

THE LIABILITY CLAIM RACKET

ROBERT MONAGHAN*

Literary circles have recently been preoccupied with a phenomenon called "the American language." The pungent, racy and colorful figures of speech with which you and I manage somehow to make ourselves understood have become matters of serious organic study at the literary teas. Our phrases, it is reported, besides having zip and punch, pack plenty of meaning, shades of meaning, nuances and attitudes which have the new Websters and the new Johnsons hanging on the ropes. But for my part, the word "racket" is a native collossus which requires volumes to define and the Supreme Court to interpret. It is the most general and yet the most specific word in our tongue, thoroughly indigenous to our soil. And its application to conditions which prevail in the prosecution and settlement of third party liability claims is unusually native, unusually apropos.

The liability claim racket is an American institution, costing Americans tens of millions of dollars annually, corrupting, together with a number of sound social principles, the American courts, the bar, the jury system, the police, and, in general, threatening the decent progress of honest litigation in America with ultimate extinction. The important social principles involved are (1) that a person must be held responsible for the injury his wrongful or negligent acts may do to others; (2) that a lawyer may in all honor represent a client on a contingent fee basis. In the ensuing discussion it will be readily seen how seriously the practical application of these principles is threatened by widespread abuses.

I

There is nothing new about the claim racket except its size. The trick of extorting money from responsible persons for real or fancied injuries has been practiced for centuries. In all probability, however, our modern version of the ancient game stems from the development of ambulance chasing which, according to its most notorious exponents, came into prominence about 1910. Ambulance chasing with its trick of masking a crooked trade with the mantle of an honorable profession is more than any other single agency the father of American claim consciousness, and Americans today are the most claim conscious people in the world. The briefest

* Director of Publicity, National Bureau of Casualty and Surety Underwriters, One Park Avenue, New York, N. Y. Formerly assistant editor, *The Spectator*; co-author, *Man and the Motor Car*; publicist and author of articles on casualty insurance, street and highway safety, and fraudulent claims.

review of the size of the calendar of the First Department of the New York State Supreme Court which comprises New York and Bronx Counties only will indicate the point: by 1921 the calendar had doubled from its 1910 peak; by 1924 doubled again. In 1929 there were 44,181 statements of retainer filed with the Appellate Division for New York and Bronx Counties. In 1935 the corresponding figure was 99,800. Let us emphasize also that New York's situation is unique only in size; similar proportions prevail in other communities.

It must be remembered that between the 1924 peak and the 1929 figure quoted above the so-called Wasservogel investigation intervened in New York City. The blaze of publicity surrounding this civil inquiry made public the whole traffic in claim faking and its attendant evils, and for a time at least New York was comparatively free from the racket. But no sooner had the investigation stopped than the racketeers boldly reopened for business on a more dazzling scale than they had ventured to dream of before. It would almost appear that they too had profited from the investigation by learning what errors to avoid in order to escape detection in the future. Hence the fact that the cases filed with the Appellate Division have more than doubled in six years.

The development and widespread use of the automobile in company with the serious damage it is capable of inflicting when placed in careless hands has aggravated the situation. Outside of the urban centers, the motor car is the chief tool of those who attempt to make a dishonest living by pressing fraudulent or exaggerated damage actions. But the automobile is by no means the only tool, and certain claims for damages arising out of automobile accidents are not the only claims we may reasonably view with suspicion. The racketeers prey upon employers with fake compensation cases, on merchants, on landlords, tenants, restaurateurs, public utilities, transportation companies—on everyone who makes, sells or distributes a product, and upon the great bulk of our citizens at large. There is the flopper who falls in or out of elevators, on stairs and sidewalks, in store and theater aisles. There is the food artist who slips foreign objects in his pie or soup, objects ranging from glass and metal parts to, believe it or not, parts of mice. There is the acrobat who falls in front of and in and out of moving vehicles. There is the emotionally sub-normal fellow who submits to terrific beatings—beatings which break and fracture bones, smear him with blood and bruises, create abrasions and lacerations. There is the opportunist—the fellow with an old or permanent injury such as a hernia, an unknit bone, an unhealed fracture, an abnormal joint condition—any of which can be capitalized on call with a little “treatment.” And there are thousands of other types and classifications ranging from the ridiculous to the disgusting, all of which are engaged singly or in groups in adding up the enormous annual toll. Be it said that the lone wolves, while they often make spectacular coups, are rapidly becoming a vanishing breed through the successful operation of defensive measures which will later be discussed.

Those who work in groups are the organized and intrenched racket, and as such

are infinitely more difficult to combat. They involve the unethical and dishonest elements of the legal and medical professions, the front men with political, social and business connections, the riff raff and hangers on in any community. The most important single classification in this group is the ambulance chaser. His office is the best organized, the most profitable, most effective and most corrupt in the entire picture. He is the Al Capone, the "higher up" in the racket. Perhaps the best means of presenting an account of his operations in general is to summarize the confession of one Abraham Gatner, one of the first and most successful of the ilk:

II

Gatner started as a chaser for a law office about 1907. It was just about this time that ambulance chasing as a business began. It seems—or so Gatner believes—to have started in New York and spread from there throughout the country. He was one of the first three chasers in the city. He and his two rivals hung around outside police headquarters every morning at 9 o'clock, getting a list of the previous day's accidents from a reporter in their pay. The three then parcelled out the city and went to get retainers.

As competition developed, Gatner secured a partner and they arranged to jump the game on the others by getting an additional daily list at 6 P.M. It was only a matter of time, of course, before the others caught on to this. Competition grew still more keen. Young lawyers starting in found it an easy way to break into the field and establish a good income quickly, and the temptation for many of them was too difficult to resist. In those days, however, it was much more difficult to collect a judgment because few persons were insured. Big verdicts were unknown.

Even then, the game was called "ambulance chasing," although at that time the chaser did not reach the injured person or his family until hours after the ambulance had done its work. It was the ever-increasing competition which made ambulance chasing a literal phrase. The next step was to jump the 9 A.M. list by getting one at 7 A.M., another dodge which could work for only a short time.

Gatner usually kept one step ahead of his rivals. His next move was to have a phone installed where he lived—quite unusual in those days—and he arranged to have a fellow in police headquarters call and give him an accident list daily at 2 A.M.; then he would start out around 5 A.M. to make his rounds. It was several months before the others who still hung around police headquarters discovered this trick. (At this point he makes a note that in those days, physicians were satisfied with a 50 cent fee for examining an injured person when they were strictly on the level. Usually, one visit to a physician was sufficient; pretty soon however, it was possible to persuade physicians that a patient needed three, four, or five visits because of the extent of his injuries, and it was a logical proceeding from here to corrupt members of the medical profession.)

In 1912, Gatner decided it would be valuable to him to round out his talents with the experience he could obtain working for an insurance company, so he got a posi-

tion with one of the New York companies as an adjuster and worked at this for a year. He did not think any better of the adjusting ethics of the company for which he worked than he did of the ethics of the chasers. The adjuster was given a wad of 100 one-dollar bills as he set out each day and instructed to make as quick and as cheap a settlement as he could. During this year, he came upon two developments in the ambulance chasing racket for the first time. One of them was something he did himself—fee splitting with a chaser. The other was the first actually faked case he ever knew about. In this year of work as an adjuster, he obtained what he set out to get—the ability to evaluate claims for bargaining purposes, a practical course in negligence law practice, and several new channels to exclusive information.

He returned to ambulance chasing. By this time organized firms had developed on a large scale, and a number of the early ambulance chasing lawyers had now become "counsel" for others. Gatner now became the first chaser to develop a system for eliminating the waste involved in handling accidents caused by persons who were not financially responsible for damages. He was first a free lance, selling to the highest bidders, and then he went to work with one lawyer for a \$30.00 a week drawing account, and a commission of one-third of the settlements of all cases he brought in. He now helped to organize what he says was the only twenty-four-hour-a-day law office ever in existence. What they did was to set up a central working bureau, always open, into which their various sources sent information concerning accidents. They had men out in the "field" who would phone in for assignments.

It was at this time that the competition became so strong that lawyers were compelled to make inducements to prospects to get them as clients. Among these inducements were: "free" medical services for which the client eventually paid, and "loans" to tide over indigent clients, loans they repaid with "interest." Gatner was with the twenty-four-hour office until 1916, when the enactment of the workmen's compensation law put a temporary crimp in the business, and the partnership was broken up.

With the increasing use of automobiles and trucks after 1916, ambulance chasing lawyers multiplied like filling stations. The sources of information increased too. One was the police telegraph bureau installed about that time, to which accidents were reported from the various precincts throughout the city. For years, a fellow in the bureau at headquarters relayed the information to the chasers—of course, for a stipend. But for the more aggressive chasers, the telegraph bureau at headquarters was not direct enough.

The next step was to reach the desk man in the precinct station, and the next step after that was to get to the patrolman on the beat. A patrolman would report an accident first to whoever paid him to do so and then make a slight error, such as in the address of the injured, when phoning in his official report. This, of course, delayed competition from those who were getting their information of the accident at the station or from the telegraph bureau. Gatner points out how fertile a source

of information the police are by noting that in one year alone, these reports of accidents in the city totalled 1,000 deaths and 46,000 injuries.

As far as the ambulance chaser is concerned, a post at a hospital is a fine one for a policeman to have. He sees the accident cases brought in and, of course, he is free to go anywhere in the hospital; he can help the chaser get into the victim's hospital room. In the realm of police information, there was one more step to take and it was taken. That was to reach the rookie while he was still attending the police academy and instruct him in the opportunities and techniques in reporting accidents to ambulance chasers.

The fat fees in the ambulance chasing game come from cultivating a hospital branch. The necessary facilities of those dealing in it are: a good physical layout to impress the clients, smart chasers with ready cash, good investigators for building up a case, coaching witnesses, etc. Even investigators are expected to bring in more cases through witnesses who have relatives and friends who have had accidents. Nothing is put down to expenses in an ambulance chasing office, not even the stenographers. The chasers work with internes, nurses, orderlies, ambulance drivers, and the operating surgeon. Two high class chasers bringing in 30 good cases of fractures, compound fractures, amputations, and death, will mean a gross business of at least \$300,000 a year. The salaries of chasers of this type are anywhere from \$100 to \$200 a week.

The typical procedure of a first class chaser after hearing of a hospital accident case is as follows: First, he satisfies himself that a wealthy or insured individual or corporation is responsible for the accident. He phones the persons who are responsible, says he is a police lieutenant in the district where the accident occurred and asks who carries the insurance. If there is no insurance, he inquires about the nature of the business. Then he phones the hospital, posing as a newspaper reporter to find out the condition of the patient, whether he is still in the hospital or has been sent home. Then he goes to the home or the hospital. If it is the hospital, he has his retainer slip in a folded newspaper. At the hospital he looks up his contacts and then goes to work on the victim. If he can't get to the victim, he goes to work on the victim's family, and having sold them, it is simple to get the victim's signature at a later date.

The racket has always been very progressive, keeping up with every new development. And thus, when a few years ago social service workers began entering the hospitals to give different kinds of aid to the patients, the ambulance chasing industry entered with them and a number of these workers became, some innocently and some not, very valuable assets to the industry "that corrupts everything with which it comes in contact."

Of course, the lawyers did not hesitate to gyp on the fifty-fifty contingent agreement with the client. One casualty insurance company tells of one case where a man getting a \$22,500 verdict for a fractured leg and other injuries actually received less than \$9,000. Lawyers even argue to prevent a client from agreeing to a profitable

settlement, knowing they cannot get a verdict which will give the client as much as he is offered.

The last place Gatner worked was as manager of as well-organized an ambulance chasing office as any we have ever heard of. It had eleven chasers whose weekly payroll totalled \$3,000 exclusive of commission, two investigators, three attorneys, besides the two partners in addition to stenographers and a clerical staff. One of the partners provided the initial financing but did no work, the other was a trial counsel. (Incidentally, Gatner tells that a layman-lawyer partnership in ambulance chasing firms is very common, together with the fact that disbarred lawyers bring large practices, experience, and "good will" to any office not yet under fire). One of the assistants did nothing but keep up with court decisions and legal techniques, and another was solely employed in fixing up the legal documents. This office in its first year did \$400,000 gross business—about \$165,000 net profit. The original outlay was \$31,000, and all this had been gotten back in four months.

Gatner tells of big cases where lawyers for steamship and railway companies lost verdicts for \$35,000 and \$50,000 on cases that they knew and could have proved were framed. He leaves it to the reader's imagination as to why they did nothing about it. He tells how employees of the U. S. Shipping Board, Interstate Commerce Commission, and other government agencies have become involved. Finally he gives the following as the four desires of ambulancing chasing lawyers:

- (1) Bigger and better injuries.
- (2) Fewer chasers to pay.
- (3) To become counsel to lawyers as low down as himself.
- (4) To become ethical!

IV

Gatner and others of what we may term the old fashioned kind of claim racketeer, worked chiefly at the business of exaggerating the importance of cases which had some foundation in fact. In other words, some one was usually injured in a real accident; impressive "damages" were collected, and the case was closed. They were and are a dangerous and costly breed. The new school is decidedly less restricted in its imagination—not only are accidents invented or faked, but injuries are the basis of claims made against scores of entirely different parties. The new ambulance chaser makes a good injury pay many times over before he allows a case to close.

The case of Sadie Esther Abramson is an apt illustration. Several years ago Sadie was involved in a legitimate accident and retained a lawyer who specialized in negligence cases. While visiting her attorney's office, she struck up an acquaintance with his brother, a layman, who acted as runner and investigator. This brother took her in hand and coached her as to the technique of staging falls or "flops," as they are termed in the racket. She was instructed to fall over a broken vault light, defective steps and the like, so that negligence could be claimed against the owner of the premises. Like all professional floaters, she employed several names.

After mastering the details of her new calling, she broke away from the runner

with whom she had been sharing the proceeds and went off on her own. Shortly thereafter she was arrested. She was questioned, and made a complete confession. In the three years that had preceded the untimely ending of her career, she had been a claimant in approximately 50 accidents. She admitted that only two were genuine. Most of them had been settled, usually for small amounts.

A typical example of a well-rounded accident fraud organization was the Hecht-Rosenzweig ring. All of the major figures and most of the minor members of this group have since been sentenced to jail.

The ring specialized in compensation frauds. Dr. Darwin Hecht operated a clinic in the garment center of Manhattan. Sidney Rosenzweig ostensibly managed the clinic, but actually bustled about arranging spurious compensation claims. He also coordinated the stories of employers, claimants and doctors so that they tallied. After grilling over 50 of Dr. Hecht's patients, the following routine story was pumped out so often as to become monotonous.

Sidney Rosenzweig would bring a future claimant to a crooked employer who carried compensation insurance. He would introduce one to the other and inform the employer that his friend wished to have an accident the following day. The employer would then place the name of Rosenzweig's man on the payroll records so as to indicate that he had been working for some time. The next day, usually without even the formality of going through the motions of an accident, the faker would call on Dr. Hecht. He would fill out a medical report for the Labor Department and insurance carrier. The employer would also report the supposed accident. Dr. Hecht would coach the claimant as to the medical aspect of his claim and Sidney Rosenzweig would give him tips as to the compensation procedure. Unless the employee had an old or fresh injury from some other source around which a case could be built up, he would be instructed to feign subjective symptoms, *i.e.*, symptoms which can be described but which do not show externally. The injuries usually took the form of a wrenched back, head impacts and the like. It is almost impossible for a company, or the Labor Department, doctor to say definitely that the well-coached malingerer complaining of subject symptoms is faking. In at least a dozen of Dr. Hecht's recent cases, the injuries were allegedly sustained by the claimant striking his back and head. One nettled insurance company doctor after examining a Hecht patient and unsuccessfully trying to pierce his armor of well-prepared lies, reported that no improvement would take place in his condition until the case had been definitely disposed of by settlement.

Rosenzweig, the alleged employee and his boss would share the amount awarded to the claimant equally, one third to each. Dr. Hecht's share would be the medical fees, which were very substantial. He seldom actually treated fake claimants as they did not sustain injuries. He would submit bills, however, for as much as \$600 or \$700 on an individual case.

V

Yet it must be conceded that, until informed, the public's sympathy is definitely on the side of the ambulance chaser and his claimant. Unquestionably the worst

opinion the public holds of the ambulance chasing attorney is that he is a necessary evil. It is felt that the injured party fares better at his hands than at the hands of those who may be considered liable for the injuries. Character witnesses for lawyers convicted of crimes and unethical practices in connection with liability claims are common, and they are usually drawn from those who are socially and economically the most influential citizens in the community. An Atlanta judge, sentencing a prominent lawyer to the Georgia chain gang for crimes of which the lawyer had been convicted by overwhelming testimony remarked: "In all my years on the bench I have never seen such an imposing array of character witnesses as came to intercede in your behalf."

The public conception of the evil is quite naturally produced by ignorance, and by the fact that it has up to now listened only to one side of the case. The ambulance chasing lawyer is more unscrupulous with his so-called clients after settlement has been made than he is in preferring the case—if such a shade of distinction is possible.

The defrauding of the client represents one of the significant aspects of the racket, for it is the lawyer's most important source of profit. Parenthetically, it is often the cause of his downfall, for when claimants who were his clients are shown how he cheated them, they talk readily by way of reprisal. Stories of how such frauds are perpetrated are difficult to believe unless the psychological relationship between lawyer and client is appreciated. The lawyer is smart, or brazen, or both, and has a long familiarity with negligence suits. The client is usually ignorant, often poor, usually bewildered at the whole proceeding. He regards his lawyer as the average person regards his doctor—as a specialist in whom he must place his trust.

Thus it was easy for one lawyer, now dead, to gyp his clients in the following manner. The case over, he would call the client to his office and say:

"Well, we won a verdict for \$2,000. You get half and I get half. Right?"

The client would agree. Then the lawyer would give him a receipt for \$1,000 and direct him to sign it, which he would do.

"Now, let's see," the lawyer would say, jotting figures on paper, "one thousand dollars. My court fee is so much, and our expenses were so much. We had to pay the witnesses such and such a sum, etc., etc. That all comes to \$500. Five hundred from a thousand is five hundred. Here's your money."

And he would count out \$500 and hand it to the client. If the client complained, he was talked down—out-bluffed. If the client took it up with the bar association or the authorities, the lawyer had the signed receipt.

This procedure was developed into a fine art by this particular lawyer. It is more or less the usual way in which a client is cheated out of a portion of his share of the settlement. Of course, there are other dodges. Sometimes the lawyer gets not only a receipt, but has the client endorse a check for the amount he thinks he's going to get. Sometimes a settlement is made with the client being told—and believing—it is much less than the actual sum obtained. This can be done by having the client sign a blank release which the lawyer fills in later. All such tricks are further

simplified if the client cannot read English. A lawyer can give an ignorant client a set of papers, saying, "Here are some papers I want you to sign," and the client does so without questioning.

Sometimes a lawyer can win a negligence case without the "claimant" even knowing about it. Forging the claimant's name to a release is one way. The company, never having seen the claimant's signature before, cannot tell it is a forgery. The company may have seen the claimant only once, when he appeared for his examination by the doctors. Or actually it may have never seen him. Another person may have been substituted for him at the examination.

The story of the fake automobile accident ring is virtually a rehearsal of the ambulance chaser's organization policies, except that *all* the accidents are faked and *all* the injuries are manufactured. Remember an accident needn't actually occur as long as the gang can employ witnesses, medical testimony and legal talent to press its claim. Sometimes, however, it appears wise to the gang's directing genius to use the regular facilities of a city hospital, and for these cases, injuries or the semblance of injuries must be provided. In Pittsburgh, where the racket is known as "the oil business" a group of Italians under the direction of one Frank Gemellaro, otherwise known as the Duke, practiced these arts to the tune of about a quarter of a million dollars in claims. The Duke posed as an attorney taking half of all proceeds. Part of his equipment was what the gang called "The House of Pain." There the "victims" prepared their accidents and injuries. They beat each other with clubs, bare fists, sacks of orange, etc., to create bruises. Perforated strips of tin, sandpaper, and other devices provided scratches and abrasions. Knives and razor blades accounted for cuts. Chicken blood in the ears would simulate a concussion and a piece of wire bound to the head would appear like a skull fracture when the roentgenologist was cut in on the take. The Duke took charge of the business and handled office routine, providing policies and policyholders, and settling claims.

VI

Insurance adjusters often appear in both kinds of organizations, for like absconding bank tellers, they cannot resist the lure of easy money. Fortunately they are few and far between, and their position gives them no advantage once discrepancies are discovered. They go to jail with the rest of the crew, and no attempt today is made by their companies to spare them in order to avoid unfavorable publicity. The crooked adjuster probably brings no special gift to the racket except the possibility that he may expedite settlements. His own judgment of the amount to be settled is secondary to that of a superior officer higher up in the company so that an unusual or abnormal sum would arouse suspicion and possibly a visit from the home office. Nevertheless, insurance company employees have appeared on the wrong side of the fight and every effort is being made by the companies to investigate the integrity of their claim staffs.

Logically enough, the stock casualty insurance companies through the National Bureau of Casualty and Surety Underwriters have led the fight to bring these

crooked and unethical practices to a halt. Theirs has been a realistic approach. Basing their judgment upon past experience, they have set out to make their defenses permanent. Money, time and effort spent on a sporadic drive regardless of its immediate effectiveness usually proves disappointing for like Hercules' Augean stables, the field is promptly sullied again. The first permanent collective effort of the Bureau's member companies against the claim evil was the organization of the Bureau's Claim Department in November, 1927. The department is under the direction of Manager Wm. P. Cavanaugh and Mr. James A. Beha, general manager and counsel of the National Bureau, both members of the New York Bar. Briefly, the objects and purposes of this department are:

1. To accelerate the possibilities for a prompt and just settlement of meritorious claims.
2. To combat fraudulent claims.
3. To establish and maintain an index for the purpose of reporting and disseminating information to its members concerning accidents and losses in which its members have an interest.
4. To promote coöperation for the exchange of information with individuals or organizations maintaining index bureaus for the collation of similar data.

In fulfilling its objectives during the period of its existence the Claim Department has unfortunately had more work than it could possibly do. But there were enough immediately practical remedies applicable on a nationwide basis so that no time or effort was wasted. The activities of the department have included: (1) the organization and extension of the index bureau system; (2) the stimulation of local public investigations; (3) the development and circulation of claim information bulletins; (4) the establishment of a crime index; (5) the encouragement of the arbitration system; (6) the enlistment of forces other than insurance in the war on fraudulent claims; (7) organization of local claim associations. Let us examine these activities in greater detail. The organization and development of the index bureau system which is now functioning on a national scale has provided a permanent and effective defense against the ordinary claim repeater. Index bureaus are located at strategic points throughout the country and to them is reported every claim made against a member of the system. Membership is open not only to the stock company members of the National Bureau but to mutual insurance companies, reciprocals, self-insurers, and to any individual or organization who can profit by its service. At present the entire index bureau membership¹ represents a total of 148 separate and distinct organizations including public utility and transportation companies, municipalities, chain store organizations and others.

When reports are made to the index bureaus, they are promptly checked and cross-indexed according to a plan which the writer is not at liberty to reveal. They are checked against the cards already on record, against the claim bulletins, and against the crime index. If suspicious circumstances appear, the company submitting the card is promptly notified and given full particulars of the circumstances arousing suspicion. Thus, repeaters, chronic claim fakers, lawyers or doctors whose interest

¹The entire membership of the National Bureau of Casualty and Surety Underwriters comprises 41 stock casualty companies.

in pressing liability claims appears abnormally pronounced are today facing continually a record of their past performances.

Where local conditions have appeared to warrant more intensive study, the Claim Department has stimulated activity on the part of prosecuting authorities. As a rule these offices have proved coöperative although some are hampered with the pressure of other work, with indifference, or with minor political considerations. The task of the Bureau has been to provide investigating personnel, case data, necessary funds, and moral support, but these contributions have been sufficient in numerous experiences to clarify costly and aggravating conditions. These minor investigations have been conducted on a wide front occurring in such places as Buffalo, Rochester, Albany and Syracuse, N. Y.; Pittsburgh, Pa.; Youngstown, O.; Girard, Kan.; Portland, Ore.; Bridgeport, Conn.; and many others.

From small beginnings the Claim Information Bulletin Service has developed into a full fledged rogues' gallery of crooked or suspected claimants. This is a regular service and goes forward to claim offices and to members of the index bureau as often as there is worthwhile information to broadcast. Photographs of the subjects, descriptions, fingerprint classifications, accounts of their claim history and their particular kind of racket, together with other pertinent information, are contained in these bulletins. They are gratefully received and have proved their value in preventing payment to fakers or in assisting the police upon hundreds of occasions.

The crime index is more or less a super claim bulletin. It records all valuable information on persistent crooks whose many convictions and sentences have failed to get over to them at least the idea that the claim racket doesn't pay them any more. The index is available to police and prosecuting authorities and to others having a legitimate use for it.

The development of the arbitration system has helped to relieve the acute congestion of New York City courts. It has relatively little application to the fraudulent claim racket, but is an indication of the Bureau's success in developing the objective of creating an improved treatment of meritorious claims.

The organization of local claim associations has stimulated coöperative activity on the part of organization representatives working in the field. About 85 of these associations are now functioning actively carrying on educational work among themselves, interchanging information on local conditions, and, in general, doing their part to translate the national effort into local needs.

VII

The Claim Department of the National Bureau has also been instrumental in launching major investigations of the more or less permanent type. In Boston, Massachusetts, for instance, a widespread investigation of the intolerable conditions in that community, largely traceable to the operation of the compulsory automobile liability insurance law, was begun more than five years ago. It is still going on. The Supreme Judicial Court of the Commonwealth appointed a special master to hear the case, and more than 5,000 have been brought before him to date. Eighteen

lawyers have been disbarred, hundreds of fake claimants have been convicted and jailed, and dozens of doctors have lost their licenses or have had them suspended for their part in the frauds. A similar investigation was launched in the State of New Jersey in 1934, and has accomplished similar results.

The investigation under way in Atlanta, Georgia, deals with conditions which are probably more analagous to those existing in the majority of communities throughout the United States than those in Boston or New Jersey. The Atlanta drive started more than a year ago and, of 23 individuals brought to trial so far, 22 have been convicted. Seventeen indictments remain to be tried and about 15 others are pending. Four lawyers have been sent to the chain gang and five others have left the state indefinitely!

In the meantime, 407 damage suits already filed in the courts were abruptly withdrawn by plaintiffs without explanation. Court records show that the number of suits entered since the investigation began is 600 less than for the preceding year, making a total of 1,000 fewer cases for one year than for the year previous.

Atlanta's condition was far from being the worst in the country, but it was typical, and it contained most of the elements already described. Atlanta business men were aroused by the conditions, and they encouraged a committee of insurance adjusters to start public action. The adjusters consulted a member of the Georgia Bar Association's Grievance Committee, Mr. Walter McElreath, who a year before had conducted a successful investigation into municipal graft. A meeting of business men was arranged, the problem was discussed, and the group decided upon immediate action financed as far as possible by local contributions. In the end 76 Atlanta firms contributed in amounts ranging down to \$10 from small tea rooms. The National Bureau made a sizeable contribution on behalf of its member companies and aided wherever possible in the development of the fight. The point was, however, that the influential people of Atlanta were convinced that the movement was to their own advantage and they took full responsibility for it.

The support of the Solicitor General, Honorable John Boykin, was generously given with the following provisos:

1. That definite evidence of fraud be presented in each case.
2. That he be permitted to follow his prosecutions unhampered no matter whom they might involve.
3. That the prosecutions be confined to fake accident frauds and not be allowed to wander off into any conflicting trails that were sure to develop as time went on.

With a modest treasury to start with, investigators were engaged to develop evidence (mostly from the files of the Southeast Index Bureau) for presentation to the Grand Jury. Indictments were promptly tried and disposed of, the newspapers coöperated handsomely, and the result was an immediate drop in fake claim activities. With a few cases out of the way, the committee's activities subsided temporarily until the furore died down. Then it came forward with new cases, new evidence and new victories. Gradually it convinced offenders that its work would never

cease, that its intention was to continue as a permanent offensive unit against fake claim racketeering if such a unit proved necessary. It is still giving that impression, and in Atlanta, at least, the struggle has narrowed down to an endurance test between the competing sides with the odds on the clean-up forces. The other side can't endure without money.

Everything wasn't as smooth sailing as appears in this summary. A campaign against certain attorneys (who obviously lead the racket) is a campaign against past masters in the art of legal delay, postponement and chicanery. In Atlanta the first counter attack was an attempt to indict the Solicitor General on a faked charge. The Grand Jury tossed it out. This was followed by a claim of perjury, and later a convicted attorney sought to have the Solicitor disbarred. When these attacks failed, attempts were made to discredit the lesser figures in the investigation with spurious charges and false arrests. Paul Kearney in the *Saturday Evening Post* for March 10, 1936, describes the Atlanta investigation as follows:

"Here we have the ideal approach and the basic reason for the drive's success: the most prominent figures in the community were lined up behind it at the beginning by a man whom all respected and whose motives no one could possibly question. And it was clearly settled early in the game that there was to be no 'Roman holiday; no hullabaloo which would nail a few dupes and let the big shots escape; no scramble for personal glory or political advantages; no effort to make goats out of a few and then settle back in contentment. Mark all of those things well, for without them any effort in this direction will be a fizzle."

VIII

As we have tried to make clear, the liability claim racket is a profitable and extensive evil. It will not disappear or even diminish without direct and definite action. It is a perennial claim that the legal profession is overcrowded and that the evils described here are largely the result of that overcrowding. However, the proper authorities are attempting to remedy the condition by elevating educational and moral standards. While efforts in this direction do not guarantee that only the right kind of people will practice law in the right kind of way, they do assure that fewer of the wrong people will be able to do so in the wrong way. Finally, they give absolutely no protection against the other practitioners of the claim racket.

In reality, correction and elimination of the liability claim racket will come first from a program which arouses the public to the enormous moral and financial damage these abuses are inflicting on the community. The public must be shown that the cost is being paid out of its own pocket and not out of the treasuries of insurance companies, large corporations or municipalities as is now erroneously believed. Once this first step is taken the way will be clear for the second and equally important move: the establishment of a program of eternal vigilance and permanent defense.

Insurance rates are based upon the amount of money paid out in settlements of claims made against insured cars in a given territory. If these amounts are affected adversely by an abnormal claim condition such as is produced by ambulance chasing,

jury fixing and its attendant evils, that condition must inevitably be reflected in the rates charged for automobile liability insurance in the community. This affects an important part of the population.

These and other costs to the community will be readily appreciated by the intelligent citizen. Courts do not run themselves, and congested courts cost more than those handling a normal number of cases. In recommending a \$50,000 appropriation by the Board of Estimate of the City of New York for an ambulance chasing investigation by the Accident Fraud Bureau, Judge Clarence J. Shearn, president of the New York City Bar Association, said:

"The money required to be spent should be returned to the taxpayers many times over in results achieved. The City maintains at a very great expense an elaborate judicial machinery. Seventy-one per cent of the cases on the calendar of the Supreme Court are for personal injuries. During 1935, 99,800 contingent retainer agreements were filed in the First Department alone,—as against 44,000 in ten months of 1929. Twenty attorneys each filed more than 1,000 of these contingent retainer agreements in 1935, one over 2,000 and another over 3,000. These figures suggest to one that to a very considerable extent an honorable profession is being used as a cover for a disreputable trade. In the meantime the calendars are becoming more and more clogged and commercial and other legitimate litigation, including genuine personal injury suits, are subjected to more and more delay.

"Apart from its duty to the taxpayers, the City has a strong interest of its own to serve in supporting a thoroughgoing investigation and prosecution of frauds in fake damage suits. Last year the Manhattan and Brooklyn offices of the Corporation Counsel were called upon to defend more than 1800 personal injury suits brought against the City. While the recoveries and settlements in personal injury suits amounted to \$590,940 during 1935, the amounts claimed in those suits aggregated \$23,414,550. These figures tell their own tale. The only defense of the City against these exaggerated claims is the maintenance of an expensive and competent legal department. One or two verdicts in fraudulent cases would exceed the modest cost of the proposed investigation."

There is every indication that as key communities begin these investigations, others will follow suit. If the public is indifferent to the ambulance chaser, other attorneys certainly do not admire him. To them he is a menace to legitimate practice, and, once his currently entrenched position appears more vulnerable, they can be counted on for decisive action, and for the preparation of permanent safeguards.

The prosecution of many indictments in the Federal Courts under charges involving misuse of the mails has engaged the interest of the United States Attorney General and the Federal Department of Justice. Both agencies have already been helpful, and further assistance is confidently expected. In short, increased interest on the part of local, state and national agencies, together with those of private business, points to a more promising future.

The liability claim racket can be curbed, and it will be curbed if the public can be aroused to take the proper kind of action. It must be curbed if a court of justice in America is to be a fit place for a free American to enter.