

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff

v.

ONE 2005 FORD GT COUPE  
VIN: 1FAFP90S95Y401945

AND

ONE 2000 FERRARI 360 MODENA F1  
VIN: ZFFYU51AXY0121286,

Defendants.

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**VERIFIED COMPLAINT FOR FORFEITURE**

The United States of America, by its attorney, William J. Hochul, Jr., United States Attorney for the Western District of New York, Richard D. Kaufman, Assistant United States Attorney, of counsel, for its Verified Complaint for Forfeiture herein alleges as follows:

1. This is an action in rem for the forfeiture of two vehicles:

ONE 2005 FORD GT COUPE  
VIN: 1FAFP90S95Y401945, hereinafter referred to as “2005 FORD”

AND

ONE 2000 FERRARI 360 MODENA F1  
VIN: ZFFYU51AXY0121286, hereinafter referred to as “2000 FERRARI”,

both under the custodianship of the U.S. Marshals Service, The 2005 Ford in the Northern District of Ohio and in the 2000 Ferrari in the Western District of New York. The defendant vehicles are titled to EUGENE GOSY, Clarence, New York.

1. The defendant vehicles are subject to forfeiture pursuant to the provisions of 18 U.S.C. §§ 981 (a)(1)(C) as traceable to GOSY's proceeds of specified unlawful activity; and the 2005 Ford is also subject to forfeiture under 18 U.S.C. § 981(a)(1)(A) as a property involved in GOSY's specified unlawful activity.

2. This Court has subject matter jurisdiction of this action pursuant to the provisions of 28 U.S.C. §§ 1345 and 1355(a), and in rem jurisdiction pursuant to 28 U.S.C. §§ 1355(b) and 1355(d). Venue is properly premised in the Western District of New York pursuant to 28 U.S.C. § 1395.

3. Based upon the preponderance of evidence, GOSY has committed violations of federal law, including but not limited to, the violations of 18 U.S.C. §§ 1035 (False Statements Relating to Health Care Fraud Matters), 1347 (Health Care Fraud), 1343 (Wire Fraud), and 1957 (Money Laundering) which are all related to the fraudulent billings that were submitted to the New York State Workers Compensation Board (WCB) by GOSY, a physician who specializes in neurology and pain management. GOSY's business practice is identified as GOSY & Associates Pain Treatment & Neurology LLP. Therefore, the defendant vehicles are subject to forfeiture applicably pursuant to 18 U.S.C. §§ 981(a)(1)(A) and (a)(1)(C) which provides in pertinent part:

(a)(1) The following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of Section 1956, 1957<sup>1</sup> . . .

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<sup>1</sup> Section 1957 (a) Whoever, in any of the circumstances set forth in subsection (d) knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000.00 and is derived from specified unlawful activity . . .

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section...1344 of this title or any offense constituting “specified unlawful activity” (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

The term “specified unlawful activity” means and includes—

18 U.S.C. §1956 (a)(7)

(A) any act or activity constituting an offense listed in section 1961(1)<sup>2</sup> of this title...

and

(F) any act or activity constituting an offense involving a Federal health care offense.

### **INTRODUCTION**

4. The Federal Bureau of Investigation is a member of the Western New York Healthcare Fraud Task Force and was made aware of billings submitted to New York State Worker's Compensation (WC) Insurance carriers by GOSY's practice and subsequently discovered that GOSY had billed contrary to the policy and regulations of WC as WC was billed for office visits conducted at GOSY & Associates Pain Treatment & Neurology LLP while GOSY was actually out of the area. See Exhibit A.

### **NEW YORK STATE WORKERS' COMPENSATION**

5. NEW YORK STATE WORKERS' COMPENSATION (WC) requires a WC board authorized physician (GOSY) to follow specific regulations in order to obtain

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<sup>2</sup> Title 18, U.S.C § 1961 Definitions; As used in this chapter – (1) “racketeering activity” means . . . (B) any act which is indictable under any of the following . . . section 1343 (relating to wire fraud).

reimbursement when submitting health care claims to WC insurance companies. The regulations are outlined in WC Law, Section 13-b(c), and General Ground rule 11(A)(1)(2)(B)(2) of the New York State Workers' Compensation General Guidelines, which states as follows:

Section 13 b(b) establishes what medical professionals are authorized to treat WC patients in NYS. Section 13-b(b) further states under the active and personal supervision of an authorized physician medical care may be rendered by a registered nurse or other person trained in laboratory or diagnostic techniques within the scope of such person's specialized training and qualifications. This supervision shall be evidenced by signed records of instructions for treatment and signed records of the patient's condition and progress. Reports of such treatment and supervision shall be made by such physician to the chair on such forms and at such times as the chair may require.

## ARTICLE II. Ground rules for Physician Assistants (PA) and Nurse Practitioners (NP)

### A. Physician Supervision

Treatment must be rendered under the supervision of a physician who is authorized to treat worker's compensation patients.

Definition of supervision:

The term "supervise" within the meaning of this recommendation encompasses the Medicare supervision requirement (i.e., that where state law enables as in New York State):

- 1) The services of non-physicians must be rendered under the physician's direct supervision.
- 2) Direct personal supervision in the office setting does not mean that the physician must be present in the same room with a PA or NP. However, the physician must be present in the office suite and immediately available to provide assistance and direction throughout the time the PA or NP is performing the services. In this instance, reimbursement should be made at the normal physician payment level as if the physician had provided the service.

B. Billing for PA or NP service

The physician must render the bill for care, with the ensuing payment for the PA or NP service made directly to the physician employer.

6. New York State WC law states that a PA or NP cannot render service and submit claims unless supervised by a physician. Therefore, a medical physician like GOSY is required to be present in the office suite while the WC patients were being treated in order to receive reimbursement from WC. In order to verify that direct supervision took place, WC requires the supervising physician to sign a claim form known as a C-4, C-4.2, or EC-4 Narrative. All three forms can be used under varying circumstances, but all three forms require the physician signature. The section that is signed by the physician is located on page 2 of the form. This section requires the physician to sign off as one of the following two options:

- *I actively supervised the health care provider named below who provided these services.*
- *I provided the services listed above.*

The section, which requires the physician's signature, also states that the form is signed under penalty of perjury.

**INITIAL INVESTIGATION**

7. Travel history of GOSY was examined, dating back to January 1, 2010, which entailed reviewing credit card information, bank account details, airline records, and other sources. Each individual day that Dr. GOSY was out of town (not including travel

days) was provided to the New York State WC Board. The WC Board then compared the list of travel dates to the claims submitted by GOSY's office for reimbursement.

8. For the period of time January 1, 2010 – May 2014, WC reviewed and found claims that were submitted for days when GOSY was actually out of town. WC then identified 2,212 WC claims for the period of 2010 – 2013. In each of those claims (for payment) GOSY represented that he was the rendering provider or the supervising physician, engaged in direct supervision, when in actuality, GOSY was out of town. An analysis of claims by CPT/HCPCS code was conducted for the years 2010 through 2013, and using the total amount charged, ranging between \$39.64 and \$276.18, for each claim and then determining the average amount for these claims, the average was calculated at \$109.30 per claim. Applying this amount per claim to the 2,212 claims submitted by GOSY when he was out of town, the total amount of false claims totaled \$241,771.60.

### **FINANCIAL ANALYSIS**

9. Upon analysis of the three GOSY bank accounts<sup>3</sup> listed below FBI analysts found payments made to these accounts from WC for unlawfully submitted claims, conservatively totaling \$241,771.60, and were traceable to the defendant vehicles: the 2000 Ferrari and the 2005 Ford.

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<sup>3</sup> Identified by account holder, type of account and last two digits of account number.

**1. M&T Bank Account # 08**

On November 24, 1998, a commercial checking account #08 was opened at M&T Bank in the name of EUGENE GOSY MD – GOSY & Associates. GOSY and his bookkeeper are listed as having signatory authority over this account.

**2. M&T Bank Account # 37**

On June 14, 2004, a Select account #37 was opened at M&T Bank in the name of Dr. EUGENE J GOSY. GOSY is listed as having signatory authority over this account.

**3. M&T Bank Account # 80**

On September 14, 2005, a business checking account #80 was opened at M&T Bank in the name of GOSY & Associates Pain Treatment & Neurology. EUGENE GOSY is listed as having signatory authority over this account.

**M&T Bank Account #80**

10. Account #80, in the name of GOSY & Associates Pain Treatment & Neurology, was reviewed for the period 01/01/2010 through 02/28/2014. During the review period deposits totaling \$25,794,440.00 were made into Account #80. A sample of the deposits was analyzed and FBI analysts determined that approximately 82% of the deposits were primarily from insurance companies, including Blue Cross Blue Shield, Independent Health Association and Univera Healthcare, among others. It is conservatively estimated that over 50% of the 82% of insurance company deposits are from

Workers' Compensation insurance providers. Therefore, it is estimated that \$21,151,441.00 was received from insurance carriers, and half of these deposits, equal to \$10,575,720.00, were received from Workers' Compensation insurance carriers. The sum of health care fraud proceeds, \$241,771.60, is included in the total of those Workers' Compensation deposits made by the carriers. Remaining deposits into Account #80 appear to be primarily from individual patient co-payments and other miscellaneous deposits. During the review period, withdrawals from Account #80 exceeded \$26,000,000.00, which includes the \$10,926,137.02 to fund GOSY & Associates payroll through Paychex Payroll Company, and \$2,296,840.00 debited and deposited to M&T Bank account #08 in the name of EUGENE GOSY MD – GOSY & Associates.

#### **M & T Account #08**

11. During Account #08's review for the period 01/01/2010 through 02/28/2014 deposits totaling \$4,028,090.00 were made into the account, including deposits from GOSY & ASSOCIATES Payroll, with regular bi-weekly deposits in the amount of \$5,704.00 (for period 01/06/2010 – 12/05/2012) and \$6,715.00 (for period 12/19/2012 – 02/26/2014), totaling \$660,088.00. These deposits are believed to represent salary paid to GOSY. In addition, \$2,296,840.00 was deposited as transfers from account, Account #80, another GOSY business account. The remainder of deposits, \$1,731,250.00, were from various

miscellaneous sources including advances from GOSY's M&T Bank personal Line of Credit (LOC)<sup>4</sup>.

12. GOSY also used Account #08 as a personal checking account. During the review period, 50 checks made payable to a family member, each in the amount of \$14,833.34.00, totaling \$741,667.00, were written from Account #08. In addition, 36 checks, in various amounts, totaling \$46,500.00, were written to a personal acquaintance of GOSY, and 51 'WEB' payments, totaling \$564,123.00 to GOSY's personal LOC were made during the review period.

**Account #08 Used in Purchase of the 2005 FORD GT COUPE**

13. Account #08 was partially funded by account #80 by the deposit of \$2,296,840.00 as mentioned above. On May 7, 2010, an outgoing Fedwire in the amount of \$102,834.50 was transmitted, from Account #08, to Las Vegas Motors Cars, LLC to purchase the 2005 Ford GT Coupe bearing Vehicle Identification Number (VIN) 1FAFP90S95Y401945, which was subsequently titled and registered to GOSY. On May 6, 2010, the day before the wire to purchase the 2005 Ford was sent, and with a balance of \$11,324.27 in account #08, an advance from GOSY's personal LOC was received in the amount of \$101,334.50.

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<sup>4</sup> A Line of Credit was made available from M & T and allowed GOSY to borrow from it as needed up to an amount of \$250,000.00.

14. In addition to regular monthly payments made on GOSY's personal LOC there were two substantial payments made on GOSY's LOC from account #08, the first substantial payment was made on November 28, 2011, in the amount of \$100,000.00, and the second substantial payment was made on December 30, 2011, in the amount of \$50,000.00.

15. While GOSY was out of town during the time periods between 5/7/10 (when the wire was sent to purchase the 2005 Ford) through 12/30/11 (the date of the second substantial payment made on GOSY's personal LOC from Account #08) (See Exhibit A), analysis shows that 1,278 fraudulent WC claims were submitted by GOSY. Applying the average WC claim amount of \$109.30.00 to the 1,278 claims submitted during the time period referenced above, the fraudulent claims paid during this period equal \$139,685.40. This amount represents well over the amount of the advance of GOSY's personal LOC used to pay for the 2005 Ford through Account #08 "repayment" to the LOC.

**Account #37**

16. Account #37 was reviewed for the period 12/13/2011 through 03/12/2014, and is a GOSY personal checking account. During the review period deposits totaling \$604,894.23 were made into the account, funded primarily with deposits again from GOSY & ASSOCIATES Payroll with regular bi-weekly payroll deposits in the amount of \$7,986.13 (for period 12/21/2011 – 12/05/2012) and \$7,989.00 (for the period of 12/19/12 – 03/12/14), totaling \$482,955.88. These payments appear to be part of the salary that GOSY is receiving from his medical practice, GOSY & Associates. In addition, on 4/15/2013,

\$13,000.00 was transferred to Account #37 from Account #80. The remaining deposits are from various miscellaneous sources.

**Account #37 Used in the Purchase of 2000 FERRARI 360 MODENA F1**

17. On November 28, 2006, GOSY entered into a consumer loan contract number 362770045 to purchase a used 2000 Ferrari 360 Modena F1, with VIN: ZFFYU51AXY0121286, which was then titled and registered to EUGENE GOSY. The purchase price of the vehicle was \$126,000.00 and GOSY made a down payment of \$36,000.00, with the remaining \$90,000.00 financed through Woodside Credit/Bank of the West. Monthly payments were set at \$1,341.98. A review of the Bank of the West records show that the first payment, due December 28, 2006 was made with check #508, dated December 12, 2006, from Account #37 in the amount of \$1,341.98. Check #540, dated January 11, 2007, from Account #37 in the amount of \$1,366.98 was shown to make the second payment on the loan. Account #37 records for the review period (12/13/2011 – 03/12/2014) reflect 27 'WEB PMT BANK OF THE WEST CONSUM' payments, each in the amount of \$1,341.98, totaling \$36,233.46.

18. GOSY was out of town during periods of time from January 1, 2013 through August 28, 2013 (See Exhibit A) and during these periods, 504 fraudulent WC claims were submitted. Applying the average WC claim amount of \$109.30 to the 504 claims submitted, during the time period referenced above, the fraudulent claims submitted during this period equal \$55,087.20. This amount represents ample funds having been received from

fraudulent WC Claims to make payments on the 2000 Ferrari. The purchase of this vehicle is therefore traceable to the WC fraud proceeds of \$36,233.46.

19. Since the investigation up to this point has shown that a portion of GOSY's unlawful health care proceeds, totaling \$36,233.46, were used in purchasing the 2000 Ferrari by payments to Bank of the West, the sum of \$36,233.46 will be deducted from the net sale proceeds derived from any forfeiture or interlocutory sale of the 2000 Ferrari and forfeited pursuant to 18 U.S.C. §§ 981(a)(1)(C). Any remaining net funds may be returned to GOSY.

**FOR A CAUSE OF ACTION AS TO THE 2000 FERRARI**  
18 U.S.C. § 981(a)(1)(C)

20. The plaintiff re-alleges paragraphs 1 through 19 as fully set forth and incorporated herein. Proceeds traceable to violations of 18 U.S.C. §§ 1035 (False Statements Relating to Health Care Fraud Matters), 1347 (Health Care Fraud), and 1343 (Wire Fraud), are subject to forfeiture. Since the 2000 Ferrari was traceable to monies obtained by the violations referenced above, the vehicle is subject to forfeiture.

**FOR A FIRST CAUSE OF ACTION AS TO THE 2005 FORD**  
18 U.S.C. § 981(a)(1)(C)

21. The plaintiff re-alleges paragraphs 1 through 19 as fully set forth and incorporated herein. Proceeds traceable to violations of 18 U.S.C. §§ 1035 (False Statements Relating to Health Care Fraud Matters), 1347 (Health Care Fraud), and 1343

(Wire Fraud), are subject to forfeiture. Since the 2005 Ford was traceable to monies obtained by the violations referenced above, the vehicle is subject to forfeiture.

**FOR A SECOND CAUSE OF ACTION AS TO THE 2005 FORD**  
18 U.S.C. § 981(a)(1)(A)

22. The plaintiff re-alleges paragraphs 1 through 19 as fully set forth and incorporated herein. Any property involved in a transaction or attempted transaction in violation of section 1957 of this title, or traceable to such property is subject to forfeiture. Since the 2005 FORD was involved in transactions representing proceeds of unlawful activity, as described in paragraphs 1-19, and most particularly described at paragraph 14, with monies totaling over \$150,000.00 in two transactions, the vehicle is subject to forfeiture.

**SEIZURE of the 2000 FERRARI 360 MODENA F1 and 2005 FORD GT COUPE**

23. On or about September 11, 2014, a Search and Seizure Warrant (for GOSY & Associates Pain & Neurology Treatment Center located at 100 College Parkway, Suite 220, Williamsville, NY) and two Seizure Warrants (for a 2005 Ford GT Coupe, VIN: 1FAFP90S95Y401945, titled and registered to EUGENE GOSY and a 2000 Ferrari 360 F1, VIN: ZFFYU51AXY0121286, titled to EUGENE GOSY) were issued by the Honorable Jeremiah J. McCarthy, United States Magistrate Judge for violations relating to 18 U.S.C. §§ 1035 (False Statements relating to Health Care Fraud Matters) and 1347 (Health Care Fraud).

24. On or about September 12, 2014, the Search & Seizure Warrant, and the Seizure Warrant for the 2000 Ferrari issued by the Court were successfully executed; however, agents were unable to locate the 2005 Ford GT Coupe in the Western District of New York and had no knowledge of the vehicle leaving the district. That seizure warrant was not executed. During a subsequent interview with GOSY, GOSY stated that the 2005 Ford was located in Warrensville Heights, OH. GOSY signed a "Consent to Seize" document regarding the 2005 Ford where it was subsequently seized by law enforcement in Ohio on or about September 22, 2014.

### **INITIATION OF JUDICIAL ACTION**

25. The Federal Bureau of Investigation sent notification of the vehicle seizures to Dr. GOSY and to his attorney, Joel L. Daniels, Esq. On or about October 17, 2014, Dr. GOSY submitted a claim for the defendant 2000 Ferrari and on or about November 6, 2014, submitted a claim for the defendant 2005 Ford to the Federal Bureau of Investigation. The claims terminated the administrative forfeiture proceedings against the seized defendant vehicles in favor of civil judicial forfeiture proceedings.

### **CONCLUSION AND REQUEST FOR RELIEF**

26. Based on all the foregoing facts, the circumstances surrounding these facts, and the experience and training of the agents involved, there is cause to believe by a preponderance of the evidence that the two defendant vehicles represent property that is traceable to proceeds of specified unlawful activity and are subject to forfeiture to the United States of America pursuant to 18 U.S.C. § 981(a)(1)(A) and/or § 981(a)(1)(C).

WHEREFORE, the United States of America respectfully requests:

- (1) that an arrest warrant in rem be issued for the arrest of the defendant vehicles;
- (2) that all persons having any interest therein be cited to appear herein and show cause why the forfeiture should not be decreed;
- (3) that a judgment be entered declaring the defendant vehicles condemned and forfeited to the United States of America for disposition in accordance with the law;
- (4) that the costs of this suit be paid to and recovered by the United States of America; and
- (5) that the Court grant such other and further relief as deemed just and proper.

DATED: Buffalo, New York, January 14, 2015.

WILLIAM J. HOCHUL, JR.  
UNITED STATES ATTORNEY

BY: s/Richard D. Kaufman  
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STATE OF NEW YORK    )  
COUNTY OF ERIE        )   ss  
CITY OF BUFFALO        )

I, Thomas W. Provost, being duly sworn, depose and say:

I am a Special Agent currently assigned to the Federal Bureau of Investigation. I was assigned to the Federal Bureau of Investigation's files on the investigation and seizure of the 2005 Ford GT Coupe and the 2000 Ferrari 360 Modena F1 seized from Dr. Eugene Gosy. The facts alleged in the Verified Complaint for Forfeiture are true to the best of my knowledge and belief and were obtained during the course of the investigation of the defendant vehicle from the official files of the Federal Bureau of Investigation and provided to the officials of the United States Department of Justice, United States Attorney's Office.

s/THOMAS W. PROVOST  
SPECIAL AGENT  
FEDERAL BUREAU OF INVESTIGATION

Subscribed and sworn to before  
me this 14<sup>th</sup> day of January 2015.

s/Patricia L. Young

Notary Public

PATRICIA L. YOUNG  
Notary Public, State of New York  
Qualified in Niagara County  
My Commission Expires: 11-13-2017