

# Porter v Zurich Insurance Company - Insureds Deliberate Damaging of Insured Property

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1. Mr Justice Coulson today handed down an important High Court judgment on the test to be applied when an insured deliberately damages his insured property and then claims for the damage under his insurance policy.

## **The Background**

2. The Claimant, Mr Porter, was a successful businessman. However, in the period leading up to 27.3.01, he suffered a cumulative build-up of a series of disastrous events in his business and personal life.

3. By 27.3.01:

- (i) He had lost his successful business and was no longer working;
- (ii) He had made an unsuccessful suicide attempt;
- (iii) He and his wife were advised they would be made bankrupt;
- (iv) He was about to lose his home in a virtual forced sale (and retain no residual equity);
- (v) He was facing sentencing in the Crown Court for harassment convictions which could have included a prison sentence;
- (vi) An ITV television programme, hosted by Trevor McDonald, which was extremely critical of Mr Porter, had been broadcast;
- (vii) On 26.3.01, his wife and daughter moved out of the matrimonial home; and
- (viii) After six months' abstinence, he began to drink heavily on 26.3.01.

## **The Fire**

4. On 27.3.01, he set fire to his home as part of a suicide attempt. He changed his mind as the fire developed. He then escaped the fire but the house and contents were damaged. He subsequently claimed on his home and contents insurance Policy with Zurich for the damage caused by the fire.

## **The defences**

5. Zurich raised four defences:

- (i) The damage by fire was excluded by the terms of the Policy which excluded liability for *"Any wilful or malicious act by a member of the family or by a person lawfully at or in the home"*
- (ii) A Claimant cannot by his own deliberate, wilful or malicious act bring about the event upon which the insurance money is payable as the policy, on its true construction, does not cover that kind of loss but only a loss occasioned by a fortuitous peril;
- (iii) The Claimant cannot recover or benefit in respect of his own criminal or civil wrong. The crime would be arson as the property had a mortgage and charges on it.
- (iv) In breach of Condition 6 of the policy, which stated, *"You and members of the family will take all reasonable steps to safeguard against loss, damage, accident or injury"*, Mr Porter did not take all reasonable steps to safeguard his house against loss or damage.

## **The Judgment**

6. Coulson J held, following American and Scottish authority and endorsing a passage in MacGillivray on Insurance Law 11<sup>th</sup> Ed. at 26-025, that to circumvent the operation of the insurers' defences:-

- (i) It had to be established that Mr Porter was not legally responsible for his actions at the time of the fire; and
- (ii) The test as to whether at the time of the fire, Mr Porter was legally responsible for his actions was the legal test of insanity under the M'Naghten Rules. So, to escape legal responsibility for his actions, Mr Porter would have to establish that (i) he did not know what he was doing; or (ii) he did not know that what he was doing was wrong.

7. This test reflects the test of legal responsibility for one's actions in the criminal law.
8. On the medical evidence and the factual evidence, Coulson J found that, while Mr Porter had a mental disorder of delusional disorder and depression, it fell short of establishing insanity in accordance with the M'Naghten Rules. This also accorded with Mr Porter's own evidence as to his mental state at the time of the fire. In other words, he knew what he was doing and that it was wrong. Therefore, his claim on the Policy for damage arising from the fire was dismissed.

**Significance**

9. This important decision has wide significance as, sadly, there appears to be a number of reported circumstances where people suffering from mental disorder, alcohol abuse or distressing personal circumstances, for example, marriage breakdown or related custody disputes, damage insured property. Prior to this authority, there appears to have been no direct English authority on the circumstances in which a valid claim could then be made on an insurance policy for the damage. Porter v. Zurich makes clear that various forms of medical and mental conditions short of insanity under the M'Naghten Rules will not deprive an insured of legal responsibility for his actions and allow an insured to recover under his insurance policy if he deliberately damages insured property. This decision provides certainty in the law and some degree of protection for insurers when faced with similar claims.

Daniel Crowley of 2 Temple Gardens acted for Zurich Insurance Company, instructed by Tom Corrigan of Beachcroft LLP, Bristol.

For further information or a copy of the Judgment please contact the Clerks at 2 Temple Gardens [clerks@2tg.co.uk](mailto:clerks@2tg.co.uk) 0207 822 1200.

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