

1971

Insurance Contract - Burglary

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Recommended Citation

James L. Ross, *Insurance Contract - Burglary*, 9 Duq. L. Rev. 547 (1971).
Available at: <https://dsc.duq.edu/dlr/vol9/iss3/20>

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in criminal cases and the submission of this nebulous concept to the jury.²⁴

Bart Max Beier

INSURANCE CONTRACT—BURGLARY—The Supreme Court of Pennsylvania has upheld recovery on a Homeowner's Policy to indemnify the perpetrator of a crime for damages not intentionally caused in the course of a burglary.

Eisenman v. Hornberger, 438 Pa. 46, 264 A.2d 673 (1970).

On the night of February 4, 1960, Alton Raymond Hornberger, seventeen, and other youths, broke into the Eisenman house and stole a quantity of liquor. To avoid possible detection, the boys lit matches instead of turning on the lights. As the matches burned down, they were dropped or thrown on the floor. Though there was no sign of fire when the boys left, apparently one of the matches became lodged in a stuffed chair. A fire resulted which enveloped the house, destroying all the personal property. Eisenman initiated an action for damages against Hornberger and was awarded a verdict. A writ of execution against Hornberger was returned *nulla bona*, defendant without sufficient funds.

When Hornberger committed the burglary, he was included under his father's Homeowner's Policy issued by the Royal Insurance Co., Ltd. Under the terms of the policy, Royal agreed "to pay on behalf of the insured all sums which insured shall become legally obligated to pay as damages because of . . . property damages . . ."¹ Property damage is defined in the policy as "injury to or destruction of property," and is in no way limited to property of the insured.² An exclusionary clause released the insurer from liability for any property damage caused "intentionally by or at the direction of the insured."³

24. Subsequent to *Embry* the United States Supreme Court and the Pennsylvania Supreme Court have pointedly referred to the possibility that due process might require that a criminal presumption be factually accurate beyond a reasonable doubt. *Leary v. United States*, 395 U.S. 6 (1970); *Turner v. United States*, 396 U.S. 398 (1970); *Commonwealth v. Owens*, — Pa. —, 271 A.2d 230 (1970).

1. *Eisenman v. Hornberger*, 438 Pa. 46, 48, 264 A.2d 673, 674 (1970).

2. *Id.*

3. *Id.* at 49, 264 A.2d at 674.

Hornberger being judgment proof, Eisenman initiated a judgment execution proceeding against Royal Insurance Co. and a judgment on the pleading was entered for \$25,000—the extent of the policy.

The insurance company appealed, claiming no liability under the Homeowner's Policy. Appellant argued Hornberger's acts were intentional and excluded from coverage; or if the cause was not intentional, it would be against public policy to allow recovery for property damaged during a burglary. Rejecting both contentions, the Supreme Court affirmed the judgment execution proceeding of the lower court.

In Pennsylvania an insurance policy is a contract.⁴ Courts in construing contracts, must accept them as written and cannot give either party more than he bargained for.⁵ With insurance contracts however, Pennsylvania has strongly adhered to interpretations favoring the insured⁶ since the policies are drafted by the insurer.⁷ Due to the insured's restricted bargaining power all uncertainty or ambiguity is resolved against the insurer.⁸

Interpreting the exclusionary clause for the first time, the *Eisenman* court adopted the majority view.⁹ The court found a distinction between intending an "act" and intending a "result" and the policy directs itself to the latter.¹⁰ Following the majority view, injury or damage is "caused intentionally" within the meaning of the policy if the insured acted with specific intent to harm a third party.¹¹ Before the exclusionary clause can disclaim liability, the insured must be shown to have intended to produce the damage that occurred.¹² In the present case, the damage resulted from dropping matches lit with no apparent intent to damage property. The facts warrant no showing of specific intent to defeat the claim under the policy.¹³ In adopting the requirement of specific intent to effectuate the exclusionary clause,

4. *Cleland Simpson Co. v. Firemen's Ins. Co. of Newark*, 392 Pa. 67, 140 A.2d 41 (1958).

5. *Union Paving Co. ex rel. U.S. Cas. Co. v. Thomas*, 186 F.2d 172 (3d Cir. 1951).

6. *Armon v. Aetna Cas. & Surety Co.*, 369 Pa. 465, 87 A.2d 302 (1951).

7. Grissom, *A Lawyer's Interpretation of the Insurance Policy Language*, 26 INS. COUNSEL J. 129, 133 (1959).

8. *Blue Anchor Overall Co. v. Pa. Lumbermen's Mut. Ins. Co.*, 385 Pa. 394, 123 A.2d 413 (1956).

9. *Morrill v. Gallagher*, 370 Mich. 578, 122 N.W.2d 687 (1963); *Crull v. Glieb*, 382 S.W.2d 17 (1964, Mo. App.); *Baldinger v. Consolidated Mut. Ins. Co.*, 15 App. Div. 2d 526, 222 N.Y.S.2d 736, *aff'd*, 11 N.Y.2d 1026, 230 N.Y.S.2d 25, 183 N.E.2d 908 (1961); *See also*, 2 A.L.R. 3d 1243 (1965).

10. *Eisenman v. Hornberger*, 438 Pa. 46, 49, 264 A.2d 673, 674 (1970).

11. 2 A.L.R. 3d 1243 (1965).

12. *Id.*

13. *Eisenman v. Hornberger*, 438 Pa. 46, 49, 264 A.2d 673, 674 (1970).

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the court was consistent with its past treatment of liability insurance policies.¹⁴

Assuming the act was not intentional, would it violate public policy to allow recovery? Pennsylvania has taken a liberal view of the public policy issue and recovery under insurance policies.¹⁵ Recovery has been upheld under automobile insurance policies even though the accident occurred subsequent to theft of the car.¹⁶ Finding Hornberger within the scope of the insurance policy, the court looked no further: "It does not matter under what circumstances liability might arise. The insured may even be protected against acts . . . that may involve a criminal statute."¹⁷ Analogizing recovery under automobile insurance policies though the claims arose from moving violations of the Motor Vehicle Code, the court found: "sanctions of criminal law and the coverage of an insurance policy are collateral issues, addressing themselves to quite separate and distinct actions on the part of the insured."¹⁸ There was no evidence the policy was procured in contemplation of any crime, nor can one say the crime was prompted by the policy.¹⁹ The act triggering liability was not the burglary, but the unconscious dropping of matches. Denial of recovery would not serve to deter crime.²⁰ The policy does not alleviate the insured from the consequences of his criminal act,²¹ but makes the innocent victim whole.

Assuming the court is correct in adopting the majority rule, can one say the insured did not know property would be damaged by dropping lit matches? Intentional interference with the property of another exists if the actor intends to do the harm or if he knows with substantial certainty harm may occur.²² Although the insured didn't *intend the result*, he should have known with substantial certainty the fire could occur. A seventeen year old obviously should know a fire may result from dropping lit matches. If this was established by the insurance company, the court could have enforced the exclusionary clause denying recovery.

14. *Armon v. Aetna Cas. & Surety Co.*, 369 Pa. 465, 87 A.2d 302 (1951).

15. *Erb v. Commercial Mut. Acc. Co.*, 232 Pa. 215, 81 A. 207 (1911); *Beley v. Pa. Mut. Life Ins. Co.*, 373 Pa. 231, 95 A.2d 202 (1953).

16. *Sky v. Keystone Mut. Cas. Co.*, 150 Pa. Super. 613, 29 A.2d 230 (1942).

17. *Brower ex rel. v. Employers' Liability Assurance*, 318 Pa. 440, 442, 177 A. 826, 827 (1935).

18. *Eisenman v. Hornberger*, 438 Pa. 46, 50, 264 A.2d 673, 675 (1970).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Ranson v. Kitner*, 31 Ill. App. 241 (1889).

The public policy argument denying recovery appears to be compelling. The insured was committing a burglary when the damage occurred. Recovery on the policy relieved the wrongdoer of financial responsibility entirely. Despite the burglary, an insurer has no recourse against its insured because it is precluded from subrogating against itself.²³ If recovery is permitted, are we not allowing a wrongdoer to benefit from his act?

Absent a "violation of law" clause in the policy, the fact insured was in the course of a crime is immaterial. Premiums are paid for the sole purpose to indemnify the insured for damages, as defined by the policy. Once it is determined the insured's act is within the scope of the policy it is not necessary to look further. By analogy, automobile insurance would never be purchased if insurers retained a right of subrogation. In allowing recovery, the court properly directed itself to the terms of the policy finding no evil consequences. Having written the policy, the insurance company could have protected itself by including a violation of law clause. Courts will not take the liberty to rewrite insurance contracts, particularly when the party seeking greater protection is the insurer.

James L. Ross

ESTATE LAW—TESTAMENTARY RIGHTS OF AN ADOPTED GRANDCHILD ADOPTED AFTER THE DEATH OF THE TESTATOR—The Pennsylvania Supreme Court has held that a testator's grandchild, who was adopted after the testator's death, was entitled to share in a testamentary disposition of trust income to his daughter's children, if any, after her death. The Court allowed this distribution where it was clearly shown that the testator knew at the time he executed his will that his daughter could have no children and already had adopted one, who subsequently died.

Chambers Estate, 438 Pa. 22, 263 A.2d 746 (1970).

The testator, James B. Chambers, died on May 6, 1933, leaving a will that created a trust, the income derived therefrom to be delivered semi-annually to Hazel G. McGill, his daughter, during her life. At

23. J. APPLEMAN & J. APPLEMAN, *INSURANCE LAW AND PRACTICE* § 4932 (1962).