

Insurance Fraud

In *United States of America, ex rel. Bookwalter v. UPMC*, the **United States Court of Appeals for the Third Circuit** held that relators' allegations of violations of the **False Claims Act** and **Stark Act** were plausible where the relators presented claims that surgeons' **pay was suspiciously high**, suggesting that referrals for hospital services relating to surgeries were impermissibly part of the compensation structure for those surgeons. The court also held that the exceptions to the Stark Act work like **affirmative defenses**, meaning that the **burden of proof** rests on the defendants. (December 20, 2019)

In *Haar v. Nationwide Mutual Fire Insurance Company*, the **New York Court of Appeals** addressed whether **New York Public Health Law** creates a **private right of action for bad faith and malicious reporting** to the **Office of Professional Medical Conduct (OPMC)**. An orthopedic surgeon had treated four patients who were injured in automobile accidents, and then submitted claims to their insurer who **either fully or partially denied each claim**. The insurer then filed complaints with the OPMC **alleging insurance fraud**. The court held that a private right of action would be inconsistent with the legislative purpose and broader statutory scheme. (November 21, 2019)

In *RSI Bank v. The Providence Mutual Fire Insurance Company*, the **Superior Court of New Jersey, Appellate Division**, addressed whether an **indemnification agreement** could be a valid **restitution condition** of pre-trial intervention in a criminal matter. The court held that such a condition is appropriate only if the **specific amount** is stated and there is an **assessment** of the participant's ability to meet the obligation. (August 7, 2018)

In *Tishman Technologies Corporation v. Travelers Indemnity Company of America*, the **New York Supreme Court, Appellate Division, 1st Department**, addressed whether the plaintiff was an **Additional Insured** within the meaning of a **commercial general liability policy** that contained a carve-back for "independent acts or omissions of such person or organization." Because the complaint alleged the damages occurred "as a direct and proximate result of the negligence" of the plaintiff, the court held that the **plaintiff did not qualify** as an Additional Insured. The court noted that the plaintiff would be an Additional Insured only if it were **vicariously liable** for the Named Insured's negligence, a claim that was not asserted in the complaint. (May 15, 2018)

Practice Areas

Insurance Fraud

In *Spay v. CVS Caremark Corporation*, the **United States Court of Appeals for the Third Circuit** addressed whether the government's decision to pay Medicare Part D claims to a pharmacy benefit manager was based on **false representations** made for reimbursement and therefore a **False Claims Act** violation. The court addressed two separate defenses: the **government knowledge inference doctrine** and the element of **materiality**. While the court found that the government knowledge inference did not apply, it held that the misrepresentations made by the pharmacy benefit manager were not material to the government's decision to pay the underlying claims. (November 16, 2017)

In *Allstate Insurance Company v. Northfield Medical Center*, the **Supreme Court of New Jersey** considered whether a series of lectures regarding how to **structure a medical practice** were a knowing violation of the **Insurance Fraud Prevention Act** (IFPA). The Court held that structure promoted by the lectures violated the IFPA, which resulted in **fraudulent claims** being submitted to Allstate, and therefore remanded the matter to determine the liability of the lecturers. (May 4, 2017)

In *United States ex rel. Winkelman v. CVS Caremark Corporation*, the **First Circuit Court of Appeals** held that the relators' claims under the **False Claims Act** were prohibited by the **public disclosure bar**. The relators' claims challenged a particular **billing practice** of the defendant **pharmacy** and its affiliated companies, under which the pharmacy permitted customers to pay a nominal enrollment fee in its Health Savings Pass program in order to purchase a range of generic prescription drugs from the pharmacy at discounted prices. The relators alleged that this program allowed the pharmacy to then **fraudulently overbill** Medicare Part D and Medicaid, because the pharmacy did not report the discounted prices charged to customers enrolled in the program as its "usual and customary price." The court held that the public disclosure bar prohibited the relators' claims because another organization, and another state's attorney general, had **already exposed** the pharmacy's billing practices, which had received **extensive publicity**. The relators also did not qualify under the "**original source**" exception to the public disclosure bar, because they had not voluntarily disclosed the information underlying their claim to the government before the public disclosure, and they **did not possess knowledge** that was **independent of and materially added to** the publicly disclosed allegations or transactions. (June 30, 2016)

In *Boehm v. Riversource Life Insurance*, the **Superior Court of Pennsylvania** addressed whether the burden of proof for an Unfair Trade Practices and Consumer Protection Law (UTCPL) claim is by a preponderance of the evidence or by clear and convincing evidence. The Court held that the **preponderance of the evidence burden of proof applies to UTCPL claims** because that standard is consistent with the UTCPL's purpose of protecting the public from fraud and unfair or deceptive business practices. (May 19, 2015)

In *Commonwealth v. Goodson*, the **Supreme Court of Pennsylvania** granted a Petition for **Allowance of Appeal** to address an insurance fraud issue. The issue the court agreed to consider is: "Whether passing a **counterfeit check** purportedly issued by an insurance company constitutes insurance fraud under 18 Pa.C.S. § 4117(a)(2)." (August 12, 2010)