Holding the line: The Standard Fire Policy remains a useful floor (Guest blog)

Most homeowner's property insurance policies contain "intentional loss" and "concealment and fraud" provisions that exclude or bar coverage if any person who qualifies as an "insured" (typically defined to include the named insured and residents of the named insured's household who are his or her relatives) commits or conspires to commit an act intending to cause a loss (e.g., arson), intentionally conceals or misrepresents any material fact or circumstance, or engages in fraudulent conduct. But when a family member acts alone in setting an arson fire, should their innocent relatives pay the price?

Some insurance companies have written their policies to answer this question YES, they should: Too bad too sad for the innocent insured. They have drafted their fraud exclusions broadly so they apply even to an innocent co-insured i.e., an insured who committed no act intending to cause a loss, did not intentionally conceal or misrepresent any material fact or circumstance, or otherwise engage in fraudulent conduct. But some courts will not allow innocent insureds to be penalized so harshly, and in those courts, the decades-old "Standard Fire Policy" can be the basis for voiding the penalty.

In Streit v. Metropolitan Casualty Insurance Company, 2015 WL 6736677 (N.D. Ill., November 4, 2015), a federal district court recently considered the issue whether an "intentional loss" exclusion in the Metropolitan insurance policy conflicted and was inconsistent with Illinois' statutorily-mandated standard fire insurance policy ("the Standard Fire Policy"), a 165-line form that includes minimum terms of insurance coverage required by the State. The Illinois Standard Fire Policy 165-line form is identical to the 165-line form prescribed by the New York legislature in 1943, which is an industry and regulatory standard. In short, fire insurance in Illinois must be written in a manner that is equivalent to or exceeds the coverage provided by the Standard Fire Policy. Hence, to the extent a particular insurance policy provision omits or detracts from the minimum protections afforded by the Standard Fire Policy, the provisions of the standard policy control and the non-compliant policy is enforceable as if it conformed to the requirements or the prohibitions of the Standard Fire Policy. In other words, there are certain

minimum standards all insurance policies must meet. If they do not, they are illegal.

The 1943 New York Standard Fire Policy form, or a statutory version differing from it only slightly, is used in many states. These states' statutory fire insurance policies also permit fire insurers to deviate from the language of the standard policy by incorporating additional or different provisions. See, e.g., ARIZ. REV. STAT. ANN. §20-1503 and §20-1112; CAL. INS.CODE §2070 and §2071; GA. CODE ANN. §33-32-1; IDAHO CODE ANN. §41-2401; LA. REV. STAT. ANN. §22:1311 and §22:1313; MICH. COMP. LAWS ANN. §500.2832 and §500.2833; MINN. STAT. ANN. §65A.01; NEB. REV. STAT. §44-501; N.Y. INSURANCE LAW §3404; W. VA. CODE ANN. §33-17-2. Collectively, the effect of these statutory provisions is the same as the Illinois statutory scheme – regarding the peril of fire, a non-standard policy is permissible only if it is equivalent to or exceeds the minimum level of coverage afforded by the Standard Fire Policy. Arizona, California, Georgia, Idaho, Louisiana, Michigan, Minnesota, Nebraska, New York, and West Virginia statutory fire insurance laws, like Illinois', thus invite a comparison between additional or different provisions and the applicable portion of the Standard Fire Policy. These are issues that are often before courts.

The Standard Fire Policy does not contain a specific "intentional loss" exclusion. It does, however, contain other provisions dealing with exclusions for intentional or fraudulent acts or omissions by "the insured": (a) lines 1-6, fraudulent conduct by "the insured"; (b) lines 21-24, neglect of "the insured" to use all reasonable means to save and preserve the property at and after a loss; and (c) lines 28-32, while the hazard is increased by any means within the control or knowledge of "the insured." Courts in Arizona, California, Georgia, Idaho, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, New York and West Virginia which have undertaken a comparison of the Standard Fire Policy phrase "the insured" with the phrase "an insured" or "any insured" used in many insurers' "intentional loss" and "concealment and fraud" provisions have concluded there is an obvious substantive difference between them. Specifically, the phrases "any insured" or "an insured" impose "joint" obligations on persons defined as an "insured" person. This means there can be no recovery for an innocent co-insured since responsibilities, acts, and failures to act of a person defined as an "insured" person will be binding upon another person defined as an "insured" person. In contrast, the consistent use of the phrase "the insured" throughout the Standard Fire Policy indicates an intent to provide "several" or "independent" obligations as to each insured, such that the wrongful actions of one insured defeats the policy rights (e.g., ability to collect insurance money) of the malfeasant insured, but not those of an innocent co-insured. See Century-National Ins. Co. v. Garcia, 51 Cal.4th 564 (Cal. 2011); Icenhour v. Cont'l Ins. Co., 365 F.Supp. 2d 743 (S.D. W. Va. 2004);

Trinity Universal Ins. Co. v. Kirsling, 73 P.3d 102 (Idaho 2003); Nangle v. Farmers Ins. Co. of Arizona, 73 P.3d 1252 (Ariz. App. 2003); Volquardson v. Hartford Ins. Co. of the Midwest, 647 N.W. 2d 599 (Neb. 2002); Lane v. Security Mut. Ins. Co., 747 N.E. 2d 1270 (N.Y. 2001); Watson v. United Services Auto. Ass'n, 566 N.W. 2d 683 (Minn. 1997); Osbon v. Nat'l Union Fire Ins. Co., 632 So. 2d 1158 (La. 1994); Fireman's Fund Ins. Co. v. Dean, 441 S.E. 2d 436 (Ga. Ct. App. 1994); Borman v. State Farm Fire & Cas. Co., 521 N.W. 2d 266 (Mich. 1994).

Given that the Standard Fire Policy affords coverage to an innocent co-insured despite the intentional acts of another co-insured, the courts in the previously cited cases have unanimously concluded that a provision in a fire insurance policy which excludes coverage for intentional acts by "an insured" or "any insured" conflicts with and is inconsistent with the Standard Fire Policy because it provides less coverage than, is not as favorable as, is not the substantial equivalent of, and is at odds with the rights and benefits of the Standard Fire Policy. In other words, the Standard Fire Policy is a floor below which insurance policies may not go. Insurance policies may be more generous, but not less so, than the Standard Fire Policy.

In Streit, the insureds' 19-year old son who resided with them admitted to setting fire to the insured premises. He pled guilty (but mentally ill) to a charge of aggravated arson, and was sentenced to six (6) years in prison. Metropolitan, who insured the residence against the peril of fire, denied the Streit's claim for insurance benefits. The denial was predicated on an insurance policy provision which excludes coverage "for any loss arising out of any intentional or criminal act committed: 1. by you or at your direction; and 2. with the intent to cause a loss", an exclusion which applies to "even people defined as you or your who did not commit or conspire to commit the act causing the loss". The terms "you" and "your" were defined in the policy as the persons named in the policy Declarations and a relative of the named insureds who is a resident of the named insureds' household. In other words, because the son-arsonist was "an insured" (by virtue of the fact that he was a family member/resident of the house) the parents could not collect the insurance money to rebuild the house, despite the fact that they were not in involved in the fire.

The federal district court granted partial summary judgment for the Streits, finding that the intentional conduct provision conflicted with the Standard Fire Policy. In other words, the insurance policy, because of the provision at issue, fell below the floor of the Standard Fire Policy. The decision is the latest in what is now a long and growing line of pro-policyholder decisions to afford coverage for innocent co-insureds

under the Standard Fire Policy. The lesson learned from Streit is that even if “intentional loss” and/or “concealment and fraud” provisions clearly and unambiguously state that coverage will be excluded as to all insureds in the event of some improper behavior by “an” insured or “any” insured, a policyholder attorney must look to the state’s statutory standard fire insurance policy. If the applicable exclusion in the insurance policy conflicts with and is inconsistent with the mandatory minimum level of protection provided by statute, then the insurance policy exclusion is void and unenforceable.

The moral of the story is that insurance policies are subject to scrutiny in most every state and must, before they are sold, either be approved by a regulator or the insurance company must somehow demonstrate the insurance policy meets the minimum requirements of the state. However, prior approval by a regulator does not insulate a provision from still being found invalid by a court. In Arizona, California, Georgia, Idaho, Louisiana, Michigan, Minnesota, Nebraska, New York West Virginia, and Illinois, for example, courts have concluded that an insurance policy providing fire coverage must be at least as favorable to the insured homeowner as the Standard Fire Policy. If it is not, and the provision that the insurer uses to deny the claim diminishes the level of coverage required to meet the standards of the Standard Fire Policy, as in the Streit, case, the policy is not enforceable. Unfortunately for the Streits, they had to litigate this issue with their insurance company; but, fortunately for the innocent co-insureds, the court found the insurance policy provision was illegal.

This article was written by Chicago policyholder attorney and UP volunteer Ed Eshoo and edited by UP staff. December 2015