McKennon | Schindler LLP
Experience. Dedication. Results.

Provision Excluding Insurance Coverage For Wrongful Acts of a Coinsured Limited By California Supreme Court

California Insurance Code section 533 provides that an insurer is not liable for a loss caused by the willful act of an insured. This is consistent with California's public policy of denying coverage for intentional acts of wrongdoing. However, when there is more than one insured, this policy can lead to inequitable results. Case in point is the situation presented in *Century National Insurance Company v. Garcia*, 2011 Cal. LEXIS 1392 (decided February 17, 2011).

In *Century*, Jesus Garcia, Sr.'s home was damaged when his adult son intentionally started a fire in his bedroom. Garcia Sr. subsequently submitted a claim under his homeowner's insurance policy issued by Century National Insurance Company ("Century"). Although Garcia was the named insured, his wife and son also qualified as an insured under the policy. Century denied the claim on the grounds that the damage was caused by an intentional wrongful act by *an insured*. Garcia challenged the denial arguing that the Insurance Code does not bar "innocent insureds" from recovering despite a co-insured's wrongful acts. At trial, the state court granted Century's demurrer and Garcia appealed.

Writing for a unanimous court, Justice Baxter agreed with Garcia and held that the policy provision which precluded coverage was invalid. To reconcile this result with section 533, the Court relied on Insurance Code section 2070 which states: "All fire polices . . . 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." In other words, fire insurance policies in California must provide coverage that is at least as good as the coverage outlined by section 2071's standard form provisions. Now here is where it gets a little tricky.

The *Century* policy provision that excluded coverage for intentional wrongdoing used the term "any insured" and "an insured." Century used this definition of "insured" to include both Garcia Sr. and his son. However, section 533 and section 2071 prefix the term "insured" with the word "the." This distinction, the court wrote, bears directly on the issue of coverage because "unlike policy exclusions that refer to `an' insured or 'any' insured, exclusions based on acts of 'the' insured are construed as not barring coverage for innocent coinsureds." Once the Court established that section 533 was intended to exclude coverage for acts of "the insured" vs. "any insured," the minimum coverage aspect of section 2071 comes into play. Since section 2071

provides a baseline level of coverage that fire insurance policies in California must meet or exceed ***and*** the minimal coverage only excludes willful acts of "the insured", then any policy that excludes willful acts of "any insured" would violate the minimal coverage levels outlined in section 2071. Because the policy at issue in *Century* excluded the wrongful acts of "any insured," it failed to provide the minimal level of coverage.

While certainly a victory for innocent co-insured policyholders, the long-term impact of this opinion is unclear. On one hand, the Court's holding raises serious doubts about the use of policy provisions that deny coverage for the intentional acts of "any" insured. On the other hand, the Court relied heavily on Insurance Code sections 2071 which applies solely to fire insurance coverage. In addition, the Justice Baxter himself remarked in a footnote that the holding in *Century* "should not be read as necessarily affecting the validity of clauses" in other contexts. Nevertheless, we can count of the fact that more cases will be coming in the future that test the boundaries of Insurance Code section 533.

By: M. Scott Koller
Associate
McKennon|Schindler LLP
20321 SW Birch St, Suite 200
Newport Beach, California 92660
sk@mslawllp.com
877-MSLAW20
(877) 675-2920