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Insurers using RICO Act to strike back against alleged fraud

By [Ron Hurtibise](#)

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Two Florida insurance companies are fighting alleged organized claims fraud using a legal tool — the Racketeer Influenced and Corrupt Organizations Act — originally created to help federal prosecutors bring down mobsters.

Fed up with what they claim is deliberate claims fraud that is triggering skyrocketing costs — and [ever-higher premiums for consumers](#) — two Florida insurance companies have gone on the offensive against alleged fraudsters using a legal tool developed to help federal prosecutors fight organized crime.

Lawsuits by Citizens Property Insurance Corp. and [Heritage Property & Casualty](#) claim that repair contractors and their affiliates are operating as criminal enterprises as defined by the Racketeer Influenced and Corrupt Organizations Act, or RICO.

Invoking the RICO Act is a risky and complicated gambit, legal experts say. Private companies use it when they want to stop organized criminal activity that's not being prosecuted by government authorities. But RICO suits are difficult to prove and are often shot down by courts when they do not meet precise criteria laid out in state and federal law.

In a suit filed Jan. 13 in federal court in Miami, Heritage is accusing brother and sister Angelica and Albert Sigler of using their respective companies Moisture Rid Inc. and Water Dryout Inc. to create multiple claims by duplicating documents that homeowners signed in the belief they were giving just one of the companies the right to bill insurers on their behalf.

Heritage's suit describes 12 examples of a homeowner's signature on one company's claims assignment duplicated onto a document assigning a claim to the other company — “deceiving Heritage into believing that the insured had in fact, assigned its rights in two separate claims.”

The company's owners did not immediately respond to a phone message left at Moisture Rid Inc.'s Doral office on Friday.

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Citizens' suit, filed in state circuit court in June, targets South Florida attorney Scot Strem, public adjusting firm Contender Claims Consultants Inc. and a repair company, All Insurance Restoration Services Inc. Citizens, the state-owned "insurer of last resort," accuses the defendants of working together to inflate or manufacture insurance claims and submitting them through "false and fictitious invoices."

Strem, whose law firm is headquartered in Coral Gables, is the subject of three Florida Bar complaints to the state Supreme Court, including one accusing his firm of [misleading elderly and immigrant homeowners](#) into hiring the firm to represent them in lawsuits they didn't know were being filed. Strem, currently suspended from practicing law, has denied those charges and in court filings denied allegations in Citizens' RICO suit.

In his motion to dismiss the Citizens suit, Strem said the company failed to meet the heightened standards of RICO claims and "merely track the boilerplate language of the statutes and fail to provide any specific factual support" for the claims. The case, originally filed in Leon County, was recently transferred to Miami-Dade County.

RICO suits are difficult to win

Each lawsuit claims the defendants' activities violate RICO laws. For RICO actions to prevail, plaintiffs must prove the existence of an ongoing enterprise, a business association with a common purpose, and an operation that has been sustained over a period of time. In addition, plaintiffs must prove that the enterprise is engaging in criminal misconduct that's likely to continue and that the plaintiffs have suffered damage as a result of the misconduct.

Meeting those criteria in court can be much more complicated than proving a single case of fraud, said Barry Zalma, an insurance claims consultant based in Culver City, California, who recently retired from his career as an insurance coverage attorney.

"You need (at least) two predicate criminal acts by the defendant," Zalma said in an interview. In law, a predicate act is a crime that is a component of a larger crime. "It takes money and time to investigate. And it's harder to prove than a single claim of fraud."

Shortly after filing the suit against Strem and his affiliates in June, Citizens released a statement it said would be its last before the matter is resolved: "This lawsuit is about what we contend are concerted actions by the defendants to abuse the claims process for their own gain, and to the detriment of both Citizens and our policyholders. These abuses have made it virtually impossible for Citizens to handle claims efficiently and effectively. We believe we had no choice but to file this suit to address the costs of these abuses that are shouldered by all Citizens policyholders through higher premiums."

Heritage attorney Murray Andrew Sperber, who filed the company's suit against the Siglers and their companies, declined to comment on why the company chose to pursue a RICO claim.

From Mafia to auto glass

Since its enactment in 1970, RICO has been used successfully in numerous criminal prosecutions, largely because it allows leaders of crime syndicates to be held responsible for crimes they did not personally commit. It's been used to convict leaders of the Gambino and Lucchese crime families and to compel other organized crime leaders to cooperate with authorities. In 2010, Fort Lauderdale attorney Scott Rothstein was convicted under the RICO Act and sentenced to 50 years in prison for his role in a billion-dollar Ponzi scheme.

In civil court, insurers have been on both sides of RICO actions. Auto insurers in particular have used RICO actions since the 1990s to combat insurance fraud against individuals and organized rings, according to the industry-sponsored Insurance Information Institute.

In 2019, Geico filed a RICO claim against Tampa-based Shazam Auto Glass and its owner, accusing the company of falsifying windshield replacement claims. Shazam is disputing the charges and the case is continuing.

In 2017, a federal judge tossed a RICO suit by two auto repair shops against Geico, State Farm, Liberty Mutual and other insurers. The shops accused the insurers of forcing them to accept payments that matched what the insurers said were accepted by shops in their "direct programs." The judge said the lawsuit failed to establish that the insurers participated in a RICO enterprise.

High risks, high rewards

Risks of failure are high when alleging RICO violations, says attorney Michael Pike, who specializes in RICO litigation at the South Florida law firm Pike & Lustig LLP.

"The plaintiff must show that the enterprise has an ongoing organization and functions as a continuing unit with the common purpose of engaging in certain conduct," he said, adding, "An enterprise is not the same as a pattern of criminal activity."

While many companies have successfully established RICO violations in civil cases, many others have failed, Pike said. "You cannot allege bald assertions and conclusions of law that are vague and lacking specificity. If you do, the case will be dismissed. If your claims are not precise, you will not get past a motion to dismiss, much less a trial."

Unsuccessful RICO claims can result in plaintiffs being ordered to pay defendants' legal fees, he said. But successful cases can force defendants to pay triple the amount of damages they are accused of causing.

Whether they are ultimately successful, the RICO suits by Citizens and Heritage are meant to signal to alleged fraudsters that the companies are willing to fight back, Zalma said.

"They wouldn't have filed them unless they thought they had evidence to prove them," he said. "They're willing to spend money to stop the people they are suing and to deter the ones they aren't."

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