



Fraud fighters are convincing courts view insurance fraud as a serious crime when making rulings. Several courts thus broadly applied state and federal laws to combat this epidemic in recent months.

Whether involving auto claims, medical fraud or other violations, recent state and federal cases are strengthening — though in some cases limiting — the fraud fight.

Luis v. United States, 136 S.Ct. 1083 (2016)

(http://www.supremecourt.gov/opinions/15pdf/14-419_nmip.pdf)

Issue: May the federal government freeze assets not connected to a suspected fraud or crime?

Petitioner Luis was charged with Medicare fraud under federal and state laws. The federal government froze his assets as “fruits of the poisoned tree” arising from his alleged fraud. Luis objected to the seizures. He claimed the government denied him his Sixth Amendment right to representation by legal counsel because he could not use his financial assets to hire an attorney.

Even if the government convicted Luis, his legitimate assets and income from non-criminal activities were wrongfully seized, he contended. That seizure also denied him his constitutional right to use untainted assets to hire legal counsel.

Decision: Restraining his “legitimate,” untainted assets needed to retain counsel violates his Sixth Amendment rights. A court majority believes the right to legal counsel of one’s choice supersedes the government’s right to seize assets. This is true, even if it appears before conviction that most of his assets were gained fraudulently.

The court rationalized it should be possible to review financial records and determine which assets are “clean,” and which stem from potential fraud.

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Importance: Any decision by the U.S. Supreme Court has wide impact on lower federal courts, and state courts reviewing similar issues. All Americans should be concerned about overreaching governmental authority and improper seizing of assets. This decision makes it harder for government agencies and law enforcement to identify “legitimate” versus fraudulently obtained assets.

The question is whether federal and state courts will apply this decision beyond Medicare fraud. Other federal and state statutes often allow seizing assets if a *prima facie* fraud case is established. This prevents suspects from liquidating assets before a criminal conviction.

This decision clearly places the responsibility on the government agency to properly determine untainted versus fraudulently obtained assets before seizing.

Allstate v. Rehab Alliance of Texas (Supreme Court of Texas)

(http://www.insurancefraud.org/downloads/Amicus_Curiae_Brief.pdf)

Issue: Allowing medical providers to hide false claims amid treatment for crash injuries will encourage scams and could discourage insurers from writing business in Texas, the Coalition contends in an *amicus* brief.

Allstate alleges Houston-based Rehab Alliance recruited legitimate crash victims for false injury treatment. The clinic upcoded treatment, billed doctor rates for work by nurses, and performed unneeded treatment such as MRIs, the insurer asserts. Patients also were secretly told they weren't financially liable for uninsured treatment, Allstate says.

“Allowing camouflaged injury claims burdens insurers with higher costs that raise premiums.”

The clinic camouflaged false treatment claims involving legitimate crash injuries. Unlike staged wrecks with fake injuries, this sophisticated disguise makes it daunting to clearly separate bogus from necessary treatment claims.

The insurer paid 107 claims and sued to recover after discovering evidence of fraud. A lower court granted Rehab Alliance summary judgement. Allstate appealed to the Texas Supreme Court.

Decision: Pending.

Importance: Insurers need access to civil courts and the ability to sue fraudsters. Allowing camouflaged injury claims burdens insurers with higher costs that raise premiums. Medical care and the ability of insurers to promptly settle claims will suffer as well.

Patel v. Allstate New Jersey Ins. Co. (3rd Cir. 2016)

(<http://www2.ca3.uscourts.gov/opinarch/152513np.pdf>)

Issue: Does plaintiff have standing to allege the New Jersey Attorney General and the state Office of the Insurance Fraud Prosecutor improperly outsourced criminal investigations to insurer Special Investigation Units?

Insurer SIUs assist the state Attorney General and insurance department in investigating insurance fraud. This joint effort combines public- and private- sector resources. Insurers often have more resources to assist the state in combating fraud.

Decision: In a limited decision, the court ruled Dr. Patel has no legal standing to bring the case. The court did not directly address whether mixing public- and private-sector investigations is proper in New Jersey.

Patel could not prove he sustained any injury because the state never prosecuted him for insurance fraud. Patel argued the mere combining of a government function with a private insurance company violated his constitutional rights. The court didn't address this issue, or determine if these joint efforts were proper even if criminal charges were filed.

“New Jersey is a model of public-private partnership in investigating and prosecuting insurance fraud.”

Importance: It is regrettable the court did not address the key issue. New Jersey is a model of public-private partnership in investigating and prosecuting insurance fraud.

The court gave no clear direction whether such joint efforts pass constitutional muster in New Jersey. The Coalition supports joint anti-fraud efforts at all levels — within governmental agencies, and between governmental agencies and private entities.

Iowa v. Rimmer, 2016 WL 1165751 (2016) (<http://law.justia.com/cases/iowa/supreme-court/2016/131397.html>)

Issue: May persons from Wisconsin and Illinois be charged in Iowa for running a staged-crash ring without even entering the state of Iowa?

The defendants staged vehicle crashes involving bogus injury treatments. The scheme took place in Chicago. The fraudsters didn't know the insurer's claims office in Davenport, Iowa handled those claims.

Criminal charges were filed in Iowa after communications between the Iowa claims office and local prosecutor. The defendants moved to dismiss. They said they were not subject to Iowa jurisdiction. The crashes happened in Illinois, they did not reside in Iowa, and did not commit fraud in that state.

Decision: In a broad decision, the Iowa Supreme Court said “persons engaged in multi-state insurance fraud assume the risk of prosecution wherever victims are located. A contrary holding impedes the ability to prosecute and deter multi-state insurance fraud schemes...”

“With the internet’s rise, fraud no longer is limited to a geographic area or region.”

The court addressed the rise of the internet and multi-state (and even multi-national) communications as an increasing part of society.

Where the defendants live was not material. Nor was the location of the underlying accidents, if the scheme was connected to Iowa in any way. The claims were adjusted in Iowa. A sufficient nexus thus existed between Iowa and the fraudsters to sustain criminal charges in Iowa.

Importance: This is the type of broad, far-reaching decision the Coalition urges state and federal courts to take. With the internet's rise, fraud no longer is limited to a geographic area or region. Decisions such as this allow prosecuting fraud on a much wider spectrum than before — in keeping with changing technology.

The Coalition long has urged courts to take a longrange view of insurance fraud as it as it changes with new technology. This view best ensures laws are updated and courts apply the law in alignment with evolving society.

New Jersey v. Goodwin, 224 N.J. 102 (N.J. 2016) (<http://law.justia.com/cases/new-jersey/supreme-court/2016/a-20-14.html>)

Issue: What constitutes a false statement, and does acquittal in a criminal action bar a subsequent insurance-fraud action?

Facts: The insured owned an SUV her boyfriend burned so she could falsely collect insurance money. Criminal charges were brought against the boyfriend in a separate case. He was acquitted. The boyfriend next was charged with insurance fraud. He allegedly assisted his girlfriend in making the false claim with her insurer.

The boyfriend argued the insurer did not rely on his statements, even if they were false. That he was acquitted on the criminal charges barred subsequent prosecution under the state's insurance-fraud statute, he contended.

“The intentional making of false statements to an insurer will sustain a fraud conviction.”

Decision: The New Jersey court recognized that the insurer knew from the start the boyfriend lied. The insurer never relied on his statements in pursuing the claim.

Still, any false statements intended to influence an insurer to pay a false claim can support a fraud conviction. The boyfriend's acquittal of burning the vehicle was a separate charge. He still can later be charged and convicted of insurance fraud under the state statute.

Importance: Both rulings broadly support the battle against insurance fraud. Prosecutors and courts are empowered to use state fraud statutes for maximum impact. If other states adopt these expansive views, the requirement of insurers to prove they relied upon false statements would no longer exist.

The intentional making of false statements to an insurer will sustain a fraud conviction. This broad ruling also buttresses the Coalition's position for broad court interpretation of statutes to support the fraud fight.

About the author: Matthew J. Smith, Esq. is founder and president of Smith, Rolfes & Skavdahl Company, L.P.A. He has practiced for nearly 30 years in the field of insurance law, defending insurers and assisting with insurance-fraud investigations. Smith is a past president of the National Society of Professional Insurance Investigators, current member of IASIU, and legal advisor to the Coalition Against Insurance Fraud.

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