A Tale of Two Houses: Recent Developments in Indiana Coverage Law

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Two recent decisions by the Indiana Court of Appeals consider property coverage issues: the first, regarding the sufficiency of evidence on which a trial court may find the insured was involved in a house arson; the second, finding a home seller who does not actually sustain a loss may still recover a hail-damage claim.

Precht v. Franklin County Farmers Mutual Ins. Co., 872 N.E.2d 701 (Ind.App. 2007). Carolyn Precht and her former husband owned a house in Fayette County which burned while Carolyn was at her current residence in Harrison, Ohio. The property investigation disclosed, among other things, that Carolyn's first comment when she arrived on the scene several hours after the fire was "I didn't do it" and that "it looked like electrical started the fire;" that the arsonist had blowtorched the breaker panel to make it look like an electrical fire; that the fire was set behind locked doors, and Carolyn was the only possessor of a key who appeared to have a motive to commit the arson; that Carolyn had previously expressed a desire not to move back to the Fayette County house; and that a similar fire had occurred at the Prechts' Ohio home one month earlier.

Notably, there was no specific evidence of who the actual arsonist was, or how Carolyn had collaborated with the arsonist, only the speculation it could have been the work of Carolyn's adult son, who refused to cooperate with the fire investigator.

Franklin County Mutual paid the former husband's claim, then sought reimbursement from Carolyn on the premise that she was complicit in the arson. After a bench trial, the trial court found in favor of the carrier.

On appeal, the Court of Appeals affirmed, holding that the foregoing evidence sufficiently supported the judgment for the carrier (that is, was sufficient to show by the preponderance of the evidence that Carolyn was involved in the arson).

It is important to note that the Court of Appeals ruled that there was enough evidence to uphold the trial court's decision in favor of the carrier. Similarly, if the trial court had decided, after hearing all the evidence at trial, in favor of Precht, the Court of Appeals probably would have upheld that decision, too. Therefore, the Court of Appeals opinion is instructive on at least a minimum level of evidence in Indiana for finding insured involvement in arson, but should not be considered a guarantee that an Indiana court would hold in favor of the carrier in every case under this set of facts.

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American Family Mutual Ins. Co. v. Matusiak, 878 N.E.2d 529 (Ind.App. 2007). American Family issued a homeowners policy to the Matusiaks. During the term of that policy, the Matusiaks signed a contract to sell their house to the Martins on March 25, 2005. An inspector found no hail damage to the Matusiak house roof on April 9, 2005. The Matusiaks' house sustained hail damage on April 22, 2005. The Martins closed on

their purchase of the Matusiak house for the full agreed-upon price on May 17, 2005, at which time neither the Martins nor the Matusiaks were aware of the hail damage sustained on April 22, 2005.

The Martins discovered the hail damage in September, 2005, and notified the Matusiaks of it at that time. The Matusiaks advised the Martins they would file a damage claim with American Family, and they would pay the Martins their $1,000 deductible. American Family denied the Matusiak claim on the basis, among others, that the Matusiaks sustained no loss.

The Matusiaks filed suit against American Family for breach of contract and bad faith. American Family argued that because the Matusiaks sold their house for the full amount agreed upon with the Martins, the intervening hail damage was not a "loss" to the Matusiaks. Nevertheless, the trial court granted summary judgment in favor of the Matusiaks for the $8,643.00 estimated to repair the hail damage to the Martin roof. The Court of Appeals affirmed the judgment against American Family.

Notwithstanding the logic of American Family's argument, the Court of Appeals appeared to be most influenced by the promises the Matusiaks made to the Martins: "although this pledge (to pay to the Martins the proceeds of any insurance recovery from American Family) may not rise to the level of a binding contract, in our view this obligation establishes that the Matusiaks have been made unwhole such that they now require indemnity and that they will not benefit from any settlement paid by American Family." The Court of Appeals therefore concluded that "the Matusiaks established a cash value loss," and American Family therefore breached its insurance contract with them when it denied its claim.

The Court of Appeals did not speculate on what could happen if after American Family paid the claim, the Matusiaks decided to keep the money rather than giving it to the Martins. Since the Court had acknowledged that the Martins and the Matusiaks did not have a "binding contract" about the insurance proceeds, presumably the Martins could not force the Matusiaks to turn over the money. This would apparently leave the Matusiaks with a court-approved windfall at American Family's expense.

The disturbing meaning of this opinion is that it may constitute precedent in Indiana that a property carrier may have an obligation to pay for a "loss" which is nothing more than the insured's impulse for generosity to someone else.