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## NJ Clinics Can't Slip Settlement With Allstate In Fraud Case

By **Jack Queen**

Law360 (December 5, 2019, 4:52 PM EST) -- A New Jersey clinic owner can't escape a \$718,000 settlement over claims that he bilked the state's charity care fund after a state appeals court ruled Thursday that disagreements with his former counsel don't nullify the deal he struck with Allstate Insurance Co., which reported the alleged scheme.

Harshad Patel, owner of AP Surgery Center LLC and AP Diagnostic Imaging Inc., must also pay \$145,000 in attorney fees, a two-judge panel ruled, finding Allstate and the Medical Investigation Group were entitled to collect for reporting Patel's alleged \$1 million fraud under the New Jersey False Claims Act.

"Patel specifically told the judge at the May 25 hearing that he reviewed the settlement agreement with counsel and found the terms to be satisfactory," the judges noted in an unpublished per curiam opinion. "Rule 4:50-1(f) is not 'a pathway to reopen litigation because [Patel] either views his settlement as less advantageous than it had previously appeared, or rethinks the effectiveness of his original legal strategy.'"

Allstate attorney John Kennedy told Law360 that Patel's purported disagreements with his former counsel only arose on the eve of the payment date, months after the deal was inked.

"The critical distinction is that at the time the settlement was negotiated and signed, he was represented," Kennedy said. "There was no indication of difficulty there, and none of that arose until the payment was due."

Counsel for Patel did not immediately respond to requests for comment Thursday.

Patel's alleged six-year pattern of fraud involved underreporting billings at his facilities to reduce the amount he had to pay into New Jersey's Health Care Subsidy Fund, which levies a 2.95% assessment on gross revenues at health care facilities to fund medical care for the needy. Allstate and the Medical Investigation Group claimed in a qui tam action that Patel avoided paying roughly \$1 million by underreporting from 2009 to 2015.

Patel faced at least \$2.9 million in damages and fees but struck a deal for \$718,000 in February 2018, according to court documents. The settlement was to be paid to New Jersey, though Allstate and the Medical Investigation Group were entitled to collect 30% for reporting the alleged fraud and litigating the case, which the state declined to take up.

Patel's counsel withdrew five days before the payment was due in May, telling the court that "significant differences have arisen between the firm and defendants and ... an irrevocable breach has developed."

Patel wired the money to the state the same day his attorney withdrew but continued to take issue with the fees award, according to the opinion. He told the trial court he never agreed to pay the fees and would later argue the entire settlement — including the sum he had already paid — should be voided because he and his former counsel “were at odds at the time the settlement was negotiated.”

The trial court rejected that argument, along with several other motions Patel filed seeking to avoid paying Allstate’s and the Medical Investigation Group’s fees. A judge found there was nothing in the record to indicate Patel was misled by his former counsel, noting that Patel actually saved around \$2 million in the deal.

“Mr. Patel understood what he was signing,” the trial court noted. “He had clear guidance from his attorney and he entered into the settlement voluntarily. Thus, there's no legal basis to disturb the settlement.”

On appeal, Patel argued the judge erred in not vacating the settlement. He also objected to the attorney fees award, which the state withdrew from an account Patel jointly controlled with his wife, and penalties the court imposed for the months of delays his last-minute objections to the deal had caused.

The judges rejected each of Patel’s arguments, finding he did not clear the high bar for vacating settlements under New Jersey law.

“When the parties entered into the settlement, defendants were represented by counsel,” the judges wrote. “Because defendants were represented by counsel during the year-long negotiation of the settlement agreement and at the time defendants agreed to the settlement terms, defendants cannot challenge the fairness or equity of the settlement agreement.”

Superior Court Judges Jessica R. Mayer and Catherine I. Enright sat on the panel.

Patel is represented by John J. Petriello of Ehrlich Petriello Gudín & Plaza PC.

Allstate and the Medical Investigation Group are represented by John F. Kennedy and Richard Vuernick of Kennedy Vuernick Law LLC.

The case is State of New Jersey ex rel. Allstate Insurance Co. et al. v. Harshad Patel et al., case number A-1437-18T3, in the Superior Court of New Jersey, Appellate Division.

--Editing by Jack Karp.