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## A Co-Insured's Arson Will Not Burn Coverage

Author: [Kathrin A. Wanner](#)

**A fire insurance policy that excludes coverage for intentional acts or criminal conduct of "any" insured does not preclude coverage for innocent insureds who suffer loss because of a co-insured's intentional or criminal acts. *Century National Insurance Company v. Jesus Garcia et al*, Case No. S179252 (S. Ct. February 17, 2011).**

The Garcias were insureds under a homeowner's policy when their adult son intentionally set fire to their home. The home sustained substantial damage, and the Garcias filed a claim under their policy to recover for their loss. The carrier denied the claim, and sued the Garcias. In the lawsuit, the carrier sought a ruling that the policy excluded coverage for intentional acts or criminal conduct of "any insured," and that the Garcia's adult son was an insured for purposes of applying the exclusion.

The California Supreme Court agreed with the lower courts that, as written, the exclusion precluded the Garcias from recovering. However, the Court further found that the exclusion conflicted with specific provisions of the California Insurance Code and was therefore unenforceable.

The Supreme Court began its analysis with Section 2070 of the California Insurance Code, which provides that all fire insurance policies must be on a

standard insurance form unless the coverage being provided is "substantially equivalent" to the coverage provided under the standard form or "more favorable" to the insured. The Court noted that the standard form provisions do not include an express exclusion for losses caused by intentional acts or criminal conduct. The Court of Appeal had concluded that, because the standard form is silent on intentional acts, the Garcia's policy is not inconsistent with, and thus "substantially equivalent" to, the coverage provided in the standard form, and does not violate Section 2070.

The California Supreme Court, examining the legislative history of Section 2070, disagreed and found that the California Legislature, in enacting Section 2070, had intended to afford coverage to innocent insureds where a co-insured has committed the intentional act. Specifically, the Court held that the standard form must be read to include Insurance Code Section 533, which provides that an insurer is not liable for loss caused by the willful act of "the" insured. The Court further found that the settled meaning of Section 533 is that it does not exclude coverage for "all" insureds but rather protects innocent insureds where a co-insured commits the willful act. Other standard form provisions likewise refer to "the" insured (not "any" insured) and, accordingly, the legislative intent was to preclude coverage only for the insured wrongdoer thereby preserving coverage for innocent insureds. The Court thus concluded that the Garcias' policy, which purported to exclude coverage for all insureds even where only one insured had engaged in the excluded conduct, was less favorable than the standard form and therefore violated Section 2070.