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## Important Court Decision For No-Fault Insurers; Second Circuit Court of Appeals Rejects Limitation On *State Farm v. Mallela*

**May 7, 2014**

We are pleased to inform you that our firm, together with our co-counsel Bob Stern of Stern & Montana, obtained a very favorable and significant decision for no-fault insurers on an issue of first impression at the appellate level. Specifically, on May 6, 2014, in the case of *Allstate Insurance Company v. David Mun, M.D., et. al.*, the United States Court of Appeals for the Second Circuit rejected the defendants' attempt to limit the ability of insurers to seek recovery of no-fault payments made to medical providers through affirmative fraud-based litigation. This decision is significant because it confirms the right of insurers to have their affirmative claims to recover fraudulently obtained no-fault payments heard in Court as opposed to requiring these claims to be arbitrated at the request of the no-fault provider. The appeal was argued successfully by Bill Natbony of our firm, who has been on the front line for years arguing for and obtaining decisions to protect and enhance insurers' anti-fraud efforts in the no-fault area.

In *State Farm v. Mallela*, the New York Court of Appeals ruled that, as of April 5, 2002, fraudulently-incorporated health care providers, or providers that were violating core licensing requirements, were not entitled to reimbursement under New York's no-fault system. *Mallela* and subsequent authority have clarified that insurers may seek through affirmative litigation to recover payments made to entities that failed to comply with the applicable licensing requirements. Since the decision in *Mallela*, many providers have sought, in the context of litigating actions against insurers or defending against affirmative recovery actions brought by insurers, to limit its scope and effect.

In *Mun*, the defendant medical providers filed a motion to compel arbitration of the affirmative claims brought by Allstate to recoup no-fault monies already paid to defendants. The defendants argued that they had the right under the No-Fault law, the insurance policies, and the Federal Arbitration Act, to require arbitration of such affirmative claims. To support their position, defendants primarily relied on New York Insurance Law Section 5106(b), which states in pertinent part that "[e]very insurer shall provide a claimant with the option of submitting any dispute involving the insurer's liability to pay first party benefits, or additional first-party benefits, the amount thereof or any other matter which may arise pursuant to subsection (a) of this section to arbitration…." The United States District Court, Eastern District of New York, embraced the "well-reasoned" and

consistent federal court decisions that had denied virtually identical motions to compel arbitration of insurers' affirmative claims to recover monies alleged to have been obtained by fraudulent means that were previously paid to medical providers.

The Second Circuit unanimously affirmed the District Court's decision, holding that the operative statute, regulation, and contract provision do not provide a right to arbitration in this context. Specifically, the Court explained that, pursuant to the Insurance Law and regulations, and the applicable insurance policies, an arbitrable dispute is one between an insurance company and a person making a claim for first-party benefits. Here, defendants were no longer making a claim for first-party benefits because the claims at issue were already paid by Allstate. Therefore, the arbitration provision did not apply as the dispute involved a claim by an insurer to recover monies already paid under a fraud theory, not a provider seeking first-party benefits as part of the no-fault claims process. In its decision, the Court also relied on New York Insurance Law Section 409, which requires insurers, as part of their anti-fraud programs, to initiate "civil actions" to recover amounts paid as a result of medical provider fraud. The Court reasoned that "[a]llowing the providers to elect arbitration in these actions would also undercut anti-fraud measures that the New York legislature encouraged."

This decision represents a significant victory that protects and re-affirms the validity of insurers' anti-fraud efforts, including the independent ability to bring affirmative recovery actions. As the Second Circuit emphasized, "[c]omplex fraud and RICO claims, maturing years after the initial claimants were fully reimbursed, cannot be shoehorned into [New York's arbitration] system."

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If you have any questions concerning the decision, or require assistance in no-fault or other health care/insurance issues generally, please do not hesitate to contact any of the below-listed attorneys at Cadwalader.


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