorneys referring the patients to Foundation, for inclusion in demand packages to be sent to Plaintiffs.

262. The Center Enterprise had an existence separate and apart from the pattern of racketeering activity; specifically, the normal operation of a pain management clinic treating a variety of other patients, including patients treating under private health insurance, and patients presenting for pain or conditions unassociated with any traumatic event.

263. The Enterprise engages in, and its activities affect, interstate commerce. (See paragraphs 272 through 274 below).

264. The Enterprise Persons have been employed by and/or associated with the Enterprise, have participated in the management and operation of the Enterprise, and deliberately caused a fraud to be perpetrated upon Plaintiffs and other automobile insurers.

265. The Enterprise Persons operated the Enterprise to inflate automobile accident claims through a ‘build up’ of the claim by unnecessary pain management services. This was accomplished through repeated violations of Title 18, United States Code, section 1341. As a direct and proximate result of the Defendants’ conduct as set forth herein, Plaintiffs were injured by paying sums in payment of fraudulently inflated bodily injury claims, arising from the pattern of racketeering activity. This injury is set forth more fully in paragraphs 87 through 251, and 268 through 271 and 309 through 310 below. The predicate acts are set forth fully in paragraphs 268 through 271 herein below and the attached and incorporated Appendix A.

C. THE PURPOSE OF THE SCHEME

266. The purpose of the scheme was to illicitly and illegally enrich the Defendants at the expense of Plaintiffs and their policyholders.

267. As set forth set forth at length in paragraphs 87 through 251 above, and incorporated herein, the scheme is to create and pursue fraudulently inflated bodily injury claims.

D. THE PATTERN OF RACKETEERING ACTIVITIES

268. Defendants have knowingly conducted and/or participated, directly and indirectly, in the conduct of the affairs of the above-described Enterprises through a “pattern of racketeering activity” as defined by Title 18, United States Code, Section 1961(5).

269. Such racketeering activity consists of repeated violations of the federal mail fraud statute, Title 18, United States Code, section 1341, based upon the fraudulent, inflated claims made regarding the supposed necessary treatment at Foundation.

270. These predicate acts were part of a scheme and were not isolated events. The predicate acts at issue are set forth in the attached Appendix A and include acts of mail fraud. As set forth herein above, particularly at paragraphs 243 through 251, the scheme involved Defendants providing claimants' attorneys with certain records and bills. Defendants knew these attorneys would forward these records and bills to Allstate and other automobile insurers, seeking Allstate and other insurers to pay amounts in settlement due to services provided at Foundation and Prime. Defendants anticipated payments by Allstate, in order to be paid by the claimants' attorneys under LOPs or similar agreements with the attorneys. Demand packages including Defendants' records and bills were forwarded by claimants' attorneys to Allstate on or about the dates stated in Appendix A. As set forth above, in those records and bills Defendants made fraudulent findings regarding the necessity of medical services, diagnostic testing, and injection procedures, the extent of services, and whether services were actually rendered, and fraudulently inflated the service costs, which included:

- a. The patients sustained severe injuries in the accidents at issue, beyond soft tissue injuries;
- b. Referrals to Foundation and Prime were reasonable and necessary;
- c. The patient's conditions were such that high complexity medical examinations were required, and Foundation spent considerable amounts of time examining and evaluating the patient;

- d. That medical examinations were performed by physicians or nurse practitioners performing the examination with Dr. Gioia or otherwise properly supervised by Dr. Gioia pursuant to Texas law.
- e. Foundation injection procedures were reasonable and necessary;
- f. Prime imaging services were reasonable and necessary;
- g. Foundation injection procedures were performed as represented in the operative reports;
- h. IV anesthesia was reasonable and necessary;
- i. IV anesthesia was provided (in cases when it was not);
- k. Facility and supply fees were properly charged separate from the injection;
- l. Other services such as epidurography, intervenous injections, lidocaine injections, fluoroscopy, recovery room, and follow-up examinations were provided during injection procedures, when those services were not provided; and
- m. CPT 99456 final examinations were performed when they were not.

271. As set forth herein above, Defendants provided these documents to claimants' attorneys knowing they would be presented in demands to Plaintiffs. In reliance on the settlement demand package documents, Allstate forwarded by U.S. mail on or about the stated dates in Appendix A settlement checks to the attorneys' offices in the amounts stated, including amounts attributable to the improper and fraudulent billing by Defendants as also set forth in Appendix A. But for the presentation of Defendants' records and bills, Allstate would not have issued payments based on the Defendants' claimed medical services, agreeing to settle claims that otherwise may not have been settled or paying more to settle the claims than would have been paid if the nature of Defendants' treatment been known. Plaintiffs and other automobile insurers were the direct

target of Defendants' scheme. The Defendants caused the mailings described in this paragraph and shown in Appendix A.

E. EFFECT ON INTERSTATE COMMERCE

272. The effect of each Enterprise on Interstate Commerce is substantial. Each Enterprise necessarily utilized the United States Postal Service in its fraud scheme.

273. Further, Plaintiffs Allstate Indemnity Company and Allstate Fire & Casualty Insurance Company are national companies, with corporate home headquarters outside of Texas, and doing business throughout the United States. The settlement funds from which Plaintiff's money was received by each Enterprise were drawn from accounts of national banks, doing business in the various states of the United States.

274. Additionally, each Enterprise must necessarily purchase goods and services within interstate commerce (equipment, supplies, etc.) to conduct business operations, and to carry out the scheme.

F. INJURY TO PLAINTIFFS

275. As a direct and proximate result of the Defendants' conduct, Plaintiffs were injured by paying sums in payment of fraudulent bodily injury claims, arising from the pattern of racketeering activity. This injury is set forth more fully in paragraphs 268 through 271 above, and paragraphs 309 through 310 below, and in the attached and incorporated Appendix A.

276. By reason of their injury, Plaintiffs are entitled to treble damages, costs, and reasonable attorneys' fees pursuant to title 18, United States Code, section 1964(c).

**VII.
COUNT THREE -- CONSPIRACY TO VIOLATE SECTION 1962(c)**

(Against All Defendants Regarding the Association-in-Fact Enterprise; Against Defendants Prime Imaging Partners, LLC, JTP Diagnostics, LLC, Thomas Hellman, Jaime Hellman, Nathan Meltzer, Bradley Eames, D.O., Ralph Stein, D.O., Anthony Gioia, M.D., Dorothy Vinton, , Joel Brandon Brock, , Complete Pain Solutions, PLLC,

and Memorial MRI & Diagnostic, PLLC Regarding the Center Enterprise, for Violation of Title 18, United States Code, Section 1962(d))

277. Plaintiffs incorporate as though fully set forth herein, each allegation contained in paragraphs 25 through 276 above.

278. Defendants willfully combined, conspired, and agreed with one another and with others to violate Title 18, United States Code, Section 1962(c), that is, to conduct and/or to participate, directly or indirectly, in the affairs of the Enterprise, the activities of which were conducted through a pattern of racketeering activities, in violation of 18 U.S.C. section 1962(d).

279. As set forth above, two or more persons agreed to commit a substantive RICO offense. As also set forth herein, the Defendants knew of the essential nature of the Enterprise, and agreed to the overall objective of the RICO offense. The object of this conspiracy was to defraud Plaintiffs. As a direct and proximate result of the Defendants' conduct as set forth herein, Plaintiffs were injured by paying sums regarding fraudulently inflated bodily injury claims, arising from the pattern of racketeering activity. This injury is set forth more fully in paragraphs 87 through 251 and 268 through 271 above, and paragraphs 309 through 310 below, and in the attached and incorporated Appendix A.

VIII.
COUNT FOUR

(Against All Defendants for Common Law Fraud)

280. Plaintiffs incorporate, as though fully set forth herein, each allegation contained in paragraphs 25 through 279 above.

281. Defendants, personally or through agents (law office workers, etc.) acting at their direction, have made or caused to be made false and fraudulent material misrepresentations of fact to Plaintiffs; specifically, false and misleading statements and representations concerning the

reasonableness and necessity of treatment. The scheme has been set forth herein at paragraphs 87 through 251.

282. The misrepresentations were conveyed to Plaintiffs through attorney settlement demand letters issued by the law offices, presenting the medical records, reports, and billings generated by Defendants. Defendants provided these documents to the law offices knowing they would be included with the demand letters in settlement demand packages, and to facilitate the settlement of the claims in order to receive payment pursuant to the LOPs. The misrepresentations made to Plaintiffs in these documents included:

- a. The patients sustained severe injuries in the accidents at issue, beyond soft tissue injuries;
- b. Referrals to Foundation were reasonable and necessary;
- c. The patient's conditions were such that high complexity medical examinations were required, and Foundation spent considerable amounts of time examining and evaluating the patient;
- d. That medical examinations were performed by physicians or nurse practitioners performing the examination with Dr. Gioia or otherwise properly supervised by Dr. Gioia.
- e. Foundation injection procedures were reasonable and necessary;
- f. Prime imaging services were reasonable and necessary;
- g. Foundation injection procedures were performed as represented in the operative reports;
- h. IV anesthesia was reasonable and necessary;
- i. IV anesthesia was provided (in cases when it was not);
- j. Facility and supply fees were properly charged separate from the injection;

- k. Other services such as epidurography, intervenous injections, lidocaine injections, fluoroscopy, recovery room, and follow-up examinations were provided during injection procedures, when those services were not provided; and
- l. In some cases, that CPT 99456 final examinations were performed when they were not.

283. Defendants also deliberately concealed documents that would have revealed the actual nature of the examinations and injection procedures, such as examination sheets, pre-operative and post-operative sheets, supply sheets, anesthesia records, and fluoroscopic images. At least in the case of fluoroscopic images, Defendants did not preserve such images, which would be the only evidence that the procedures were performed correctly. Defendants also deliberately concealed documents showing attorneys ultimately decided whether injection procedures and diagnostic testing were done.

284. The circumstances concerning these misrepresentations are set forth herein above at paragraphs 87 through 251.

285. At the time the statements and representations were made, as detailed in paragraphs 87 through 251 and 268 through 271 above, Defendants were aware of the falsity of the misrepresentations.

286. Defendants made the misrepresentations with the intent to deceive Plaintiffs, and with the intent that Plaintiffs would act on the misrepresentations by paying sums of money in settlement of claims to the associated law offices, which would provide a portion of those funds to Defendants. The way the Defendants disbursed the money among themselves is solely in their knowledge.

287. Plaintiffs relied on the misrepresentations, and thereby suffered injury by paying sums of money in settlement of the claims. This injury is set forth more fully in paragraphs 268 through

271 above and paragraphs 309 through 310 below, and in the attached and incorporated Appendix A. Plaintiffs are also entitled to consequential damages and exemplary damages in an amount to be determined at trial.

IX.
COUNT FIVE

(Against All Defendants for Common Law Conspiracy)

288. Plaintiffs incorporate, as though fully set forth herein, each allegation contained in paragraphs 25 through 271 above.

289. Beginning about mid-2019 and continuing through the present, Defendants have willfully combined, conspired, and agreed with each other and others to defraud Plaintiffs. Defendants, in combination with themselves and others, knowingly made false and misleading statements in regard to the existence, nature, and severity of the injuries to automobile collision patients, and the need for pain management procedures and diagnostics including MRIs and x-rays.

290. The object of the conspiracy was to defraud Plaintiffs. There was a meeting of the minds and agreement on this course of action by each Defendant, and each Defendant played a specific role in the overall scheme to defraud Plaintiffs and other insurers. The Defendants, separately or in concert with other Defendants and/or other parties, committed overt, unlawful acts in furtherance of this course of action. The roles of the conspirators and overt acts are set forth herein above.

291. The false and fraudulent misrepresentations and omissions alleged above were made by Defendants and others with the purpose and intent to deceive Plaintiffs and to induce Plaintiffs to pay Defendants sums of money, through the associated law offices, to which Defendants were not legally entitled.

292. As a direct and proximate result of Defendants' conduct, Plaintiffs have paid sums regarding the fraudulent treatment and billing arising from automobile collisions in which the

claimant went to IST. This injury is set forth more fully in paragraphs 268 through 271 above and paragraphs 309 through 310 below, and in the attached and incorporated Appendix A.

293. Plaintiffs are also entitled to consequential damages and exemplary damages in an amount to be determined at trial.

**X.
COUNT SIX**

(Against All Defendants for Unjust Enrichment)

294. Plaintiffs incorporate, as though fully set forth herein, each allegation contained in paragraphs 25 through 293 above.

295. As described above, Defendants have made false and fraudulent representations of fact to Plaintiffs regarding the existence, nature, and severity of supposed injuries allegedly attributable to automobile collisions and the need for treatment, and willfully combined, conspired, and agreed with each other and others to defraud Plaintiffs.

296. Additionally, as set forth herein above, neither Prime or Foundation was a licensed ASC, and should not have billed for facility fees and supplies for injection procedures, in addition to the Foundation injection charges.

297. Additionally, as set forth herein above, Foundation and Prime are lay entities, and were operated by lay persons to support personal injury claims. This included coordination with attorneys in regard to referral of patients to Foundation and Prime, and allowing attorneys to determine treatment to be provided. The licensed defendants such as physicians and nurse practitioners allowed these lay persons to use their services in the scheme. The status of being a non-profit health organization is a sham to allow the corporate practice of medicine. As “directors,” Drs. Gioia and Eames did not adopt, maintain, or enforce policies to ensure Foundation did not interfere with, control, or otherwise direct a physician’s professional

judgment (including their own). Drs. Gioia and Eames knew Foundation allowed attorneys to decide the care ultimately provided, or not provided. The nurse practitioners were not properly overseen by Dr. Gioia pursuant to Texas law. At least in the case of Dr. Eames, he split his medical fees with the laypersons and entities for most of the period at issue, taking a percentage of the recovery when the attorney paid Foundation and/or Prime.

298. Defendants, most of whom are healthcare providers or healthcare entities, or purported to be, also took undue advantage of Plaintiffs.

299. Defendants have unjustly obtained a benefit from Plaintiffs, namely the payment for healthcare expenses that were unreasonable and unnecessary, and designed to enrich Defendants to Plaintiffs' detriment.

300. As a direct and proximate result of Defendants' conduct, Plaintiffs have paid sums, and Defendants have been benefited from those payments, relating to the treatment and billing practices arising from automobile collisions at issue, in regard to claimants' referral to Foundation and Prime..

301. The sums by which Defendants were unjustly enriched regarding the patients at issue are solely within Defendants' knowledge.

XI.
COUNT SEVEN

(Against All Defendants for Money Had and Received)

302. Plaintiffs incorporate, as though fully set forth herein, each allegation contained in paragraphs 25 through 301 above.

303. Plaintiffs conferred a benefit upon Defendants by paying sums to settle the claims at issue. The records and bills provided by Defendants concerning services at Foundation and Prime were at the very least a substantial factor in inducing Plaintiffs to settle these claims.

304. The money Defendants obtained in connection with the payment of the claims at issue in equity and good conscience belongs to and should be returned to Plaintiffs.

305. The sums by which Defendants were unjustly enriched regarding the patients at issue are solely within Defendants' knowledge. However, based upon the substantial amounts of the Foundation and Prime entities' charges in the claims at issue, and the continued relationship between Defendants and attorneys to refer law office clients for supposed necessary pain management services, the sums received by Defendants are likely substantial. As set forth above, these services were not medically necessary. Additionally, as set forth above, Foundation and Prime are lay entities, and were operated by lay persons to support personal injury claims. This included coordination with attorneys in regard to referral of patients to Foundation and Prime, and allowing attorneys to determine treatment to be provided. The licensed defendants such as physicians and nurse practitioners allowed these lay persons to use their services in the scheme. The status of being a non-profit health organization is a sham to allow the corporate practice of medicine. As "directors," Drs. Gioia and Eames did not adopt, maintain, or enforce policies to ensure Foundation did not interfere with, control, or otherwise direct a physician's professional judgment (including their own). Drs. Gioia and Eames knew Foundation allowed attorneys to decide the care ultimately provided, or not provided. The nurse practitioners were not properly overseen by Dr. Gioia pursuant to Texas law. At least in the case of Dr. Eames, he split his medical fees with the laypersons and entities for most of the period at issue, taking a percentage of the recovery when the attorney paid Foundation and/or Prime. In equity and good conscience, Defendants should be required to pay restitution to Plaintiffs equal to the total amounts Defendants received as a result of the Plaintiffs settling the claims at issue.

**XII.
DAMAGES**

306. Plaintiffs incorporate, as though fully set forth herein, each allegation contained in paragraphs 25 through 305 above.

307. Plaintiffs have been damaged by Defendants' practices outlined in this Complaint.

308. Based upon Defendants' material misrepresentations and other affirmative acts to conceal their conduct from Plaintiffs, Plaintiffs injuries were inherently undiscoverable.

309. As a result of these fraudulent claims, Plaintiffs were damaged in that they paid sums in regard to these inflated bodily injury claims. Plaintiffs seek recovery of the amount by which the claims were inflated; specifically, recovery of the amounts paid attributable to the Defendants' charges for the services provided at Foundation and Prime in these cases. The cases known to date are set forth in the attached and incorporated Appendix A.

310. As set forth in Appendix A, the total amount of damages for these cases is \$1,743,518.10. Regarding Counts 1, 2 and 3 (RICO violations), Plaintiffs are entitled to trebling of these damages pursuant to 18 U.S.C. §1964(c), of \$5,230,554.30, and entitled to attorneys' fees and costs in an amount to be determined by the Court. Regarding Counts 4 and 5 (common law fraud and conspiracy), Plaintiffs are also entitled to exemplary damages to be determined at trial.

311. Regarding Count 6 (Unjust Enrichment), Plaintiffs are entitled to the amount by which Defendants were unjustly enriched.

312. Regarding Count 7, Plaintiffs are entitled to restitution for the amounts which Defendants obtained, which in equity and good conscience belong to Plaintiffs.

**XIII.
JURY DEMAND**

313. Trial by jury is requested on all issues triable by jury.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs **Allstate Indemnity Company, Allstate County Mutual Insurance Company, and Allstate Fire & Casualty Insurance Company**, respectfully request that upon final trial of this cause, the Court enter a judgment against Defendants, each of them jointly and severally:

- (1) Upon the First and Second Claims for Relief, all damages resulting from Defendants' violation of Title 18, United States Code, Section 1962(c), including prejudgment interest, the sum trebled pursuant to Title 18, United States Code, Section 1964(c);
- (2) Upon the Third Claim for Relief, all damages resulting from Defendants' violation of Title 18, United States Code, Section 1962(d) by conspiracy to violate Title 18, United States Code, Section 1962(c), including prejudgment interest, the sum trebled pursuant to Title 18, United States Code, Section 1964 (c);
- (3) Upon the Fourth Claim for Relief, all damages resulting from Defendants' fraudulent conduct;
- (4) Upon the Fifth Claim for Relief, all damages resulting from Defendants' conspiracy;
- (5) Upon the Sixth Claim for Relief, all sums to which Defendants were unjustly enriched to Plaintiffs' detriment;
- (6) Upon the Seventh Claim for Relief all sums to which, in equity and good conscience, Defendants should be required to pay restitution to Plaintiffs as a result of the Plaintiffs settling the claims at issue.
- (7) For the costs of suit including reasonable attorneys' fees in accordance with Title 18, United States Code, Section 1964(c);
- (8) Prejudgment interest at the maximum rate allowed by law;
- (9) Post-judgment interest at the maximum rate allowed by law;
- (10) Exemplary damages in such amount as the finder of fact may award at its discretion; and
- (11) All such other and further relief, legal and equitable, special or general, to which Plaintiffs may be justly entitled.

Respectfully submitted,

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