Suing For Money When You Haven't Been Damaged? New Case Settles Dispute Over California's Insurance Fraud Law

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We learned in our first day of torts class that to sue for money, you need to show a duty, a breach of that duty, causation and damages or harm. When it comes to suing for insurance fraud in California, damages or harm are no longer required.

California has a novel and powerful anti-fraud statute, Insurance Code section 1871.7, which allows insurance companies or third-party whistleblowers to sue defrauders. A successful plaintiff, which is usually an insurance company, receives three times the claim for compensation plus a penalty of $5,000-$10,000 per false claim.

For years, battle has been waged regarding whether liability attaches if and only if the person or company actually believed the false claim and paid money or whether the defrauder was liable as soon as the claim was submitted even if no money was paid. The answer is now clear.

Why worry about such legal nuances? If detrimental reliance and damages are considered required elements under Insurance Code 1871.7, it opens up much more broad and intrusive discovery directed at insurers, makes proof that much more difficult a trial, and limits recoverable sums at trial.

While we have been largely successful at thwarting such a misinterpretation of the law, busy judges have misconstrued the law, leading to needless expenditure of money on meaningless discovery. In People of the State of California ex rel Geico v. Janice Cruz, et al, such a misapplication of the law led to the dismissal of Geico's case.

In Geico, the trial court granted summary judgment in favor of one defendant, finding that there was no showing of damages. Reversing the trial court and finding that the trial court erroneously applied the law, the appellate justices have resolved this issue once and for all:

"We are similarly unpersuaded by Dr. Cruz's argument that she cannot be liable under [Insurance Code section 1871.7] because GEICO has not established it incurred any damages. As noted above, the Act does not require that a fraudulent claimant's scheme be successful to establish her liability; she need only knowingly present a false claim with the intent to defraud."

The Court further explained: "It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts."

In truth, while this case has wide reaching implications, it simply states the obvious. Insurance Code section 1871.7 is an attempted fraud statute. Individuals are held responsible for attempted fraud equally as much as if they successfully defrauded an insurance company. The trigger is the presentation of a false insurance claim. How do we know? It's in the statute!

The trigger for a cause of action under section 1871.7 is the violation of Penal Code section 550. Each subsection of Penal Code 550 states that the crime is complete upon submission of a false claim. Nowhere does it say that someone has to part with money or rely to their detriment.

Also, Insurance Code section 1871.7 creates two separate classes of plaintiffs who can sue. One is an insurance company who has had a false claim presented to it. The second is a "whistle-blower;" someone who has knowledge of fraud being perpetrated upon an insurance company. Such an outsider would never be damaged or part with money. If we were to require damages or detrimental reliance, we would essentially write out of section 1871.7 the ability for such whistle-blowers to sue.

Further, besides submission of a false claim, one can be liable under 1871.7 for capping – a doctor or lawyer paying for patients or clients. Capping does not require damages. Yet, one can sue under 1871.7 for capping.

Finally, since this is a qui tam action, the State of California may share in any penalties and assessments (not damages!) recovered from the defendant. Section 1871.7(g) provides one formula for dividing up these sums if the victim carrier paid money and a different formula if the carrier did not pay money to the person(s) submitting the false claim(s). One would have to completely ignore this provision to claim that one must part with money and rely to their detriment in order to state a claim under 1871.7.

The law is finally settled that Insurance Code 1871.7 does not require damages or detrimental reliance to prove liability or recover statutory penalties or assessments. This is an attempted fraud statute, holding both those submitting false claims and getting paid by an insurer and those who were not successful in their endeavor, equally responsible. This is akin to perjury. It is the lie under oath that is the crime, not whether someone believed the lie.

With case law settling this issue once and for all, the fight over whether someone suing under 1871.7 must show damages and detrimental reliance is finally over. This decision should help streamline discovery and especially thwart attempts at intrusive, irrelevant and expensive discovery directed at the insurance carriers.

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