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## ***California Supreme Court Invalidates Intentional Acts Exclusion In Fire Insurance Policy***

On February 17, 2011, the Supreme Court of California filed its decision in *Century-National v. Jesus Garcia*, 51 Cal. 4<sup>th</sup> 564, holding an exclusion for intentional acts of *any* insured in a fire insurance policy was invalid because the policy failed to provide coverage substantially equivalent to the level of protection provided in the statutory standard form fire policy.

### *Factual and Procedural Background*

Jesus and Theodora Garcia suffered substantial damage to their home when their adult son set fire to his bedroom. The home was insured by Century-National. Jesus Garcia was the named insured and his wife and son also qualified as insureds. The policy excluded coverage for “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.”

Century-National denied the Garcia’s claim for damage caused by the fire, and sought a declaration that it had no duty to pay for the loss based on the intentional act exclusion. The Garcias cross-complained for breach of contract, breach of the implied covenant of good faith and fair dealing and reformation. Century-National responded that because the damage to the house was intended by an insured, neither he, nor his parents, were entitled to coverage. The Garcias contended the exclusion was invalid because it did not comport with the statutory requirements for fire insurance policies. The trial court found in favor of Century-National and the Court of Appeal affirmed. The Supreme Court reversed stating that, as to innocent insureds, the application of the intentional acts exclusion in the policy resulted in coverage that was not at least substantially equivalent to the level of protection provided in the statutory standard form policy. Therefore, the exclusion was invalid.

### *Judicial Holding and Analysis*

Intentional act exclusions barring coverage for acts of *any* insured, as opposed to *the* insured, apply collectively. If one insured has committed acts for which coverage is excluded, the exclusion applies to all insureds. Unlike policy exclusions that refer to *any* insured, exclusions based on acts of *the* insured do not bar coverage for innocent coinsureds. Pursuant to the language used in the Century-National policy, Mr. and Mrs. Garcia would not be entitled to coverage because their son, an insured, acted intentionally.

However, California Insurance Code section 2070 provides: “All fire policies . . . shall be on the standard form . . . except that any policy providing coverage against the peril of fire . . . need not comply with the standard form . . . provided, that coverage . . . when viewed in its entirety, is substantially equivalent to or more favorable to the insured than that contained in [the] standard form fire insurance policy.” The provisions of the standard form fire policy are set forth in section 2071. The issue in this case was whether the Century-National policy provided coverage that was at least as favorable to the insureds as the coverage provided in the standard statutory form.



Although the statutory form contains no express exclusion for losses caused by intentional acts, Insurance Code section 533, which is impliedly contained in all insurance policies, provides an “insurer is not liable for a loss caused by the willful act of *the* insured.” The Court held that the standard form policy excludes coverage for losses caused by the willful act of *the* insured, and must be construed as not barring coverage for innocent coinsureds.

Century-National cited a number of California cases which hold intentional acts exclusions that bar insurance coverage for the acts of *any* insured negate all coverage when applied. However, these cases do not involve fire insurance policies which are subject to Insurance Code sections 2070 and 2071. The Court found no California case on point, but noted that courts in other jurisdictions have held that provisions purporting to exclude coverage for an innocent insured based on the intentional acts of a coinsured impermissibly reduced statutorily mandated coverage and were therefore unenforceable.

Under the Century-National policy, the intentional acts exclusion bars coverage for property losses sustained by insureds who are innocent of wrong doing. Under the standard form, which must be read as including the exclusion for willful acts of *the* insured, innocent insureds would not be barred from coverage. “Thus, under section 2070, it cannot be said that the coverage provided by the Century-National policy, 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.”

#### *Comments and Implications*

The Court’s decision was based on a policy subject to the requirements of Insurance Code sections 2070 and 2071, and thus “should not be read as necessarily affecting the validity of clauses that deny coverage for the intentional acts of *any* insured in other contexts.” The decision does however clearly hold that the statutory exclusion for willful acts of *the* insured (which is impliedly contained in every insurance policy) does not bar coverage for innocent insureds from recovering despite a coinsured’s intentional or criminal conduct.