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Pennsylvania Court Voids First-Party Property Coverage Based on Insured's False Representations to Its Insurer

The United States District Court for the Eastern District of Pennsylvania recently ruled that a first-party property policy was void because of the insured's fraudulent claim submission. *Excelsior Ins. Co. v. Mitchell*, 2008 WL 5210384 (E.D. Pa. Dec. 10, 2008).

Background

The dispute arose out of an incendiary fire at a store owned by Scott Mitchell. Mr. Mitchell submitted an insurance claim to his first-party property insurer, Excelsior Insurance Company ("Excelsior"). Excelsior refused to pay the claim based on alleged fraud by Mr. Mitchell in his claim submission. Mitchell filed suit seeking insurance coverage. Excelsior moved for summary judgment.

Court's Ruling

In its summary judgment motion, Excelsior argued that Mr. Mitchell's claim sought coverage for replacement of property that was not damaged by the fire. Under governing Pennsylvania law, an insurance contract is void if an insured knowingly makes a false representation that is material to the risk being insured. *Matincheck v. John Alden Life Ins. Co.*, 93 F.3d 96, 102 (3d Cir. 1996). Pennsylvania law does not differentiate between a misrepresentation

in the application for coverage or in a claim following issuance of the policy.

The court found that, based on a fraudulent report, Mr. Mitchell sought the replacement cost for an undamaged business sign. In reaching this conclusion, the court noted that the sign company's principal who had examined the sign testified that it was not damaged and he so advised Mr. Mitchell. In addition, the report eventually submitted to Excelsior on the sign company's letterhead was not actually prepared by the company.

The court also took into consideration the insured's financial status at the time of the claim, noting that an insured's financial condition is relevant to determining whether there was a motive for fraud. *Peer v. Minnesota Mut. Fire Ins. Co.*, 1995 WL 141899, at *10-11 (E.D. Pa., Mar. 27, 1995). During his examination under oath, Mr. Mitchell testified that his business was not in debt and that he was not having any financial problems. In his subsequent deposition, however, Mr. Mitchell admitted that he and his business were struggling financially. Consequently, the court found that Mr. Mitchell knowingly misrepresented his financial condition at the time of the fire, which violated the fraud and concealment provision in the policy.

Finally, the court held that Mr. Mitchell was liable under the Pennsylvania Insurance Fraud Act (the "Insurance Fraud Act"), which prohibits "[k]nowingly and with the intent to defraud any insurer ..., present[ing] or caus[ing] to be presented to any insurer ... any statement forming a part of, or in support of a claim that contains any false, incomplete or misleading information concerning any fact or thing material to the claim." Based on the evidence above, the

court summarily concluded that the Insurance Fraud Act was violated.

Implications

The *Mitchell* ruling is important because it underscores the significance of accurate factual statements by insureds, not only in the application process but in the claim submission process as well, and confirms that insureds must be vigilant about accurately stating their claim and other information relevant

to their insurer's underwriting and claims handling functions. The decision likewise underscores the value of a timely examination of the insured under oath following submission of a claim so that facts pertinent to the claim submission can be memorialized. The decision is also important because it illustrates that a material misrepresentation may void coverage even where the misrepresentation is discovered before any prejudice inures to the insurer.