

Rhudy Decision Overturned on Appeal

“EVIDENCE DOES NOT SUPPORT THE JURY’S VERDICT ON DIRECT FRAUD.”

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On Sept. 20, 2007, a \$5.9 million judgment levied against the largest chain of Texas-based chiropractic clinics was overturned on appeal.

Robert Smith, owner of the Accident and Injury Pain Centers (A&I), and Thomas Rhudy, DC, chief of staff and "compliance officer" at A&I, had appealed the civil suit decision, rendered on Sept. 29, 2004.

In the original suit, filed in late 2001, Allstate Insurance and one of its subsidiaries, Encompass, claimed that A&I and its related entities, including Rhudy and Smith, had committed fraud by referring more than 1,800 automotive accident victims to doctors employed by A&I or diagnostic clinics owned by the company. Additionally, Allstate, et al., alleged that several patients were referred to another A&I employee, Marlon Padilla, MD, for "second-opinion examinations."

Allstate and Encompass claimed they were not liable for and did not owe more than \$41 million in various fees that A&I had billed them for. However, this amount did not account for billings to other insurance companies, which may have reached as much as \$100 million per year.

The jury in the original case found "clear and convincing evidence" that A&I was guilty of fraud and conspiracy to commit fraud. The various defendants in the case were found to be operating as a single business entity.

According to Texas law, six elements must exist in order to prove fraud:

- that a material representation was made;
- that the representation was false;
- that when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion;
- that the speaker made the representation with the intent that the other party should act upon it;
- that the party acted in reliance on the representation; and
- that the party thereby suffered injury.

After conducting an independent investigation, the United States Court of Appeals, 5th Circuit, determined the following:

[T]he evidence does not suffice to show that any Allstate or Encompass adjuster, or other agent or employee making, directing or approving any payment made on any of the claims in question, actually relied on an A&I misrepresentation. The evidence does not support the jury's verdict on direct fraud.

In order to succeed on their Texas common law fraud claim, Allstate and Encompass needed to present legally sufficient evidence of actual reliance. . . But the insurance companies failed to do so.

For example, they could have, but did not, introduce the testimony of adjusters (or other similar agent or employee) who in fact worked on some significant number of the 1,800-plus claim files at issue, to say that they relied on the medical claims submitted in deciding to settle a claim.

Thus, the court ruled:

The jury verdict for fraud is unsustainable as plaintiffs-appellees Allstate and Encompass failed to introduce sufficient evidence of actual reliance on an A&I representation. Because A&I cannot be held liable for fraud, the remaining defendants-appellants cannot be held liable for conspiracy to commit fraud. ... Further, even if this court could otherwise uphold the verdict for fraud and conspiracy to commit fraud, the damages award was based on conjecture and speculation as to what amount the defendants obtained through A&I's fraud, and therefore it, too, cannot be sustained. We conclude that "further proceedings are unwarranted because [Allstate and Encompass] ha[ve] had a full and fair opportunity to present the case." ... We reverse and render judgment for the defendants-appellants.

Resources

1. United States Court of Appeals for the Fifth Circuit. Opinion rendered Sept. 20, 2007. www.ca5.uscourts.gov/opinions/pub/05/05-10265-CV0.wpd.pdf.
2. "Allstate Wins Suit Against Texas Chiropractic Chain." *Dynamic Chiropractic*, Nov. 18, 2004;22(24). Available at: www.chiroweb.com/archives/22/24/01.html.
3. "NACM Member Sued by Allstate: \$41 Million in Billing in Question." *Dynamic Chiropractic*, Feb. 24, 2003;21(5). Available at: www.chiroweb.com/archives/21/05/01.html.

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