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The *WRNewswire* is created exclusively for AALU Members by insurance experts led **by Steve Leimberg, Lawrence Brody and Linas Sudzius. *WRNewswire* #16.03.02** was written by **Steve Leimberg**, co-author with **Howard Zaritsky**, of **Tax Planning With Life Insurance**, Publisher of **Leimberg Information Services, Inc. (LISI)** and Creator of **NumberCruncher Software**.

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TOPIC: Court Denies Motion to Dismiss Criminal Charges

CITATION: [*U.S. v. Magat*](#), 2016 WL 688528, Case No. 14-cr-00627 (U.S.D.C. ND CA Feb. 19, 2016)

SUMMARY: A U.S. District Court denied a motion to dismiss a 25 criminal count indictment against five defendants charged with conspiracy to commit wire fraud, aggravated identity theft, and money laundering. The indictment could, in addition to criminal charges and sentencing, result in the defendant’s forfeiture of all property, real or personal, which constitutes or is derived from proceeds traceable to the transactions which are the subject of the charges.

RELEVANCE: At this stage, the merits of the case itself are not yet being tried, and admittedly, if the charges are true, this was an egregious fraudulent scheme. What is important about this case to AALU members – even at this point - is that it indicates:

- a trend toward widening the scope of potential criminal charges (e.g. wire or mail fraud, identity theft, and money laundering) against bad actors in a life insurance transaction,
- an increased willingness of federal and state governments to use *criminal* charges and potentially impose jail sentences in these transactions, and
- that the complexity of the modern insurance product mixed with ever changing technology enhances the likelihood that we will see more life insurance scheming (and consequently burdensome laws enacted to discourage, combat, and penalize “gaming” insurers and the insurance consumer).

FACTS: The five defendants worked as independent contractors selling life insurance for American Income Life Insurance Company (AIL) - until they were fired or resigned in 2012. According to the allegations, the defendants conspired in a scheme to defraud AIL, and to obtain money from AIL by means of materially false and fraudulent pretenses, representations, and promises, and by omitting and concealing material facts. Specifically, the government charged that “The defendants executed the scheme by, among other things, submitting applications for life insurance on behalf of individuals who did not know that a policy was applied for or issued in their name and/or did not want a life insurance policy, and then shared the commissions and bonuses issued by AIL in connection with those fraudulent policies.”

The indictment alleges that as a result of the fraudulent scheme, AIL paid more than \$2.5 million in commissions and bonuses for fraudulent life insurance policies.

Specifically, the indictment alleges that the defendants and their co-conspirators:

- paid recruiters to find individuals who were willing to take a medical exam in exchange for approximately \$100, and then they took the personal information associated with those individuals and submitted applications for life insurance in their names, in many cases without the individual’s knowledge;
- paid individuals to participate in a fictitious survey of a medical exam company, and then took the personal information associated with those individuals and submitted applications for life insurance, in many cases without the individual’s knowledge;

- solicited their family and friends to submit applications for life insurance, and told them that they would receive free life insurance for several months after which the policies would be canceled;
- created fraudulent driver's licenses so they could take medical exams purporting to be the individuals in the applications;
- opened hundreds of bank accounts to fund the premiums on the fraudulent policies, and typically paid between one to four months of premiums before letting the policies lapse;
- purchased pre-paid telephones and set up Google Voice telephone numbers for phone numbers listed on the fraudulent applications, and they returned verification calls to AIL purporting to be the applicants on the fraudulent applications and confirmed the information in the fraudulent applications;
- listed addresses of gas stations and apartment complexes on many of the fraudulent applications in an effort to avoid detection, and they fabricated the names of the beneficiaries of the policies; and
- exchanged e-mails in which they tracked the telephone numbers and bank accounts associated with the fraudulent policies.

Federal Criminal Procedure rules require that an indictment must contain "a plain, concise, and definite written statement of the essential facts constituting the offense charged." In the Ninth Circuit, that threshold is reached if the indictment states the elements of the offenses charged. This court, charged with considering a motion to dismiss the indictment described above, had to determine if the government's documents contained the elements of the charged offense in sufficient detail (1) to enable the defendants to prepare their defense; (2) to ensure that the defendants were being prosecuted on the basis of the facts presented to the grand jury; (3) to enable them to plead double jeopardy; and (4) to inform the court of the alleged facts so that it can determine the sufficiency of the charge.

Here, Magat contended that the conspiracy to commit wire fraud was pled in such a way that it is impossible for him to know what he did to commit these offenses or when he did such actions. He argued that the government had not made it clear as to the time when he joined the conspiracy charged or whether it was one conspiracy

with multiple objectives or multiple conspiracies. He also noted that, while the indictment alleges that the scheme involved submitting fraudulent applications for life insurance to obtain commissions and bonuses issued by ALL, the government had not made it clear as to the role, if any, Magat played in the scheme. He claimed the indictment alleges that he was an independent contractor for ALL selling ALL life insurance, but that the indictment does not specify what he did to further the conspiracy.

But the District Court found the indictment was sufficient. "An indictment...need only set forth the essential facts necessary to inform the defendant of what crime he is charged; it need not explain all factual evidence to be proved at trial." It was enough for this court that the "Manner and Means" section of the indictment alleges a number of specific actions taken by defendant and his co-defendants and co-conspirators in furtherance of the conspiracy to commit wire fraud and that the individual wire fraud counts allege that defendants "for the purpose of executing the material scheme to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by omission and concealment of material facts, did knowingly transmit and cause to be transmitted [specific wire communications in interstate commerce]."

The wire fraud counts identify the approximate dates and nature of the wire communications underlying each count. Thus, the indictment as a whole alleged that defendants engaged in a conspiracy to commit wire fraud by, *inter alia*, submitting fraudulent life insurance applications, opening bank accounts to fund the premiums on the fraudulent policies, and paying premiums on the fraudulent policies before letting the policies lapse. The government was not required to allege with any greater specificity how the particular wire communications furthered the conspiracy.

As to the money laundering charge, the indictment alleges the defendants knowingly engaged and attempted to engage in monetary transactions in criminally derived property of a value greater than \$10,000 and "those funds were derived from specified unlawful activity, namely, wire fraud."

Aggravated identity theft charges involved the allegation that the defendants knowingly transferred, possessed, and used, without lawful authority, the means of identification of another person, namely, the names, dates of birth, and Social Security numbers of the real individuals set forth below in connection with the issuance of life insurance policies, during and in relation to wire fraud.

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