

To: New Jersey Law Revision Commission
From: Samuel M. Silver, Counsel
Re: Definition of Material in the Insurance Fraud Statute (N.J.S. 2C:21-4.6).
Date: October 08, 2018

MEMORANDUM

Background

On September 20, 2018, the Commission unanimously approved the release of a Final Report regarding the “Definition of Material in the Insurance Fraud Statute (N.J.S. 2C:21-4.6).” To correct a Staff oversight, the Commission is now being asked to consider a “Revised Draft Final Report” on this subject.

In response to comments from stakeholders, the Commission was asked to consider removing the phrase, “...that it would not otherwise have tendered [issued or renewed] if inaccurate facts had not been provided by the claimant [applicant]” from the proposed statutory definition.¹

During the September 20, 2018 meeting, Commissioner Bell observed that the language contained in paragraph one (1) of the proposed statute did not contain the same language found in paragraphs (2) and (3). To make the language consistent, and parallel, Commissioner Bell suggested that the phrase, “[...] that it would not otherwise have tendered [issued or renewed...]” be added to the latter portion of paragraph (1).

At the time of the meeting, focused solely on removing the “inaccurate facts” clause from the proposed language, I did not recall that removing the phrase “**...that it would not otherwise have tendered [issued or renewed]**” was also part of the stakeholder’s request. Although this language had been removed from the first paragraph, it mistakenly remained in paragraphs (2) and (3).

On September 26, 2018, during the preparation of the Final Report I realized my error. I redrafted the language in paragraphs (2) and (3) of the Appendix to comply with the request of the stakeholders, and am asking for the Commission’s consideration of the revision to make sure that it meets with your approval before releasing a Final Report.

¹ See Draft Final Report to Define “Material” in the Insurance Fraud Statute, N.J.S. 2C:21-4.6 *7(Sept. 20, 2018).

Appendix

The full text of the proposed language to be added to 2C:21-4.5 is as follows:

As used in sections 73 and 74 of P.L.2003, c.89 (C.2C:21-4.6 and C.2C:21-4.7), unless the context otherwise requires, the following words and terms shall have the following meanings:

[...]

A statement of fact is “material”

(1) for purposes of 2C:21-4.6(a)(1) if it could reasonably affect the decision of an insurance company to tender the payment of a claim, reimbursement or other benefit pursuant to an insurance policy or from any insurance company or the “Unsatisfied Claim and Judgment Fund Law,” P.L. 1952, c174 (C.39:6-61 et seq.); or,

(2) for purposes of 2C:21-4.6(a)(2) if it could reasonably affect the decision of an insurance company to issue, or renew, an insurance policy ~~that it would not otherwise issue, or renew;~~ or,

(3) for purposes of 2C:21-4.6(a)(3) if it could reasonably affect the decision of an insurance company to tender payment in accordance with the terms of an insurance policy or premium finance transaction ~~that it would not otherwise have tendered;~~ or,

(4) for purposes of 2C:21-4.6(a)(4) if set forth in an affidavit, certification, record or other document that could reasonably affect the decision of an insurance company with respect to any insurance or premium finance transaction.