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New Jersey DCs Win First Round in Lawsuit against Dept. of Insurance

By Richard Jaffe, Esq.

Last year I filed a lawsuit on behalf of a group of New Jersey chiropractors against employees of the Fraud Division of the New Jersey Department of Insurance. (Editor's note: see "New Jersey DCs Allege Extortion" June 4, 1993, *Dynamic Chiropractic*). The basic claim of the lawsuit was that investigators of the Fraud Division were extorting money from chiropractors and other health care practitioners in New Jersey by asserting uninvestigated, unsubstantiated allegations of insurance irregularities and demanding payment of civil fines to avoid further investigation, criminal prosecution and licensing action.

Instead of filing an answer to the charges, the defendants moved to dismiss the complaint on various technical, legal bases, including that the federal court should not get involved on this state matter and, that the fraud investigators were cloaked with an absolute immunity from lawsuits akin to the immunity which judges and prosecutors have.

On May 27, 1994, U.S. District Judge Stanley Brotman issued what may turn out to be a landmark decision on the defendants' motion to dismiss our complaint. In short, he rejected each and every technical and legal defense raised by the defendants. He specifically held that in light of the allegations of overreaching and illegality on the part of the fraud investigators, it was appropriate for the federal court to hear this case and decide whether the conduct was in fact illegal.

The court also held that the fraud investigators do not have absolute immunity from civil liability for their actions. Rather they at best have a "qualified immunity" which is only applicable if the defendants acted reasonably and in good faith, which we deny is the case.

The judge's decision is not a final judgment. The judge did not rule that the defendants are guilty of anything. He only held that the complaint states a viable cause of action against the defendants, and that the

defendants asserted arguments to dismiss the lawsuit were not valid. The case will now proceed to discovery. A trial is scheduled for early 1995. We will see what happens.

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Editor's note: The plaintiffs in this case are the Chiropractic Alliance of New Jersey, plus an individual chiropractor and dentist. The plaintiffs' suit is against Louis Parisi, director of insurance fraud prevention in New Jersey, for violating the Racketeer Influenced and Corrupt Organizations Act (RICO). Attorney Jaffe says he hasn't heard of a similar case, i.e., where RICO is claimed against a government investigative body. Louis Parisi has called the charges "totally ridiculous."

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