

Stamping Out Insurance Fraud

As the economy heads toward recession and mortgage foreclosures are on the rise, carriers will almost certainly see an increase in fraudulent claims. However, you have every right to fight back during the claim investigation and there are several tools at your disposal. Whether the claim involves suspected arson, inflated or false claims, or even rate evasion, you don't have to take it lying down.

Once a claim has been referred to SIU due to suspected fraud, consideration should be given to conducting an examination under oath ("EUO") and also to investigating possible misrepresentations by the insured in the insurance application.

The Examination Under Oath

An EUO is a process by which a representative of an insurance company, either an attorney, investigator or adjuster, questions an insured about the circumstances surrounding a loss for which the insured has filed a claim. Most insurance policies require an insured to submit to this formal questioning, similar to a deposition, at the insurer's request. Those same policy provisions normal-

ly also require the insured to submit documentation related to the loss and/or the insured's financial circumstances. Courts have held that an EUO enables an insurer to obtain information necessary to determine the extent of its obligation. It also helps the insurer protect itself from false or fraudulent claims. *Chavis v. State Farm Fire & Casualty Co.*, 79 N.C. App. 213, rev'd 317 N.C. 683 (1986); See also, *Claffin v. Commonwealth Insurance Co.*, 110 U.S. 81, 3 S.Ct. 507 (1884). Normally, an EUO is conducted before a certified court reporter and is later transcribed and considered a part of the claim file.

In addition to investigating the circumstances of the actual loss, the EUO allows the carrier to inquire as to the insured's possible motives to commit insurance fraud, including the insured's financial condition at the time of loss. A federal Court in Virginia affirmed the right of insurance carriers to investigate the insured's possible financial motives regarding suspected fraudulent claims. When the insureds challenged the insurance carrier's questions regarding their financial condition, the Court held that "The examination-under-oath clause encompasses investigation into possible motives for suspected fraud." *Powell v. U.S. Fidelity and Guar. Co.*, 88 F.3d 271, 273 (4th Cir. 1996). The Court further held that "An Examination [under oath] is not restricted to amount of loss, but the insurer has the right to examine the insured and

his witnesses as to any matter material to the insurer's liability and the extent thereof."

When a duty to investigate arises, an insurer must conduct a reasonably prudent investigation, and the insurer will be bound by all knowledge that such an investigation would have disclosed. Thus, an insurer that merely makes a superficial investigation of a claim will be bound by the information that a full investigation would have revealed. *Costello v. Larsen*, 182 Va. 567, 29 S.E.2d 856 (1944); See also, *Harris v. Dunham*, 203 Va. 760, 127 S.E.2d. 65 (1962); but see, *Boykin v. Hermitage Realty*, 234 Va. 26, 360 S.E.2d 177 (1987).

Ultimately, a material misrepresentation during the EUO gives the insurer the right to void the entire policy and not cover the loss. Virginia's standard fire policy, as with most policies, reads that "this entire policy shall be void, if whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or the interest of the insured therein, or in the case of any fraud or false swearing by the insured relating thereto." The insured must make a false statement willfully with respect to a material matter with the intention of deceiving the insurer. *U.S. Fidelity and Guar. Co. v. Haywood*, 211 Va. 394, 177 SE. 2d 530 (1970); *Sands v. Bankers Fire Ins. Co.*, 168 Va.



645, 192 S.E. 2d 617 (1937). The false statement must concern some fact material to the insurance, the policy, or a claim made under the policy. *U.S. Fidelity and Guar. Co. v. Haywood*, 211 Va. 394, 177 S.E. 2d 530 (1970); *State Farm Fire & Casualty Co. v. Gilman*, Civil Action No 91-1622-A. (ED. Va. 1992). Also, misrepresentation by a co-insured bars recovery by the other “innocent” co-insureds, such as a spouse whom does not participate in the fraud. *Rockingham Mut. v. Hummel*, 219 Va. 803, 250 S.E. 2d 774 (1979).

Misrepresentation In The Insurance Application

Under Virginia law, an insurance carrier can void the policy from its inception and avoid cov-

erage for a loss if the insured made a misrepresentation of fact in the insurance application that was material to the risk assumed. *State Farm v. Butler*, 203 Va. 575 (1962) Voiding the policy from its inception allows the insurer to avoid any potential claims by the insured under the policy during the entire policy period.

Experience has shown us that when an insured is bold enough to misrepresent either the cause of a loss or the nature of the property loss, they are likely to have made misrepresentations in the application. During the initial recorded statement and during the Examination Under Oath, be sure to ask the same questions from the insurance application regarding the underwriting infor-

mation (or “rating” questions).

Ultimately, a well crafted recorded statement, followed by an EUO, may uncover not only misrepresentations regarding the loss, but misrepresentations in the insurance application. Under either scenario, a fraudulent insurance claim, or even an entire policy can be avoided. These important tools should be used early and often to stamp out fraudulent insurance claims.



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