



Case Study

**Fire Insurance Coverage: Exclusion for
Unoccupied Dwellings**

— by Ryan McLellan

Schmidt v. Underwriters At Lloyds of London, __Or App__ (1/14/03)

In late January 2001, Plaintiff purchased a house in Pendleton with the intention that it become her son's residence. She obtained an insurance policy for the property from the Defendant that provided coverage for loss from fires from February 14, 2001 through February 14, 2002. Soon thereafter, Plaintiff's son began paying rent to Plaintiff for the Pendleton house in anticipation of moving there. Plaintiff's son also took some of his belongings to the house in late February. Although some cleaning and repair work was performed, no one stayed overnight at the house because the electricity and water were not turned on until April 2, 2001.

On either the first or second weekend of April, Plaintiff's son returned to the house with most of his belongings, although he left some clothes at his Portland residence. After staying in the house for the weekend, Plaintiff returned to Portland. Neither he nor the Plaintiff had any further contact with the house. On May 30, 2001, the house was destroyed by fire.

Plaintiff made a claim for the loss under her insurance policy. The defendant denied coverage citing a provision which excluded coverage if the house was unoccupied for more than 60 days before the fire. The exclusion provided, in relevant part:

“The Company shall not be liable for loss occurring...while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond period of sixty consecutive days.”

The Court of Appeals found the defendant-insurer's denial of coverage was proper under the above quoted exclusion. Relying on an earlier Oregon Supreme Court case, the Court of Appeals adopted the following definition in making its decision:

“Occupation of a dwelling house...requires that there be in the house the presence of human beings as at their customary place of abode, not absolutely and uninterruptedly continuous, but the house must be the usual return and habitual stoppage.”

The Court found that in light of the date of the fire, the only contact with the house during the preceding 60 days involved Plaintiff's son staying at the house on the first or second weekend of April. The Court concluded that Plaintiff and her son never “occupied” the Pendleton house because it never became their customary or usual place of habitation or abode. ❖

— Full case available at: <http://www.publications.ojd.state.or.us/A119759.htm>.

— For additional information, please visit our website at www.smithfreed.com.

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