

FIRE INSURANCE--DEFENSE OF FRAUDULENT PROOF OF LOSS.¹

The (*state number*) issue reads:

"Did the [plaintiff(s)] [defendant(s)]² willfully [conceal] [misrepresent] [falsely swear to] a material fact or circumstance in connection with the filing of the proof of loss required by the insurance policy?"

The policy of fire insurance in this case contains the following provision:

"[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 the case of any fraud or false swearing by the insured relating thereto."³

On this issue, the burden of proof is on the [plaintiff] [defendant] insurance company.⁴ This means that the [plaintiff] [defendant] insurance company must prove, by the greater weight of the evidence, that the [plaintiff(s)] [defendant(s)] willfully [concealed] [misrepresented] [falsely swore to] a material fact or

¹This instruction applies to any alleged concealment, misrepresentation, or false swearing which occurs following and outside the context of an application for fire insurance. See Note Well and fns. 1-5 in N.C.P.I.--Civil 910.26.

²The part (y) (ies) referenced here (is) (are) the insured, whether plaintiff(s) or defendant(s).

³See G.S. § 58-44-15 (standard fire insurance policy approved by the General Assembly).

⁴In this context, the burden of proof will always been on the insurer, whether in the capacity of plaintiff or defendant.

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circumstance in connection with the filing of the proof of loss required by the insurance policy.

A [concealment] [misrepresentation] [false swearing] is willful when done intentionally,⁵ knowingly, or without regard to the truth. However, if a [concealment] [misrepresentation] [false swearing] was made [accidentally] [mistakenly] [unknowingly] [in good faith], it would not be willful.⁶

A fact or circumstance is material if the knowledge or ignorance of it would naturally and reasonably influence the judgment of the [plaintiff] [defendant] insurance company in accepting the proof of loss as presented by the [plaintiff(s)] [defendant(s)].⁷ It is not necessary for the [plaintiff] [defendant] insurance company to have actually been deceived, prejudiced or injured by the [concealment] [misrepresentation] [false swearing].⁸

Finally, as to the [*state number*] issue on which the [plaintiff] [defendant] insurance company has the burden of proof, if you find, by the greater weight of the evidence, that the [plaintiff(s)] [defendant(s)] willfully [concealed] [misrepresented] [falsely swore to] a material fact or

⁵For an instruction on intent, see N.C.P.I.--Civil 101.46.

⁶See *Bryant v. Nationwide Ins.*, 313 N.C. 362, 370, 329 S.E.2d 333, 338 (1985) ("[m]ere overstatement of value of the goods or premises lost in a fire, or an error in judgment with respect to their value, is not sufficient to prove an intentional misrepresentation").

⁷See *id.* at 371, 329 S.E.2d at 339.

⁸See *id.*

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circumstance in connection with the filing of the proof of loss required by the insurance policy, then it would be your duty to answer this issue "Yes" in favor of the [plaintiff] [defendant] insurance company. If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the [plaintiff(s)] [defendant(s)].

