

August 30, 2018

Northern District of Illinois: Insured's Misrepresentations Do Not Necessarily Defeat Coverage

BY:

The U.S. District Court for Northern District of Illinois just sent insurers another reminder of the difficulties of proving that an insured's misrepresentations defeat coverage.

In *State Auto Property & Casualty Insurance Company, Inc. v. Blair*, 2018 U.S. Dist. LEXIS 145335 (Aug. 27, 2018), State Auto Property & Casualty Insurance Company Inc. ("State Auto") sought a declaratory judgment that it had no duty to cover a fire loss under a homeowner's policy due to numerous misrepresentations by the insured during the investigation of the loss. The State Auto policy provided that no coverage would be provided if the insured "intentionally concealed any material fact or circumstance," "engaged in fraudulent conduct," or "made false statements" during the loss investigation. State Auto moved for summary judgment based on arguments that the insured (1) falsely testified during the investigation about the circumstance under which he purchased the insured home; (2) made misrepresentations about whether he operated a business out of his house, and (3) concealed information and made false statements about his living expenses in the wake of the fire. The court denied State Auto's motion, reasoning that there were genuine issues of material fact regarding the insured's intent and that materiality of the purported misrepresentations should be decided by a jury.

The court first addressed State Auto's argument that the insured's false testimony about his acquisition of the home should defeat coverage. It was undisputed that the insured falsely testified that he purchased the home from a bank for \$8,000. In actuality, the insured acquired the home from his grandmother in exchange for three payments of \$8,000. The court acknowledged that insured should have been able to accurately recall how he acquired the house, but questioned the materiality of the misrepresentation because it was undisputed that the insured owned the house and had an insurable interest in it. Further, the court questioned whether the insured actually intended to deceive the insurer because his testimony undervalued the house.

The court next addressed State Auto's argument that the insured intentionally misrepresented that he "did not conduct business" at the home. The insured ran a printing business and rented a separate office to conduct that business, but it was undisputed that (1) the insured kept four or five commercial printing machines in the home; (2) the insured used at least one of the machines to make t-shirts; (3) there were blank t-shirts in the basement; (4) there were bottles of paint in the basement; (5) there was office furniture in the basement; (6) the insured displayed advertising for the business outside of the house; (7) there was a drop box on the house's fence; (8) the house's address was the address listed with the Illinois Secretary of State for the business; and (9) the house address was associated with the business's phone number. The court nonetheless held that the insured's testimony included reasonable explanations for these facts and that "[m]any people conduct some aspect of their business from their home" without making their home a primary business location. The court further questioned the materiality and threshold of what activities constituted "conducting business" and noted that the State Auto policy did not contain a definition of "conducting business" that would enable the Court to assess materiality as a matter of law.

The court finally addressed State Auto's argument that the insured intentionally misrepresented his living expenses after the fire. The insured's proof of loss claimed \$4,500 a month in living expenses, but rental receipts showed that he actually only paid \$475 per month in rent to lease space in his grandmother's home. The proof of loss, however, was prepared by an agent, and the court held that there was an issue of fact whether the insured had actual knowledge of the agent's representations on the proof of loss. The court also held that that a juror could reasonably conclude that the agent calculated the \$4,500 in living expenses based on the rental market value of the destroyed house and furniture and that the agent did not believe the actual rent was relevant to the calculation.

While the court's ruling will still allow a jury to find that the insured's misstatements were intentional and material, *State Auto* illustrates the difficulties in relying on an insured's misstatements to disclaim coverage. It also illustrates that courts may be unwilling to bind insureds to the representations of their agents.