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Fraud on One Part of Insurance Claim Will Void the Whole Claim

By Michael M. Pollak

An insured gives his insurance company a phony receipt. The rest of his claim is valid. Should the insurance company deny the entire claim? Does an intentionally false statement as to one material aspect of an insurance claim void coverage for the entire claim or only for the portion of the claim to which the false statement relates? Most insurance policies covering an insured for damage to his or her own property ("first party" coverage) have a clause voiding coverage for fraud. The clause usually states that the policy is void if the insured intentionally misrepresents or conceals a material fact.

In a first-party insurance claim, there is often more than one type of coverage involved. For example, where fire destroys

sentation of the other aspects of the claim.

The law in California, as in the majority of jurisdictions, is that an intentional, material misrepresentation as to any aspect of the claim voids coverage for the entire claim. Insurance Code Section 2071 sets forth a standard-form fire insurance policy for the state. All policies covering the peril of fire are deemed to include the standard-form policy set forth in Section 2071. Insurance Code Section 2070; *Gebbers v. State Farm Gen. Ins. Co.*, 38 Cal.App.4th 1648 (1995). Section 2071 states that the "entire policy" is void if the insured willfully conceals or misrepresents any material fact or circumstance.

Typically, auto policies also have a provision voiding first-party coverage for an intentional, material misrepresentation. While Section 2071 does not apply to auto

The Court of Appeal reversed, stating that the carrier presented substantial evidence in support of its defense that recovery was barred by the insured's false statements as to the items that burned in the fire. In other words, the intentional, material false statement as to the contents claim voided the insured's entire claim.

The cases of *Cummings*; *Zemelman v. Boston Ins. Co.*, 4 Cal.App.3d 15 (1970); *Perovich v. Glens Falls Ins. Co.*, 401 F.2d 145 (9th Cir. 1968); and *Baldwin v. Bankers & Shippers Ins. Co.*, 222 F.2d 953 (9th Cir. 1955), all involved only a single type of claim where recovery was barred by an insured's false statement. These cases show the courts' willingness to penalize an insured whose claim is even partly fraudulent. The court in *Zemelman* rejected the argument that a fraud provision violates public policy, stating, "A judge-made policy which thus gives advantage to dishonesty will retard, not accelerate, the orderly adjustment of insurance losses."

The law in most jurisdictions is as it is in California — an intentional misrepresentation voids the entire claim. 5 A. Appleman, "Insurance Law and Practice" Section 3595; *Home Ins. Co. v. Hardin*, 528 S.W.2d 723 (Ky. 1975); *Saks & Co. v. Cont'l Ins. Co.*, 242 N.E.2d 833 (N.Y. 1968); *Henrickson v. Home Ins. Co.*, 392 P.2d 324 (Or. 1964); *Sunbright Fashions Inc. v. Greater N.Y. Mut. Ins. Co.*, 310 N.Y.S.2d 760 (N.Y. App. Div. 1970), *aff'd*, 268 N.E.2d 323 (N.Y. 1971); *Schneer v. Allstate Indem. Co.*, 767 So.2d 485 (Fl. 2000); *Dale v. Iowa Mut. Ins. Co.*, 254 S.E.2d 41 (N.C. 1979).

Courts in some out-of-state cases have discussed whether a policy is "divisible" among coverages. *Claxton v. Fid. & Guar. Fire Corp.*, 175 So. 210 (Miss. 1937) However, because the language of Section 2071 states unequivocally that the entire policy is void, the concept of a divisible insurance contract does not apply in California. The policy against insurance fraud is strong. As one court stated, "A clause vitiating the policy in the event of fraud is designed to give the insured a compelling reason to tell the truth." *American Cas. Co. v. B. Cianciolo Inc.*, 987 F.2d 1302 (7th Cir. 1993).



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a residence, the insured usually submits a claim for damage to the structure, damage to the contents and additional living expenses. In a business loss, besides a claim for property damage, there usually is a claim for loss of income while the business cannot function normally.

Where the loss itself is fraudulent, such as an intentionally set fire, often there also are fraudulent claims for personal property, additional living expenses or loss of income. After all, an insured in financial distress does not burn his or her own house or business merely to be put back in the same condition as before the fire; more often, the insured also submits a fraudulently inflated claim. Because it is often difficult for an insurance carrier to prove that its insured intentionally caused the fire or other loss, the carrier often must prove that the insured lied in the pre-

policies, the courts have upheld the validity of a provision in an auto policy voiding coverage for fraud. See, e.g., *Osajindu v. Allstate Ins. Co.*, 2000 U.S. Dist. Lexis 4201 (N.D. Cal. 2000). California courts have held that even one intentional, material misrepresentation voids the entire claim. *Cummings v. Fire Ins. Exch.*, 202 Cal.App.3d 1407 (1988).

In *Singleton v. Hartford Fire Ins. Co.*, 105 Cal.App. 320 (1930), the insured made a claim for damage to both the structure and its contents, both of which were destroyed in an arson fire. The insured submitted a contents list identifying the items allegedly destroyed in the fire and the values for each. The carrier introduced evidence that a number of items on the list were not in the building at the time of the fire. Despite that evidence, the trial court directed a verdict for the insured.

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