

To: New Jersey Law Revision Commission
From: Jon Aunio
Re: Meaning of “Material” in N.J.S. 2C:21-4.6 (*State v. Goodwin*)
Date: March 6, 2017

MEMORANDUM

Executive Summary

In case of *State v. Goodwin*¹ the New Jersey Supreme Court considered whether the meaning of “material” under the current insurance fraud statute, N.J.S. 2C:21-4.6, indicated that conviction required *actual* reliance on the material fact, or only required that it *could* have reasonably affect the decision by an insurance company.

Ultimately, the Supreme Court determined 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. 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.”²

The Court thus found 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. The term, as of now undefined in the insurance fraud context, is defined in other statutory contexts which the Court relied upon to make its determination.

Background

In *State v. Goodwin*, the defendant was charged with second-degree insurance fraud under 2C:21-4.6. The statute provides that a person is guilty when 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. [emphasis added]”³

Defendant had been involved romantically with an individual named “Stacey” since 2004.⁴ In 2009, Stacey purchased an SUV, insured with Progressive Insurance Company, of which the Defendant was the primary operator.⁵ Following an argument with Stacey, Defendant drove the vehicle to the home of another woman with whom he was romantically involved.⁶ The

¹ *State v. Goodwin*, 224 N.J. 102 (2016).

² *Id.* at 104–105.

³ N.J.S. 2C21-4.6(a)

⁴ *Goodwin*, 224 N.J. at 105

⁵ *Id.*

⁶ *Id.*

following morning, defendant discovered the SUV had been severely damaged due to a fire.⁷ Defendant returned to Stacey to report the vehicle's damage.⁸ Defendant advised Stacey to call the police to report that the vehicle had been stolen and "burnt" up.⁹ Despite inconsistencies, the investigating officer held that the car had been in fact stolen based on the statement that neither Defendant nor Stacey had moved the car the night prior.¹⁰ Progressive conducted its own investigation, during which Defendant admitted that he had parked the SUV where it had been found, and had previously lied.¹¹ Progressive denied the claim on the grounds that nothing could be verified given the misrepresentations made.¹² Defendant was charged with second-degree aggravated arson, third-degree attempted theft by deception, and second-degree insurance fraud.¹³ At trial, Defendant was convicted of the insurance fraud.¹⁴

The Appellate Division subsequently overturned the conviction on the basis that the jury charge was inaccurate.¹⁵ The Appellate Division was of the view that actual reliance was required 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."¹⁶

Analysis

On appeal, the New Jersey Supreme Court analyzed the statute to determine if a defendant may be found to be guilty without actual inducement to pay a claim.¹⁷ To answer this, the Court explored the current statutory construction, specifically, "a false...statement of material fact."¹⁸ The Court determined that the statute contained no requirement that criminal liability is dependent on an insurance company actually relying of the false statement and suffering a loss; instead it requires only a knowing submission of a false or fraudulent statement of material fact.¹⁹

The second issue concerns the term "material," which is not defined in N.J.S. 2C:21-4.6, nor in the definition provision of N.J.S. 2C:21-4.5. The Court noted that it was unsurprising that the parties contested the meaning of "material fact" as used in the statute, and determined that a constricted interpretation of "material fact" was inconsistent with the statute's legislative

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 106

¹⁰ *Id.* at 107

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 105

¹⁴ *Id.*

¹⁵ *Id.* at 108

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

intent.²⁰ To ascertain the appropriate definition, the Court sought analogous statutes where the term “material” had already been defined.²¹ The perjury statute, at N.J.S. 2C:28-1(b), is one such statute and it defines a falsification as material “if it could have affected the course or outcome of the proceeding or the disposition of the matter.”²² 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.²³

The federal false-statements statute holds similarly that, as interpreted by the federal courts, “a material misrepresentation is one that ‘ “has a natural tendency to influence, or was capable of influencing, the decision of” the decisionmaking body to which it was addressed.’”²⁴

The Court concluded that the legislature would have been aware of these and other uses of material in other contexts when crafting the insurance-fraud statute.²⁵ Furthermore, the Court suggested that 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.²⁶ It suggested that allowing fraud to go unpunished merely due to a carrier’s thorough investigation uncovering the false statements clearly is not the intent of the statute.²⁷

The Court then turned to the use of material in the issuance of the Model Jury Charge for insurance fraud.²⁸ The criminal model jury charge on materiality read 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 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.*²⁹

The non-emphasized language comes from an insurance fraud case in the civil context.³⁰ The Court explained that the non-emphasized language, while appropriate in the civil context,

²⁰ *Id.* at 112

²¹ *Id.*

²² *Id.*

²³ *Id.* at 113.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 114.

²⁷ *Id.*

²⁸ *Id.* at 115.

²⁹ *Id.*

³⁰ *Id.*

led to confusion for a jury in the criminal context.³¹ The emphasized section was deemed a “more precise explication of the term ‘material’ for the purposes of this statute and should be solely used to avoid any confusion and to focus the jury’s task as a finder of fact.”³²

The Court thus concluded that a jury could reasonably have found that the statements made by Defendant could have reasonably affected the decision by the carrier to pay the claim.³³

Conclusion

The current insurance fraud statute under N.J.S. 2C:21-4.6 lacks definition regarding the meaning of “material,” and it appears as though it might benefit from the addition of the language like that identified by the Court in *State v. Goodwin* as to its meaning. As a criminal statute, the insurance fraud provision arguably benefits from clarity. Staff seeks authorization from the Commission to conduct additional research and outreach, in order to determine whether including a definition of “material” would be of assistance in the current insurance fraud statute.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 117.