Sedgwick LLP

California Supreme Court Holds That Innocent Insured Is Not Subject to Intentional Act or Criminal Conduct Exclusion in Fire Insurance Policy

Insurance Law Flash

February 2011

By: Laura Goodman

On February 17, 2011, the California Supreme Court held in *Century-National Insurance Co. v. Jesus Garcia, et al.*, Case No. S179252, that an exclusion in a fire insurance policy excluding coverage for losses caused by the intentional act or criminal conduct of "any insured" impermissibly reduced coverage statutorily mandated by the Insurance Code provisions regulating fire insurance policies.

Plaintiffs Jesus Garcia Sr., and his wife, Theodora Garcia, (the "Garcias") suffered substantial damage to their home when their adult son set fire to his bedroom. Jesus Garcia Sr. was a named insured in an insurance policy issued by Century-National Insurance Company under which both his wife and his son also qualified as insureds. Century-National denied the Garcias' claim for fire damage on the ground that its policy contained an intentional acts exclusion, excluding coverage for the intentional acts or criminal conduct of "any insured." The trial court sustained Century-National's demurrer to the Garcias' complaint without leave to amend and the appellate court affirmed. The Supreme Court reversed.

The Supreme Court began its analysis by noting that all fire insurance policies in California are regulated by the Insurance Code. Pursuant to Insurance Code section 2070, "[a]ll fire policies . . . shall be on the standard form, and except as provided by this article shall not contain additions thereto. No part of the standard form shall be omitted therefrom except that any policy providing coverage against the peril of fire only, or in combination with coverage against other perils, need not comply with the provisions of the standard form of fire insurance policy . . . ; *provided, that coverage with respect to the peril of fire, when viewed in its entirety, is substantially equivalent to or more favorable to the insured than that contained in such standard form fire insurance policy."* Thus, the

fire insurance coverage must be at least "substantially equivalent" to that provided by the standard form prescribed in Insurance Code section 2071.

The court acknowledged that the statutory standard form contains no express exclusion for losses caused by intentional acts or criminal conduct but recognized that Insurance Code section 533 represents an "implied exclusionary clause which by statute is to be read into all insurance policies ("[a]n insurer is not liable for a loss caused by the willful act of *the* insured")." The court noted that the term "*the* insured" as used in section 533 is construed as not barring coverage for innocent coinsureds. It thus held that the standard form fire policy must be construed as including a willful acts exclusion that is protective of innocent insureds. The court also discussed additional language in the standard fire insurance policy form that uses the term "*the* insured" as opposed to "*any* insured" and found that the language "evinces the Legislature's intent to ensure coverage on a several basis and protect the ability of innocent insureds to recover for fire losses despite the acts of a coinsured." The Supreme Court noted that courts in other jurisdictions with identical or very similar standard form fire policies have reached the same conclusion, "i.e., that an insurance clause purporting to exclude coverage for an innocent insured based on the intentional acts of a coinsured impermissibly reduces statutorily mandated coverage and is unenforceable to that extent." In a footnote, the court expressly acknowledged that its analysis and decision was limited to insurance fire policies subject to the requirements of Insurance Code sections 2070 and 2071 and "should not be read as necessarily affecting the validity of clauses that deny coverage for the intentional acts of 'any' insured in other contexts."

Related Practices:

Insurance Practices

Property Coverage