

## Impact Of Century-National Insurance V. Jesus Garcia

Law360, New York (March 8, 2011) -- In a decision released Feb. 17, 2011, the California Supreme Court specifically adopted the “innocent insured” rule as applicable to the California standard form fire insurance policy. The court determined that the standard policy includes an implied exclusion for loss caused by the willful act of “the insured” and the exclusion bars coverage only for the insured who commits the intentional act.

The exclusion does not prejudice the coverage for other insureds under the policy who are innocent of the willful act. As a consequence, policies that exclude coverage for all insureds for loss caused by the intentional act of “an insured” or “any insured” provide less favorable coverage than the standard form and must be reformed.

The court noted a “broad consensus” in other states to construe the standard form policy to include a willful acts exclusion that is protective of innocent insureds. The interpretation of the standard form adopted by the court effectively alters all California fire insurance policies to protect innocent insureds. *Century-National Ins. Co. v. Jesus Garcia*, 2011 Cal.Lexis 1392 (Cal. Feb. 17, 2011).

### Factual Background

Century-National Insurance Company issued a homeowner’s insurance policy to Jesus Garcia that insured against the risk of loss by fire. The policy excluded coverage for “loss caused directly or indirectly by any of the following excluded perils whether occurring alone or in any sequence or concurrently with a covered peril ... intentional loss, meaning any loss arising out of any act committed by or at the direction of any insured having the intent to cause a loss.” Jesus Garcia was the named insured and his wife and adult son were additional insureds under the policy.

The Garcia’s adult son set fire to his bedroom and the fire caused substantial damage to the home. Garcia submitted a claim under the Century-National policy and the insurer denied the claim relying on the intentional acts exclusion of the policy. Century-National contended that under the policy, the intentional act of any insured barred coverage for all insureds.

Century-National brought a declaratory judgment action. Garcia filed a cross-complaint and the trial court sustained Century-National's demurrer finding that the policy excluded coverage for innocent coinsureds. The Court of Appeals agreed and Garcia appealed.

### **The "Innocent Insured Doctrine"**

The "innocent insured doctrine" protects an insured who has no involvement in the willful or wrongful act of a coinsured which excludes coverage. A policy which excludes loss caused by the intentional act of "any insured" or "an insured" is consistently held to preclude coverage for all insureds, including insureds who had no involvement in the intentional act.

A policy which excludes loss caused by the intentional act of "the insured," however, is generally held that to only bar coverage to the insured who committed the act and allows innocent insureds to recover. The doctrine is based on the interpretation of insurance policies as creating several and not joint obligations to insureds.

### **The California Standard Fire Policy**

The California Supreme Court noted that the California standard fire policy form, Insurance Code §2071, follows the New York standard 165 line form. California law allows insurers to issue policies that do not comply with the standard form so long as the coverage with respect to fire is "substantially equivalent to or more favorable to the insured." Policy exclusions which conflict with the standard form or result in less favorable coverage are unenforceable.

In reviewing the standard form, the court recognized it does not contain an express exclusion for loss caused by intentional acts or criminal conduct. The court noted, however, that California Insurance Code §533 specifies "an insurer is not liable for loss caused by the willful act of the insured."

The court determined that because §533 is an implied exclusion in all policies, the standard form policy is "properly read as excluding coverage for losses caused by a willful act of the insured."

### **Comparison of the Century-National Policy and California Standard Form Policy**

Having determined that the standard policy form included the implied exclusion for the willful act of the insured and that the wording of the exclusion did not preclude coverage for an innocent insured, the court compared the standard form to the Century-National policy.

As written, the Century-National policy excludes coverage for the intentional act of "any insured." The court agreed that the provision does exclude coverage for innocent insureds. However, the court held the effect of the exclusion is to provide coverage which is "markedly less favorable to insureds than the coverage provided in the standard form."

The court surveyed cases from other jurisdictions including Arizona, Idaho, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, New York, Nebraska and West Virginia, where courts have held that a clause that excludes coverage for an innocent insured based upon the intentional act exclusion impermissibly reduces statutorily mandated coverage and is invalid. The court noted that although California is not bound to follow out-of-state authorities, “they reflect a broad consensus as to the proper interpretation of the common standard form fire policy.”

The court also noted the use of “the insured” in other provisions of the standard form. The reference to “the” insured “evinces the Legislature’s intent to ensure coverage on a several basis and protect the ability of innocent insureds to recover for their fire losses despite neglectful or intentional acts of a coinsured.”

The issue was of one of first impression in the California Supreme Court. The court adopted the view endorsed by other states that have addressed the issue and held the exclusion in the Century-National policy was unenforceable. Excluding coverage for an innocent insured provides coverage that is less favorable to insureds and is not enforceable.

As a result, fire insurance policies insuring California property now include an exclusion for the willful acts of the insured but insureds who have no involvement in the willful act are not barred from coverage.

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