

LEXSTAT CAL PEN CODE § 550

DEERING'S CALIFORNIA CODES ANNOTATED
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*** THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED ***
*** THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 7 AND ***
*** CH. 17 OF THE 2008 REGULAR SESSION APPROVED 5/21/08 ***

PENAL CODE
Part 1. Of Crimes and Punishments
Title 13. Of Crimes Against Property
Chapter 10. Crimes Against Insured Property and Insurers

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Cal Pen Code § 550 (2007)

§ 550. Unlawful acts related to claims

(a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any person to do any of the following:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss or injury, including payment of a loss or injury under a contract of insurance.

(2) Knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud.

(3) Knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.

(4) Knowingly present a false or fraudulent claim for the payments of a loss for theft, destruction, damage, or conversion of a motor vehicle, a motor vehicle part, or contents of a motor vehicle.

(5) Knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented, in support of any false or fraudulent claim.

(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit.

(7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf of, the claimant.

(8) Knowingly present multiple claims for payment of the same health care benefit with an intent to defraud.

(9) Knowingly present for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time.

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(10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for payment of a health care benefit also means a claim or claim for payment submitted by or on the behalf of a provider of any workers' compensation health benefits under the Labor Code.

(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:

(1) Present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(2) Prepare or make any written or oral statement that is intended to be presented to any insurer or any insurance claimant in connection with, or in support of or opposition to, any claim or payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.

(4) Prepare or make any written or oral statement, intended to be presented to any insurer or producer for the purpose of obtaining a motor vehicle insurance policy, that the person to be the insured resides or is domiciled in this state when, in fact, that person resides or is domiciled in a state other than this state.

(c)

(1) Every person who violates paragraph (1), (2), (3), (4), or (5) of subdivision (a) is guilty of a felony punishable by imprisonment in the state prison for two, three, or five years, and by a fine not exceeding fifty thousand dollars (\$50,000), or double the amount of the fraud, whichever is greater.

(2) Every person who violates paragraph (6), (7), (8), or (9) of subdivision (a) is guilty of a public offense.

(A) When the claim or amount at issue exceeds four hundred dollars (\$400), the offense is punishable by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, by a fine of not more than ten thousand dollars (\$10,000), or by both that imprisonment and fine.

(B) When the claim or amount at issue is four hundred dollars (\$400) or less, the offense is punishable by imprisonment in a county jail not to exceed six months, or by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine, unless the aggregate amount of the claims or amount at issue exceeds four hundred dollars (\$400) in any 12-consecutive-month period, in which case the claims or amounts may be charged as in subparagraph (A).

(3) Every person who violates paragraph (1), (2), (3), or (4) of subdivision (b) shall be punished by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, or by a fine of not more than ten thousand dollars (\$10,000), or by both that imprisonment and fine.

(4) Restitution shall be ordered for a person convicted of violating this section, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid.

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(d) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of a sentence be suspended for, any adult person convicted of felony violations of this section who previously has been convicted of felony violations of this section or Section 548, or of *Section 1871.4 of the Insurance Code*, or former Section 556 of the Insurance Code, or former Section 1871.1 of the Insurance Code as an adult under charges separately brought and tried two or more times. The existence of any fact that would make a person ineligible for probation under this subdivision shall be alleged in the information or indictment, and either admitted by the defendant in an open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

Except when the existence of the fact was not admitted or found to be true or the court finds that a prior felony conviction was invalid, the court shall not strike or dismiss any prior felony convictions alleged in the information or indictment.

This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with *Section 6000 of the Welfare and Institutions Code*).

(e) Except as otherwise provided in subdivision (f), any person who violates subdivision (a) or (b) and who has a prior felony conviction of an offense set forth in either subdivision (a) or (b), in Section 548, in *Section 1871.4 of the Insurance Code*, in former Section 556 of the Insurance Code, or in former Section 1871.1 of the Insurance Code shall receive a two-year enhancement for each prior felony conviction in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury. Any person who violates this section shall be subject to appropriate orders of restitution pursuant to *Section 13967 of the Government Code*.

(f) Any person who violates paragraph (3) of subdivision (a) and who has two prior felony convictions for a violation of paragraph (3) of subdivision (a) shall receive a five-year enhancement in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(g) Except as otherwise provided in Section 12022.7, any person who violates paragraph (3) of subdivision (a) shall receive a two-year enhancement for each person other than an accomplice who suffers serious bodily injury resulting from the vehicular collision or accident in a violation of paragraph (3) of subdivision (a).

(h) This section shall not be construed to preclude the applicability of any other provision of criminal law or equitable remedy that applies or may apply to any act committed or alleged to have been committed by a person.

(i) Any fine imposed pursuant to this section shall be doubled if the offense was committed in connection with any claim pursuant to any automobile insurance policy in an auto insurance fraud crisis area designated by the Insurance Commissioner pursuant to Article 4.6 (commencing with *Section 1874.90 of Chapter 12 of Part 2 of Division 1 of the Insurance Code*).

HISTORY:

Added Stats 1992 ch 675 § 8 (AB 3067). Amended Stats 1993 ch 120 § 8 (AB 1300), effective July 16, 1993, ch 605 § 3 (AB 1179); Stats 1994 ch 841 § 3 (AB 3751), ch 1008 § 3.1 (SB 1833); Stats 1995 ch 573 § 2 (SB 1228), effective October 4, 1995, ch 574 § 4 (SB 465); Stats 1998 ch 189 § 1 (SB 334); Stats 1999 ch 83 § 143 (SB 966); Stats 2000 ch 867 § 21 (SB 1988); Stats 4th Ex Sess 2003-2004 ch 2 § 6 (SB 2XXXX), effective March 6, 2005.

NOTES:**Amendments:****1993 Amendment (ch 120):**

Added subd (a)(11).

1993 Amendment (ch 605):

(1) Amended subd (a)(6) by (a) adding "any person described as follows:"; (b) substituting the period for a semicolon at the end of subds (A) and (B); and (c) substituting the period for "; and" at the end of subd (C); and (2) deleted the former last sentence of subd (b)(1) which read: "Except in the interest of justice, a person placed on probation for violating any provision of this section shall be required by the court to perform some community service, specifically, the removal of graffiti."

1994 Amendment:

(1) Added "false or fraudulent" after "in support on any" in subd (a)(6)(D); (2) added subd (b); (3) redesignated former subds (b)-(e) to be subds (c)-(f); (4) amended subd (c) by (a) substituting subd (1) for former subd (1) which read: "(1) Every person who violates paragraph (1), (2), (3), (4), (5), or (6) of subd (a) is punishable by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both that imprisonment and fine, unless the value of the fraud is fifty thousand dollars (\$50,000) or more. Whenever the value of the fraud is fifty thousand dollars (\$50,000) or more, the fine may be double the amount of the value of the fraud. Except in the interest of justice, a person placed on probation for violating any provision of this section shall be required by the court to perform some community service, specifically, the removal of graffiti."; (b) adding "double" after "fine may not exceed" in subd (2)(A); and (c) adding subd (3); (5) substituted "act committed or alleged to have been committed by a person" for "transaction" in subd (f); and (6) added subds (g) and (h). (As amended Stats 1994 ch 1008, compared to the section as it read prior to 1994. This section was also amended by an earlier chapter, ch 841. See *Gov C § 9605*.)

1995 Amendment (ch 573):

(1) Added ", or to aid, abet, solicit, or conspire with any person to do any of the following" in the introductory clause of subd (a); (2) added "or injury" after "of a loss" the first time it appears in subd (a)(1); (3) deleted former subd (a)(6) which read: "(6) Knowingly assist, abet, solicit, or conspire with any person described as follows:

"(A) Any person who knowingly presents any false or fraudulent claim for the payment of a loss, including payment of a loss under a contract of insurance.

"(B) Any person who knowingly presents multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud.

"(C) Any person who knowingly causes or participates in a vehicular collision, or any other vehicular accident, for

the purpose of presenting any false or fraudulent claim.

"(D) Any person who knowingly prepares, makes, or subscribes any writing, with the intent to present or use it, or to allow it to be presented in support on any false or fraudulent claim."; **(4)** redesignated former subs (a)(7)-(a)(11) to be subs (a)(6)-(a)(10); **(5)** substituted "paragraphs (6) to (9)" for "paragraphs (7) to (10) in subd (a)(10); **(6)** substituted "paragraph (1), (2), (3), (4) or (5)" for "paragraph (1), (2), (3), (4), (5), or (6)" in subd (c)(1); **(7)** substituted "paragraph (6), (7), (8), or (9)" for "paragraph (7), (8), (9), or (10)" in subd (c)(2); **(8)** added "or Section 548, or of *Section 1871.4 of the Insurance Code*, or former Section 556 of the Insurance Code, or former Section 1871.1 of the Insurance Code" in subd (d); **(9)** amended subd (e) by **(a)** substituting "subdivision (a) or (b)" for "subdivision (a)"; **(b)** substituting "an offense set forth in either subdivision, in Section 548, in *Section 1871.4 of the Insurance Code*, in former Section 556 of the Insurance Code, or in former Section 1871.1 of the Insurance Code" for "the offense set forth in that subdivision or in Section 548"; **(c)** substituting "subdivision (c)" for "subdivision (b)" at the end of the first sentence; and **(d)** adding the last sentence; and **(10)** substituted subs (f) and (g) for former subs (f)-(h) which read: "(f) This section shall not be construed to preclude the applicability of any other provision of criminal law that applies or may apply to any act committed or alleged to have been committed by a person.

"(g) Any person who violates any provision of subdivision (a) shall be liable, in addition to any other penalty prescribed by law, for a civil penalty of up to five thousand dollars (\$5,000) per claim or act, plus an assessment of not more than three times the amount of each claim for compensation submitted in violation of this section. The penalties provided for in this subdivision may be assessed and recovered in a civil action brought in the name of the people of the State of California by any district attorney, city attorney, or the Attorney General. Any civil penalty recovered shall be allocated as follows:

"(1) If the action was brought by the Attorney General, 50 percent of the penalty collected shall be paid to the General Fund, and 50 percent of the penalty collected shall be paid to the Department of Insurance Fraud Account in the Insurance Fund.

"(2) If the action was brought by a district attorney, 25 percent of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, 25 percent of the penalty collected shall be paid to the General Fund, and 50 percent of the penalty collected shall be paid to the Department of Insurance Fraud Account in the Insurance Fund.

"(3) If the action was brought by a city attorney, 25 percent of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, 25 percent of the penalty collected shall be paid to the General Fund, and 50 percent of the penalty collected shall be paid to the Department of Insurance Fraud Account in the Insurance Fund.

"(4) Moneys collected by the Department of Insurance pursuant to this subdivision shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund and shall be used solely for the investigation and prosecution of insurance fraud, as appropriated by the Legislature.

"(h) This section shall remain operative only until January 1, 1999, and as of that date is repealed."

1995 Amendment (ch 574):

(1) Added "or injury" the second time it appears in subd (a)(1); and **(2)** deleted former subd (g) which read: "(g) In order for a false statement to constitute a violation of subdivision (a) or (b), it must be material. A statement is material if it is reasonably relevant to the claim or investigation of the claim and a reasonable insurer would attach importance to it."

1998 Amendment:

(1) Substituted "Except as otherwise provided in subdivision (f)," for "Any" at the beginning of subd (e); (2) added subds (f) and (g); and (3) redesignated former subd (f) to be subd (h).

1999 Amendment:

(1) Added the comma after "to be presented" in subd (a)(5); (2) substituted "that" for "which" in subd (a)(7), and after "of any fact" in the second sentences of subds (d)-(f); (3) added the comma after "Conceal" and "occurrence of" in subd (b)(3); (4) added "or" after "or five years," in subd (c)(2)(A); (5) amended subd (c)(2)(B) by (a) adding "or" after "exceed six months,"; (b) adding the comma after "imprisonment and fine"; and (c) substituting "12-consecutive-month" for "12 consecutive month"; (6) amended subd (c)(3) by (a) adding "or" after "or five years," after "of the fraud," and after "exceed one year"; and (b) substituting the semicolon for the comma after "imprisonment and fine" the first time it appears; (7) Substituted "when" for "where" near the beginning of the third sentence in subd (d); (8) amended the last sentence of subd (d) by substituting (a) "does" for "shall" near the beginning; and (b) "or Division 6 (commencing with Section 6000) of" for "of, or Division 6 (commencing with Section 6000) of,"; (9) amended the first sentence of subd (e) by adding (a) "any" after "in subdivision (f)," and (b) "(a) or (b)" after "in either subdivision"; (10) added "a" after "felony convictions for" in the first sentence of subd (f); and (11) substituted "This section shall not" for "No portion of this section shall" in subd (h).

2000 Amendment:

(1) Substituted "one thousand five hundred dollars (\$1,500)" for "one thousand dollars (\$1,000)" in subd (c)(3); and (2) added subd (i).

2004 Amendment:

(1) Substituted "or double the amount of the fraud, whichever is greater" for "unless the value of the fraud exceeds fifty thousand dollars (\$50,000), in which event the fine may not exceed double of the value of the fraud" at the end of subd (c)(1); (2) substituted subd (c)(2)(A) for former subd (c)(2)(A) which read: "Where the claim or amount at issue exceeds four hundred dollars (\$400), the offense is punishable by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both that imprisonment and fine, unless the value of the fraud exceeds fifty thousand dollars (\$50,000), in which event the fine may not exceed double the value of the fraud, or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine."; (3) substituted "When" for "Where" at the beginning of subd (c)(2)(B); (4) amended subd (c)(3) by substituting (a) "or double the amount of the fraud, whichever is greater," for ", unless the value of the fraud exceeds fifty thousand dollars (\$50,000), in which event the fine may not exceed double the value of the fraud"; (b) the comma for the former semicolon following the second instance of "fine"; and (c) "ten thousand dollars (\$10,000)" for "one thousand five hundred dollars (\$1,500)"; and (5) added subd (c)(4).

Historical Derivation:

(a) Former Pen C § 549, as enacted Stats 1872, amended Stats 1923 ch 353 § 3.

(b) Former Ins C § 556, as enacted Stats 1872, amended Stats 1976 ch 1139 § 87, Stats 1978 ch 174 § 3, Stats 1979

ch 556 § 1, Stats 1986 ch 1324 § 1, Stats 1988 ch 1609 § 1, Stats 1989 ch 730 § 1.

(c) Former Ins C § 1871.1, as added Stats 1989 ch 1119 § 3, amended Stats 1991 ch 1008 § 2.

Note

Stats 1993 ch 605 provides:

SECTION 1. This act shall be known and may be cited as "The 1993 California Graffiti Omnibus Bill."

Stats 2000 ch 867 provides:

SECTION 1. The Legislature finds and declares that auto theft, auto body repair fraud and other forms of auto insurance fraud, including staged accidents, cause great economic harm and personal suffering to the people of California. The cost of this theft and fraud has been estimated to be at least \$1 billion annually and may be in excess of \$9 billion annually. According to the Bureau of Automotive Repair, 39 percent of the work it inspects involves fraud, and according to the California Highway Patrol, insurance fraud and auto theft are linked to organized crime. Accordingly, the Legislature has determined that it is necessary to increase efforts by state agencies to combat this type of fraud and to require insurers to strengthen their antifraud efforts.

SEC. 2. This act shall be known and may be cited as the Anti-Auto Theft and Insurance Fraud Act of 2000.

Cross References:

Burning or aiding and abetting burning of personal property with intent to defraud insurer: *Pen C § 451*.

Theft by fraud: *Pen C § 484*.

Crimes against insured property and insurance carriers: *Pen C § 548*.

Insurance Frauds Prevention Act: *Ins C §§ 1871 et eq.*

Obligations of district attorney upon filing complaint: *Ins C § 1872.45*.

Contract for professional services procured in violation of this section: *Lab C § 3219*.

Collateral References:

Cal Forms Pl & Practice (Matthew Bender) ch 72 "Attorney Practice and Ethics" § 72.10 et seq.

2 Witkin Summary (10th ed) Workers' Compensation § 23.

5 Witkin Summary (10th ed) Torts § 14.

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2000, Insurance Fraud: Fraudulent Claims

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2001:

Insurance Fraud: Multiple Claims

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2002, Insurance Fraud: Vehicle Accidents

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2003, Insurance Fraud: Health-Care Claims-Total Value

Attorney General's Opinions:

Where a dental insurance plan provides that the insurance company will pay a fixed percentage of a dentist's "usual fee," a dentist who claims a "usual fee" that does not account for the fact that he has waived a patient's copayment does not violate California laws against misrepresentation and fraud. *64 Ops. Cal. Atty. Gen. 782.*

Annotations:

Fraud or misrepresentation by insured's agent after loss as within provision avoiding policy for fraud or attempted fraud of insured. 24 ALR2d 1220.

Right of life insurer to restitution of payment made because of fraud as to death of insured. 59 ALR2d 1107.

Admissibility to establish fraudulent purpose or intent, in prosecution for obtaining or attempting to obtain money or property by false pretenses, of evidence of similar attempts on other occasions. 78 ALR2d 1359.

Overvaluation in proof of loss of property insured as fraud avoiding fire insurance policy. 16 ALR3d 774.

Hierarchy Notes:

Pt. 1, Tit. 13, Ch. 10 Note

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Decisions Under Former Law

A. DECISIONS UNDER FORMER PEN C § 549 1. In General B. DECISIONS UNDER FORMER INS C § 556 2. In General 3. Scope and Elements of Offense 4. Prosecution Generally 5. Indictment and information 6. Admissibility of Evidence 7. Sufficiency of Evidence C. DECISIONS UNDER FORMER INS C § 1871.1 8. In General

Decisions Under Current Law**1. In General**

Action under *Ins. Code § 1871.7* may be brought on behalf of the State of California against every person who violates *Pen C §§ 549 and 550*. Those statutes, in turn, criminalize the making of false or fraudulent claims to insurers.

State of California ex rel. Nee v. Unumprovident Corp. (2006, Cal App 2d Dist) 140 Cal App 4th 442, 44 Cal Rptr 3d 491, 2006 Cal App LEXIS 862, review denied (2006, Cal) 2006 Cal LEXIS 10103.

3. Scope and Elements of Offense

Exclusivity provisions of the Workers' Compensation Act did not bar an action initiated by the People under *Ins C § 1871.7* alleging that defendants had submitted fraudulent claims for compensation proscribed by *Pen C § 550*. *People ex rel. Monterey Mushrooms, Inc. v. Thompson* (2006, Cal App 6th Dist) 136 Cal App 4th 24, 38 Cal Rptr 3d 677, 2006 Cal App LEXIS 112, rehearing denied (2006, Cal App 6th Dist) 2006 Cal App LEXIS 138, review denied (2006, Cal) 2006 Cal LEXIS 4758, cert den (2007, US) 167 L Ed 2, 127 S Ct 1869, 2007 US LEXIS 3087.

Insurer is not subject to a qui tam action under *Ins C § 1871.7* based on its marketing and claims handling practices. By its terms, an action under § 1871.7 may be brought on behalf of the State against "every person" who violates *Pen C §§ 549* and *550*, and those statutes in turn criminalize the making of false or fraudulent claims to insurers. *State of California ex rel. Metz v. Farmers Group, Inc.* (2007, 2d Dist) 156 Cal App 4th 1063, 2007 Cal App LEXIS 1838.

In the context of *Ins C § 1871.7(b)*, "every person" must be viewed as excluding the insurer who receives and handles an insured's claim, as well as the insurer's agents and affiliates aiding in the processing of the claim, whether the insurer entity is a stock insurance company or a reciprocal exchange. *Pen C §§ 549* and *550* are tools to combat insurance claims fraud perpetrated against insurance companies, and "any person" who engages in such insurance claims fraud is the proper subject of a qui tam action under *Ins C § 1871.7*. *State of California ex rel. Metz v. Farmers Group, Inc.* (2007, 2d Dist) 156 Cal App 4th 1063, 2007 Cal App LEXIS 1838.

4. Prosecution Generally

In a civil action against doctors for presenting false insurance claims, as prohibited by *Pen C § 550*, the insurer did not have to prove that doctors used cappers to procure clients. *People ex rel. Allstate Insurance Co. v. Muhyeldin* (2003, Cal App 2d Dist) 112 Cal App 4th 604, 5 Cal Rptr 3d 492, 2003 Cal App LEXIS 1523, review denied (2004, Cal) 2004 Cal LEXIS 57.

In a case in which defendants violated *Ins C § 1871.7* by submitting fraudulent claims proscribed by *Pen C § 550*, the trial court properly imposed a penalty for each false or fraudulent claim submitted. *People ex rel. Monterey Mushrooms, Inc. v. Thompson* (2006, Cal App 6th Dist) 136 Cal App 4th 24, 38 Cal Rptr 3d 677, 2006 Cal App LEXIS 112, rehearing denied (2006, Cal App 6th Dist) 2006 Cal App LEXIS 138, review denied (2006, Cal) 2006 Cal LEXIS 4758, cert den (2007, US) 167 L Ed 2, 127 S Ct 1869, 2007 US LEXIS 3087.

In a civil case alleging that doctors presented fraudulent insurance claims, the burden of proving the acts was met by a preponderance of the evidence; the high degree of proof demanded in criminal cases was not required in civil cases even on the issue of a crime. *People ex rel. Allstate Insurance Co. v. Muhyeldin* (2003, Cal App 2d Dist) 112 Cal App 4th 604, 5 Cal Rptr 3d 492, 2003 Cal App LEXIS 1523, review denied (2004, Cal) 2004 Cal LEXIS 57.

Insured failed to allege a violation of *Pen C § 550(b)(3)* where the insured did not claim that the insurance company concealed the amount of benefits to which the insured was entitled. The insured alleged that the insurance company demanded more back from the insured than it was entitled because of the operation of two separate equitable defenses; the insurance company paid all of the benefits to the insured to which he was entitled. *Progressive West Ins. Co. v. Superior Court* (2005, Cal App 3d Dist) 135 Cal App 4th 263, 37 Cal Rptr 3d 434, 2005 Cal App LEXIS 1979, rehearing denied (2006) 2006 Cal. App. LEXIS 180, review denied (2006, Cal) 2006 Cal LEXIS 4455.

Trial court's Blakely error in imposing an upper term sentence of five years for defendant's crime of presenting a false or fraudulent insurance claim was not harmless. The basis upon which the trial court imposed the upper term sentence did not include at least one legally sufficient aggravating circumstance found to exist by the jury, admitted by

defendant, or justified based upon defendant's record of prior convictions. *People v. Ayala* (2007, 6th Dist) 2007 Cal App LEXIS 1588.

Decisions Under Former Law **A. DECISIONS UNDER FORMER PEN C § 549**

1. In General

Section 549 of the Pen C does not include the offense of presenting a false or fraudulent claim upon a contract of accident insurance, and one convicted under an information attempting to charge such an offense will be discharged on habeas corpus. *In re Application of Wilson* (1916, Cal App) 30 Cal App 567, 158 P 1050, 1916 Cal App LEXIS 130.

The offense set forth in *section 549 of the Pen Code* may be committed either by presenting a false claim of loss or by presenting false proof in support thereof; and in such prosecution defendant could not claim that he was prejudiced because the plaintiff relied in one count on the claim for loss and damage to machinery and equipment appearing in the proof of loss supporting such claim, rather than on a similar claim that was apparently sent to the insurer with that relied upon in another count. *People v. Thorn* (1934, Cal App) 138 Cal App 714, 33 P2d 5, 1934 Cal App LEXIS 692.

The offense set forth in *section 549 of the Pen Code* may be committed either by presenting a false claim of loss or by presenting false proof in support thereof; and in such prosecution defendant could not claim that he was prejudiced because the plaintiff relied in one count on the claim for loss and damage to machinery and equipment appearing in the proof of loss supporting such claim, rather than on a similar claim that was apparently sent to the insurer with that relied upon in another count. *People v. Thorn* (1934, Cal App) 138 Cal App 714, 33 P2d 5, 1934 Cal App LEXIS 692.

In this action for damages for malicious prosecution based upon a dismissal of a charge of presenting a false claim of insurance in violation of *section 549 of the Pen Code*, a finding that there was probable cause for the prosecution was proper, and the verdict for the defendant insurance company was properly directed, where the company's agents did not instigate or press the prosecution, but public officials did so on the basis of evidence obtained by their own investigation which showed that plaintiff's sworn claim for loss was excessive and false. *Short v. Stuyvesant Ins. Co.* (1935, Cal App) 6 Cal App 2d 309, 43 P2d 872, 1935 Cal App LEXIS 894.

B. DECISIONS UNDER FORMER INS C § 556

2. In General

In a prosecution for subscribing a writing with intent to use it in support of a false and fraudulent claim for payment of loss under a burglary insurance policy in violation of former Ins C § 556 (see now *Ins C § 1871.1*), defendants could not successfully claim that execution of a proof of loss as required by the policy was waived, although the loss was adjusted and a draft for payment thereof was signed on the basis of an inventory and typewritten statement of the claim which was signed by only one defendant, where the draft was sent to the insurance adjuster to be delivered after execution of the official form of proof of loss by all defendants, where other papers necessary to complete the official form, and already in possession of the insurer, were to be attached, and where execution of proof of loss was demanded as a condition for delivery of the draft in payment of the claim. *People v. Ross* (1951, Cal App) 105 Cal App 2d 235, 233 P2d 68, 1951 Cal App LEXIS 1453.

A person who knowingly or wilfully submits a claim to an insurance company, knowing it to be false, necessarily does so to defraud. *People v. Benson* (1962, Cal App 2d Dist) 206 Cal App 2d 519, 23 Cal Rptr 908, 1962 Cal App LEXIS 2050, cert den (1963) 374 US 806, 83 S Ct 1691, 10 L Ed 2d 1030, 1963 US LEXIS 1305, overruled *People v. Perez* (1965) 62 Cal 2d 769, 44 Cal Rptr 326, 401 P2d 934, 1965 Cal LEXIS 294.

An insurance company's payment of a claim is not determinative of whether the claim was false or fraudulent. *People v. Loomis* (1962, Cal App 2d Dist) 207 Cal App 2d 229, 24 Cal Rptr 281, 1962 Cal App LEXIS 1901.

The superior court's order setting aside an information charging defendant with presenting a false and fraudulent claim, former Ins C § 556 (see now *Ins C § 1871.1*), on the ground that defendant had been committed without reasonable or probable cause was erroneous where the valuation set forth in the claim filed by defendant was so grossly disproportionate to what was shown to have been the actual value of the property destroyed, as was indicated in the evidence adduced before the magistrate, that clearly there was a showing of an intent to defraud sufficient to warrant the magistrate, acting as a man of ordinary caution or prudence, to conscientiously entertain a reasonable suspicion that a violation of former Ins C § 556 (see now *Ins C § 1871.1*), had been committed by defendant. *People v. Kanan* (1962, *Cal App 2d Dist*) 208 *Cal App 2d* 635, 25 *Cal Rptr* 427, 1962 *Cal App LEXIS* 1841.

It was not error to deny defendant's motion for a mistrial sought on the theory that the only reasonable inference available to the jury when they were told that certain tape recordings had disappeared during a noon recess was that he was responsible for the tapes and that, therefore, it became impossible for him to have a fair trial, where any prejudice in this connection was averted by the court's prompt admonition telling the jury that the tapes had been in the court's custody, and directing the jurors not to attribute the disappearance to either the prosecution or the defense. *People v. Kirk* (1974, *Cal App 1st Dist*) 43 *Cal App 3d* 921, 117 *Cal Rptr* 345, 1974 *Cal App LEXIS* 1366.

3. Scope and Elements of Offense

Venue of the offense could be laid in the county where the false claims were mailed or in the county where they were received. *People v. Thorn* (1934, *Cal App*) 138 *Cal App* 714, 33 *P2d* 5, 1934 *Cal App LEXIS* 692.

In a prosecution for preparing a writing to be presented and used in the presentation of a false and fraudulent claim for payment of loss under an insurance contract, former Ins C § 556, subd. (b), (see now *Ins C § 1871.1*), where there was evidence to support an inference that an inventory report dated on the day of the fire in question was intended to be used in support of the fraudulent claim and was considered by the insurer in adjusting the loss, though the insurer relied primarily on other means to determine the value of the property destroyed, the case was triable in the county in which the inventory report was prepared and mailed, venue being in either the county in which the document was mailed or the county in which it was received. *People v. Zelver* (1955, *Cal App 1st Dist*) 135 *Cal App 2d* 226, 287 *P2d* 183, 1955 *Cal App LEXIS* 1352.

A count charging the preparing of a writing to be presented and used in the presentation of a false and fraudulent claim for payment of loss under an insurance contract, former Ins C § 556, subd. (b), (see now *Ins C § 1871.1*), was triable in the county in which the subject matter of the claim, that is, the destruction of the property by fire, occurred, since it was an act "requisite to the consummation of the offense" under *Pen C § 781*. *People v. Zelver* (1955, *Cal App 1st Dist*) 135 *Cal App 2d* 226, 287 *P2d* 183, 1955 *Cal App LEXIS* 1352.

In using the word "claim" in former Ins C § 556 (see now *Ins C § 1871.1*), making it unlawful to present to an insurance company, or to prepare with intent to present to an insurance company, any false claim for payment of a loss, the Legislature intended it to have its common meaning and intended to proscribe the presentation of any false demand under an insurance policy irrespective of the form of that demand. *People v. Teitelbaum* (1958, *Cal App 2d Dist*) 163 *Cal App 2d* 184, 329 *P2d* 157, 1958 *Cal App LEXIS* 1486, cert den (1959) 359 *US* 206, 79 *S Ct* 738, 3 *L Ed* 2d 759, 1959 *US LEXIS* 1266.

The gravamen of a charge of presenting false or fraudulent claims to an insurance company is the intent to defraud. *People v. Burnham* (1961, *Cal App 2d Dist*) 194 *Cal App 2d* 836, 15 *Cal Rptr* 596, 1961 *Cal App LEXIS* 1885.

The fact that the person making a false claim to an insurance company was not the policyholder, and was not, therefore, in a contractual relation with the insurance company to which the false claim was presented, did not make such person immune from prosecution for the offense denounced by former Ins C § 556 (see now *Ins C § 1871.1*), relating to false or fraudulent insurance claims, though the insurance contract did not give to the injured person a direct right to proceed against the insurance company. It was sufficient that the claim was for the payment of a loss under a

contract of insurance, since the gravamen of the substantive offense was defendant's intent to defraud. *People v. Benson* (1962, *Cal App 2d Dist*) 206 *Cal App 2d* 519, 23 *Cal Rptr* 908, 1962 *Cal App LEXIS* 2050, cert den (1963) 374 *US* 806, 83 *S Ct* 1691, 10 *L Ed 2d* 1030, 1963 *US LEXIS* 1305, overruled *People v. Perez* (1965) 62 *Cal 2d* 769, 44 *Cal Rptr* 326, 401 *P2d* 934, 1965 *Cal LEXIS* 294.

Prosecution of defendants for grand theft (*Pen C* §§ 484, 487), arising out of the procuring and cashing of fraudulent insurance claims drafts was not precluded by a misdemeanor statute proscribing presentation of false insurance claims former *Ins C* § 556 (see now *Ins C* § 1871.1); the felony statute requires, as an essential element, the taking of something of value, whereas a violation of the misdemeanor statute was complete when a false claim for payment of loss was presented or a false writing was prepared or presented with intent to use it in connection with such a claim, whether or not anything of value was taken or received. *People v. Cohen* (1970, *Cal App 2d Dist*) 12 *Cal App 3d* 298, 90 *Cal Rptr* 612, 1970 *Cal App LEXIS* 1629.

Former *Ins C* § 556 (see now *Ins C* § 1871.1), making it unlawful to present a fraudulent insurance claim, extended to the acts of an attorney in knowingly presenting such a claim on behalf of a client. *People v. Scofield* (1971, *Cal App 2d Dist*) 17 *Cal App 3d* 1018, 95 *Cal Rptr* 405, 1971 *Cal App LEXIS* 1549.

An intention to defraud was an essential element of the offense of presenting a fraudulent insurance claim in violation of former *Ins C* § 556, subd. (a) (see now *Ins C* § 1871.1), but such intention might properly be determined from a consideration of all the circumstances. *People v. Scofield* (1971, *Cal App 2d Dist*) 17 *Cal App 3d* 1018, 95 *Cal Rptr* 405, 1971 *Cal App LEXIS* 1549.

The gravamen of the offense established by former former *Ins C* § 556, subd. (a) (see now *Ins C* § 1871.1), which proscribes the presenting of any false or fraudulent claim for the payment of a loss under a contract of insurance, is the intent to defraud. This intent may be inferred from the surrounding circumstances and may be established merely by the assertion in an insurance claim of values for the stolen items in excess of the actual values of the items. *People v. De Caro* (1981, *Cal App 1st Dist*) 123 *Cal App 3d* 454, 176 *Cal Rptr* 509, 1981 *Cal App LEXIS* 2068.

4. Prosecution Generally

In such prosecution, where each count charging false entries in corporate books showed that defendant was the president and general manager of the corporation, that he made and concurred in making a false entry in the book of accounts of said corporation, specifying the particular entry of which complaint was made, and that he knew that said entry so made was false and untrue, said counts stated the acts constituting the offense in ordinary and concise language, and were good as against demurrer. *People v. Thorn* (1934, *Cal App*) 138 *Cal App* 714, 33 *P2d* 5, 1934 *Cal App LEXIS* 692.

In a prosecution for preparing a false claim of loss under an insurance contract, former *Ins C* § 556, subd. (b), (see now *Ins C* § 1871.1), it was error to instruct that defendant's employee was not an accomplice as a matter of law where, though such employee did not prepare or present the fraudulent insurance claim, he admittedly burned a warehouse at defendant's solicitation and request, knowing that such destruction of property was to be used as the basis of the false claim, since he was thus an aider and abettor to the filing of that false claim, his act making that filing possible, and was therefore an accomplice as a matter of law whose testimony under *Pen C* § 1111, required corroboration. *People v. Zelver* (1955, *Cal App 1st Dist*) 135 *Cal App 2d* 226, 287 *P2d* 183, 1955 *Cal App LEXIS* 1352.

In a prosecution for conspiracy to commit grand theft and for presenting a false claim for payment of a loss under an insurance contract, it was not error to fail to instruct as to the meaning of the word "claim," since such word is one of common meaning and defendant did not request any such instruction. *People v. Teitelbaum* (1958, *Cal App 2d Dist*) 163 *Cal App 2d* 184, 329 *P2d* 157, 1958 *Cal App LEXIS* 1486, cert den (1959) 359 *US* 206, 79 *S Ct* 738, 3 *L Ed 2d* 759, 1959 *US LEXIS* 1266.

5. Indictment and information

In such prosecution, where two counts charging the presentment of false insurance claims did not set out verbatim the claim of loss, but did give the date of purchase, the amount of the claim, and the name of the insurer, said counts stated sufficient facts to constitute a public offense and were not subject to the objection that they did not state how or in what manner or particular either of the claims was false or fraudulent, and that they did not set forth the claims or describe them with reasonable certainty. *People v. Thorn (1934, Cal App) 138 Cal App 714, 33 P2d 5, 1934 Cal App LEXIS 692.*

In such prosecution, defendant could not claim that there was a variance between the pleading and proof because certain proofs of loss were filed by the corporation proving a loss somewhat less than the amount of the claim alleged to have been presented by defendant, where the evidence showed the presentation of a claim of loss in the exact amount alleged; and defendant could not claim prejudice because plaintiff did not include in the information in lieu of the claim charged four other claims attached to four proofs of loss and compel him to defend four charges instead of one. *People v. Thorn (1934, Cal App) 138 Cal App 714, 33 P2d 5, 1934 Cal App LEXIS 692.*

In such prosecution, the gist of the offense charged was the presentation of a false claim of loss, and no material variance was shown by the fact that the claim for loss was shown by the evidence to have been based on four policies instead of one, or by the fact that the loss under the policies was payable to said corporation and another company instead of to said corporation and defendant as alleged in the information; and defendant was not prejudiced by such variance where he could not possibly have been misled in making his defense and there was no possible danger of his being twice put in jeopardy. *People v. Thorn (1934, Cal App) 138 Cal App 714, 33 P2d 5, 1934 Cal App LEXIS 692.*

An information charging defendant with the offense of filing a false claim for payment of loss under an insurance contract substantially in the language of former Ins C § 556 (see now *Ins C § 1871.1*), describing and identifying with reasonable particularity the writing which he subscribed and submitted, so that he was fully advised of the precise charge he had to meet, sufficiently complied with the requirements of *Pen C § 950*, relating to contents of accusatory pleading. *People v. Turley (1953, Cal App) 119 Cal App 2d 632, 259 P2d 724, 1953 Cal App LEXIS 1262.*

There was sufficient cause to hold defendants to answer to a charge of conspiracy to commit grand theft and to present to an insurance company a false and fraudulent claim, former Ins C § 556 (see now *Ins C § 1871.1*), where it appeared that defendants, in claiming compensation from an insurance company for alleged personal injuries sustained in an automobile rear-end collision, stated orally and in writing that they had not been involved in any prior accident and had not made any prior claims to an insurance company, whereas they had in fact done so several times at frequent intervals within a short period of time, since the magistrate could have concluded from the flagrantly false and fraudulent statements relating to such a material and major part of the claim that such claim was false and fraudulent in other respects, including the manner in which the accident happened and the alleged resulting injuries, and that defendants had entered into a conspiracy to present a false and fraudulent claim. *People v. Reed (1961, Cal App 2d Dist) 190 Cal App 2d 344, 11 Cal Rptr 780, 1961 Cal App LEXIS 2304.*

6. Admissibility of Evidence

In a prosecution for presenting a false claim for payment of a loss under an insurance contract, error in sustaining an objection to defendant's offer to prove that when defendant gave the list of allegedly stolen articles to an employee to deliver to the insurance adjustor he said that it was a list for the police that the adjustor had asked for did not result in a miscarriage of justice where it appeared without conflict that defendant prepared and delivered directly to the police two other lists of the property lost in the alleged robbery, that he stated to the police that the list delivered to the adjustor was the final list for the insurance company and that if the police wanted a copy they should get it from the company, and there was no offer to prove that defendant or his employee informed the adjustor that the list delivered to him was for the use of the police. *People v. Teitelbaum (1958, Cal App 2d Dist) 163 Cal App 2d 184, 329 P2d 157, 1958 Cal App LEXIS 1486, cert den (1959) 359 US 206, 79 S Ct 738, 3 L Ed 2d 759, 1959 US LEXIS 1266.*

An attorney's client had a reasonable expectation of privacy as to files maintained by his attorney regardless of whether the files were confidential for purposes of the attorney-client privilege. Thus, in a prosecution for violations of former Ins C § 556, subd. (a), (false insurance claim), (see now *Ins C § 1871.1*), and *Pen C § 487* (grand theft auto), the trial court erred in denying defendant's motion to suppress clients' files seized without a warrant from defendant's employer's office with the consent of the attorney employer but without the consent of the clients. Defendant was not one of his employer's clients. *People v. Doyle* (1977, *Cal App 1st Dist*) 77 *Cal App 3d* 126, 141 *Cal Rptr* 639, 1977 *Cal App LEXIS* 2132.

In a prosecution of three defendants for capital homicide and conspiracy, the trial court did not err in concluding that the People had established a prima facie showing there existed at the time of trial a conspiracy to obtain insurance proceeds fraudulently. Thus, there was no error in admitting into evidence statements of conspirators uttered after the killing of the insureds but before the time of trial. Five days after the victims' death one codefendant (the beneficiary of the victims' life insurance) filed a claim with the insurers. Former Ins C § 556, subd. (a), (see now *Ins C § 1871.1*), as it read at the time of the murders, made it unlawful to knowingly present a false claim for payment under an insurance contract. As one involved in the killing of the insureds, codefendant was not entitled to the insurance proceeds, and thus he knowingly filed a false insurance claim. Also, the facts indicated that codefendant obtained the policy fraudulently, thus relieving the insurer of all liability. Shortly before the killings, codefendant purchased a large policy insuring the victims despite advice that the premiums were excessive in comparison to his income, and the killings occurred shortly before a premium was due. Further, there was evidence that the other defendants participated in the conspiracy to defraud the insurer. *People v. Hardy* (1992) 2 *Cal 4th* 86, 5 *Cal Rptr 2d* 796, 825 *P2d* 781, 1992 *Cal LEXIS* 974, modified (1992) 2 *Cal 4th* 758a, 1992 *Cal LEXIS* 2443, cert den (1993) 506 *US* 1056, 113 *S Ct* 987, 122 *L Ed 2d* 139, 1993 *US LEXIS* 174.

In a prosecution for grand theft by false pretenses (*Pen C § 487*), attempted grand theft (*Pen C §§ 487, 664*), and the filing of false insurance claims (Ins C former § 556, subd. (a)), arising from the filing of claims for treatment by a chiropractor following a series of automobile accidents allegedly staged by defendant, the expert testimony of three police officers as to whether the accidents had been staged did not amount to inadmissible "profile" evidence, but rather was admissible because it was relevant. Defendant's posture at trial was that the collisions were not staged. Short of an admission from him or an accomplice, the prosecution was left to circumstantial evidence. The experts testified in order to explain the relationship between the various pieces of evidence, such as the extent of damage, type and extent of injuries, number of passengers in the car, use of a common caregiver or attorney, etc. Their opinions, that the collisions were staged, were based on the integration of these factors. These opinions were relevant because defendant was charged with staging fraudulent collisions, a sophisticated course of conduct. *People v. Singh* (1995, *Cal App 1st Dist*) 37 *Cal App 4th* 1343, 44 *Cal Rptr 2d* 644, 1995 *Cal App LEXIS* 818, rehearing denied (1995, 1st Dist) 37 *Cal App 4th* 1343, 44 *Cal Rptr 2d* 644, 1995 *Cal App LEXIS* 819, review denied (1995, Cal) 1995 *Cal LEXIS* 6622.

In a prosecution for grand theft by false pretenses (*Pen C § 487*), attempted grand theft (*Pen C §§ 487, 664*), and the filing of false insurance claims (Ins C former § 556, subd. (a)), arising from the filing of claims for treatment by a chiropractor following a series of automobile accidents allegedly staged by defendant, the admission of evidence involving three collisions for which defendant was not charged was not prejudicial. The evidence of uncharged conduct, while certainly not similar enough to prove identity (an element not at issue), was similar enough to negate a claim of accident and thus prove the element of intent, whether or not the evidence was sufficient to prove a common plan or scheme. Further, the trial court properly exercised its discretion, under *Ev C § 352*, to admit or deny admission of the evidence, even though it did not expressly say it was doing so, since it ruled only after hearing argument from both sides following defendant's objection to admission of the evidence. Finally, there was sufficient proof, by a preponderance of the evidence, of the uncharged collisions to warrant their consideration by the jury. Defendant never disputed that they occurred, only that the uncharged, as well as the charged, collisions were staged. Even if innocent, the uncharged collisions could have provided the experience upon which defendant later relied to construct and enact his fraudulent scheme. *People v. Singh* (1995, *Cal App 1st Dist*) 37 *Cal App 4th* 1343, 44 *Cal Rptr 2d* 644, 1995 *Cal App LEXIS* 818, rehearing denied (1995, 1st Dist) 37 *Cal App 4th* 1343, 44 *Cal Rptr 2d* 644, 1995 *Cal App LEXIS* 819,

review denied (1995, Cal) 1995 Cal LEXIS 6622.

7. Sufficiency of Evidence

In a prosecution for presenting false claims for payment of loss under a burglary insurance contract, a judgment of conviction is not supported by circumstantial and negative evidence that witnesses had never seen the stolen property on defendant's premises, where other and disinterested witnesses on behalf of the defendant testified that they had seen some of the articles on the premises prior to the burglary, where bills of sale showed that defendant had purchased a considerable portion of the stolen property and where testimony that witnesses had assisted defendant in placing the articles on the premises was uncontradicted and unimpeached. *People v. Nichols* (1942, Cal App) 52 Cal App 2d 31, 125 P2d 513, 1942 Cal App LEXIS 236.

In the prosecution of a tavern owner for presenting a false claim for insurance on liquor which he claimed was stolen from the tavern, defendant's guilty knowledge could be inferred from the facts that he was the last person in possession of the tavern on the night of the claimed theft, that on the following morning police officers found the liquor at the home of his sister-in-law, and also found the defendant there in an intoxicated condition from drinking such liquor. *People v. Engelhart* (1947, Cal App) 78 Cal App 2d 6, 176 P2d 789, 1947 Cal App LEXIS 1427.

Evidence that the defendant made false appraisals, where he was appointed by an insurance agency to handle the salvage with reference to a fire loss, supported his conviction under this section. *People v. Burton* (1949, Cal App) 91 Cal App 2d 695, 205 P2d 1065, 1949 Cal App LEXIS 1290, cert den (1949) 338 US 866, 94 L Ed 544, 70 S Ct 187, 1949 US LEXIS 1676.

In a prosecution for preparing a false claim of loss under an insurance contract, former Ins C § 556, subd. (b), testimony of defendant's employee that he burned a warehouse at defendant's request was sufficiently corroborated without the testimony of the employee's brother-in-law, which directly connected defendant with the crime, by the fire chief's testimony as to the suspicious nature of the fire, which was concentrated in the center of the building, by the fire department's having found a door of the building open on arrival, and by evidence that defendant filed inventory reports with the insurer eight months late, that he took out a "use and occupancy" policy five days before the fire, and that defendant and his company were in financial difficulty. *People v. Zelver* (1955, Cal App 1st Dist) 135 Cal App 2d 226, 287 P2d 183, 1955 Cal App LEXIS 1352.

In a prosecution for conspiracy to commit grand theft and for presenting a false claim for payment of a loss under an insurance contract, there was sufficient evidence from which the jury might find that a false claim of loss had been made where defendant's accomplice testified that there was no robbery or theft of furs from defendant's store on the night in question and that defendant presented to the insurance companies an itemized list of more than 280 furs with the value of each and their total value set forth, and stated to the police that such list was the final list for the insurance company. *People v. Teitelbaum* (1958, Cal App 2d Dist) 163 Cal App 2d 184, 329 P2d 157, 1958 Cal App LEXIS 1486, cert den (1959) 359 US 206, 79 S Ct 738, 3 L Ed 2d 759, 1959 US LEXIS 1266.

A conviction of making a false claim under a contract of insurance, former Ins C § 556 (see now Ins C § 1871.1), was supported by evidence that defendant signed written statements which he gave to an insurance company insuring his automobile against theft claiming that accessories had been stripped from the car when it was stolen and that prior thereto it had been in undamaged condition, by a police officer's testimony that on a number of occasions prior to the claimed theft of the car he had seen it parked in front of defendant's house and it was then completely stripped and in a damaged condition, and by defendant's statements that "Everybody fudges on a claim to an insurance company" and that his written claims were not the whole truth. *People v. Wirth* (1960, Cal App 1st Dist) 186 Cal App 2d 68, 8 Cal Rptr 823, 1960 Cal App LEXIS 1603.

In a prosecution for presentation of false claims to an insurance company, false testimony by defendant, an attorney, constituted evidence of a consciousness of guilt from which, along with other evidence, a determination of

guilt could be inferred. *People v. Benson* (1962, Cal App 2d Dist) 206 Cal App 2d 519, 23 Cal Rptr 908, 1962 Cal App LEXIS 2050, cert den (1963) 374 US 806, 83 S Ct 1691, 10 L Ed 2d 1030, 1963 US LEXIS 1305, overruled *People v. Perez* (1965) 62 Cal 2d 769, 44 Cal Rptr 326, 401 P2d 934, 1965 Cal LEXIS 294.

An inference of actionable knowledge or scienter and reckless disregard of the truth was reasonably drawn from evidence showing that the defendant, an attorney, charged with the crime of making false claims against an insurance company, was advised on a number of occasions that his client had not suffered any injury in the accident forming the basis of the claim, and yet forwarded to the insurer false medical reports showing that such injury had taken place. *People v. Benson* (1962, Cal App 2d Dist) 206 Cal App 2d 519, 23 Cal Rptr 908, 1962 Cal App LEXIS 2050, cert den (1963) 374 US 806, 83 S Ct 1691, 10 L Ed 2d 1030, 1963 US LEXIS 1305, overruled *People v. Perez* (1965) 62 Cal 2d 769, 44 Cal Rptr 326, 401 P2d 934, 1965 Cal LEXIS 294.

The evidence was sufficient to support defendant's conviction of making a fraudulent insurance claim in violation of former Ins C § 556, subd. (a), (see now Ins C § 1871.1), where, after defendant's plane burned following a crash, defendant told the insurance adjuster that a similar plane was not available, whereas defendant knew one was available, where defendant, after filing his proof of loss, testified before the Industrial Accident Commission that the value of the plane was less than one-half of the amount for which he had filed the insurance claim, where defendant stated that he and a loan company were the only ones who had an interest in the plane, whereas the pilot who had been killed in the crash had an interest in the insurance proceeds, and where the proof of loss stated that the loss was not caused by design or procurement on the owner's part, whereas the evidence showed that defendant had repeatedly attempted to make arrangements with others for the deliberate destruction of the plane. *People v. Loomis* (1962, Cal App 2d Dist) 207 Cal App 2d 229, 24 Cal Rptr 281, 1962 Cal App LEXIS 1901.

The evidence was sufficient to support defendant's conviction of conspiracy to violate Pen C § 548, by burning an insured airplane with intent to defraud the insurer and to violate former Ins C § 556, subd. (a), (see now Ins C § 1871.1), by presenting a fraudulent claim for loss of an insured plane, where it was shown that defendant and the pilot who crashed in the plane were in bad financial circumstances and had agreed that the pilot would have a lien of 20 per cent of the insurance proceeds should the plane crash, that after making that agreement, the pilot made a codicil to his will stating how his money should be distributed if he should have a sum equal to what his share of the insurance proceeds would be, that the pilot told friends he was going to make a lot of money from the test flight that resulted in the plane crash, and that defendant had attempted to get other pilots to crash the plane for him. *People v. Loomis* (1962, Cal App 2d Dist) 207 Cal App 2d 229, 24 Cal Rptr 281, 1962 Cal App LEXIS 1901.

In a prosecution for conspiracy to commit grand theft and for presenting a false claim for payment of a loss under an insurance contract, there was sufficient evidence from which the jury might find that a false claim of loss had been made where defendant's accomplice testified that there was no robbery or theft of furs from defendant's store on the night in question and that defendant presented to the insurance companies an itemized list of more than 280 furs with the value of each and their total value set forth, and stated to the police that such list was the final list for the insurance company. *People v. Scofield* (1971, Cal App 2d Dist) 17 Cal App 3d 1018, 95 Cal Rptr 405, 1971 Cal App LEXIS 1549.

In a prosecution of a chiropractor for presentation of a false insurance claim (Ins C former § 556, subd. (a)(1)), defendant was properly convicted even though the fraudulent claim was represented by an attorney's demand letter to the insurance company rather than a direct claim by defendant. Ins C former § 556, subd. (a)(1), makes liable both those who present fraudulent claims and those who cause them to be presented. The phrase "cause to be presented" must be interpreted in a way that avoids rendering it surplusage. Consequently, the statute must reach those who present claims and anyone who intentionally, by his or her actions, causes the fraudulent claim to be presented, and the evidence showed that defendant had done precisely that. Further, this reading of the statute did not require the jury to be instructed on proximate cause. The jury was instructed that in order to find a violation of Ins C former § 556, subd. (a)(1), they must find not only that defendant presented or caused to be presented a fraudulent claim, but also that he did so with the specific intent to defraud. As evidenced by their verdict, the jury found that defendant had specifically intended the criminal result, that is, to defraud the insurance company. No special instruction on proximate cause was

required where the jury necessarily found that defendant had both directly caused the criminal result and specifically intended to do so. *People v. Singh* (1995, Cal App 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 818, rehearing denied (1995, 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 819, review denied (1995, Cal) 1995 Cal LEXIS 6622.

In a prosecution of a chiropractor for grand theft by false pretenses (*Pen C* § 487), based on fraudulent billings to insurance companies, and for presentation of a false insurance claim (*Ins C* former § 556, subd. (a)(1)), there was sufficient evidence of defendant's intent to defraud. The prosecution maintained that defendant overtreated his patients by using medically unnecessary diagnostic tests. Although he was acquitted on charges relating to referral to a diagnostic laboratory without valid medical need, this did not mean that the jury believed other diagnostic testing was medically valid. Prosecution witnesses testified that defendant's use of certain tests was unnecessary and indiscriminate, and there was also substantial evidence that defendant overprescribed the use of pain therapies. Further, the evidence was uncontradicted that defendant billed no-shows as "routine brief treatment" and postdated massage therapy by one day, and the evidence showed that both were meant to deceive the insurance company. That the billings for diagnostic tests represented the cost of procedures that were actually performed did not detract from their fraudulent nature. When a caregiver causes an insurance company to part with money on the basis of medical procedures that, though actually conducted, were not necessary, fraud occurs. Finally, defendant's improper use of a certain billing code was fraudulent even though he was not required to use it for the particular patients involved, since his use of a widely used, standardized system could only have suggested to insurers that he was using it accurately. *People v. Singh* (1995, Cal App 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 818, rehearing denied (1995, 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 819, review denied (1995, Cal) 1995 Cal LEXIS 6622.

In a prosecution for preparing a fraudulent writing in support of a false insurance claim (*Ins C* former § 556, subd. (a)(4)), arising from the filing of claims for treatment by a chiropractor following a series of automobile accidents allegedly staged by defendant, there was sufficient evidence that defendant unlawfully prepared, made, or subscribed the fraudulent declarations which were the basis for the charges, even though they were prepared by a lawyer. The evidence was uncontradicted that the lawyer prepared the declarations, upon which the insurance company relied, based on the information given to him by defendant. The jury was instructed that a conviction required not only an intent to defraud on defendant's part but also a specific intent to use or allow the documents to be used in support of a claim. There was substantial evidence that defendant procured the execution of the fraudulent declarations. He could not disclaim liability for preparing or making a fraudulent document, where the jury found he had the requisite fraudulent intent, merely because another person acted as scrivener. *People v. Singh* (1995, Cal App 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 818, rehearing denied (1995, 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 819, review denied (1995, Cal) 1995 Cal LEXIS 6622.

C. DECISIONS UNDER FORMER INS C § 1871.1

8. In General

In a prosecution for presenting a false and fraudulent insurance claim (*Ins C* former § 1871.1, subd. (a)(1)) and preparing a writing in support of a fraudulent insurance claim (*Ins C* former § 1871.1, subd. (a)(5)), the trial court did not err when it refused defendant's request to instruct the jury that defendant "knowingly" committed the charged acts, since the trial court did instruct the jury that defendant must have had a specific intent to defraud and the element of "knowledge" is inherent in that concept. In fact, the element of "specific intent to defraud" is more rigorous than the concept of "knowingly." Since specific intent to defraud requires both knowledge of the true facts and an intent to deceive, it was impossible for defendant to have intended to defraud the insurer by presenting a false claim, and to have done so unknowingly. *People v. Booth* (1996, Cal App 1st Dist) 48 Cal App 4th 1247, 56 Cal Rptr 2d 202, 1996 Cal App LEXIS 809, review denied (1996, Cal) 1996 Cal LEXIS 5995.

The word "knowingly" merely implies the person knows of facts which bring the act or omission within the scope of the statute (*Pen C* § 7, subd. (5)). Thus, the requirement of "knowingly" is satisfied where the person involved has

knowledge of the facts, though not of the law. Intent to defraud is an intent to commit a fraud. "Fraud" and "dishonesty" are closely synonymous. Fraud is defined as a dishonest stratagem. It may consist of the misrepresentation or the concealment of material facts or a statement of fact made with consciousness of its falsity. A defendant cannot submit a claim with the intent to defraud unless he or she is conscious of its falsity. While it is undoubtedly true that one can "knowingly" present a false claim without the specific intent to defraud, for example by presenting false data to support a claim in the good faith belief that the information is correct, the opposite is not true. One simply cannot intend to defraud another by submitting false information unknowingly. *People v. Booth* (1996, Cal App 1st Dist) 48 Cal App 4th 1247, 56 Cal Rptr 2d 202, 1996 Cal App LEXIS 809, review denied (1996, Cal) 1996 Cal LEXIS 5995.

In a prosecution for presenting a false and fraudulent insurance claim (Ins C former § 1871.1, subd. (a)(1)) and preparing a writing in support of a fraudulent insurance claim (Ins C former § 1871.1, subd. (a)(5)), the trial court did not err when it refused defendant's request to augment *CALJIC No. 3.01*, which defines the concept of aiding and abetting by adding the phrase "and actually aids or assists...the commission of the crime." To find a defendant guilty of aiding and abetting, it is not necessary that there be separate findings concerning two distinct types of acts (assisting and encouraging) before a jury may properly convict a defendant as an aider and abettor. The test is whether the accused in any way, directly or indirectly, aided the perpetrator by acts or encouraged him or her by words or gestures. While accomplice liability cannot be predicated on conduct absent the required mental state, one can be guilty as an accomplice without having actually assisted the commission of the offense, e.g., by instigating or advising the perpetrator to commit it or by having been present for the purpose of its commission. *People v. Booth* (1996, Cal App 1st Dist) 48 Cal App 4th 1247, 56 Cal Rptr 2d 202, 1996 Cal App LEXIS 809, review denied (1996, Cal) 1996 Cal LEXIS 5995.