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Insurance Fraud Co-crime Discussion

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Abstract

Insurance as an imported product in China started late, with the rapid development of China's economy, it has ushered in a better environment and achieved vigorous growth. The most significant characteristic of insurance products is that to obtain insurance compensation, insurance fraud has emerged with the rapid development of the insurance business; insurance fraud not only strikes against insurance companies and the insurance system but also disrupts the order of the national economic environment. However, criminal law clearly defines the concept of insurance fraud and the subject and manner of the joint crime of insurance fraud. However, the subjects of implementing insurance fraud in practice are relatively more complicated, especially when there are insurance frauds with the participation of internal staff of insurance companies and those without status. In this paper, we mainly focus on two aspects of insurance fraud and joint crime and also discuss the common crime of insurance fraud by combining the cases and decisions in judicial practice.

Keywords

Insurance fraud, joint criminality, judicial practice

1. Background of Insurance Fraud Co-Crime Study

The 2022 annual report of PICC Group Corporation shows that PICC Property & Casualty Insurance achieved stable growth in original insurance premium income in 2022, up 8.3% year-on-year. PICC Life Insurance's actual insurance premium income also showed positive change. The 2022 annual report of China Pacific Property and Casualty Insurance Co. shows that the insurance business income of Pacific Insurance Group Co. increased by 8.7% year-on-year in 2022.

According to the big data anti-insurance fraud work carried out by the BCI in 2021, insurance fraud-related criminal cases accounted for 90% of the insurance cases also counted in 2020. At the same time, through close cooperation with the Beijing Municipal Public Security Bureau, the BIRC has successfully solved more than 170 insurance fraud cases and knocked down more than 20 insurance fraud criminal gangs involving more than 130 people, with the total amount involved in the cases reaching more than 12 million.

2. Overview of Insurance Fraud Co-Crime

2.1 Insurance Fraud

Article 198 of the Criminal Law provides that insurance fraud is a status offense; only the policyholder, beneficiary, and insured can be the subject of insurance fraud properly. From the perspective of the contract, the contract binds the two parties who entered into the contract, and the insured, etc., as parties to the insurance contract, should, therefore, be bound by the contract.

2.2 Insurance Fraud Co-Crime

Article 25 of the Criminal Law stipulates that two or more persons jointly and intentionally committing a crime constitute a joint crime. 1. In the subject matter of the crime: first, the subject of the crime must be two or more persons. 2. In the subjective aspect of the crime, there is a common criminal intent and exciting links between each other. 3. In the objective aspect of the crime, there is a common criminal act: the implementation of the line to the same criminal object. As the subjects of the crime have different divisions of labor in the ordinary criminal act, there is a difference between the perpetrator, abettor, and aider.

Identity is a necessary condition for constituting an insurance fraud offender. Still, the general principles of criminal law do not provide that an accomplice who constitutes an identity offender must also have a unique identity. Therefore, the general principles of criminal law do not provide that a person without identity can not constitute a joint criminal identity. In practice, there are several ways in which the joint criminality of insurance fraud exists:

(1) Between subjects such as policyholders.

(2) Subjects such as appraisers, certifying persons, property appraisers, and insurers of insurance accidents.

(3) Between a person without status and the insured, etc.

(4) Between insurance company staff and the insured, etc.

3. Forms of joint criminality in insurance fraud

3.1 Common crime of insurance fraud constituted by the subjects of Article 198 of the Criminal Code

The joint crime of insurance fraud constituted between the insured and other subjects. Zhangjiakou Economic Development Zone People's Court on Jia Dawei, Yang Chunyan, Qiao Shengyang and other insurance fraud in the first instance criminal verdict: In 2019, three people conspired to create a traffic accident in the south gate of Maple Town District in Zhangjiakou Economic Development Zone and successfully cheated the insurance company of more than 80,000 yuan of insurance compensation, and eventually all three were sentenced by the court to constitute the crime of insurance fraud.

Insurance fraud is a joint crime between the insured and the accident appraiser. In the second trial judgment of Shijiazhuang Intermediate People's Court of Hebei Province on the insurance fraud of Zhang Heng, Yu Xin, and Jin Siyao: Jin Siyao, as a car insurance investigator of Yongan Property and Casualty Insurance Company Limited, four people created insurance accidents by driving into each other, faking flooded cars, etc., and successively cheated the insurance company for compensation. The court eventually found the four guilty of insurance fraud after the trial.

3.2 The joint crime of insurance fraud constituted by a non-status subject and a status person such as an insured, etc.

In judicial practice, the joint crime of insurance fraud is mainly manifested as non-identity subjects with the insured and other people with status.

The People's Court of Kaiping District, Tangshan City, Hebei Province on Xu Huiyong, Li Jinshun, Liu Xiaoming, and other insurance fraud criminal verdict of first instance: Li Haipeng, as the owner of the car, to cheat its insurance premiums for water-related insurance insured in the People's Republic of China Property Insurance Co. and led to four vehicles due to total loss of water, after which they were claimed from the insurance company. Tangshan Development Zone People's Court heard Li Haipeng, respectively, together with Xu Huiyong, Li Jinshun, Sun Lijie, Liu Xiaoming, Wang Weiqiang to the insurance company fraudulent insurance money, the amount of crime reached a considerable amount, its behavior has constituted the crime of insurance fraud, the case Li Haipeng as the instigator of insurance fraud, other people as the implementation of insurance fraud are convicted and punished for insurance fraud, but because of the unsuccessful existence of There are mitigating or mitigating circumstances.

Jiangxi Ganzhou Intermediate People's Court on Chen Dongwei and Chen Baoqing Insurance Fraud Criminal Judgment of the Second Instance: Chen Dongwei purchased a "Mercedes" car, and after using it for some time, he had the idea of causing a traffic accident to damage the vehicle to obtain insurance money and informed the defendant Chen Baoqing of this idea and asked him to help. In early March 2017, Chen Dongwei found Zhang Xin, told Zhang Xin the meaning of car destruction fraud insurance, and asked Zhang Xin to find a suitable place to commit the crime. 14 at 8 p.m., Chen Baoqing wanted to damage the car by burning it but failed. After that, Chen Dongwei's help set the car on fire. After the incident, Sang Wei police processed claims on March 22 because in accepting reports for

claims, the insurance company staff found the reporters suspicious, and ultimately Chen Dongwei and others failed to succeed in their actions. In this case, Chen Baoqing, Zhang Xin as a helper in the joint crime of insurance fraud, Chen Dong as the perpetrator, and ultimately all three were convicted by the court of insurance fraud.

The non-identity subject can be an aider and abettor in the joint crime of insurance fraud. But can the aider and abettor constitute a joint criminal of insurance fraud? The typical perpetrator contains two types: the dominant joint perpetrator and the conspiracy joint perpetrator (Yoichi Okamoto & W.-H. Song, 2010). Under these two types, the subject who plays a dominant role is recognized as a co-perpetrator. Still, no clear rule exists on whether a person without identity who plays a dominant role in a joint crime constitutes a co-perpetrator. Can a non-identified person who plays a dominant role in insurance fraud constitute a co-perpetrator of the joint crime of insurance fraud? The criminal law of "identity" refers to the specific qualifications, status, or status of the perpetrator, and the law expressly provides for certain personal elements that impact the conviction and sentence (Chen Mei, 2022).

On whether a person without identity can constitute a true identity of the co-perpetrator, the current theory has the following views:

(1) The affirmative statement, represented by Professor Richard Chang, holds that the non-identified person can constitute a joint positive offender with a true identity offender. Professor Li Hong also asserts that since the non-identified person can commit some of the acts of the actual identity offender, he can be fully held responsible (Lai Hong, 2012).

(2) In the negative, Professor Chen Xingliang argues that a non-identified person is unable to perform the criminal acts that can only be committed by a real identity offender because he does not have a specific identity under the criminal law, so a non-identified person cannot become a co-perpetrator of a real identity offender (Xu Dai & Wang Peiran, 2023).

(3) The compromise view is that it is necessary to give specific consideration to the cases that occur in practice, and if a person without status can perform some of the acts of a status offender. They can constitute a joint criminal, but if not, then they cannot constitute a common criminal (Li Qingli, 2016).

All three views mentioned above have their reasonableness, but I agree more with the negative view. First, status in criminal law refers to the qualification, status or state possessed by the perpetrator, and status is the core of status offenders. The positive offender of a status offender in criminal law assumes certain legal obligations in their domain. A person without status does not carry obligations under the law. Therefore, a violation of such obligations should not be punished in the same way as a person with status. Second, the relationship between the insurer and the insured, the beneficiary and the insured is contractual. The binding nature of the contract involves the two parties who entered into the contract, and a person without status is not a party to the insurance contract, so he or she is not qualified to violate the contractual obligations. He or she cannot be a co-perpetrator of the insurance fraud. Finally, regarding the relationship between the proper offender and the co-perpetrator, the general theory in China is that the co-perpetrator is a kind of proper offender, so in order to maintain the consistency between the co-perpetrator and the proper offender, it is more reasonable that the non-identity person cannot constitute the co-perpetrator of the insurance fraud.

3.3 "Internal and external collusion" type insurance fraud joint crime

The "inside and outside" type of insurance fraud joint crime to master three points, first of all, there should be "inside and outside" two subjects; secondly, "inside and outside" two subjects to collude with each other; finally, "inside" the main body to use the convenience of its position, one of the three can not be missing.

Article 183 of the Criminal Law provides for the situation where a staff member of an insurance company uses the convenience of his position to commit insurance fraud alone and keep the fraudulently obtained funds for himself. In this case, the court usually convicts and punishes the crime of embezzlement or misappropriation.

The key to the "internal and external collusion" type of insurance fraud lies in the insurance company staff using the convenience of their positions to help the insured and other fraudulent insurance money. If the insurance company staff did not use the convenience of their positions, they would constitute the abettor and aider of the joint crime of insurance fraud; if they used the convenience of their positions and cheated the funds to their own possession, they would be convicted and punished for the crime of misappropriation or embezzlement. At present, about the insurance company staff to use their positions to help the insured and other subjects to jointly implement the insurance fraud how to convict and punish, China's academic circles exist the following views:

(1) The main offender said, that is, how to convict and punish depends on the role played by insurance staff and policyholders, beneficiaries, etc. in the crime. When the subject of insurance fraud under the criminal law plays a

major role in the crime, all the people involved in the crime should be convicted and punished according to the crime of insurance fraud; when the insurance company personnel play a major role, all the people involved in the crime should be convicted and punished according to the crime of embezzlement or the crime of misappropriation of office. This view has a certain degree of rationality, but there is a certain difficulty for how to judge the size of the role of the crime subject in the process of crime, and even more so when the insured and other subjects and insurance company staff in the joint criminal acts play the same role, the use of this view will not be able to solve the problems encountered.

(2) Separate conviction, that is, the criminal law of insurance fraud and insurance company staff were convicted of insurance fraud and embezzlement or embezzlement respectively. This separate conviction and punishment ignores the oneness of the criminal acts of the insured and other insurance staff. Although separate conviction has some reasonableness for the conviction and punishment of different personnel, it seems unreasonable to cut off the oneness of the crime (Peng Sha, 2018).

(3) This view is that the crime of insurance fraud is divided into two stages: fabricating an insurance accident and making a claim. In this view, it is necessary to consider which process of falsifying an insurance accident and making a claim to the insurance company should be characterized as the practice act when determining how to convict and punish. Undoubtedly, it adds some difficulties to the judgment of insurance fraud.

(4) The core role, which is the view held by Professor Zhang Mingkai. This view attaches importance to the role of the criminal subject in the joint crime. However, under this view, subjects such as the policyholder can never be the core role of the crime of embezzlement or the crime of misappropriation, and the staff of the insurance company can never be the core role of the crime of insurance fraud (Wang Yuan, 2020).

The above four views, for the insurance company staff to use the convenience of their positions to help the insured and other acts of insurance fraud should be convicted and punished, I agree with the core role + imaginary competing views. The "internal and external collusion" type of insurance fraud joint crime should be discussed separately: (1) First of all, the policyholder and the insurance company staff in the scope of the crime of insurance fraud set up a joint crime, because the insurance staff or the company's employees, when they use their positions to help commit insurance fraud, we should consider a separate crime of embezzlement or embezzlement. For the conviction of insurance staff, the competition between the crime of insurance fraud and the crime of embezzlement or misappropriation of office should be considered. (1) When the insurance company personnel are in the core role, subjects such as insurance workers and policyholders are first established as joint crimes within the scope of embezzlement or misappropriation of office. Because the criminal law provides that special subjects can constitute the crime of insurance fraud, the conviction and punishment of such subjects also need to consider the competition between the crime of insurance fraud and the crime of embezzlement or the crime of embezzlement. This view not only solves the problem of determining the size of the role played by the subject of the crime and the core role in the core role but also solves the problem of severing the unity of the crime in the implementation of the crime and separate conviction.

4. Conclusion

With the development of the insurance business, the advantages of insurance are becoming increasingly obvious, both life insurance and property insurance play an essential role in supporting people's lives. However, frequent insurance frauds threaten the insurance system and the property of insurers in China, which is negative for the development of the insurance industry and the domestic environment. To promote the development of the insurance industry and the formation of a good domestic economic environment, the research on the crime of insurance fraud needs to be further deepened; as the judicial practice continues to deepen, active and effective countermeasures are needed for the complex and changing forms of crime, and the provisions for the crime of insurance fraud should be more comprehensive.

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