



Denying the Claim by Dennis M. Foerster

By far the most common type of insurance litigation is as a result of an insurer denying a claim. There are three common reasons for claims being denied. First, when the insurer discovers a “non-disclosure of material risk” the insurer may consider the contract is void. Alternatively, the insurer may assert that the insured has done something in breach of the insurance policy and for this reason the insurer asserts that it no longer is bound by the contract with the insured because of the breach. Finally, the insurer may assert that the loss being claimed is not covered by the policy.

The first two reasons “material risk” and “breach of contract” although sounding similar are very different in law. A denial of a claim based on non-disclosure of a material risk is unique to insurance contracts. The law of insurance recognises the fact that an insurer relies on the insured to provide all material information in order to allow the insurer to assess the risk of the property to be insured. The insurer relies on this information to determine

whether or not it is prepared to offer insurance and, if so, how much the insurer will charge, the premium, to provide the insurance policy. Any failure by the insured to advise the insurer of material information in making this assessment may allow an insurer to deny a claim.

For example, suppose that you suffer a loss because a baseball broke your front window. When the adjuster attends your property to determine the amount of the claim he or she happens to see that you store dynamite in your basement. (This is an extreme example.) The adjuster, either an employee of the insurer or hired by the insurer, will advise the insurer of this fact and shortly thereafter you will likely receive a letter from the insurer telling you that since you did not advise the insurer of the material risk they are voiding the policy. When the contract is considered void it is as if there was never a contract and therefore the insurer will return all of the premiums. The material non-disclosure need not relate to the claim being made because the issue is with

respect to the formation of the contract and not the nature of the claim. Also the non-disclosure need not be intentional; an innocent failure to advise of a material fact may result in the contract being declared void.

A denial of a claim based on a breach of the insurance contract is different because requires the existence of the contract in order to assert that the insured is in breach. For example, suppose that your insurance policy requires you to report a claim immediately upon becoming aware of a claim. If there is an unexplainable delay in reporting the claim to the insurer, the insurer may be entitled to deny the claim based on this breach of the contract. If this matter results in a court action the court may examine if the insurer suffered any prejudice as a result of the delay and if this can be established, then the insurer may not be required to pay for the loss under the insurance contract.

The difference between these two reasons for denying a claim is complicated and involves subtle points of law. The third

reason, that the loss is not covered by the policy, involves a care review of the policy by the court. There is interesting case law on this issue. For example most homeowner policies will not provide coverage for intentional criminal or wrongful acts of the insured. Suppose that your child intentionally burns down your home (this is from an actual case). The insurer may assert that it is not bound to honour a claim in this situation because of this intentional criminal or wrongful act. Although your child is not a named insured or a party to the insurance contract, for the purposes of interpreting an insurance contract, the courts have recently determined that the family members residing in the home have an insurable interest in the home and therefore their wrongful or criminal acts may prevent you from receiving the benefit of the insurance contract.

We are surrounded by insurance in many different forms. There is insurance through private contracts, as a result of employment and even through various statutes (Manitoba Public Insurance and Workers'

Compensation Benefits). Most people however do not think about their legal responsibilities or benefits from insurance until it becomes necessary to make a claim. In most circumstances provided, people have acted reasonably and honestly, insurance claims are honoured and never result in litigation. Taking the time to understand your insurance coverage and responsibilities under your policies will save you from discovering these facts at the most inopportune time when you need to rely on your coverage.