

## Homeowners Coverage for Arsonist's Innocent Coinsured: Clarification From the MA Supreme Judicial Court

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In *Aquino v. United Property & Casualty Company*, the Massachusetts Supreme Judicial Court addressed the responsibilities of an insurer under a homeowners policy to an innocent insured homeowner when her fiancée — a coinsured who co-owned the home — intentionally set fire to the home. When the innocent homeowner sought coverage, the insurer denied coverage based on the policy's intentional loss exclusion, which barred recovery when any coinsured intentionally caused a loss. In its decision, the Court addressed several questions: 1) whether the exclusion comports with the requirements of the Massachusetts statute regarding standard fire insurance policy language; 2) whether the innocent insured was entitled to the full insured value of the home; and 3) whether the insurer's denial of coverage constituted unfair claim settlement practices.

Massachusetts statute defines the contents of a standard fire insurance policy, and policy language in conflict with that statute is unenforceable. The intentional loss exclusion barred coverage for acts by any insured, whereas the standard form required by statute excludes loss by "the" insured. The Court held that where the definite article ("the") is used, recovery is precluded only as to the insured who commits arson, not as to the innocent insured. The Court explained that by using "the insured" and not "an insured" in the exclusion, the Legislature provided for several rather than joint rights and obligations. Thus, the innocent coinsured homeowner should not have been denied coverage based on intentional acts committed by a different coinsured.

On the question of insurance proceeds, the Court determined that the innocent insured was entitled to recover only 50% of the insurance proceeds, as she owned 50% of the property as a tenant in common. As the remaining 50% of the property belonged to the coinsured who set fire to the property, that half of the insurable interest in the home was forfeited by the insured's own intentional act. The Court acknowledged that different considerations would be at issue if the innocent insured had survivorship rights in the property, but left unresolved the question of whether an innocent coinsured with rights of survivorship would be entitled to 100% of the insurable interest in the property.

Notwithstanding the fact that the insurer's denial of coverage was at odds with what the Court determined Massachusetts statute to require, the Court concluded that the insurer was not liable for unfair claim settlement practices under Chapter 93A. The insurer had relied on a 1938 decision in which a coinsured wife was denied insurance proceeds from property her husband intentionally burned in attempt to defraud the insurance company. Although the Court distinguished the 1938 decision as having been based, at least in part, on outdated conceptions of the marital relationship, the Court concluded that the insurer had not acted unfairly or deceptively in denying coverage where the 1938 case could be interpreted in good faith to support the insurer's interpretation of Massachusetts law.

If you have questions or would like additional information, please contact Rachel Eisenhaure ([eisenhaure@whiteandwilliams.com](mailto:eisenhaure@whiteandwilliams.com); 617.748.5221).

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