IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 07-CR-30193-JPG
	)	
LAURA KRPAN, a.k.a. LAURA ZOLLER,	)	
TARA MORGAN, a.k.a. TARA PRINCE,	)	
a.k.a. TARA JONES and	)	
LT CONSULTING, INC.,	)	
	)	
Defendants.	)	

MOTION TO DISMISS THE INDICTMENT FOR FAILURE TO ALLEGE DEPRIVATION OF A COGNIZABLE PROPERTY INTEREST UNDER THE STATUTES

Comes now the Defendant, Tara Morgan, by her attorney John D. Stobbs, II and moves this Honorable Court to dismiss all counts of the indictment because the indictment fails to allege a deprivation of a cognizable property interest under 18 U.S.C. §§§1341, 1343, and 1349. In support of this motion, Defendant states the following:

Memorandum of Law

Rule 7(c)(1) of the Federal Rules of Criminal Procedure requires that an Indictment be a "plain, concise, and definite written statement of the essential facts constituting the offense charged." For an Indictment to be sufficient, it must "'contain[ ] the elements of the offense charged.' " *U.S. v. Olson,* 262 F.3d 795 (8th Cir. 2001) (citing *Hamling v. United States,* 418 U.S. 87, 117 (1974)).

The Indictment charging Tara Morgan is insufficient because it fails to allege that the object of the fraud was "property" under the terms of the statute. The Indictment charges Ms. Morgan with having participated in a conspiracy, "to defraud and to obtain money . . . through the use of the United States Mail, private and commercial interstate carriers, and through the use of interstate wire communications" in violation of 18 U.S.C. §§§1341, 1342, and 1349. The federal mail fraud statute, 18 U.S.C. §1341, provides, in relevant part: "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, ... for the purpose of executing such scheme or artifice or attempting so to do, [uses the mails or causes them to be used], shall be fined under this title or imprisoned not more than 20 years, or both."

To prove fraud under the statute, the Government must establish that the object of the fraud was "property" *in the hands of the victim. Cleveland v. United States,* 531 U.S. 12, 26 (2000); *Pasquantino v. United States,* 544 U.S. 349, 355 (2005) (emphasis added). The requirement that the object of the fraud be property in the hands of the victim applies equally when the alleged object of the conspiracy is money as when it is other property. *See United States v. Griffin,* 324 F.3d 330, 354 (5th Cir. 2003)(holding that tax credits are not property under the mail fraud statute because the Government has no property interest in them before they are issued); *See also U.S. v. Turner,* 465 F.3d 667, 682 (6th Cir. 2006) (Holding that an elected official's salary did not constitute property for purposes of the statute because the citizens did not have a property right to that money).

Additionally, the requirement applies equally to both mail and wire fraud statutes. *See Pasquantino,* 544 U.S. at 355, n 2 ("Although *Cleveland* interpreted the term 'property' in the mail fraud statute . . . we have construed identical language in the mail and wire fraud statutes *in pari material.*" (citations omitted).

I. The alleged $1,035,386.00 in premium payments denied to the insurance companies are not sufficient to support a finding of fraud because the alleged insurance companies had no property right to those premium payments.

A deprivation of money is only a sufficient interest to constitute fraud where the "victim" of the fraud has a valid, legal property interest in that money. In *Pasquatino v. United States,* for example, the Supreme Court held that a scheme to avoid Canadian excise taxes did constitute wire fraud under the statute because Canada had a "right to collect excise taxes on the liquor the petitioners imported." 544 U.S. at 355. In *U.S. v. Turner,* in contrast, the Sixth Circuit held that a politician's allegedly fraudulent scheme to get elected, and thereby obtain the salary of an elected official did not constitute fraud under the statutes because neither the State nor its citizens had a valid property right to the money that the elected official collected through his salary. 465 F.3d at 682. The statute required more, the court pointed out, than a simple allegation that "the victim obtain[ed] something of lesser value than the price paid." *Id.* at 681. "Kentucky has no right to appropriate, transfer, or otherwise spend the money in question; thus, there is no resulting property deprivation." *Id.* at 682. *See also Cleveland,* 531 U.S. at 22 ("Tellingly . . . the Government nowhere alleges that Cleveland defrauded the State of any money to which the state was entitled by law.")

In this case, the insurance companies had no right to the premium payments purportedly

denied to them by the defendants' actions. The Indictment alleges that the defendants misrepresented themselves and their client companies in the applications for insurance coverage which they sent to the insurance companies. The premium payments referred to in the Indictment thus represent money the insurance companies allegedly *would have received* had the applications for coverage been accurate, and they thus contracted for higher premium payments. Unlike in *Pasquatino,* there exists no statute that would have obligated the defendants or their clients to pay that money to the insurance companies in the absence of an agreed upon contract. Moreover, the contracts under which the defendant and its clients *were obligated* offered coverage at a lower rate. The *only* premiums that the insurance companies had a right to were those that the defendant and its client companies were obligated to pay under the contracts between the two companies. The Indictment *does not* allege that the defendants or their client companies failed to pay the premiums actually due to them under a contract as a result of the alleged fraud. Therefore, the alleged "unpaid premiums" did not constitute a property interest sufficient to support a fraud convictions. Like in *Turner,* it is not sufficient for the Government to allege that the "victim" obtained something "of lesser value than the price paid." The insurance companies maintained no right to the higher premiums for which they had not contracted.

Nor do the contracts with the insurance companies for the lower premiums themselves constitute a sufficient property interest to support a conviction under the mail and wire fraud

statutes[1]. First, the Indictment does not specifically allege that contracts themselves were an object of the purported fraud. Therefore, any purported property interest in the contracts themselves cannot be used to support the sufficiency of the Indictment. However, even if the contracts were alleged in the Indictment as an object of the conspiracy, the promises given by the insurance companies under the terms of those contracts do not constitute a property interest for purposes of the mail and wire fraud statutes.

For something to constitute a property interest sufficient to support a mail or wire fraud conviction, it must be property in the hands of the victim. *Cleveland,* 531 U.S. 12. In *Cleveland,* the Supreme Court ruled that state and municipal licenses did not constitute "property" under the statute because the Government did not have a property interest in the licenses. *Id.* Applying this rule, the Fifth Circuit similarly ruled in *U.S. v. Griffin* that an alleged scheme to fraudulently obtain tax credits did not support a finding of a statutory violation because, "unissued tax credits have zero intrinsic value." 324 F.3d at 354.

The workers compensation coverage provided by the insurance companies in this case implicated no property interests until it left the hands of the victim. Like licenses at issue in *Cleveland,* and the tax credits at issue in *Griffin,* such coverage simply "[does] not have value until [it is] issued." 324 F.3d at 353. Such coverage simply has no inherent value. Even to the extent that such coverage would have value in the hands of the beneficiaries, it had no

[1] While the seventh circuit did hold in *United States v. Leahy* that contracts can constitute a sufficient property interest under *Cleveland* (see 463 F.3d 773 (2006)), such a holding in no way requires a conclusion that the contracts at issue in this case do. In *Leahy,* the victims pledged to pay certain money to the defendants in exchange for services provided. What the victims were to be deprived of under the contract thus met the *Cleveland* test because the victims had a property interest in that money before it ever left their hands. In this case in contrast, the insurance coverage at issue does not represent something of value in which the insurance companies have an interest and of which they would be deprived through the operation of the contract.

such value in the context of this case because that coverage was ultimately denied.[2]

II. The $299,514.00 in claims allegedly paid out are not sufficient to allege fraud under the relevant statutes because that money was not the object of the conspiracy.

A money or property loss only supports a conviction under the relevant statutes where that money or property was the specific aim or object of the fraudulent scheme. *United States v. Walters,* 997 F.2d 1219, 1227 (7th Cir. 1993). In *Walters,* a sports agent formed secret contracts with college athletes, thus violating a condition of their scholarship money which precluded them from accepting professional contracts. *Id.* at 1219. The Seventh Circuit held that the property loss alleged by the Government as a result of the sports agent's actions – i.e., the loss of the scholarship money paid to the athletes by the various universities – was insufficient to support a conviction for mail fraud. In finding that that lost scholarship money was not the object of the fraud, the court emphasized that the defendant had not himself obtained any of the scholarship money directly from the universities, but rather had used the scheme to obtain money through other sources. A deprivation of money alone was not sufficient to support a conviction under the statute, where "the defendant [had] neither obtained nor tried to obtain the victim's property." *Id.* at 1225. "Losses that occur as *byproducts* of a deceitful scheme do not satisfy the statutory requirement." *Id.* at 1227 (*emphasis added*).

In this case, like in *Walters,* the $299,514.00 in claims purportedly paid out by the

[2] That the supposed beneficiaries of the coverage, i.e. the defendant's client companies, may have been denied something of value in being denied the workers compensation coverage is of no relevance to this analysis. The Indictment does not allege that the object of the conspiracy was to deny the client companies insurance coverage.

insurance companies were not the specific aim or object of the fraudulent scheme, but rather a byproduct of the defendants' alleged actions. Of the twenty-four counts stated in the government's fifteen page Indictment, not one alleges an attempt by the defendants to collect on a workers' compensation claim. Even had there been such an attempt, it would have been made by employees of the client companies, not by the defendants. Like in *Walters,* the defendants themselves would have never received any of the money in claims paid out. Any benefit they would have allegedly derived from the fraudulent scheme were separate and independent of any money the insurance companies would have paid out through filed claims. Any money the insurance companies lost as a result of claims paid out was a purely incidental property deprivation, and therefore cannot form the basis for a valid conviction under the wire and mail fraud statutes.

Conclusion

The Supreme Court has held that a strict construction of the mail and wire fraud statutes with regard to the property requirements is necessary in order to ensure that federal criminal law does not encroach upon areas traditionally relegated to the states. *Cleveland,* 531 U.S. at 24-25. Both the Supreme Court and the Seventh Circuit dismissed cases where the conduct alleged did not meet with this strict construction of the statute. Because the counts in Ms. Morgan's Indictment do not comport with this strict construction that precedent mandates, this court should do so as well in this case.

The defendant therefore respectfully requests that this court dismiss the Indictment against Tara Morgan with regard to all counts alleged.

TARA PRINCE

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2008 a copy of the attached *MOTION TO DISMISS THE INDICTMENT FOR FAILURE TO ALLEGE DEPRIVATION OF A COGNIZABLE PROPERTY INTEREST UNDER THE STATUTES* was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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