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## Fire Insurance Policy Language Intended to Eliminate Innocent Coinsured Recovery is Unenforceable in California

By Andrew B. Downs

*California Supreme Court concludes "any insured" language in intentional conduct exclusion is contrary to statutory fire policy.*

Last week, California joined a number of other states, including Arizona, Idaho and New York, in concluding that the state's statutory fire insurance policy precluded an insurer from enforcing an exclusion for intentional loss "arising out of any act committed by or at the direction of any insured..." *Century-National Ins. Co. v. Garcia*, 2011 WL 537627 (2/17/11).

Century-National issued a homeowner's policy to the Garcias. The Garcias' home was damaged when their adult son set fire to his bedroom. Century-National declined the claim relying on an exclusion 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." Many insurers across the country use the "any insured" language to limit the application of the innocent coinsured doctrine. Under the innocent coinsured doctrine, an innocent coinsured's right to payment under the policy is not impaired by the intentional or fraudulent conduct of another insured.

Like most states, California law mandates the minimum content of a fire insurance policy. California Insurance Code § 2071. Insurers are free to provide more generous coverage, but they cannot provide coverage which is not at least substantially equivalent to that provided by the statutory policy. The California statutory fire policy does not contain an intentional acts exclusion. Rather, intentional acts are excluded by operation of California Insurance Code § 533, which is an implied exclusion in all California insurance policies. That statute provides: "An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured, or of the insured's agents or others."

The California Supreme Court held that the use of "any insured" in the intentional acts exclusion was more restrictive than the statutory formulation of "the insured" appearing in section 533 and incorporated into the statutory fire policy. Accordingly, it concluded that the "any insured" language was unenforceable because with it the policy provided less coverage than the statutory fire policy.

For property insurers doing business in California the *Century-National v. Garcia* decision means they cannot use the "any insured" formulation of an Intentional Act exclusion to avoid the operation of the innocent coinsured doctrine. Oregon enforces the "any insured" language. *Traders & General Ins. Co. v. Freeman*, 81 F. Supp.2d 1070 (D. Or. 2000). Washington has not yet addressed the issue. Nevada does not have a statutory fire insurance policy, so this particular issue will not arise there. As noted above, Idaho applies the same rule as California now does.

Andrew Downs practices insurance coverage law from the San Francisco and Las Vegas offices of Bullivant Houser Bailey PC. For more information about this eAlert, or for assistance in complying with this new ruling, please contact the author or the Insurance Group of Bullivant Houser Bailey PC.