



Not Your Standard Auto Case: Expand Your Practice Areas by Spotting  
Case in Day-to-Day Life

October 15<sup>th</sup> | Columbus

**Intentional Loss, Fraud, and Property  
Insurance Claims: Tips on Presenting and  
Resolving First-Party Property Insurance  
Claims Pre-Suit**

*Justin Rudin, Esq., Cleveland, OH*

# Intentional Loss, Fraud, and Property Insurance Claims: Tips on Presenting and Resolving First-Party Property Insurance Claims Pre-Suit.

FIGHTING *for the Rights of* POLICYHOLDERS  
[ Not Insurance Companies ]

Fire & Property Claims | Arson & Fraud Investigations | Insurance Bad Faith  
Duty to Defend | Insurance Agent Negligence | Life & Disability Insurance Claims



RUTTER & RUSSIN<sup>LLC</sup>  
ATTORNEYS AT LAW

[www.OhioInsuranceLawyer.com](http://www.OhioInsuranceLawyer.com) | 216-642-1425

**BY: JUSTIN RUDIN of RUTTER & RUSSIN, LLC**

## **First Party v. Third Party Insurance**

- **First Party Insurance:** involves claims for loss sustained directly by the insured.  
Ex. You represent a homeowner whose house just burned down.
- **Third Party Insurance:** involves claims by someone who is not the policyholder.  
Ex. You represent an individual hit by a car.

## **The Claims Process**

- Claim Notice
- Claim Investigation
- Claim Evaluation
- Claim Disposition

## **Case Intake and Information Gathering**

- Account of the loss
- Insurance Policy
- Correspondence between insured and insurer
- Written or recorded statements
- Identify witnesses  
Who, what, where, when, how
- Police/fire reports  
The Insurance Policy

## **What property is covered under the typical Homeowner's Policy?**

- Coverage A: the dwelling or residence
- Coverage B: unattached structures
- Coverage C: personal property

## The Insurance Policy—cont'd

- What is usually not covered?  
Animals  
Motor vehicles  
Aircraft  
Property of roomers, boarders, and tenants\*  
Property in an apartment regularly rented to others  
Business data (books, records, computers, electronic data)  
Credit cards

## The Insurance Policy—cont'd

- What causes of loss are covered?  
“All Risk” v. “Named Peril”
- Coverages A & B are typically “All Risk”  
“We insure against all risk of direct physical loss to property described in Coverages A and B”
- Coverage C is typically “Named Peril”  
Direct physical loss to property caused a peril listed below.  
Theft, vandalism and malicious mischief

## Coverage Limits

- Each coverage has its' own limit.
- Coverage B is typically a % of the Coverage A limit.

## Exclusions & Conditions

- **Intentional Loss**, meaning any loss arising out of any act committed:  
By or at the direction of an “insured”; and  
With the intent to cause a loss.

## Exclusions & Conditions--cont'd

- **Concealment or Fraud.** The entire policy will be void if, whether before or after a loss, an “insured” has:  
Intentionally concealed or misrepresented  
Engaged in fraudulent conduct or  
Made false statements  
Relating to this insurance.

## **Arson**

*Caserta v. Allstate Ins. Co.* (10<sup>th</sup> Dist. 1983), 14 Ohio App. 3d 167

The defense of arson is an affirmative defense requiring proof beyond a preponderance of the evidence that the insured participated in the burning of the property to obtain the insurance proceeds either by personally setting the fire or having someone else set it for him.

## **Proving Arson with Circumstantial Evidence**

- Fire was incendiary;
- Insured had motive to set fire;
- Insured had the opportunity to participate in the arson. *Caserta, supra.*

Circumstantial evidence must be so convincing as to be irreconcilable with the claim of innocence and admit no other hypothesis than that the insured was responsible for the fire. *Carter v. Ohio* (5<sup>th</sup> Dist. 1915), 4 Ohio App. 193.

## **Mize v. Hartford Ins. Co. (Va. 1982), 567 F. Supp. 550**

- Insured had previously lived with the admitted arsonist
- The insured was on vacation at the time of the fire and had taken her jewelry with her
- The insured had placed her pets in a kennel instead of leaving them at home
- The insured was slightly behind in her mortgage payments
- The insured had her important papers at her mother's house; and
- The insured had been trying to sell her house.

## **Mize—cont'd**

- “The insurance company’s view of the circumstances, whether viewed singularly or as a whole, is not impressive. Every circumstance listed by the company was perfectly normal, everyday act and was fully explained by the plaintiff as such. When circumstances admit of two equally plausible interpretations, they are insufficient to carry the burden of proof.”

## **Fraud, Concealment, and Material Misrepresentation**

For an insurer to void the contract due to fraud or concealment, the misrepresentation must be material and made intentionally by the insured. *Taylor v. State Farm Fire & Cas. Co.* (N.D. Ohio), 2012 WL 1643877.

## **Cont'd**

What is a “material” misrepresentation?

- If a reasonable insurance company, in determining its course of action, would attach importance to the fact misrepresented. *Latimore v. State Farm Fire & Cas. Co.* (N.D. Ohio), 2012 WL 3061263.

- This is a mixed question of law and fact and is typically for the jury. *Id.*

## **Post-Loss Misrepresentations**

- Proof of Loss
- Recorded Statements
- Examinations Under Oath

## **Types of Misrepresentations**

- Whereabouts at the time of the loss
- Manner in which damage occurred
- Financial condition
- Inflated, exaggerated, or made up claim  
Value or quantity of damaged property

## **Typical “Red Flags”**

- Multiple prior insurance claims
- Policy recently issued or limits increased
- Behind on mortgage payments
- Damaged property held for sale for a long time
- Failure to notify police of theft
- Financial position—income/debt
- No forced entry
- Inability to produce receipts or verify purchase of items—particularly items of high value.

## **Case Example from EUO Transcript**

## **The Duty to Cooperate**

The failure of an insured to comply with policy provisions requiring cooperation in the claims investigation may bar the insured from recovery. *Conold v. Stern* (Ohio), 138 Ohio St. 352.

Cancellation is warranted only if the failure to cooperate (1) prejudices the insurer's rights and (2) is material and substantial. *State Farm Mut. Auto. Ins. Co. v. Holcomb* (9<sup>th</sup> Dist. 1983), 9 Ohio App. 3d 79.

## **Document Requests**

- Documentation showing existence, ownership, or value of items claimed;
- Financial Records—tax returns, loan documents, credit card and bank statements;
- Criminal History;
- Prior Claims;
- Repair estimates

## **Responding to Document Requests**

- Just give them what they request?
- Objecting/Refusing
- Releases
- Helpful information not otherwise requested

## **Examination Under Oath**

### **Section I - Conditions**

- “As often as we reasonably require...submit to examination under oath, while not in the presence of any other “insured,” and sign the same[.]”

## **EUO v. Deposition**

## **Preparing for the EUO**

- Timelines
- Review the documents
- Be consistent (with prior statements)

- Gameplan on how to handle questions on sensitive matters

### **Pitfalls**

- Refusing to provide information;
- Failing to provide requested documents BEFORE the EUO

### **After the EUO—Now What?**

- Provide any additional documents requested
- PUSH for a decision!

### **Coverage Is Acknowledged**

#### **Matching**

- Loss Settlement...the replacement cost of that part of the building damaged for like construction and use on the same premises.
- OAC 3901-1-54(I)(1)(b): When an interior or exterior loss requires replacement of an item and the replaced item does not match the quality, color or size of the item suffering the loss, the insurer shall replace as much of the item as to result in a reasonably comparable appearance.

#### **How do I get paid?**

- Contents check
- Dwelling check