Cutting Claims With Fraud?

Records Sealed in Major Insurer's Case

By Edward Walsh
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The nation's largest automobile insurer has settled several lawsuits over the past year that allege the company used fraudulent medical reports by outside firms to slash or deny insurance claims submitted by people injured in car accidents. Now, three consumer groups have gone into federal court in Oregon seeking to unseal the records of one of the cases, arguing that it holds clues to what could be a widespread practice within the industry.

The case, in U.S. District Court in Eugene, Ore., involves the settlement of a lawsuit filed by Debbie Foltz, an Oregon woman, against State Farm Mutual Automobile Insurance Inc. After her son was injured in an auto accident, Foltz alleged that State Farm sent her medical claim to a supposedly independent outside firm for review, knowing that the firm would return a phony medical analysis that said State Farm should deny or reduce the claim.

According to Foltz's lawyer and others who have represented plaintiffs in lawsuits against auto insurers, the Foltz case, which began in 1994, is but a small piece of a larger pattern. The use of independent, outside firms to review medical claims is extremely common in the

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insurance industry, and is even mandated in two states. The plaintiffs' lawyers charge that, in an effort to keep down costs, insurance companies are systematically using dubious reports from some such firms as a pretext to cut their payments for medical treatment.

Last year, a jury in Idaho found State Farm did exactly that in one case. A few months later, the insurer settled with Foltz and several other policyholders who had made similar allegations.

But the details of the Foltz case and others that were settled may never be known. A key provision of the settlement, insisted upon by State Farm, was that U.S. District Judge Michael R. Hogan seal virtually the entire case record, an apparently voluminous file containing four years of pretrial skirmishing by lawyers for the two sides. Lawyers involved in the case are precluded from discussing it or identifying the related cases that were settled at the same time. The records in those cases are also believed to be sealed.

The secrecy surrounding the Foltz settlement, and the insurance industry practices that it may shroud, is the focus of the new legal action by the consumer groups and the Washington-based Trial Lawyers for Public Justice Foundation. The groups are attempting to persuade Hogan to unseal the court records in an effort to shed light on a relatively new practice by the insurance industry that plaintiffs' lawyers say is saving insurance giants like State Farm millions of dollars a year at the expense of their policyholders.

"Consumers cannot fight what they do not know about," said Linda Sherry of Consumer Action, one of the groups that is attempting to intervene in the case.

At the heart of the Foltz case and several others against major insurance companies is a process known as "utilization review" or "paper review." It involves the review of insurance claims by outside companies that employ physicians and other medical experts to determine whether medical treatments were necessary and the charges reasonable, the standard set in law. Much of the analysis is done by computer, matching the claims submitted to an insurance company against stored information on past treatments and charges for the same condition.

But critics charge that some insurance companies, which began using utilization review about 10 years ago in an attempt to root out claims for unnecessary medical treatments and inflated charges, have entered an alliance with unscrupulous outside firms that promise they will reduce insurers' costs by generating reports that are all but guaranteed to recommend denial or slashing of claims.

One such case that reached trial was in Idaho, where in 1994 Cindy Robinson sued State Farm over a three-year delay in the payment of medical claims stemming from an automobile accident. When the trial ended last year, the jury awarded Robinson $2,500 in damages under her policy, $100,000 in additional damages for intentional infliction of emotional distress and $9.5 million in punitive damages.

In a blistering opinion last August, Idaho District Judge D. Duff McKee upheld the jury verdict and the amount of damages. Reviewing the testimony in the case, McKee wrote that "the evidence was overwhelming that the utilization review company selected by the claim examiner was a completely bogus operation. The company did not objectively review medical records but rather prepared 'cookie-cutter' reports of stock phrases, assembled on a computer, supporting the denial of claims by insurance companies. The insured's medical records were not examined and reports were not prepared by doctors or even reviewed by doctors."

McKee said that State Farm's management knew that the reports it was receiving from outside utilization review companies were false but condoned the practice because it was "leading to reduced claim expenses."

"The defendant's conduct in this case was outrageous, intentional, harmful and an extreme deviation from reasonable conduct," McKee wrote. "The practice of manufacturing evidence to use in defeating a claim being made by the insurance company's own insured is reprehensible."

The utilization review firm that produced the reports in Robinson's case was Medical Claims Review Services (MCRS), which was based in Bethesda and is now apparently defunct. Ten years ago, the company's president, Ronald E. Gots, wrote an article in an insurance industry trade publication urging the industry to turn to utilization review as a way to combat what he described as the "vast economic interests" that were constantly pressing for "exaggerated medical losses."

Gots, a physician who now heads two other companies in Rockville, did not respond to messages left at his office.

State Farm, which has 36.7 million auto insurance clients, is appealing the Robinson verdict. Officials at the company's Bloomington, Ill., headquarters said they could not comment on any of the cases or the general subject of utilization review. "Anything we say about this topic could come back to haunt us in discovery in some case involving this," said Dave Hurst, a State Farm spokesman.

But the cadre of plaintiffs' lawyers who daily do battle with the insurance industry in courtrooms and law offices across the country are more than eager to talk about the topic.

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Rick Friedman, an Anchorage lawyer who represented Robinson, said that during the case he obtained 79 MCRS reports on medical claims in Idaho and Montana and that every one said either that the claimant was not injured or that the injury was not caused by the accident that led to the claim.

"These are supposed to be independent reviews of medical records," Friedman said. "At the trial, a former State Farm adjuster said they get these reports, send them to the insured and tell them this is what the independent review concluded. She said most people just give up at that point. Some will call back and she said she was trained to say we have lawyers to fight this. She said then everybody gives up."

"It's all over the country, these phony medical review services," said Daniel J. Gatti, a personal injury lawyer who represented Foltz. "They have a computer program that says all soft tissue injuries heal in six months. To put everybody in the same group and use a computer program to say this is what they get is [expletive]. We think it's fraud."

Another person who will talk about this system is James Mathis, a former State Farm supervisor who sued the company in 1997 for wrongful discharge from his job in Washington state three years earlier. Last year, a federal judge issued a summary judgment against Mathis in the case. He is appealing.

Mathis said that when he was in charge of processing medical claims by State Farm policyholders in Washington state the insurer's position was "you don't use an [outside utilization] company that did not provide you with at least a 20 percent reduction in the billing. Otherwise it would not be cost effective."

Mathis said one company that he considered "too aggressive" in cutting medical claims was Comprehensive Medical Review (CMR), which is headquartered in San Diego and is headed by William J. Marvin, a former chairman of the San Diego County Republican Party. CMR provided the medical reports in the Foltz case.

"CMR had a mind-set. They were going to prove to State Farm that they were a profit machine," said Mathis, who gave testimony in the Robinson and Foltz cases. "They were going to cut every bill."

Attempts to reach Marvin by phone were unsuccessful.

David Snyder, assistant general counsel of the American Insurance Association, a trade association of property and casualty insurers, said that during the 1990s there has been "tremendous pressure on insurers to reduce expenses and premiums. One way a number of insurers have responded is to more closely review medical bills to make sure they are 'reasonable and necessary,' which is the standard."

Snyder said this was particularly important because in some states the amount of medical charges set the parameters for the amount of awards for "pain and suffering" in lawsuits stemming from automobile accidents. "The higher you can drive the medical bills the greater the litigation value of the case," he said. "That's why insurers need to control medical costs, because otherwise this can greatly increase the cost of insurance for everybody."

Snyder added that the utilization review system is one factor behind a trend toward stable or lower auto insurance premiums and is considered so important in Pennsylvania and New Jersey—two historically high-cost insurance states—that such reviews are mandated by law.

Friedman, Robinson's lawyer, said, "Most people would agree that there is a place for paper review in handling insurance claims, but like any tool it can be misused." Speaking of the two companies that reviewed the Foltz and Robinson claims, he added, "I don't think that you would find that these are two bad apples out of a healthy barrel, but that half the barrel is rotten. What's going on, in my opinion, is the insurance industry is waging an undeclared war against American consumers. They know exactly what they are doing."

"The insurance industry is making more and more use of utilization firms," said Matthew Whitman, an Oregon lawyer who is working with the consumer groups. "It's an out for the insurance company."

Whitman and other lawyers for the consumer groups argue that the sealing of records in the cases that have been settled makes it difficult to determine if there is widespread abuse in the industry and unnecessarily shields companies from public accountability. They also charge that the extent of secrecy in the Foltz case is virtually unprecedented, involving not only the court record but also the very existence of the case itself.

According to Whitman, when he visited the federal courthouse in Eugene last April, the court clerk told him that *Foltz v. State Farm* did not exist because it did not show up in the court's internal computer system. A physical search later located the thin case file that is public. But Whitman said the file contained references to about 450 motions and other items that have been sealed.

Sarah Posner, a staff attorney for Trial Lawyers for Public Justice, said that as recently as last week an attempt to locate the case through a nationwide computer system that lawyers routinely use came up blank.

"Inevitably, this favors big corporations such as insurance companies and other defendants," Whitman said of the system that enables companies to demand silence in exchange for large monetary settlements. "Debbie Foltz cannot defend the rights of everyone to access to the courts. At some point the money gets too big."