INSURANCE FRAUD IN THE FOURTH DEGREE
(E felony)
PENAL LAW §176.15
(Committed on or after Nov. 1, 1998 for Commercial/Personal Insurance Policy)

(Committed on or after July 20, 2011 for Health Insurance Policy)[1]

The _____ count is Insurance Fraud in the Fourth Degree.

Under our law, a person is guilty of Insurance Fraud in the Fourth Degree when he or she commits a fraudulent insurance act and thereby wrongfully takes, obtains or withholds, or attempts to wrongfully take, obtain or withhold property with a value in excess of one thousand dollars.

The term "fraudulent insurance act"[2] has its own special meaning in our law. I will now give you the meaning of that term.

A FRAUDULENT INSURANCE ACT is committed by any person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by:

Select appropriate alternative(s):

an insurer,
self insurer, [or]
purported insurer, [or]

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[1] Effective July 20, 2011, Penal Law § 176.05, which defines insurance fraud was amended. L 2011, ch 211. The amendment was made to comply with the dictates of *People v. Boothe*, 16 NY3d 195 (2011). It changed the definition of "fraudulent insurance act" to include the separate definition of "fraudulent health care insurance act."

[2] *See* footnote 1.

purported self insurer, [or]
any agent thereof,

Select if commercial/personal insurance policy is alleged:

any written statement as part of, or in support of,

Select appropriate alternative(s):

an application for the issuance of, or the rating of, a commercial insurance policy, [or]

a certificate or evidence of self insurance for commercial insurance or commercial self insurance, [or]

a claim for payment or other benefit pursuant to an insurance policy or self insurance program for commercial or personal insurance[3]

Select if health insurance policy is alleged:

any written statement or other physical evidence as part of, or in support of,

Select appropriate alternative(s):

[3] Penal Law § 176.05 (1).

> an application for the issuance of a health insurance policy,[4] [or]
>
> a policy or contract or other authorization that provides or allows coverage for, membership or enrollment in, or other services of a public or private health plan,[5] [or]
>
> a claim for payment, services or other benefit pursuant to such policy, contract or plan[6]

that he or she knows to: (a) contain materially false information concerning any fact material thereto; or (b) conceal, for the purpose of misleading, information concerning any fact material thereto.

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[4] If appropriate and/or necessary, add the following language from Penal Law § 176.05:

> An "application for the issuance of a health insurance policy" shall not include (i) any application for a health insurance policy or contract approved by the superintendent of financial services pursuant to the provisions of sections three thousand two hundred sixteen, four thousand three hundred four, four thousand three hundred twenty-one or four thousand three hundred twenty-two of the insurance law or any other application for a health insurance policy or contract approved by the superintendent of financial services in the individual or direct payment market; or (ii) any application for a certificate evidencing coverage under a self-insured plan or under a group contract approved by the superintendent of financial services.

[5] If appropriate and/or necessary, add the following language from Penal Law § 176.05:

> Such policy or contract or plan or authorization shall include, but not be limited to, those issued or operating pursuant to any public or governmentally-sponsored or supported plan for health care coverage or services or those otherwise issued or operated by entities authorized pursuant to the public health law.

[6] Penal Law § 176.05 (2).

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "knowingly" and "intent." [7]

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[7] If appropriate, define one or more of the following terms:

PERSON includes any individual, firm, association or corporation. Penal Law § 176.00 (3)

STATEMENT includes, but is not limited to, any notice, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test result, and other evidence of loss, injury or expense. Penal Law § 176.00 (2).

INSURANCE POLICY means any agreement or other transaction whereby one party, the "insurer," is obligated to confer benefit of pecuniary value upon another party, the "insured" or "beneficiary," dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such event. A fortuitous event means any occurrence or failure to occur which is, or is assumed by the parties to be, to a substantial extent beyond the control of either party. Penal Law § 176.00 (1); Insurance Law § 1101 (a).

[The definition includes reinsurance contracts, purported insurance policies and purported reinsurance contracts.]

["Contract of warranty, guarantee, or suretyship" means an insurance contract only if made by a warrantor, guarantor or surety who or which , as such is doing an insurance business.]

COMMERCIAL INSURANCE means insurance other than personal insurance, and shall also include insurance providing disability benefits [pursuant to article nine of the workers' compensation law], insurance providing worker's compensation benefits [pursuant to the provisions of the worker's compensation law] and any program of self insurance providing similar benefits. Penal Law § 176.00 (5).

PERSONAL INSURANCE means a policy of insurance insuring a natural person against any of the following contingencies:

(a) loss of or damage to real property used predominantly for

(continued...)

A person KNOWINGLY acts with respect to conduct or to a circumstance when that person is aware that his or her conduct is of such nature or that such circumstance exists.[8]

INTENT means conscious objective or purpose. Thus, a person acts with intent to defraud when that person's conscious objective or purpose is to do so.[9]

In order for you to find the defendant guilty of this crime, the People are required to prove from all of the evidence in the case beyond a reasonable doubt each of the following three elements:

1. That on or about (*date*) in the county of (*county*), the defendant (*defendant's name*) committed a fraudulent insurance act; and

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[7](...continued)

residential purposes and which consists of not more than four dwelling units, other than hotels, motels and rooming houses;

(b) loss of or damage to personal property which is not used in the conduct of a business;

(c) losses or liabilities arising out of the ownership, operation or use of a motor vehicle, predominantly used for non-business purposes;

(d) other liabilities for loss of, damage to, or injury to persons or property, not arising from the conduct of a business;

(e) death, including death by personal injury, or the continuation of life, or personal injury by accident, or sickness, disease or ailment [excluding insurance providing disability benefits pursuant to article nine of the workers' compensation law].

A policy of insurance which insures any of these contingencies as well as other contingencies shall be personal insurance if that portion of the annual premium attributable to these contingencies exceeds that portion attributable to other contingencies. Penal Law § 176.00 (4).

[8] Penal Law § 15.05 (2).

[9] Penal Law § 15.05 (1).

2. The defendant did so knowingly and with intent to defraud; and

3. That the defendant thereby wrongfully took, obtained or withheld [or attempted to wrongfully take, obtain or withhold] property with a value in excess of one thousand dollars.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Insurance Fraud in the Fourth Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Insurance Fraud in the Fourth Degree as charged in the _____ count.