

**1494 FRAUDULENT INSURANCE CLAIM: PRESENTING A FALSE OR FRAUDULENT CLAIM — § 943.395(1)(a)****Statutory Definition of the Crime**

Section 943.395 of the Criminal Code of Wisconsin is violated by one who presents a false or fraudulent claim to be paid under any contract or certificate of insurance, knowing the claim to be false or fraudulent.

**State's Burden of Proof**

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

**Elements of the Crime That the State Must Prove**

1. The defendant presented a claim to be paid under a contract or certificate of insurance.
2. The claim was false or fraudulent.
3. The defendant knew the claim was false or fraudulent.

**Deciding About Knowledge**

You cannot look into a person's mind to find knowledge. Knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge.

### Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

IF A FELONY OFFENSE IS CHARGED, A JURY DETERMINATION OF VALUE MUST BE MADE. ADD THE FOLLOWING IF THE EVIDENCE WOULD SUPPORT A FINDING THAT THE VALUE OF THE CLAIM WAS MORE THAN \$2,500.<sup>1</sup>

#### [Determining the Value of the Claim]

[If you find the defendant guilty, answer the following question:

"Was the value of the claim more than \$2,500?"

Answer: "yes" or "no."

"Value" means the amount of the entire claim.<sup>2</sup>

Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the value of the property was more than \$2,500.]

#### COMMENT

Wis JI-Criminal 1494 was originally published in 1996. This revision was approved by the Committee in February 2003; it involved adoption of a new format and nonsubstantive changes in the text.

This instruction is for violations of § 943.395(1)(a), which are punished as Class A misdemeanors if the amount of the false claim does not exceed \$2,500 and as Class I felonies if the amount does exceed \$2,500. This amount was increased to \$2,500 by 2001 Wisconsin Act 16, effective date: September 1, 2001. The felony class was changed to Class I by 2001 Wisconsin Act 109, effective date: February 1, 2003.

1. By analogy to theft cases, the Committee concluded that the jury must make a finding of the value of the claim if the felony offense is charged and if the evidence supports a finding that the required

amount is involved. Regarding theft cases, see Heyroth v. State, 275 Wis. 104, 81 N.W.2d 56 (1957). The amount making the offense a felony was increased to \$2,500 by 2001 Wisconsin Act 16, effective date: September 1, 2001. The felony class was changed to Class I by 2001 Wisconsin Act 109, effective date: February 1, 2003. While value may not, strictly speaking, be an element of the crime, it determines the range of permissible penalties and should be established "beyond a reasonable doubt." The Committee concluded that if the misdemeanor offense is charged, the jury need not make a finding as to value.

2. Whether the felony amount is exceeded is determined by reference to the value of the full claim. See State v. Briggs, 214 Wis.2d 281, 288-89, 571 N.W.2d 881 (Ct. App. 1997), where the court of appeals rejected the defendant's argument that the statute required that the false portion of the claim exceed the designated amount, which at the time of Briggs was \$1,000.