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LEGAL UPDATES

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Wisconsin Court of Appeals Affirms Insurer's Right to Enforce Examination Under Oath Requirement Prior to Litigation

The Wisconsin Court of Appeals recently issued a published decision in *Prunty v. Maple Valley Mutual Insurance Company*, clarifying the enforceability of examination under oath provisions in homeowner's insurance policies and the consequences of an insured's failure to comply before filing suit.

Case summary

After the plaintiff purchased a homeowner's insurance policy and during the application process and subsequent inspection, questions arose regarding the presence and operability of a woodburning unit in the plaintiff's garage. The plaintiff represented that the stove was cracked, disconnected, and unusable—a representation that the defendant insurer accepted, allowing the policy to remain in force.

In January 2023, a fire damaged the plaintiff's home. The defendant insurer's investigation suggested that the fire originated from the woodburning unit, raising concerns about the plaintiff's prior statements that the unit was unusable. As part of the investigation—and pursuant to the policy's terms—the defendant requested that the plaintiff submit to an examination under oath (E.U.O.). Instead of complying, the plaintiff filed a coverage lawsuit, asserting claims of breach of contract, bad faith, and statutory interest.

At the circuit court, both parties moved for summary judgment. The defendant insurer argued that the plaintiff's failure to sit for an EUO was a material breach of the policy that precluded coverage. The plaintiff, in turn, argued that his later deposition testimony in the coverage action satisfied any obligation to

sit for an EUO. The circuit court granted judgment in favor of the defendant, and the plaintiff appealed.

Court of Appeals' analysis

On appeal, the plaintiff contended that his failure to sit for the EUO was not a material or prejudicial breach of the policy because he answered questions under oath in a deposition. The Court of Appeals rejected this argument and affirmed the circuit court's decision, addressing for the first time in Wisconsin whether later deposition testimony can cure an insured's breach of the EUO requirement.

The Court of Appeals held that the plaintiff was required to submit to an EUO upon request, prior to litigation. The court emphasized that an EUO is a contractual tool enabling insurers to investigate claims thoroughly before making coverage determinations.

The Court of Appeals also rejected the plaintiff's argument that his failure to submit to an EUO was not material and prejudicial as he contended that he "effectively complied" with the EUO requirement. The court explained that, even assuming a breach of the EUO provision must be both material and prejudicial to deny coverage, those requirements were satisfied here. The refusal to submit to an EUO hampered the insurer's investigation, exposing it to potential bad faith liability. The court, relying on prior Wisconsin case law, explained that offering to answer questions after litigation commences is "too late to be meaningful to the insurance company." *Prunty v. Maple Valley Mut. Ins. Co.*, 2025 WI App 38, ¶ 27 (quoting *State Farm Fire & Cas. Ins. Co. v. Walker*, 157 Wis. 2d 459, 468, 459 N.W.2d 605, 609 (Ct. App. 1990)). Allowing a post-suit deposition to substitute for an EUO would render the contractual EUO requirement "essentially meaningless." *Prunty*, 2025 WI App 38, ¶ 35.

What this means to you

This decision reinforces the critical role of the EUO provision in property insurance policies and affirms that an insured's failure to comply with a reasonable EUO request prior to litigation can result in a complete forfeiture of coverage—even if the insured later provides deposition testimony during the course of litigation. Insurance carriers should ensure that EUO requests are clearly communicated and documented, and that policy language clearly sets forth the insured's duty to submit to an EUO as a condition precedent to coverage.

Contact us

If you have questions regarding the legal implications of this decision or other questions relating to insurance litigation, please contact Jason Fathallah, Doug Raines, Meghan Villalpando, or your Husch Blackwell attorney.