S179252

In the

Supreme Court

of the

State of California

CENTURY NATIONAL INSURANCE CO.,

Plaintiff and Respondent,

v.

JESUS GARCIA et al.,

Defendants and Appellants.

CALIFORNIA COURT OF APPEAL · SECOND APPELLATE DISTRICT · NO. B209616
SUPERIOR COURT OF LOS ANGELES · MAUREEN DUFFY-LEWIS · NO. BC379522

PETITION FOR REVIEW

STEPHEN M. LOSH, ESQ. (127508)
ANGELICA M. LEON, ESQ. (224719)
BEVERLY HILLS LAW ASSOCIATES
9461 Charleville Boulevard
PMB 613
Beverly Hills, California 90212
(310) 552-2490 Telephone
(310) 552-7891 Facsimile

Attorneys for Petitioners,
Jesus Garcia, Sr. and Theodora Garcia

COUNSEL PRESS · (800) 3-APPEAL

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STATUTES

I.

TO THE HONORABLE CHIEF JUSTICE, RONALD M. GEORGE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioners, Jesus Garcia, Sr.& Theodora Garcia, respectfully petition for review of the Decision of the Court of Appeal, Second Appellate District, Division 7, filed on December 2, 2009 (Case No. B209616) affirming the ruling of the trial court sustaining the Respondent's Demurrer to Petitioners' Cross Complaint without leave to amend. A copy of the opinion of the Court of Appeal is attached hereto as Exhibit A.

II.

ISSUE PRESENTED FOR REVIEW

Can a real property fire insurance policy exclude coverage for innocent co-insureds when a family member deliberately sets fire to the family home?

III.

REVIEW SHOULD BE GRANTED TO SETTLE A CRITICAL POINT OF LAW

The public policy and purpose of the language contained in the standard statutory fire insurance policy is to allow recovery for a fire loss by an innocent co-insured when a co-insured caused the loss by a deliberate act. The Court of Appeal in this instance carved an exception to this rule by allowing the Respondent to use an exclusion from a different part of the

policy to defeat the right of Petitioners as innocent co-insureds to recover for a fire loss caused by their adult son. The Court of Appeal's decision should be subject to review and reversal by this Court for the following reasons:

(1) The exclusionary clause in the Century National Insurance Company property insurance policy as applied in this case is invalid as it diminishs the rights of the Petitioners under the provisons of the standard fire insurance policy as set forth in *California Insurance Code* §2071 and as regulated by *California Insurance Code* §2070.

(2) The decision in this case conflicts with the Court of Appeal decision in *Watts v Farmers Insurance Exchange* (2002) 98 Cal.App.4th 1246.

(3) The decision in this case conflicts with the out State authority cited with approval in *Watts v Farmers Insurance Exchange* (2002) 98 Cal.App.4th 1246.

(4) The decision in this case conflicts with the modern trend cited in *Watts v Farmers Insurance Exchange* (2002) 98 Cal.App.4th 1246 and newer cases in the majority of jurisdictions in the United States which set forth the public policy favoring recovery by innocent co-insureds in fire losses caused by the intentional acts of co-insureds.

(5) That if the decision of the Court of Appeal is published as requested by the Respondent, property insurance companies throughout the State of California would revise their property insurance policies to eliminate the rights of innocent co-insureds from recovering for fire insurance losses that would otherwise be covered losses.

IV.

STATEMENT OF THE CASE

A. Factual Background

The home of Jesus Garcia, Sr. and his wife, Theodora Garcia suffered substantial damage as a result of a fire deliberately started by their son, Jesus Garcia, Jr., on May 2, 2007. At the time of the loss, the home was insured under a homeowner's insurance policy issued by Century National Insurance Company to Jesus Garcia, Sr., only. Petitioner Theodora Garcia is not named on the policy, but was an insured on the policy because she is the wife of the named insured and lived at the home at the time of the Loss.

Jesus Garcia, Jr. was not named on the policy either, but as he was living at the home at the time of the loss and is the son of the Petitioners, he became an insured also under the terms of the policy. Jesus Garcia, Jr. was arrested and charged with arson in connection with the fire and ultimately pled *Nolo Contendre* to the charge.

Petitioners submitted a timely claim to Century National Insurance Company under their policy for their loss and damage. July 3, 2007, Century National Insurance Company sent the Petitioners a letter informing them that it refused to pay for their loss as it was caused by the intentional conduct of an insured, Jesus Garcia, Jr., and Respondent's letter referred to paragraphs nine (9) and ten (10) of the "Exclusions" section of the policy. These exclusions are not found in the standard fire insurance policy terms mandated by *California Insurance Code* §2071. These paragraphs stated the following acts were excluded from coverage under the policy:

> "9. Intentional Loss, meaning a loss arising out of any act committed by or at the direction of any insured having the intent to cause the loss.
>
> 10. Dishonest, Fraud or Criminal Conduct of any insured."

These exclusions while not contained in *California Insurance Code* §2071, are added to the additional coverages and exclusions contained in the Century National Insurance Company homeowners insurance policy which supplements the standard fire insurance policy set forth in *California Insurance Code* §2071 as permitted, subject to the limitations of *California Insurance Code* §2070. The subtle change in the exclusionary language in the Century National Insurance Company policy changed the phrase "the insured" to "any insured". The significance of this language change eliminates the right of innocent co-insureds to collect policy benefits in the

event of a fire loss intentionally caused by any insured. California case law interprets the phrase "the insured" to exclude only the non-innocent insured from coverage in the event of an intentional fire loss.

B. Procedural History

On October 22, 2007, Century National Insurance Company filed a complaint seeking declaratory relief and asking for a judicial determination of the rights, obligations and liabilities of the parties under the homeowners insurance policy as they pertained to the May 7, 2007 fire.

The Petitioners filed an Answer and Cross-Complaint on December 3, 2007. In the Cross-Complaint, the Petitioners alleged that Century National Insurance Company's policy did not comply with the standard California fire insurance policy language as the policy language excluded coverage for claims arising from the intentional acts of "any insured" rather than from the intentional acts of "the insured" thereby affording its insureds less coverage than that mandated by the standard fire insurance policy. The Petitioners alleged that the language change from "the insured" to " any insured" in the policy can exclude coverage under the policy to innocent co-insureds, and that this exclusion contravenes the pertinent sections of California *Insurance Code* §2071, the California Standard Form Fire Insurance Policy, which refers throughout its language, including the three exclusions contained therein, to "the insured."

Century National Insurance Company demurred to Petitioners' Cross-Complaint on the basis that: 1) the language of its insurance policy was controlling; 2) that §2071 of the *Insurance Code* expressly authorizes changes to the language of the California Standard Form Fire Policy; 3) that its policy was presumptively correct pursuant to *Insurance Code* §1855.5; 4) that a bad faith cause of action cannot lie when there is a genuine dispute over the scope of an insurer's obligations under the policy; and, 5) that there cannot be a reformation to the policy when its policy contains no mistake with regard to its compliance with the *Insurance Code*.

On May 28, 2008, the trial court dismissed the case after sustaining Century National Insurance Company's Demurrer without leave to amend. The trial court ruled that Century National Insurance Company's insurance policy excluded coverage for the intentional or criminal acts of any insured so there was no breach of contract, that the existence of a genuine dispute precluded Petitioners cause of action for breach of the implied covenant of good faith and fair dealing, and finally, that the Cross-Complaint failed to state a cause of action for reformation.

C. The Court of Appeal Decision

On July 24, 2008, Petitioner timely appealed the judgment of the trial court. Following briefing and oral argument by the parties, the case was submitted for decision on November 4, 2009. The Court of Appeal issued its decision on December 2, 2009 affirming the decision of the trial

court. Petitioner filed a Motion for Rehearing on December 17, 2009, which was denied on December 21, 2009.

V.

ARGUMENT

A. The Court of Appeal's Opinion and Ruling of December 2, 2009 conflicts with Insurance Code §2071 and §2070

The Opinion is predicated on the erroneous reasoning that *Insurance Code* §2071 divides the occurance of a fire into different types of fire, i.e., accidental or intentional, and that as a result Century National Insurance Company can therefore issue a real property insurance policy that provides less coverage for a fire loss than that provided for in *Insurance Code* §2071. *Insurance Code* §2070 provides:

> "All fire policies on subject matter in California shall be on the standard form, and, except as provided by this article shall not contain additions thereto. No part of the standard form shall be omitted therefrom except that any policy providing coverage against the peril of fire only, or in combination with coverage against other perils, need not comply with the provisions of the standard form of fire insurance policy or Section 2080; **provided, that coverage with respect to the peril of fire, when viewed in its entirety, is substantially equivalent to or more favorable to the insured than that contained in such standard form fire insurance policy."** (Emphasis added).

This error arises from confusion that "arson" as an intentional act is not mentioned in *Insurance Code* §2071 and can therefore be subject to an exclusionary clause added by Century National Insurance Company that

conflicts with the language of standard policy and in effect provides the Petitioners with less coverage than that provided in the standard policy. In the standard fire insurance policy there are three intentional act coverage exclusions, each using the term "the insured" as opposed to "any insured". Arson is merely one of approximately four recognized causes of fire and *Insurance Code* §2071 covers all types of fire under the term "fire". The four recognized causes of fire are accidental, undetermined, suspicious and intentional. If the legislature intended that *Insurance Code* §2071 should divide insurance coverage for a fire into different types of fire, it would have so stated. As will be discussed *infra*, the Court of Appeal in *Watts v Farmers Insurance Exchange* (2002) 98 Cal.App.4th 1246 held that the phrase "the insured" allowed innocent co-insureds in a fire loss to recover insurance policy proceeds if they were free from fault in a situation involving fraud and false swearing arising out of a fire loss.

The Court of Appeal, in the present case, in affirming the trial court relied on two homeowner insurance policy cases, but neither of these cases involved a fire loss. The Court cited *Fire Insurance Exchange v. Alterieri* (1991) 235 Cal.App.3rd 1352 however in that case the insured was involved in a fight invoking the personal liability coverage contained in a homeowners insurance policy. *Western Mutual Insurance Co. v. Yamamoto* (1994) 29 Cal. App.4th 1474 is also inapposite as this case

involved a shooting, once again dealing with personal liability coverage and not a fire loss.

B. The Ruling of the Court of Appeal Directly Contradicts the Court's Holding in *Watts* and The Outstate Authority Followed in Watts.

When as in this case, there are no published opinions on the specific issue in dispute in a fire insurance case, California courts have looked to decisions from the State of Michigan as well as other states. Examples would be this Court's decision in *Prudential-LMI Com. Ins. v. Superior Court* (1990)51 Cal.3rd 674 at 688 citing *Ford Motor Company v. Lumbermans Mutual Casualty Company* (1982) 413 Mich. 22 and *Tom Thomas Organization v. Reliance Insurance Company* (1976) 396 Mich. 588 dealing with equitable tolling extending the limitations period for filing suit on property insurance claims. In *Watts v Farmers Insurance Exchange* (2002) 98 Cal.App.4th 1246 the Court of Appeal looked to the Michigan Courts as well as others again for guidance. At p.1254 of *Watts* the Court of Appeal cited with approval the language of a Wisconsin Appellate Court which ruled:

> Comparing earlier Wisconsin decisions with more modern decisions from other jurisdictions such as Michigan, [8] Illinois [9] and New York, [10] the court concluded that "imputing the incendiary actions of an insured to the innocent insured and creating an absolute bar to recovery by the innocent insured, produces inequitable results" (*Hedtcke, supra*, 326 N.W.2d at p. 740), whereas "the modern rule adopted by courts in other jurisdictions permitting recovery by innocent insureds preserves the essence of the legal

> principles recognized in the [contrary Wisconsin] cases and produces an equitable result ...." (*Id.* at p. 738.)

While *Watts, supra,* involved fraud and false swearing, it cited with approval the language from out of State cases involving arson as the cause of the loss and treated it legally interchangeably with fraud and false swearing under the standard fire insurance policy. Footnote 8 cited to the Michigan case of *Morgan v. Cincinnati Insurance Company* (1981) 411 Mich. 267, further cited by the Court of Appeal at p.1261. *Morgan, supra,* was a case wherein one spouse burned the family home and the other spouse was innocent of any wrongdoing. This case like that of the Petitioners involved arson by one family member. Insurance companies in Michigan like Century National Insurance Company in California decided to change the property insurance policy language after *Morgan* to penalize an innocent co-insured for the intentional acts of another insured. The Michigan Supreme Court quashed that attempt in *Borman v. State Farm Fire & Casualty Co.* (1994) 446 Mich. 482 at 484 and 485 held:

> We hold that the provisions of the insurance policy issued by defendant State Farm Fire & Casualty Co., insofar as they deny coverage to an insured who is innocent of wrongdoing by another insured, are inconsistent with. the provisions of the standard policy, and, thus, contrary to the provisions of the standard policy, and are therefore void insofar as fire insurance coverage is involved. We further hold that State Farm is subject to liability under the policy to the plaintiff's decedent, who was an innocent insured, in the same manner and to the same extent as if the inconsistent provisions were not contained in the policy.

This case predated *Watts* and is newer than *Morgan* and it is strange that the *Watts* Court cited to *Morgan* even though *Borman* reaffirmed the holding in *Morgan* while upholding in even stronger language the public policy behind protecting innocent co-insureds. This case like *Morgan* was also an arson case. Michigan like California has a code section similar to *Insurance Code* §2070 and the Michigan Supreme Court cited to that section in footnote 3. The intentional acts exclusion in the State Farm policy referred to "any" insured with similar language to the Century National Insurance Company policy. At p.489 of *Borman, supra,* the Michigan Supreme Court dealt decisively with this issue by ruling as follows:

> While the standard policy contemplates "[a]dded provisions" "any other provision or agreement *not inconsistent* with the provisions" of the standard policy because the provisions of the homeowner's policy relied on by State Farm cover the same subject matter as the first sentence of the standard policy, and provide for less coverage to innocent insureds than is mandated under the first sentence as construed by this Court in *Morgan,* the provisions of the homeowner's policy relied on by State Farm are "inconsistent with the provisions" of the standard policy and hence "absolutely void."

In 2004, two years after W*atts*, the United States District Court for the Southern District of West Virginia on a West Virginia State Court case removed to Federal Court on Diversity of Citizenship grounds, discussed in detail the modern trend of courts to honor the rights of innocent co-insureds in situations similar or identical to that of the Petitioners. *Icenhour v*

Continental Insurance Company 365 F. Supp.2nd 743. In that case, the Plaintiff's husband set fire to the family home. Continental Insurance Company relied on exclusion similar to the one contained in Petitioners' policy. The Federal Trial Judge refused to honor the exclusion on the ground that this exclusion impermissibly diminished the rights of the Plaintiffs contained in the standard fire insurance policy. The Court went on to discuss the history of the West Virginia standard fire insurance policy code sections which are similar if not identical to *California Insurance Code* §§2071 and 2070. The Court initially looked at West Virginia case law that appeared to grant relief to innocent co-insureds, including one case involving the insured's son burning down their business. The Court then turned to precedent throughout the United States. The Court noted that there was a distinct difference between the standard fire insurance policy use of the phrase "the insured" and the typical policy language of "an insured" or "one or more covered persons" as drafted by insurance companies. The Court noted that it is almost unanimous throughout the United States that the innocent co-insured in a fire loss will prevail over contrary exclusionary clauses in the policy. In its survey and review, the Court included the decisions in *Borman* and *Watts, supra.* The Court construed the exclusions contained in the standard fire insurance policy as encompassing arson committed by a co-insured and that the standard fire insurance policy allowed recovery for a loss to innocent co-insureds.

The specific exclusion referred to by the cited authorities is the "increase in hazard" exclusion which like the other two exclusions in the standard policy refers to "the insured" and that the financial responsibility or loss for wrongdoing is confined solely to the wrongdoer.

VI.

CONCLUSION

The modern trend in the majority of States and Federal Jurisdictions allows property insurance recovery by innocent co-insureds where an otherwise covered property insurance fire loss is caused by a co-insured. California Courts have followed the opinions of many of these jurisdictions when there are no California cases directly on point. Further, in the *Watts* case, *supra*, the Court of Appeal followed law from other jurisdictions allowing recovery for innocent co-insureds. While *Watts* was a fraud and false swearing case, the cases relied upon in that decision involved arson by a co-insured. The Court of Appeal in this case, not only ignored the decision and supporting cases cited in *Watts*, but created an exception to this rule by using an exclusion not contained as an exclusion in the standard fire insurance policy.

For that reason and for the other reasons set forth more fully in this Petition, the Petitioners request that this Court grant this Petition for Review and conform the result in this case to the public policy and case law of the State of California.

Dated: January 7, 2010

RESPECTFULLY SUBMITTED,
BEVERLY HILLS LAW ASSOCIATES

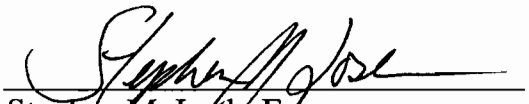
By: _____
Stephen M. Losh, Esq.
Angelica M. Leon, Esq.
Attorneys for Petitioners,
Jesus Garcia, Sr. and Theodora Garcia

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.504(d)(1) of the California Rules of Court, the enclosed Petition for Review is produced using 13-point or greater Roman type, including footnotes, and contains 3,072 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: January 7, 2010

RESPECTFULLY SUBMITTED,
BEVERLY HILLS LAW ASSOCIATES

By: 

Stephen M. Losh, Esq.
Angelica M. Leon, Esq.
Attorneys for Petitioners,
Jesus Garcia, Sr. and Theodora Garcia

EXHIBIT A

OPINION

Filed 12/2/09 Century Nat. Ins. v. Garcia CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CENTURY NATIONAL INSURANCE CO., Plaintiff and Respondent, v. JESUS GARCIA et al., Defendants and Appellants.	B209616 (Los Angeles County Super. Ct. No. BC379522)

APPEAL from a Judgment of the Superior Court of Los Angeles County. Maureen Duffy-Lewis, Judge. Affirmed.

Beverly Hills Associates and Stephen M. Losh for Defendants and Appellants Jesus Garcia and Theodora Garcia.

Haight, Brown & Bonesteel, Valerie A. Moore and Christopher Kendrick for Plaintiff and Respondent Century-National Insurance Company.

Jesus Garcia, Sr. and Theodora Garcia appeal judgment on their cross-complaint against Century National Insurance Company. The Garcia's son Jesus, Jr. deliberately set fire to the Garcia's home, and Century National sought a declaration that coverage was excluded for the intentional acts of "any insured;" the Garcias cross-claimed for breach of contract, bad faith, and reformation. The trial court sustained Century National's demurrer without leave to amend, concluding that the policy language defining "any insured" to include relatives precluded recovery for the intentional acts of Jesus Garcia, Jr. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Jesus Garcia, Sr. and his wife Theodora Garcia were Century National's named insureds under a fire insurance policy on their home.[1] On May 2, 2007, a fire occurred at the Garcia's home, and on May 3, 2007, the Garcias filed a claim with Century National.

The insurance adjuster inspected the premises and suspected arson. Century National retained a qualified fire investigator, who determined that the fire started in the bedroom of the Garcia's son Jesus, Jr. shortly after he had been in the bedroom. The investigator ascertained the fire was intentionally set with the use of a small amount of accelerant applied to the floor and bed that was ignited with a small open flame, such as would be found on a cigarette lighter or a match. Century National concluded the fire was the result of arson. Jesus, Jr. pleaded no contest to arson charges (Pen Code, § 451, subd. (b)) and was sentenced to five years.

At the time of the fire, the Garcias were insured by Century National under a policy which excluded coverage for "Intentional Loss, meaning any loss arising out of any act committed by or at the direction of any insured having the intent to cause a loss," and also excluded coverage for losses caused by "Dishonesty, Fraud, or Criminal Conduct of any insured." An "insured" was defined as "you and the following persons if permanent residents of the residence premises. . . . [¶] Your relatives. . . ."

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[1] To avoid confusion, because the defendants share the same last name, we refer to them by their first names.

On October 22, 2007, Century National filed its complaint for declaratory relief, seeking a declaration that it had no duty to pay the Garcia's claim because the loss resulted from the intentional or criminal acts of an insured.

On December 3, 2007, the Garcias filed their cross-complaint for breach of contract, breach of the covenant of good faith and fair dealing, and reformation. They alleged that Jesus, Jr. was not a named insured on the policy and did not have an insurable interest in the property, although they alleged he was their son and lived at the property at the time of the loss. The Garcias further alleged that Century National's definition of intentional loss violated Insurance Code section 2071[2] because the policy used the words "any insured" rather than "the insured," and thereby denied the Garcias insurance coverage.

Century National demurred to the cross-complaint, contending that wrongdoing by the insured barred coverage and bad faith does not lie where there is a genuine dispute of law. In particular, Century National argued that although the Garcias allege Century National should indemnify them because they did not set the fire, the policy provided that coverage was excluded for any insured who engaged in intentional or criminal conduct. Century National pointed out under sections 2071 and 533, exclusion of coverage applied to "innocent co-insureds," citing *Fire Insurance Exchange v. Altieri* (1991) 235 Cal.App.3d 1352 (*Altieri*) and *Watts v. Farmers Insurance Exchange* (2002) 98 Cal.App.4th 1246 (*Watts*).

The Garcias opposed Century National's demurrer, contending that the Insurance Code required an insurance policy to refer to "the insured," not "any insured," and that the current trend in case law was to resolve any conflict between policy language and statutory language in favor of innocent co-insureds, citing *Sager v. Farm Bureau Mutual Ins. Co.* (Iowa 2004) 680 N.W.2d 8, 11. The Garcias also argued any legal dispute was not genuine, but had been manufactured by Century National.

The court sustained the demurrer without leave to amend, finding that (1) the policy defined "any insured" to include relatives of the insured, (2) courts generally interpret

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[2] All statutory references herein are to the Insurance Code unless otherwise noted.

policies which exclude coverage for criminal or intentional acts to exclude coverage of innocent co-insureds (*Altieri, supra,* 235 Cal.App.3d at p. 1361), and (3) section 533 expressly sets forth California's public policy of denying coverage for willful wrongs. The court entered judgment on the cross-complaint, and Century National dismissed its complaint.

DISCUSSION

I. STANDARD OF REVIEW.

Because the function of a demurrer is to test the sufficiency of a pleading as a matter of law, we apply the de novo standard of review in an appeal following the sustaining of a demurrer without leave to amend. (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) We assume the truth of the allegations in the complaint, but do not assume the truth of contentions, deductions, or conclusions of law. It is error for the trial court to sustain a demurrer if the plaintiff has stated a cause of action under any possible legal theory, and it is an abuse of discretion for the court to sustain a demurrer without leave to amend if the plaintiff has shown there is a reasonable possibility a defect can be cured by amendment. (*California Logistics, Inc. v. State* (2008) 161 Cal.App.4th 242, 247.)

II. CENTURY NATIONAL'S POLICY DOES NOT VIOLATE THE INSURANCE CODE.

The Garcias argue that Century National's policy violates sections 533 and 2071, which they contend require policy language to refer to "the insured," not "any insured;" they assert that because they had no role in Jesus, Jr.'s conduct, they are innocent co-insured entitled to indemnity. (See *Watts, supra,* 98 Cal.App.4th 1246.)

1. Century National's Policy Language Precludes Recovery.

Although insurance contracts have special features, they are contracts to which the ordinary rules of contractual interpretation apply. "Thus, the mutual intention of the contracting parties at the time the contract was formed governs. [Citations.] We ascertain that intention solely from the written contract if possible, but also consider the

circumstances under which the contract was made and the matter to which it relates. [Citations.] We consider the contract as a whole and interpret the language in context, rather than interpret a provision in isolation. [Citations.] We interpret words in accordance with their ordinary and popular sense, unless the words are used in a technical sense or a special meaning is given to them by usage. [Citations.]" (*London Market Insurers v. Superior Court* (2007) 146 Cal.App.4th 648, 655-656.)

In reviewing the question of whether an innocent co-insured is entitled to coverage under a policy exclusion, *Altieri, supra,* 235 Cal.App.3d 1352 held that where the policy exclusion language referred to "the insured," coverage would be extended to co-insureds. On the other hand, if the policy exclusion language referred to "an insured," or "any insured," coverage would not extend to innocent co-insureds. (*Id.* at pp. 1360-1361; see also *Western Mutual Insurance Co. v. Yamamoto* (1994) 29 Cal.App.4th 1474, 1486-1487 [relying on *Altieri* in holding no coverage for co-insured where exclusion language refers to "any insured"].)

In *Watts, supra,* 98 Cal.App.4th 1246, where the court held that an innocent co-insured may recover his or her percentage share of the property unless the policy contains language excluding that possibility, the court explained the basis for the distinction between "the insured" and "any insured." (*Id.* at pp. 1253-1254.) *Watts* noted that "'Generally, where a policy precludes recovery as a result of fraud on the part of "*the*" insured, the recovery is precluded only as to the insured who committed the fraud and the innocent co-insured is allowed to recover. On the other hand, where the policy precludes recovery as a result of fraud on the part of "*any*" insured, the effect of the fraudulent acts of one insured precludes recovery as to all insureds and an innocent co-insured is thereby precluded from recovery.'" (*Id.* at p. 1258, citing 13 Couch on Insurance (3d ed. 1999) § 197:34, p. 197-65, italics added, fn. omitted.) *Watts* explained that the use of the word "any" indicates that the insureds' obligations under the policy relating to fraud and intentional conduct are joint, rather than several. (*Id.* at p. 1260.)

The Garcia's Century National policy defined insured as a relative of the named insured and excluded coverage for intentional loss. The Garcias have admitted Jesus, Jr.'s

conduct was intentional. As a result, the policy language provides no coverage. (See *Western Mutual Insurance Co. v. Yamamoto, supra,* 29 Cal.App.4th at p. 1486.)

2. Century National's Policy Language is Not Prohibited By the Insurance Code.

The Garcias argue the plain policy language violates section 2071, which they contend in its fraud provisions also applies to intentional and criminal acts and specifies the language "the insured." They also assert that Century National cannot rely on section 2080 pertaining to riders because its policy used the "any insured" terminology in the main policy, not in a rider. Finally, they argue the policy similarly violates section 533's reference to "the insured."

In interpreting a statute, we begin with the fundamental rule that our primary task is to determine the Legislature's intent. To determine that intent, we turn first to the words of the statute for the answer. (*J.C. Penney Casualty Insurance v. M.K.* (1991) 52 Cal.3d 1009, 1020.) A statute must be construed in the context of the entire statutory scheme of which it is a part, in order to achieve harmony. (*O'Brien v. Dudenhoeffer* (1993) 16 Cal.App.4th 327, 333.)

Insurance Code section 2070 provides that "[a]ll fire policies on subject matter in California shall be on the standard form, and, except as provided by this article shall not contain additions thereto. No part of the standard form shall be omitted therefore except that any policy providing coverage against the peril of fire only, or in combination with coverage against other perils, need not comply with the provisions of the standard form of insurance policy or section 2080; provided, that coverage with respect to the peril of fire, when viewed in its entirety, is substantially equivalent or more favorable to the insured than that contained in such standard form of fire insurance policy."

Section 2071 sets forth the standard form fire insurance policy for the State of California, and its standard provisions relating to concealment and fraud provide that "[t]his 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 case of any fraud or false

swearing by *the insured* relating thereto." (§2071, emphasis added.) Under section 2080, "[e]xcept as otherwise provided in this article, clauses imposing specified duties and obligations upon the insured and limiting the liability of the insurer may be attached to the standard form. Such clauses shall be in the rider or riders attached to the standard form of policy and shall be in type as provided in Section 2073."[3]

The Garcias' policy insures against perils in addition to the peril of fire, and therefore pursuant to section 2070 need not comply with the provisions of section 2071's standard form of insurance policy or section 2080 governing riders, provided that coverage with respect to the peril of fire, when viewed in its entirety, is "substantially equivalent or more favorable to the insured than that contained in such standard form insurance policy." (§ 2070.)

We conclude Century National's policy complies with section 2070 because the addition of the provision at issue is not inconsistent with the fire coverage of the standard form policy, which does not address intentional acts. Because section 2070 governs, the limitation of section 2080 requiring additional language to be placed in riders does not apply; there is nothing to prohibit the additional exclusionary language from being incorporated into the insurance contract itself. Section 2071 contains no language relating to exclusion for intentional misconduct or criminal acts, and there is no prescription of the form of exclusionary language relating to such conduct. The exclusionary language at issue here relating to intentional conduct this did not alter the standard form language of the fire insurance provisions of the Garcias' contract because the standard provisions are silent with respect to intentional conduct. Furthermore, if the policy at issue were solely a fire policy, the insurer properly could have placed the exclusionary language in a rider; it does not alter the insurance coverage to include the exclusions in this insurance policy because, as it covers additional perils, the insured knows there are more provisions to read.

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[3] Section 2073 provides, "The policy shall be plainly printed. The type shall not be smaller than eight-point and in a style not less legible than Century and subheads shall be in type larger than eight-point and in a style not less legible than Century. The lines of the policy following the countersignature clause shall be numbered consecutively."

As a result, the Garcias' fire coverage was "substantially equivalent" to that under the standard form policy.

Nonetheless, the Garcias insist that *Watts* held that recovery will be permitted to an innocent co-insured because the statutory form fire insurance policy does not state the act of any insured will be attributed to all insureds; they argue the intent is to provide coverage for an innocent co-insured when another insured commits a wrongful act. *Watts,* in discussing section 2071 as it applied to the distinction between "the insured" and "any insured," stated that, "since the language adopted by the Legislature for the standard form does not specifically state that the act of any insured will be attributed to all insureds, the intent is that coverage be severable and that an innocent co-insured be able to recover for his or her proportionate share of the damaged property." (*Watts, supra,* 98 Cal.App.4th at p. 1261.) *Watts's* statement in this regard does not alter the rule that liability for excluded acts may be joint or several, depending upon the language of the policy. *Watts* merely refers to the standard form policy, which as our discussion above establishes, does not govern the exclusion here.

Finally, section 533 provides in relevant part that "An insurer is not liable for a loss caused by the willful act of *the insured.*" (Emphasis added.) Section 533 is an implied exclusionary clause in every insurance contract, and reflects the fundamental public policy of denying coverage for willful wrongs. (*Shell Oil Co v. Winterthur Swiss Insurance Company* (1993) 12 Cal.App.4th 715, 739.) Contrary to the Garcias' assertion, unlike section 2071, which is expressly directed at controlling the language insurers may use in fire policies, section 533 does not govern mandatory requirements for policy language, but rather provides the basis for exclusion of coverage. We therefore find that Century National's policy may, consistent with section 533, exclude coverage for willful acts of *any* insured.

DISPOSITION

The judgment of the superior court is affirmed. Respondent is to recover its costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.

State of California)
County of Los Angeles)
)

Proof of Service by:
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I, Stephen Moore , declare that I am not a party to the action, am over 18 years of age and my business address is: 354 South Spring St., Suite 610, Los Angeles, California 90013.

On 01/07/2010 declarant served the within: Petition for Review

upon:

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Christophe Victor Kendrick
Haight Brown & Bonesteel LLP
6080 Center Drive. Suite 800
Los Angeles, California 90045

Attorney for Plaintiff-Respondent,
Century National Insurance Company

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Signature: Stephen Moore