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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re: CLINICA REAL, LLC, and KEITH MICHAEL STONE, Debtors.	Chapter 11 proceedings Case No. 2:12-bk-20451-EPB *Jointly Administered With:* Case No. 2:12-bk-20452-EPB
This filing applies to: ■ All Debtors ☐ Specified Debtor	**SFIC'S MEMORANDUM OF LAW IN OPPOSITION TO DEBTORS' MOTION FOR SUMMARY JUDGMENT OF STATE FARM'S ARIZONA STATE CIVIL RICO AND FRAUD CLAIMS [Docket No. 437]** **Hearing Date: May 21, 2015** **Hearing Time: 10:00 a.m.** **Hearing Place: Courtroom 703**

State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company (collectively "SFIC"), creditors and parties in interest in the above-captioned jointly administered Cases (the "Cases") of debtors Clinica Real, LLC ("Clinica Real") and Keith Michael Stone ("Dr. Stone," and with Clinica Real, the "Debtors") in connection with the non-binding 11 U.S.C. § 502(c) estimation proceeding (the "Estimation") to estimate SFIC's proofs of claim [Case No. 12-20451, Claim No. 4; Case No. 12-20452, Claim No. 5] (collectively, the "SFIC Claim"), respectfully submit this Memorandum of Law in opposition to the "Debtors' Motion For Summary Judgment of State Farm's Arizona State Civil Rico and Fraud Claims"

(the "Motion") [Docket No. 437].[1]

I. INTRODUCTION

At the March 31, 2015 hearing, the Court noted that the filed motions for summary judgment are to determine what can be considered at the Estimation [Docket No. 15]. Therefore, Debtors' motion is more appropriately addressed as a motion in limine. A motion in limine is a request for the court's guidance concerning an evidentiary question. *See Wilson v. Williams*, 182 F.3d 562, 570 (7th Cir.1999). Debtors' Motion goes well beyond seeking guidance, and while a judge has broad discretion when ruling on motions in limine, *see Jenkins v. Chrysler Motors Corp*., 316 F.3d 663, 664 (7th Cir. 2002), a motion in limine should not be used to resolve factual disputes or weigh evidence. *See C & E Services, Inc. v. Ashland Inc.,* 539 F.Supp.2d 316, 323 (D.D.C. 2008). To exclude evidence on a motion in limine "the evidence must be inadmissible on all potential grounds." *Ind. Ins. Co. v. Gen. Elec. Co.*, 326 F.Supp.2d 844, 846 (N.D. Ohio 2004); *Kiswani v. Phoenix Sec. Agency, Inc*., 247 F.R.D. 554 (N.D. Ill. 2008).

Debtors have presented neither facts nor argument to support a finding that the evidence SFIC will present to support its claims is inadmissible on any ground, let alone on all potential grounds. At best, Debtors have merely established that there are factual disputes concerning the issues of reliance and damages. Because a motion in limine is not the procedural vehicle to resolve factual disputes or weigh evidence, Debtors' Motion must be denied.

In an abundance of caution SFIC will address the Motion as presented. The Court should be aware that on May 1, 2012, the Debtors and non-debtor Patricia Rascon ("Rascon") presented the exact same motion in the State Court Action as the Debtors' are presenting to this Court. The State Court **denied** Debtors' and Rascon's motion. The State Court also **denied**

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[1] The Debtors titled their pleading "Motion for Summary Judgment"; however, the Motion is part of a claim estimation process pursuant to 11 U.S.C. § 502(c). Consequently, as the Court reiterated during the pretrial hearing on March 31, 2015 [Adv. Pro. 2-14-00297 - Docket No. 15], the Motion will not result in a binding judgment for purposes other than estimating the value of SFIC's claim for plan voting purposes. The Debtors' motion will be reviewed based on the totality of the circumstances or as a motion in limine.

Debtors' and Rascon's October 23, 2009 summary judgment motion, which sought summary judgment on SFIC's RICO and common law fraud claims. In denying that motion for summary judgment, the State Court determined that SFIC had presented sufficient evidence to establish all elements of their common law fraud and RICO claims. Debtors are now apparently taking the position that the State Court's earlier summary judgment rulings should be ignored or overturned, essentially collaterally attacking the State Court's earlier rulings on the same claims, defenses and issues.

Debtors argue that SFIC's common law fraud and RICO claims/damages should not be considered as part of the Estimation because SFIC cannot establish that it relied on Debtors' fraudulent representations or that it suffered damages as a result of the fraudulent scheme. Debtors' arguments are without merit. Regardless, issues of reliance and damages are questions of fact for the Bankruptcy Court to weigh and consider as part of the Estimation.

The deposition testimony of SFIC's representatives confirms that SFIC relied upon Debtors to submit honest and accurate medical records and bills and that SFIC handled and settled insurance claims after relying upon the truthfulness and accuracy of those records and bills. Although Debtors are apparently taking the position that their fraudulent scheme, by which they enjoyed great financial benefit, did no harm to SFIC, the facts establish that SFIC would not knowingly settle insurance claims which are based, at least in part, upon a scheme to defraud SFIC. Debtors have presented only selected and misleading portions of deposition testimony to suggest that SFIC did not rely on the truthfulness and accuracy of the medical records and bills it received from Debtors. However, the actual and complete deposition testimony and record shows that SFIC did rely on the truthfulness and accuracy of the medical records and bills when making settlements and general claim handling decisions.

Simply put, the Court should allow SFIC to present its evidence pertaining to reliance and damages to the Court at the Estimation. Just as their prior motions seeking judgment or dismissal of SFIC's lawsuit, Debtors' present Motion should be denied in its entirety.

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II. BRIEF FACTUAL SUMMARY OF LAWSUIT

SFIC has set forth the brief factual bases for its claims in the "Joint Pretrial Statement Regarding 11 U.S.C. § 502(c) Nonbinding Claim Estimation" [Docket No. 403] at pages 2-4. SFIC also relies upon the factual background of this matter set forth in its Statement of Facts in Support of Memorandum of Law in Opposition to Debtors' Motion for Summary Judgment ("SOF") filed contemporaneously herewith.

SFIC is seeking to recover more than $28,269,258.52 in connection with Clinica Real's fraudulent billing practices. SFIC's Claim includes: (1) compensatory damage in the amount SFIC paid to claimants that received "treatment" at Clinica Real on more than 1,100 claims between 1998 and 2006 ($4,817,139.88); (2) mandatory RICO treble damages ($4,817,139.88 x 3 = $14,451,419.64); (3) common law fraud punitive damages ($12,000,000); and (4) attorneys' fees, costs, and reasonable investigation expenses ($1,817,839.00). "Objection to Debtors' Motion to Estimate Claims of State Farm Mutual Automobile Insurance Co. and State Farm Fire & Casualty Co." [Docket No. 290].

The insurance claims at issue included medical records and billings generated by Debtors relating to chiropractic care allegedly provided by Debtors. (SOF ¶ 31.) These records and billings were a critical component in SFIC's handling and processing of the claims at issue. (*Id.*) SFIC's payment of these claims was made under the belief that Debtors' medical and billing records were fair, honest, and accurate, and that the records reflected the claimants' actual injuries and the reasonable and necessary treatment provided by Debtors. (SOF ¶ 32.) SFIC relied upon the representations contained in these records and billings when it paid settlement monies and/or benefits to said claimants. (*Id.*) After adjusting the claims at issue, SFIC discovered that Debtors' medical and treatment records (and the bills submitted in connection with those records) included content which was false, misleading, and fraudulent. (*Id.*)

SFIC's expert, Craig Little, D.C., reviewed copies of all of Debtors' medical and treatment records and bills pertaining to the more than 1,000 claimants identified in SFIC's Rule 26.1 Disclosure Statement dated July 27, 2007. (SOF ¶ 33.) Dr. Little has also reviewed

more than 200 extant original patient records generated by Debtors. Dr. Little has identified a pattern of misrepresentations, including but not limited to excessive, inappropriate, and medically unnecessary diagnostic testing, treatment, services, and overbilling found in Debtors' records submitted to SFIC. (*Id.*)

The two SFIC representatives who have been deposed to date testified that SFIC relies upon the truthfulness and accuracy of medical records and bills when handling and settling insurance claims. (SOF ¶¶ 34-43.)

III. ARGUMENTS AND AUTHORITIES

A. Elements of a Common Law Fraud Claim[2]

"The elements necessary to establish fraudulent misrepresentation are well settled in this state." *Carrel v. Lux*, 420 P.2d 564, 568 (Ariz. 1966). They are:

> (1) A representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted upon by the person and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) his reliance on its truth; (8) his right to rely thereon; (9) his consequent and proximate injury.

Id. (quoting *Moore v. Meyers*, 253 P. 626, 628 (Ariz. 1927)).

B. Reliance Requirement Specifically

A party pursuing a common law fraud claim is required to show that it had the right to rely upon the representations. *Dawson v. Withycombe*, 163 P.3d 1034, 1048 (Ariz. App. 2007). "A person may rightfully rely upon a misrepresentation of fact even when he may have discovered the falsity of the statement by a simple investigation." *Id.* (citations omitted). "A person may not, however, rely upon a misrepresentation that is obviously false." *Id.* (citation omitted). "A party is not required to prove that all the specifications of fraudulent representations are true; a single representation of material fact upon which the party had a right and did rely to his damage is sufficient to afford relief." *Sult v. Bolenbach*, 327 P.2d 1023, 1025 (Ariz. 1958). The Arizona Supreme Court has further observed: "In our recent case of

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[2] Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in a federal case where the claims are based on state law is the law of the forum state. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78, 58 S. Ct. 817, 822, 82 L. Ed. 1188 (1938).

Mayo v. Ephrom, *supra*, we recognized that where only a partial investigation is made and a party relies in part upon the representations and is deceived by such representations, the action may be maintained." *Sult*, 327 P.2d at 1026.

Debtors' fraudulent scheme was designed to be undetectable to SFIC's claim representative who reviewed the medical records and bills submitted by Debtors as part of a claim file. Debtors' repeated references to SFIC's failure to identify misrepresentations within a particular claim file ignore the record evidence presented by SFIC's expert, Dr. Little. Dr. Little reviewed copies of all of Clinica Real's medical and treatment records and bills pertaining to more than 1,000 claimants identified in SFIC's Rule 26.1 Disclosure Statement dated July 27, 2007 (SOF ¶ 33.) Dr. Little identified a pattern of excessive, inappropriate, and medically unnecessary diagnostic testing, treatment, services, and over billing in the records Clinica Real submitted to SFIC. (*Id.)* Not surprisingly, Debtors' motion is utterly devoid of any reference to Dr. Little or his findings

C. SFIC Relied Upon Debtors' Medical Records and Bills When Evaluating and Adjusting Claims.

Debtors have argued that SFIC did not rely upon their fraudulent misrepresentations. (Debtors' Motion at 3.) The record unequivocally contradicts Debtors' position on this issue. As noted above and in the Statement of Facts, SFIC settled more than a thousand claims which involved dishonest and inaccurate medical records and bills submitted by Debtors. SFIC clearly had a right to rely upon the misrepresentations because it was necessary to review the claimants' medical records and bills submitted by Debtors as part of analyzing and adjusting the insurance claims at issue. (Glenn Dep. Tr., Vol. II, at 76, 95.)

In the Motion, Debtors note that Cathy Glenn, a former SFIC claim representative familiar with Debtors' medical records and bills, testified that one of her duties as a SFIC claim representative was to review medical records and bills submitted in connection with third–party claims. (Debtors' Motion at 4.) As Debtors point out, Ms. Glenn testified that her review of the medical records and bills was one component that she considered when adjusting a claim. (*Id.*)

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Curiously, however, Debtors attempt to use Ms. Glenn's testimony that she relied upon Debtors' records and bills to argue that SFIC did not rely on the fraudulent records and bills when deciding how to adjust a claim. (*Id.* at 8.) According to Debtors, because review of medical records and bills was only one portion of handling a claim (rather than, apparently, the only aspect of claim handling), SFIC cannot establish that it relied on Debtors' fraudulent conduct when it decided how much to pay to resolve a claim. (*Id.*) However, Debtors do not cite to a single case supporting their proposition that an action for insurance fraud may exist only if the fraud was the sole basis upon which the insurer relied when settling a claim. (*See id. at* 8-9.) Indeed, such a law would be against public policy, as it would encourage fraud against insurers because it is well-known that insurers must analyze several different factors before adjusting a claim.

More importantly, such a theory runs directly contrary to established Arizona law. *See Sult*, 327 P.2d at 1025 (holding that partial investigation of fraudulent representations adequate to support claim). Under Debtors' "sole basis" theory, it would be virtually impossible for an insurer to defend against fraudulent schemes because there are several aspects of each claim which must be considered before a payment is issued or a claim is denied.

In any event, testimony from SFIC's representatives clearly shows that SFIC relied upon the information submitted by Debtors when adjusting claims. For example, during his deposition, Mr. Hassoldt testified that it is of great importance whether a medical provider's bills (based on billing codes) accurately reflect the services performed:

> Q. So then in training [a claim representative how to do his or her job], does it matter if a doctor submits a bill for an initial exam under a code of 92205 or 204, or 203, over 202?
>
> A. Does it matter in training?
>
> Q. Well, do you train your claim representatives that it just doesn't matter if they submit a 205, or a four, a three, a two, or a one, because there is no fee schedule that we use. We simply say here's what [SFIC says] that event is worth, in analyzing a medical bill?
>
> A. No. It does matter what those codes – what codes are submitted.
>
> Q. Why?
>
> A. Because we expect that the bills that are presented are a honest and accurate reflection of what's been performed by whatever provider. So we expect that to be truthful, honest, as a part of when we're taking that in and making it a part of our evaluation of that claim. So it's important that those charges are reflective and accurate for the treatment that's

being submitted.

(Hassoldt Dep. Tr. at 240-41.)

According to Mr. Hassoldt, although there are many components that play a role in adjusting a claim, one of "the components is going to be the specials, the actual expenses that have been incurred" in relation to "the injury claim of that party." (*Id.* at 136-37.) Consequently, if the medical specials are inaccurate or fraudulent, the handling of the insurance claim will be affected. (*See id.*; *see also id.* at 240-41.)

Similarly, Ms. Glenn testified that she reviewed the medical bills which were submitted by Debtors in connection her review of claim files. (Glenn Dep. Tr., Vol. II, at 76, 95, 97, 105-06.) She also reviewed the treatment records to determine if they appeared consistent with the bills. (*Id.* at 105.) The chiropractic records and bills would have been "one of the components" in her evaluation. (*Id.* at 95.) Ms. Glenn had some discretion in deciding how to resolve a claim on behalf of SFIC, but she could not pay whatever she wanted. (See *Id.* at 83.) Instead, she reviewed an entire claim file, including all medical treatment records and bills, when completing her evaluation of a claim. (*Id.* at 97.) Thereafter, she would use her experience, and possibly receive input from her management, before a claim was resolved. (*See Id.* at 83.) Ms. Glenn specifically testified that she relied upon the accuracy and truthfulness of Debtors' records and bills:

Q. You wouldn't simply rely on the chiropractor's medical bills.

A. I would rely on the bills telling me what was done or supposedly done and charged for. I would rely on the bills in that regard, yes.

(*Id.* at 105; *see also* Glenn Dep. Tr., Vol. I, at 102-03).

When asked to assign a percentage to her reliance upon Debtors' medical records and bills (as opposed to other components of a claim) when resolving a claim, Ms. Glenn testified as follows:

Q. Well, we can certainly agree it wasn't 100 percent reliance upon this bill, can we?

A. I don't want to say. That's probably accurate, not 100 percent, but still a component.

Q. But you don't know what component.

A. What percentage? You mean quantify? No, I could not give you – I would not be able to give you a weighting.

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Q. That's because you look at the entire file when adjusting the claim?

A. The entire file, including bills, records, yes, everything within a file.

* * *

Q. Because the bill isn't – it isn't a primary focus in adjusting a claim?

A. No, but it is a component, an important component of resolving the claim.

(Glenn Dep. Tr., Vol. II, at 97, 143.)

In Arizona, questions regarding the weight of the evidence, particularly in fraud claims, are to be resolved by the jury, not the Court. *See, e.g., Marcus v. Fox*, 723 P.2d 691, 693 (Ariz. App. 1985), *vacated in part on other grounds,* 723 P.2d 682 (1986) ("Fraud, however, is a question of fact for the jury."); *see also St. Joseph's Hosp. & Medical Ctr. v. Reserve Life Ins. Co*., 742 P.2d 808, 817 (Ariz. 1987) ("Whether United Chambers' verification was a material representation and whether St. Joseph's reliance was reasonable was properly resolved by the jury."); *Carrel*, 420 P.2d at 576–77 (Ariz. 1966) (reversing directed verdict ruling and noting that jury must decide whether fraud claim has merit). "The jury, not the court, is the fact finding body. It weighs the contradictory evidence and inferences, judges the witness' credibility and draws the ultimate conclusions as to the facts." *Marcus*, 723 P.2d at 682.

In short, SFIC clearly relied upon the fraudulent medical records and bills submitted by Debtors. The arguments in Debtors' brief about reliance go to the weight of the evidence, not the question of whether there is any reliance at all, because there is substantial testimony in the record demonstrating that SFIC relied upon Debtors' fraudulent submissions as part of the claim handling process. Accordingly, Debtors' Motion should be denied in its entirety.

D. SFIC Suffered Damages As a Result of Debtors' Fraud and the Court Should Decide the Amount for Estimation Purposes

"[T]ort damages comprehend all damages 'legally caused' by the tort." *Standard Chartered PLC v. Price Waterhouse*, 945 P.2d 317, 343 (Ariz. App. 1996) (citation omitted). The tort will be considered the legal cause of the damage if it is "a substantial factor in bringing out the harm." *Id.* (citation omitted). "One of the basic principles of damage law is the concept that a wrongdoer may be held liable for all damages which he may have caused and all costs which the victim may sustain as a result of the wrong." *Univ. of Ariz. Health Sciences Ctr. v.*

Maricopa County, 667 P.2d 1294, 1300 (Ariz. 1983). "We have recognized before in Arizona that the right to damages must be established without speculation, but that uncertainty as to the amount of those damages will not preclude recovery and is a question for the jury." *Id.* at 1301.

In this matter, Debtors' arguments regarding damages are closely related to their arguments concerning reliance. According to Debtors, because review of medical records and bills was only one portion of handling a claim, SFIC cannot establish that it was damaged when it resolved claims involving Debtors' fraudulent submissions. (Debtors' Motion at 8-9).

Debtors' argument goes to the amount of damages suffered by SFIC, not whether SFIC was damaged at all. There is no reasonable dispute that SFIC suffered damages as a result of Debtors' fraudulent conduct. SFIC's expert, Dr. Little, will provide testimony in support of the damages sustained by SFIC as a direct result of Debtors' fraudulent conduct. Further, Ms. Glenn testified that SFIC was damaged because it relied on information submitted by Debtors when resolving claims. (Glenn Dep. Tr., Vol. II, at 167, 169.) According to Ms. Glenn, SFIC would not have paid anything to resolve claims involving fraudulent medical bills submitted by Debtors if it had known about the fraud prior to resolving the claims. (*Id.* at 171.) Ms. Glenn has also testified that SFIC suffered damages in having to investigate and adjust claims which were part of the fraudulent scheme. (*Id.* at 169-70.)

While Debtors might argue that SFIC's damages are limited in some fashion because Debtors' medical records and bills were only one component of adjusting a claim, the amount of damages is a question of fact not appropriate for summary determination on a motion in limine. See, e.g., *Echols v. Beauty Built Homes, Inc*., 647 P.2d 629, 632 (Ariz. App. 1982) (noting that extent of damage not appropriate for summary judgment); *City of Tucson v. Superior Court*, 778 P.2d 1337, 1342 (Ariz. App. 1989) (issue of damages, like the issue of liability, raises questions of fact). Consequently, Debtors' motion should be denied in its entirety.

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E. Debtors' RICO Arguments Are Insupportable and Have Been Rejected in Similar Cases

Debtors rely exclusively on the Eleventh Circuit's decision in *Ironworkers v. AstraZenca Pharm*., 634 F.3d 1352 (11th Cir. 2011), to argue that SFIC's RICO claim should be dismissed on summary judgment. (Debtors' Motion at 10–13.)

There are two main problems with Debtors' reliance on the Eleventh Circuit's decision in *Ironworkers*. First, there is no record evidence (despite Debtors' suggestions to the contrary) that SFIC added a premium to its automobile policies to account for fraudulent chiropractic care and billing practices. Simply put, Debtors' arguments on this issue are pure speculation and therefore are insufficient to lend support to their Motion. *See* Fed. R. Evid. 602; *see also Neely v. St. Paul Fire & Marine Ins. Co.,* 584 F.2d 341, 346 (9th Cir. 1978) (noting that parties are entitled to have the determination of their rights rest on more than speculation and guesswork.).

Second, and perhaps even more importantly, the facts of *Ironworkers* are easily distinguishable from the facts of this case, as illustrated by *State Farm Mut. Auto. Ins. Co. v. Kugler,* No. 11-80051, 2011 WL 4389915 (S.D. Fla. 2011). In *Kugler*, SFIC alleged that the Debtors devised a scheme to defraud SFIC by performing medically unnecessary diagnostic tests and procedures on persons involved in automobile accidents. *Id.* at *10. Rejecting a motion to dismiss a RICO claim based in part upon *Ironworkers*, the court stated:

> This case is distinguishable from *Ironworkers*, because, as State Farm notes, it did not unconditionally agree to pay for discograms and PDs regardless of medical necessity or fraud under its contractual obligation to its insureds; accordingly, there is no basis for inferring that State Farm factored the cost of medically unnecessary discograms or PDs into the premiums it charged its subscribers for PIP, UM or BI insurance.
>
> In addition, unlike the plaintiffs in *Ironworkers*, in this case State Farm was the target of the alleged fraud and party to whom the Debtors' misrepresentations were directed. While a determination of the alleged damages in Ironworkers, in contrast, would have required an analysis of the extent to which third parties (prescribing doctors) relied on the drug manufacturer's alleged misrepresentations when they prescribed Seroquel for their patients, with myriad other external forces potentially at play in that decision making process, in this case, the analysis would focus simply on the extent to which State Farm itself relied on the Debtors' alleged fraudulent misrepresentations when it engaged in the settlement making decision process which resulted in its payment on the 198 BI, UM and PIP claims at issue in this suit.

> In this situation, where the directly defrauded party presses a RICO claim against the alleged wrongdoer, there is no viable "pass on" defense, i.e. Debtors cannot argue that plaintiffs not entitled to recover damages for costs which it has theoretically already passed on to its subscribers in the form of premium adjustments. (citations omitted).
>
> *Id.* at *10.

Likewise, in the case of *In re Neurontin Marketing & Sales Practices Litig*., 799 F. Supp. 2d 110 (D. Mass. 2011), the court rejected a "pass on" defense centered on *Ironworkers. Id.* at 119. According to the court, the Debtors' "Hail Mary" defense based on *Ironworkers* did not defeat the RICO claim at issue because such a "pass on" argument is not available when the injured party is seeking redress directly from the wrongdoer. *See id.*; *see also Blue Cross & Blue Shield of New Jersey, Inc. v. Philip Morris, Inc*., 138 F.Supp.2d 357, 363 (E.D.N.Y. 2001). Indeed, the Arizona Court of Appeals has questioned whether such a "pass on" defense would ever be allowed outside the antitrust area. *Northern Arizona Glass Serv. v. Petrolane Transport, Inc.*, 702 P.2d 696, 704 (Ariz. App. 1984) (rejecting "pass on" defense and identifying several reasons why the defense should be prohibited). Here, SFIC is the injured party seeking redress directly from the wrongdoers. Accordingly, Debtors' "pass on" defense is not viable.

F. Debtors' Fraudulent Conduct Proximately Caused SFIC's RICO Damages

Although Debtors rely upon a case from the Second Circuit Court of Appeals relating to "transactional loss" and "loss causation," the law in Arizona is that a RICO plaintiff must establish that damages were proximately caused by the Debtors. *See, e.g., Rosier v. First Financial Capital Corp*., 889 P.2d 11, 15 (Ariz. App. 1994); *see also Diaz v. Gates*, 420 F.3d 897, 901 (9th Cir. 2005).

"Arizona courts have repeatedly defined proximate cause as 'that which, in a natural and continuous sequence, unbroken by an efficient intervening cause, produces an injury, and without which the injury would not have occurred.'" *Central Alarm of Tucson v. Ganem*, 567 P.2d 1203 (Ariz. App. 1977) (citations omitted). "The Debtors' act or omission need not be a 'large' or 'abundant' cause of the injury; even if Debtors' conduct contributes 'only a little' to plaintiff's damages, liability exists if the damages would not have occurred but for that

conduct." *Robertson v. Sixpence Inns of America, Inc.*, 789 P.2d 1040, 1047 (Ariz. 1990) (citation omitted). "Plaintiff need only present probable facts from which the causal relationship reasonably may be inferred." *Id.*

Here, there is no doubt that SFIC has produced evidence showing that Debtors' fraudulent conduct contributed to its damages. As indicated above, Ms. Glenn and Mr. Hassoldt both testified that they relied upon Debtors' fraudulent records and bills when they adjusted insurance claims. According to Ms. Glenn, SFIC would not have paid anything to resolve claims involving fraudulent medical bills submitted by Debtors if it had known about the fraud prior to resolving the claims. (Glenn Dep. Tr., Vol. II, at 171.) It is undeniable that SFIC paid millions of dollars in reliance of the billings and records from Debtors. Ms. Glenn has also testified that SFIC suffered damages in having to investigate and adjust claims which were part of the fraudulent scheme. (*Id.* at 167, 169.) Accordingly, there is a clear and unbroken link between Debtors' fraudulent conduct and SFIC's handling of the insurance claims at issue. SFIC has therefore demonstrated sufficient evidence of proximate causation for the Court to estimate its RICO claim.

III. CONCLUSION

For the foregoing reasons, the Court should enter an order denying Debtors' Motion in its entirety and granting such other relief as is just and equitable under the circumstances before the Court.

DATED: April 13, 2015.

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E-FILED on April 13, 2015 with the U.S. Bankruptcy Court and copies served via ECF notice on all parties that have appeared in the case.

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