

The insureds need a contingency fee attorney to file a civil complaint preferably by December 2013 (?) in their denied \$500,000.00 restaurant under construction arson fire loss claim. Transients were often seen in the building by neighbors and police had been notified on multiple occasions. The insureds also had enemies, disgruntled tenants who had been evicted from the insured's rental properties and had brandished handguns at the insureds.

“Fraud” as a cause of action has a 3 year statute of limitations to file suit in

California from the time of discovery of the fraud (See fraud and “deceit” defined below in CACI jury instructions below and Calif. Ins. Code below and CCP § 338(d)). Fraud and deceit are not limited to contract actions (see CACI Sources and Authority discussion below). I discovered the fraud sometime between late 2010 and March 2011, after I was hired as a public adjuster and obtained and read the EUO transcripts and advised the insureds of the fraud. The policy 2 year time limitation to file suit is irrelevant here since this would not be an action on the policy contract. This would be no different than for example when insurers retain 3rd party contractors for emergency repairs and those contractors cause additional damages. (Breach of contract is not available as a cause of action due to the statute time bar. See further explanation below).

The "intentional misrepresentation" was where Farmers Insurance attorney, Richard Knapp, baited and told Mrs. Insured over and over during her EUO that she spoke English “very well”, well enough not to need an interpreter (see EUO excerpts below). He also told her (during her EUO) that he offered Mr. Insured an interpreter in his EUO. But in fact, he did not. (The EUO pdfs are text searchable). That is "concealment". Mr. Knapp also led Mr. Insured to say that he would not need an attorney. He gave both insureds a "false reasonable expectation" that their words meanings, even though grammatically incorrect, would not be misrepresented to deny their claim.

Note – most of the claim file and EUO transcripts can be downloaded and viewed online via the link in the 7-11-2011 press release at <http://www.uclaim.com/PressRelease.asp> .

Background

I, Ron Cercone, the Syprasert's public adjuster, have been advised that a civil lawsuit action with **Fraud** as a cause of action could still be filed against Farmers Insurance Group and their 3rd party independent EUO attorney Richard Knapp in the Syprasert's restaurant fire claim which occurred on 9-22-09. The fraudulent acts by Knapp began on the date of the insureds' EUO's 11-12-09 when Knapp **tricked Mr. and Mrs. Syprasert** into thinking that they would not need an interpreter, that their command of the English language was “quite well” (his words). He further led them into a “false reasonable expectation” that their lack of perfect grammar would not be later used to deny their claim (see EUO transcript excerpts further down in the “Fact” section this letter).

The fraud and conspiracy continued with Knapp's 10 page “denial/recommendation” letter of 2-16-10 to the insureds on behalf of Farmers Insurance Group. That letter was also full of obviously copy pasted text from a denial recommendation to Farmers Insurance Group. That letter contained gross misrepresentations and **intentional lies** to the insureds in regard to their EUO testimony (see excerpts in the 7-11-2011 press release link above). I discovered the fraud in late 2010 to early 2011 after reviewing the EUO transcripts (see next paragraph).

Both insureds went through a EUO without an attorney. Their claim was subsequently denied on 2-16-10. Then they hired an attorney to represent them for about 6 months and paid him around \$4,000.00 in hourly fees. After getting nowhere with Farmers Insurance, the attorney asked for a \$50,000.00 advance to file a lawsuit on an hourly fee basis. The insureds then ended that attorney's representation. After all this, and a year after the fire, the insureds hired me Ron Cercone on 10-13-10, as a public adjuster, to pursue and negotiate their claim on a contingency basis. It was made clear to the insureds, in our contract, that I had no obligation to find them a lawyer or to pursue litigation. They had been advised all along that they were free to look for legal representation at any time during my representation, and that I would cut my fee if they hired a lawyer to pursue litigation. They are and have been aware of the statutes of limitations for filing a lawsuit and know that time is running out on Fraud as a cause of action.

While the insureds' attorney did many good things and eventually obtained for the insurer all of the documents they requested, I saw no indication that he even read the EUO transcripts or pursued any of the fraud in the conduct of those EUOs. There were no letters to Farmers Insurance in his file pointing to the fraudulent conduct of the EUOs, or the fraud and misrepresentations in the denial letter of 2-16-10. Farmers insurance failed to reverse their denial of the claim even after the Insureds attorney gave them all of the documents they asked for.

As to my work on the claim, after having pointed out the flaws in the conduct of the EUO and the subsequent denial, Farmers attorney, adjuster and CEO continued to stonewall and deny the claim. Their attorney failed to give specific answers to my arguments, instead stating that the claim was denied "based on the totality of the evidence". He ignored my references to the insurance code, which requires that an insurer give "specific" answers to questions for denial of claims.

After having been stonewalled by Farmers Insurance for 8 months, I decided to send out a press release and got a few highlights of Farmers Insurance claims handling published on two websites: www.uclaim.com and www.insuranceclaimhelp.org . I also made my portion of the claim file and the EUO transcripts available for download via the websites.

This did nothing to bring Farmers to the table. And in fact, the website www.insuranceclaimhelp.org came under attack by hackers in Russia within two weeks of publishing a "Boycott Farmers Insurance" page and making the documents from this claim available via links from that page. That website has been under attack ever since then and subsequently lost 90% of its traffic and growth rate. At that time, that website had 300,000 visitors a year and was on track to be at 900,000 visitors a year by years end.

I made a formal complaint to the California DOI on behalf of the insureds claim as well as for unfair business practices to the websites. At first the DOI was interested in website's portion of the complaint, but not the insureds' claim. However, they failed to pursue an investigation into the website complaint.

Since it appears that the time to file suit with a Fraud cause of action is approaching the end, I am trying to find an attorney to file suit on the insureds' behalf. If an attorney wants to add me Ron Cercone as a co-plaintiff or a separate action with an unfair business practice cause of action, I would be open to discuss that. I am no stranger to litigation.

The Facts (as to a “Fraud” cause of action)

Farmers EUO attorney Richard Knapp misrepresented the below pertinent facts to the insureds **during their EUO**, the results (grammatical errors of speech) of which were later intentionally falsified and misinterpreted and used to deny the insured’s claim:

1. That Mrs. Syprasert spoke English well enough not to need an interpreter. Knapp **repeatedly** told her how well she spoke English; baiting her into thinking he would not misrepresent her intended meanings (e.g. see pages 5 and 16 of Mrs. Syprasert’s EUO).

Following is one excerpt from the actual transcript of Mrs. Syprasert’s EUO page 5 line 19:

Mr. Knapp Q. The reporter who's sitting to your right has placed you under oath, which obligates you to tell the truth to the best of your ability and carries with it the penalty of perjury. Do you have any questions about your obligation to give truthful and accurate testimony today?

Mrs. Syprasert A. No. Some -- I'm sorry. ***Some question I don't understand***, I have to ask you back. ***I not really good, good in English that much.***

Mr. Knapp Q. I think we let your husband know that you can have an interpreter if you wanted to, ***but you seem like you're comfortable with English?***

Mrs. Syprasert A. Yes, I hope.

Mr. Knapp Q. Good. ***You seem like you do quite well with English***

(Emphasis added)

Following is another excerpt from the actual transcript of Mrs. Syprasert’s EUO page 16 line 19:

Mrs. Syprasert A. Yeah, to take care. Because I'm not really good in English and maybe I do something wrong, make mistake. He have take care everything.

Mr. Knapp Q. ***So far it seems like you're doing really well in English.***

(Emphasis added)

2. Mr. Insured was not even offered an interpreter during his EUO, even though his spoken and written English was no better than Mrs. Insured's English. See also his nearly unintelligible letter to the fire department in the general claim file documents pdf. It was obvious that Mr. Insured had problems with English when he answered "NO" when he was asked if he wanted to proceed in the EUO without an attorney (see page 9 of Mr. insured's EUO).

Following is one excerpt from the transcript of Mr. Syprasert's EUO page 9 line 23:

Mr. Knapp Q. *Do you want to proceed without an attorney?*

Mr. Syprasert A. *No.*

Mr. Knapp Q. You don't want to proceed without an attorney?

Mr. Syprasert A. *Sorry, I don't understand.* You want me -- someone to help me?

Mr. Knapp Q. I'm glad you asked. We notified you you could have an attorney here if you want to.

Mr. Syprasert A. Yes, sir.

Mr. Knapp Q. And you don't have one.

Mr. Syprasert A. No.

Mr. Knapp Q. So you want to go ahead?

Mr. Syprasert A. Just go ahead. I don't have one. I'm sorry.

(Emphasis added)

3. Mr. Knapp knew all along, during the EUO of Mr. Syprasert that Mr. Syprasert's intended meaning was that he had "more than one property" since Knapp questioned Mr. insured about *several properties* just after Mr. Syprasert's "mortgage" (in the singular grammar) response (see page 24 of Mr. insured's EUO). Yet Knapp falsely reported to Farmers Insurance that Mr. Insured lied in his EUO, stating that Mr. Syprasert said he was behind on "only one" property's mortgage payments, when in fact he was behind on more than one.

Following is one excerpt from the transcript of Mr. Syprasert's EUO page 24 line 6:

Mr. Syprasert A. Property. Property rental. The property. On *some property* we behind.

Mr. Knapp Q. Which *properties* did you fall behind on? You

could just identify them on number on Exhibit Two.

Mr. Syprasert A. This behind. (Indicating.)

Mr. Knapp Q. Number three?

Mr. Syprasert A. Three.

Mr. Knapp Q. How far behind did you fall on number three?

(Emphasis added)

4. That the insureds spoke English well enough to give them a “reasonable expectation” that their imperfect grammar (i.e. singular vs. plural) would not be used to convey meanings other than what they intended.

CACI Jury Instructions:

1900. Intentional Misrepresentation

[*Name of plaintiff*] claims that [*name of defendant*] made a false representation that harmed [*him/her/it*]. To establish this claim, [*name of plaintiff*] must prove **all of the following:**

- 1. That [*name of defendant*] represented to [*name of plaintiff*] that an important fact was true;**
- 2. That [*name of defendant*]'s representation was false;**
- 3. That [*name of defendant*] knew that the representation was false when [*he/she*] made it, or that [*he/she*] made the representation recklessly and without regard for its truth;**
- 4. That [*name of defendant*] intended that [*name of plaintiff*] rely on the representation;**
- 5. That [*name of plaintiff*] reasonably relied on [*name of defendant*]'s representation;**
- 6. That [*name of plaintiff*] was harmed; and**
- 7. That [*name of plaintiff*]'s reliance on [*name of defendant*]'s representation was a substantial factor in causing [*his/her/its*] harm.**

New September 2003

Directions for Use

If it is disputed that a representation was made, the jury should be instructed that “a representation may be made orally, in writing, or by nonverbal conduct.”

Sources and Authority

- “Fraud” and “deceit” are defined in Civil Code sections 1572, 1709, and 1710. Courts appear to refer to the terms interchangeably, though technically “fraud” applies to only contract actions.
- Civil Code section 1709 defines “deceit” generally: “One who willfully deceives another with intent to induce him to alter his position to his

injury or risk, is liable for any damage which he thereby suffers.”

- Civil Code section 1710 specifies four kinds of deceit. This instruction applies to the first:

1032 (Pub.1283)

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A deceit, within the meaning of [section 1709], is either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true [intentional misrepresentation of fact];
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true [negligent misrepresentation of fact];
3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact [concealment or suppression of fact]; or,
4. A promise, made without any intention of performing it [promissory fraud].

- Civil Code section 1572, dealing specifically with fraud in the making of contracts, restates these definitions in slightly differing language, with the addition of a fifth kind of deceit, described generally as “[a]ny other act fitted to deceive.” Fraud in the context of contract formation is covered by other instructions.

- The tort of deceit or fraud requires: “ ‘(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.’ ” (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974 [64 Cal.Rptr.2d 843, 938 P.2d 903], internal quotation marks omitted; see also *Molko v. Holy Spirit Ass’n* (1988) 46 Cal.3d 1092, 1108 [252 Cal.Rptr. 122, 762 P.2d 46].)

- Sometimes this tort is stated with four elements instead of five: “(1) a knowingly false representation by the defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4) resulting damages.” (*Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1816 [52 Cal.Rptr.2d 650].)

- The representation must ordinarily be an affirmation of fact, as opposed to an opinion. Under the Restatement Second of Torts section 538A, a representation is an opinion “if it expresses only (a) the belief of the maker, without certainty, as to the existence of a fact; or (b) his judgment as to quality, value, authenticity, or other matters of judgment.” Opinions are addressed in CACI No. 1904, *Opinions as Statements of Fact*.

- “Puffing,” or sales talk, is generally considered opinion, unless it involves a representation of product safety. (*Hauter v. Zogarts* (1975) 14 Cal.3d

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104, 112 [120 Cal.Rptr. 681, 534 P.2d 377].)

- “Fraud is an intentional tort; it is the element of fraudulent intent, or intent to deceive, that distinguishes it from actionable negligent misrepresentation and from nonactionable innocent misrepresentation. It is the element of intent which makes fraud actionable, irrespective of any contractual or fiduciary duty one party might owe to the other.” (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith* (1998) 68 Cal.App.4th 445, 482 [80 Cal.Rptr.2d 329], internal citations omitted.)

- “A misrepresentation need not be oral; it may be implied by conduct.” (*Thrifty-Tel, Inc. v. Bezenek* (1996) 46 Cal.App.4th 1559, 1567 [54 Cal.Rptr.2d 468], internal citations omitted.)
- “ ‘[F]alse representations made recklessly and without regard for their truth in order to induce action by another are the equivalent of misrepresentations knowingly and intentionally uttered.’ ” (*Engalla, supra*, 15 Cal.4th at p. 974, quoting *Yellow Creek Logging Corp. v. Dare* (1963) 216 Cal.App.2d 50, 55 [30 Cal.Rptr. 629].)
- “Actual reliance occurs when a misrepresentation is “ ‘an immediate cause of [a plaintiff’s] conduct, which alters his legal relations,’ ” and when, absent such representation, “ ‘he would not, in all reasonable probability, have entered into the contract or other transaction.’ ” ‘It is not . . . necessary that [a plaintiff’s] reliance upon the truth of the fraudulent misrepresentation be the sole or even the predominant or decisive factor in influencing his conduct. . . . It is enough that the representation has played a substantial part, and so has been a substantial factor, in influencing his decision.’ ” (*Engalla, supra*, 15 Cal.4th at pp. 976–977, internal citations omitted.)
- “Justifiable reliance is an essential element of a claim for fraudulent misrepresentation, and the reasonableness of the reliance is ordinarily a question of fact.” (*Guido v. Koopman* (1991) 1 Cal.App.4th 837, 843 [2 Cal.Rptr.2d 437] internal citations omitted.)
- “A ‘complete causal relationship’ between the fraud or deceit and the plaintiff’s damages is required. . . . Causation requires proof that the defendant’s conduct was a “ ‘substantial factor’ ” in bringing about the harm to the plaintiff.” (*Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 132 [39 Cal.Rptr.2d 658], internal citations omitted.)
- “In order to recover for fraud, as in any other tort, the plaintiff must plead and prove the ‘detriment proximately caused’ by the defendant’s tortious conduct. Deception without resulting loss is not actionable fraud.” (*Service by Medallion, Inc., supra*, 44 Cal.App.4th at p. 1818,

CACI No. 1900 FRAUD OR DECEIT

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internal citations omitted.)

Secondary Sources

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 243, 767–817, 821, 822, 826

3 Levy et al., California Torts, Ch. 40, *Fraud and Deceit and Other Business Torts*, §§ 40.02, 40.05 (Matthew Bender)

23 California Forms of Pleading and Practice, Ch. 269, *Fraud and Deceit* (Matthew Bender)

10 California Points and Authorities, Ch. 105, *Fraud and Deceit* (Matthew Bender)

2 California Civil Practice: Torts (Thomson West) § 22:12

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Insurance Code:

790.03. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance.

(h) Knowingly committing or performing with such frequency as to indicate a general business practice any of the following unfair claims settlement practices:

(1) **Misrepresenting to claimants pertinent** facts or insurance policy provisions relating to any coverages at issue.

Please do not hesitate to contact me for further information.

Thank you,

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