

Insurance Fraud Probe Stalled

Some cases dismissed, others called weak

By Andrew Smith

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Less than six months after Suffolk District Attorney Thomas Spota announced, with much fanfare, that his office had cracked a major auto insurance fraud ring, the investigation appears to have run aground.

The indictments of 567 defendants targeted people who allegedly staged accidents and faked injuries, as well as doctors and lawyers who allegedly profited from bilking insurance companies with phony no-fault claims. Initially, Spota said the first 85 arrests were just the "tip of the iceberg," and blamed such fraud for this region's high auto insurance rates.

But cases against several defendants have been dismissed, and many others were given dismissals on the condition that they stay out of trouble for as lit-

tle as 72 hours. The prosecutor who began the investigation resigned last month, and lawyers familiar with the cases say many of them are weak.

"I think it's a mess," said Joseph Tacopina, a Manhattan lawyer who represents many of the doctor defendants in the case.

The district attorney's office has little to say about its effort now. Spota said he didn't want to comment on whether he was satisfied with how the cases have turned out.

Spota and Leonard Lato, chief of the office's insurance crime unit, would not comment on cases that were dismissed or say how many cases were dismissed.

"Almost all of them have been sealed dispositions," Lato said, referring to the dismissed cases.

Critics of the insurance crime investi-

gation say many cases were dismissed because of a lack of evidence. In an effort to round up as many defendants as possible, some lawyers said, the district attorney's office over-reached. In addition, they said, the office was too quick to do the bidding of insurance companies, particularly State Farm.

"I think the DA got too involved with the insurance companies," said Evan Schwarz, a Garden City attorney who often opposes insurers in civil litigation and has followed Spota's investigation.

"This is a complicated area of the law. And insurance companies are trying to criminalize what should be civil actions."

A State Farm spokeswoman declined to comment on the investigation, referring questions to the district attorney's office.

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Newsday File Photo / David L. Polkress
District Attorney Thomas Spota

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"State Farm and other insurance companies misled the Suffolk district attorney's office," Tacopina said. "That's what happens when you have people who have a financial interest doing criminal prosecutions . . . You can't have a criminal investigation by partisans."

Spota's office relied in part on assistance from State Farm and the National Insurance Crime Bureau, an industry-funded agency, to investigate the cases. At one point, Tacopina said, a prosecutor told him that documents that normally would be turned over to the defense by the district attorney's office would be coming instead from State Farm.

Schwarz said staged accidents and

fraudulent billing are crimes that ought to be prosecuted. But the district attorney's office went beyond that and accused doctors and lawyers of being part of the conspiracy.

"It's more of a gray area," Schwarz said, adding that a doctor shouldn't be expected to doubt a patient who shows up with a police report from an accident and complaints of pain.

"State Farm assumed fraud throughout the entire process, and that's wrong," Tacopina said.

It is almost impossible to prove a doctor intended to defraud an insurance company by providing treatment and billing for it, Schwarz said. The question of whether the treatment is necessary is another issue, he said.

"But that's not a question for a criminal court," he said. "That's a

question for a civil court."

Much of the zeal for prosecuting these cases originated with former Assistant District Attorney Peter Smith, who headed the insurance crime unit until Lato was hired in August, then became Lato's deputy. Smith, whose approach to the cases was described as "visionary" in a glowing Fortune magazine article in December, resigned last month for reasons that Lato said he could not and Spota said he would not explain.

Spota emphatically denied courthouse rumors that Smith was fired. He said he tried to keep Smith from leaving.

Lato said he disagreed with Smith about how some of the cases should be handled. He noted that the indictments were Smith's work, not his.

"I wasn't here at the beginning,"

Lato said. "I got these cases from Pete."

Smith could not be reached for comment.

Tacopina said the indictments have harmed his medical clients. Insurance companies have stopped paying their bills, forcing some of the doctors out of business, he said.

Still, he said he appreciated Spota's willingness to acknowledge problems and dismiss weak cases.

And even if he's not holding a news conference to say so, Spota said the effort has been worthwhile for its deterrent effect alone, and that there is less fraud now simply because of the threat of prosecution.

"I think there is a heightened awareness," Spota said. "We're not going to stop."

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