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Federal District Court Addresses Material Misrepresentation in First Party Property Damage Claim

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In Pittsfield Dev. LLC v. Travelers Indem. Co., 2024 U.S. Dist. LEXIS 117530 (N.D. Ill. July 3, 2024), the United States District Court for the Northern District of Illinois addressed an alleged material misrepresentation by an insured during the course of the adjustment of a water loss claim at an insured property. Subsequent to a pipe burst event which caused damage to a number of the floors in the insured building, the insured submitted a claim to Travelers and also submitted, with the assistance of a retained public adjuster, a damage estimate of the damages at the property. Included within the estimate submitted by the insured was a line item for "Lead Paint & Asbestos Removal" with a corresponding dollar amount of $1,140,000. It was this line item which formed the basis of Travelers' claim of misrepresentation.

At his deposition, the public adjuster testified that the $1,140,000 figure was an oral estimate received over the phone from an asbestos remediation company. Travelers disputed the testimony and contended that no such estimate was ever provided. For support, Travelers pointed to deposition testimony from a remediation company employee that while rough estimates were occasionally given verbally, the largest over the phone estimate she could recall was in the $20,000-$25,000 range. It was also disputed that the company would ever provide an oral quote of that magnitude sight unseen, especially since the largest project the remediation company had ever completed was less than $250,000.

The Court began its analysis by stating that while under Illinois law the existence of fraud or false swearing is ordinarily a question of fact for the jury, it becomes a question of law when the insured's misrepresentations cannot be seen as innocent. In finding in favor of Travelers, the Court focused less on whether the public adjuster had actually received the aforementioned oral quote, and more whether it was a misrepresentation for the insured to take that estimate and present it to Travelers as factual proof of damages payable under the Policy. The Court concluded that doing so was indeed a material misrepresentation. As explained by the Court, even assuming there was an oral quote as the public adjuster testified, the highly generalized and hypothetical nature of the quote revealed that the insured had no basis to claim it as a damage owed under the policy. Neither the restoration company that was alleged to have provided the quote nor any other contractor ever examined the property to confirm that asbestos removal was actually needed.

Beyond the above, the Court took particular issue with the fact that the insured cited to the estimate figure in their pleadings and as part of their purported damage calculation in the lawsuit. Beyond this, the Court also made reference to the fact that the estimate was reiterated in the Rule 30(b)(6) deposition wherein the insured’s representative stated that there was a “proposal from a contractor that says it." The Court pointed out that this statement was simply false. Finally, the Court noted that the insured “doubled down” on their claim they were owed $1,140,000 as part of their damage expert’s report.

In sum, the Court found that the insured had misrepresented their damages and that even drawing all reasonable inferences in the insured’s favor, no reasonable jury could view the statements as innocent. Correspondingly, the Court held that the insured had breached the Policy by making a misrepresentation about their claim, rendering the Policy void.

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