



NEW JERSEY LAW REVISION COMMISSION

Tentative Report to Define “Material” in the Insurance Fraud Statute N.J.S. 2C:21-4.6

June 21, 2018

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S.* 1:12A-8.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **August 20, 2018**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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“Love all, trust a few, do wrong to none.”¹

- William Shakespeare

Executive Summary

In the case of *State v. Goodwin*² the New Jersey Supreme Court considered whether an insurance carrier was required to rely, to its detriment, upon a defendant’s material misrepresentation of fact in order for criminal liability to attach under the current insurance fraud statute. The Court also addressed whether false statements of material fact that had the potential to influence a decision-maker in determining whether to cover a claim were sufficient to uphold an insurance fraud conviction. To answer these questions, the Court focused on the language of N.J.S. 2C:21-4.6(a), with emphasis on defining the phrase “a false... statement of material fact.”³

The *Goodwin* Court made two findings concerning the New Jersey insurance fraud statute. The Court found that a “person violates the insurance fraud statute, N.J.S.A. 2C:21–4.6(a), even if he does not succeed in duping an insurance carrier into paying a fraudulent claim.”⁴ In addition, the Court held that, “[a] false statement of material fact is one that has the capacity to influence a decision-maker in determining whether to cover a claim. If the falsehood is discovered during an investigation but before payment of the claim, a defendant is not relieved of criminal responsibility.”⁵

The term “material” is not defined in New Jersey’s insurance fraud statute.⁶ After a review of New Jersey’s perjury statute⁷, the model jury charge⁸, the federal false-statements statute⁹, and dictionaries¹⁰ the Supreme Court identified the definition of the word “material” in the context of the insurance fraud statute.

Ultimately, the Supreme Court determined that the term “material,” referred to a fact which could have reasonably affected the decision by an insurance company in providing insurance or decisions regarding a claim and does not require actual reliance.¹¹ The term “material,” presently undefined in the insurance fraud context, could benefit from a clear legislative definition.

¹ William Shakespeare, *All’s Well that Ends Well*, Act I, Scene I (1623).

² *State v. Goodwin*, 224 N.J. 102 (2016).

³ *Id.* at 110.

⁴ *Id.* at 104.

⁵ *Id.* at 105.

⁶ *Id.* at 112.

⁷ *Id.*

⁸ *Id.* at 115.

⁹ *Id.* at 113.

¹⁰ *Id.*

¹¹ *Id.* at 115.

Background

Robert Goodwin, the defendant, began dating “Stacey”¹² in 2004.¹³ Subsequently, the two began living together in a third-floor apartment in Newark, New Jersey.¹⁴ The defendant, unbeknownst to Stacey, began surreptitiously dating “Linda” in 2008.¹⁵ In April 2009, despite having only a learner’s permit, Stacey put a down-payment on an SUV and financed the balance with a loan that was co-signed by the defendant.¹⁶ Insurance coverage for the vehicle was maintained by Progressive Insurance Company (“Progressive”). The defendant was the primary operator of the vehicle.¹⁷

Following an argument with Stacey, the defendant spent an evening with Linda.¹⁸ To avoid detection, the defendant parked the vehicle around the corner from the apartment he maintained with Stacey. The next morning the defendant and Linda walked to the SUV to find it had been destroyed by fire.¹⁹ Defendant returned his apartment to advise Stacey about the status of their vehicle.²⁰ Defendant advised Stacey to call the police to report that the vehicle had been stolen and “burnt” up.²¹ Later that morning, both the defendant and the Stacey met with the police and separately completed sworn statements regarding the incident.²² Based on the sworn statements of both the defendant and Stacey that they had not moved the car the evening before the incident, the investigating detective concluded that the car had been stolen.²³

In addition to filing an incident report, Stacey filed a theft and fire claim with Progressive.²⁴ Both the defendant and Stacey were questioned under oath by a Progressive representative.²⁵ The defendant, admitted that he lied about where he parked the SUV on the evening of the incident so that Stacey would not learn that he had been cheating on her.²⁶ The defendant, however, maintained that he did not set the vehicle on fire.²⁷

Progressive denied the defendant’s insurance claim.²⁸ Progressive’s investigator based the denial of the claim on the “... misrepresentation of the total facts of what happened” noting

¹² The Court changed the name of both the defendant’s girlfriend and the name of his paramour to protect their privacy.

¹³ *State v. Goodwin*, 224 N.J. at 105.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 106.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 106.

²² *Id.* at 107.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

further "... there was no way anything could be verified."²⁹ The defendant's lie that the SUV was stolen, according to Progressive, infected the credibility of the entire claim including his denials that he was not involved in the arson.³⁰

Defendant was ultimately charged with second-degree aggravated arson, third-degree attempted theft by deception, and second-degree insurance fraud.³¹ After a jury trial, the defendant was convicted of the insurance fraud.³² The jury, however, found the defendant not guilty of arson and attempted theft.³³ The defendant was sentenced to a seven-year state prison term and ordered to pay fines and penalties.³⁴ He appealed this conviction.

The panel found that the defendant had been "wrongfully convicted" because the jury charge "did not actually reflect the facts and the issues."³⁵ The Appellate Division held that actual reliance upon the defendant's material misrepresentation was required to support a finding of guilt.³⁶ The Appellate Division maintained and that "defendant was not guilty of insurance fraud on the theft claim because Progressive knew that the SUV was not stolen and did not pay the claim. On the fire-damage claim, it determined that defendant's assertion that he did not set fire to the SUV was not a false statement unless the jury convicted him of the arson or theft charges."³⁷ In an unpublished opinion, the Appellate Division reversed the defendant's conviction.³⁸

The State's petition for certification was granted by the New Jersey Supreme Court.³⁹

Analysis

The New Jersey Supreme Court focused on two issues. First, whether a defendant could be convicted of insurance fraud, pursuant to N.J.S. 2C:21-4.6(a), if his statement was capable of influencing a reasonable examiner to pay a claim even though the carrier ultimately denies the claim.⁴⁰ Next, it focused on the meaning of the term "material" in the context of the statute. The Court began its analysis with a review of the insurance fraud statute, N.J.S. 2C:21-4.6(a), which reads, in relevant part:⁴¹

A person is guilty of the crime of insurance fraud if that person knowingly makes, or causes to be made, a false, fictitious, fraudulent, or misleading statement of

²⁹ *Id.*

³⁰ *Id.* at 117.

³¹ *Id.* at 104.

³² *Id.*

³³ *Id.* at 108.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 109.

⁴⁰ *Id.* at 111.

⁴¹ N.J.S. 2C:21-4.6(a).

material fact in, or omits a **material fact** from, or causes a **material fact** to be omitted from, any record bill, claim or other document, in writing, electronically, orally or in any other form, that a person attempts to submit, submits, causes to be submitted, or attempts to cause to be submitted as part of, in support of or opposition to or in connection with: (1) a claim for payment, reimbursement or other benefit pursuant to an insurance policy, or from an insurance company.

[(Emphasis added).]

Conspicuously absent from the insurance fraud statute is any language that suggests that criminal liability is predicated upon a false statement and the suffering of an actual loss by the insurance company. The Court held, “[t]he statute contains no provisions stating that the carrier must rely on the misrepresentation to its detriment for criminal liability to attach.”⁴² Assuming arguendo that this was a requirement, the Court reasoned that, “investigations spurred by false statements necessarily result in the expenditure of a carrier’s resources” which amount to an actual loss.⁴³ The Court then turned its attention to the definition of the term “material.”

In interpreting the statute, the Court determined that a finding of guilt is grounded in a knowing submission of a false or fraudulent statement of material fact.⁴⁴ The term “material,” however, is not defined in N.J.S. 2C:21-4.6, nor is this term defined in the in the definition section of N.J.S. 2C:21-4.5. Given the absence of a definition, the *Goodwin* Court stated that it was not surprised the parties contested the meaning “material fact” as used in the statute.⁴⁵ To ascertain the definition of material, the Court examined the term as it is used in multiple sources.

Dictionary Definition

Colloquially, the word “material” is defined as, “important enough to affect the outcome of a case, the validity of a legal instrument.”⁴⁶ The term “material” is also defined legally. As defined by Black’s Law Dictionary “material” means, “[o]f such a nature of the item would affect a person’s decision-making.”⁴⁷ With a common understanding of the generally accepted meaning of the term, “material” it is necessary to analyze the word in the context of the legal landscape.

New Jersey Perjury Statute

To ascertain the appropriate definition of the word “material,” the Court reviewed an analogous New Jersey statute in which the term had been defined by the Legislature.⁴⁸ The New Jersey perjury statute sets forth a definition for the term materiality.⁴⁹ In subsection b, the statute reads:

⁴² *State v. Goodwin*, 224 N.J. at 114.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ WEBSTER’S NEW WORLD COLLEGE DICTIONARY 900 (5th ed. 2014).

⁴⁷ BLACK’S LAW DICTIONARY 1124 (10th ed. 2014).

⁴⁸ N.J.S. 2C:28-1.

⁴⁹ N.J.S. 2C:28-1(b).

Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding or the disposition of the matter. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether the falsification is material is a question of law.

The Court made it clear that, “[t]o be material, a false statement does not have to actually corrupt the outcome of a proceeding; it is enough if the false statement has **the potential** to affect[] the course or outcome of the proceeding.”⁵⁰ The focus of “materiality,” according to the Court is on the “**potential effect**” of the false testimony and not necessarily on the outcome.⁵¹ A review of common-law perjury demonstrated that the focus is on the *potential* effect, not that actual effect on the outcome of the proceeding.⁵² Finally, the 1971 comments to the perjury statute confirmed to the Court that “materiality” is the equivalent to “capable of influencing” rule found in many judicial opinions.⁵³ The state, statutory definition of “material” was then compared with the federal statute with the same term.

Federal False-Statements Statute

It is a crime for a person to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation to a federal officer or body.⁵⁴ Under the federal false-statements statute, a material misrepresentation is one that “has a natural tendency to influence, or was capable of influencing, the decision of” the decision-making body to which it was addressed.”⁵⁵

The New Jersey use of the term “material” is consistent with the federal usage of this term. Both statutes appear to derive their origin from the definitions of material found in both legal and colloquial lexicons.⁵⁶

Model Jury Charge (Criminal)

The term “material” appears in the New Jersey Model Jury Charge entitled, “Insurance Fraud: Making a False Statement (Claims).” When this issue arises in the context of a criminal case, the jury will be read the standard jury charge. The jury charge provides that a misstatement is material if,

...when the statement was made, a reasonable insurer would have considered the misrepresented fact relevant to its concerns and important in determining its course of action. In other words, *the statement of fact is material if it could have reasonably affected the decision by an insurance company to provide insurance*

⁵⁰ *State v. Goodwin*, 224 N.J. at 112 (Emphasis added).

⁵¹ *Id.* citing *State v. Neal*, 361 N.J. Super. 522, 533 (App. Div. 2003).

⁵² *Id.* at 113.

⁵³ *Id.*

⁵⁴ 18 U.S.C.A. § 1001(a)(2).

⁵⁵ *State v. Goodwin*, 224 N.J. at 113; citing *Kungys v. United States*, 485 U.S. 759, 770 (1988)(quoting *Weinstock v. United States*, 231 F.2d 699, 701 (D.C. Cir. 1956).

⁵⁶ See dictionary definition *supra*.

*coverage to a claimant or the decision to provide any benefit pursuant to an insurance policy or the decision to provide reimbursement or the decision to pay a claim.*⁵⁷

The non-emphasized language comes from an insurance fraud case in the civil context. In *State v. Goodwin*, the Court opined that, “the emphasized portion [of the model jury charge] is a more precise explication of the term “material” for purposes of this statute...”⁵⁸ The *Goodwin* Court also made it clear to future litigants that the emphasized section was should be solely used to avoid any confusion and to focus the jury’s task as a finder of fact.”⁵⁹

A limited definition of material contradicts legislative intent to aggressively confront the insurance fraud problem, and punish individuals who knowingly engage or assist others to commit fraud in the insurance context.⁶⁰ It is therefore suggested that a statutory definition of the term “material” be included in the New Jersey Insurance Fraud Statutes.

Conclusion

The current insurance fraud statute under N.J.S. 2C:21-4.6 lacks a definition for the word “material.” As a criminal statute, the insurance fraud provision would benefit from clarity. Thus, the statute, and those who read it, could benefit from the addition of the language contained in the Model Jury Charge and approved by the Supreme Court in *State v. Goodwin*. The Commission proposes the following language to effectuate that result.

The Appendix on the following page proposes the addition of a of a definition of the term “material” to the New Jersey Insurance Fraud Statutes consistent with the intent of the Legislature and the guidance of the New Jersey Supreme Court. The proposed modifications are based upon the language and principles set forth in *State v. Goodwin*.

⁵⁷ *State v. Goodwin*, 224 N.J. at 115 (Emphasis original).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 114.

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.) that it would not otherwise have tendered if inaccurate facts had not been provided by the claimant; 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, if inaccurate facts had not been provided by the applicant;

(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 if inaccurate facts had not been provided by the claimant.

(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.

Included for Reference

2C:21-4.6. Crime of Insurance Fraud.

a. A person is guilty of insurance fraud if that person knowingly makes, or causes to be made, a false, fictitious, fraudulent, or misleading statement of material fact in, or omits a material fact from, or causes a material fact to be omitted from, any record, bill, claim, or other document, in writing, electronically, orally or in any other form, that a person attempts to submit, submits, causes to be submitted or attempts to cause to be submitted as part of, in support of or opposition to or in connection with:

(1) a claim for payment, reimbursement or other benefit pursuant to an insurance policy or from an insurance company or the “Unsatisfied Claim and Judgment Fund Law,” P.L. 1952, c174 (C.39:6-61 et seq.);

(2) an application to obtain or renew an insurance policy;

(3) any payment made or to be made in accordance with the terms of an insurance policy or premium finance transaction; or

(4) an affidavit, certification, record or other document used in any insurance or premium finance transaction.