Enforcement Under the NJ Insurance Fraud Prevention Act Will Be Swift Without Jury Trial

Insurers now have a quicker, more effective enforcement tool to aid them in the war on insurance fraud in New Jersey: An appellate court determined there is no right to a jury trial under the Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 et. seq. (the Act). The Act is expressly intended to "confront aggressively the problem of insurance fraud," causing the appellate court to conclude the Legislature had a goal of creating "a swift and cost-effective remedy" of detecting and eliminating insurance fraud. Eliminating jury trials clearly speeds up lawsuits, reduces costs and wipes out the uncertainty of jury verdicts.


The Act is the primary weapon in the arsenal against insurance fraud and was used by the plaintiff carriers in the Lajara case. The Act proscribes eight (8) categories of insurance fraud:

- Presentation of an insurance claim knowing the claim contains any false or misleading information pertinent to the claim.
- Preparation of any false insurance claim with the intention of presenting it to an insurance carrier.
- Concealing an event or fact that affects a person's right to insurance coverage.
- Presenting false evidence for purposes of obtaining insurance.
- Conspiring to violate the Act.
- Profiting from violations of the Act, even indirectly.
- Allowing facilities to be used for violations of the Act.
- Unlawful prosecution of personal injury protection benefits.

At the outset, the plaintiff insurance companies demanded a jury trial, as did some of the defendants. Thereafter, the carriers filed a motion to
withdraw the jury demand. Not surprisingly, the defendants vigorously opposed the application. The trial court agreed with the carriers, striking the jury demand. The appellate court granted defendants leave to appeal the ruling, which the appellate division affirmed.

In a detailed analysis, the court concluded that, absent explicit legislative approval, the courts will not imply a right to a jury trial under the Act. The Act contains no express right to a jury trial. Moreover, the court took special note that the Commission of Banking and Insurance intervened in the lawsuit and joined the motion to strike the jury demand. The court favorably cited the fact that, under the Act, the commissioner, without a jury, can impose restitution orders and levy penalties.

The appellate court spelled out the striking differences between what is required to prove a claim for insurance fraud versus a claim for common law fraud. Specifically, proof of insurance fraud does not require a carrier to prove the defendant intended the carrier to rely on a false statement. The Act also does not require the carrier to prove it actually did rely on the false statement. Given these differences between insurance fraud and common law fraud (which does require those elements), the court noted the Act is more akin to equitable fraud. And in matters of equity in New Jersey, jury trials are typically disallowed.

The court also pointed to the fact that in "numerous statutes," the Legislature has permitted jury trials but failed to do so under the Act. Indeed, even when the Act was amended in 1997, no right to trial by jury was added. The court noted, "[I]n the absence of an express provision, our courts have consistently denied a right to a jury trial for newly created statutory causes of action." The Act is uniquely a creature of statute, and the "Constitution does not guarantee a trial by jury for a statutory claim that was unknown to the common law." The final nail in the no-jury-trial coffin was the court's noting that the Act expressly leaves to the trial judge the determination as to whether there has been a "pattern" of insurance fraud, which would trigger enhanced penalties.

What does this mean? Before this ruling, New Jersey had one of the most powerful insurance fraud-fighting tools in the country. Now, it may possess the most powerful one. Unlike with common law fraud, under the Act, an insurance carrier does not have to prove the claimant intended the carrier to rely on the false submission. Moreover, the carrier does not have to prove it actually did rely on the false submission. The elimination of reliance is a huge tactical advantage to carriers. Another tactical advantage is the burden of proof. The standard of proof of common law fraud is a high one: clear and convincing evidence. Under the Act, the standard of proof is a pedestrian "preponderance of the evidence," meaning: more likely than not. Penalties can be severe: The commissioner may impose sanctions of $5,000 for the first offense, $10,000 for the second and $15,000 for every one thereafter. An insurance company damaged by a violation of the Act may sue and recover treble damages if it can show five or more violations. The court must award treble damages and must award attorneys' fees. In a nutshell, the Act already was a powerful fraud-busting tool.
The jury trial was the final governor on a carrier’s ability to swiftly and more inexpensively combat fraud. As a result of this decision, combating insurance fraud should be quicker and less expensive for carriers in New Jersey.

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