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Double Coverage: Not the Sharpest Tool in the Truck

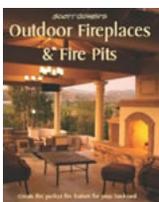
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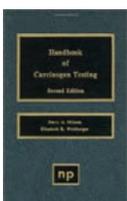
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On a cold winter night, December 4, 2009, to be exact, Gustav Toolio headed east to see a long-lost relative. Before departing the Portland metropolitan area, he allegedly secured his expensive box-type mobile tool truck and its inventory of professional tools, the sale of which provided Mr. Toolio's only source of income. Mr. Toolio, recently separated from his wife, lived on a fairly typical residential street in a two-story duplex. His tool truck was protected by a factory-installed door alarm and an aftermarket alarm on the box portion. It was also equipped with a GPS locator and camera security system.

At approximately 9:30 p.m. that evening, Mr. Toolio's truck was discovered engulfed in flames in rural Washington County, Oregon - approximately a 45-minute drive from his house. The inventory from the truck was mostly missing, and there were obvious signs of an incendiary fire - gas was poured in the cab and the remains of a road flare were found between the seats. The dashboard in the area of the GPS locator and the steering column were completely destroyed by fire. Mr. Toolio was still in possession of both his keys. When contacted by local law enforcement, Mr. Toolio stated he was going to visit his daughter who he had not seen in over 10 years and would not turn around despite the destruction of his livelihood. Adding to the oddity of Mr. Toolio's response, he reported to one of his [insurance companies](#) that he knew the tool truck was gone before he left Portland, but he thought his friends were playing a trick on him. Mr. Toolio later denied making this statement.

Mr. Toolio had two commercial auto policies and two commercial property policies covering the tool truck and inventory. This arrangement became instantly problematic for Mr. Toolio, especially because he stated that he acquired the second policy because the rates were less expensive when, in fact, the rates were higher. Both insurance companies quickly began working together on this interesting fact scenario, both at the Claims Department and Special Investigation Unit level. The companies shared recorded statements and policy information. They also decided to conduct the examination under oath (EUO) of Mr. Toolio and his estranged wife, who according to business records, was also an owner of the tool truck. This cooperation would continue through the case's conclusion in federal court litigation.

Raising Red Flags

When the companies began sharing facts, red flags began to rise. Mr. Toolio told both insurance companies that his family situation and financial health were both in good shape. Investigation uncovered that Mr. Toolio and his wife separated almost a month before the purported theft, that his business was spiraling downward, and his finances were rapidly deteriorating. One of his regional managers later testified that Mr. Toolio was about to lose his franchise because of poor performance, and Mr. Toolio no longer had credit buying ability through the parent company because of late payments on the inventory. In fact, at the time of the claim, Mr. Toolio's truck lease and tool payments were past due. Mr. Toolio's business and personal financial documents, witness testimony and a review conducted by a forensic accountant all supported the fact that Mr. Toolio's business was in dire straits.

Once letters scheduling the EUOs were sent, Mr. Toolio hired an attorney to represent him. The attorney for Mr. Toolio balked initially at attending EUOs until he was provided with the recorded statements taken by both insurance companies. When the insurance companies refused to provide them, Mr. Toolio's attorney subpoenaed the transcripts in Mr. Toolio's divorce proceedings. The divorce court ordered the production of the transcripts. Then, EUOs were taken by each insurance company, although at different times, by different counsel and not until about eight months after the loss. Mr. Toolio's wife was also examined under oath.

Joint Defense

By the end of 2010, Mr. Toolio filed suit against both insurers who agreed to defend under a formal Joint Defense Agreement. The companies split expenses for a [forensic accountant](#), fire cause and origin experts, and an engineering expert regarding the feasibility to break-in and drive the tool truck away from Mr. Toolio's house. As litigation ensued, the collective concern of the defendant insurers included the perceived difficulty in actually stealing the tool truck: the incongruence between the time it would take to empty the truck of tools and

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the short amount of time from when Mr. Toolio reportedly last saw it to when it was found burning; and the involvement of Mr. Toolio's friend/customer in this possible fraudulent scheme.

Mobile tool truck franchise owners develop a close relationship with some of their customers whose garages and shops are visited on weekly or bi-weekly routes. One of Mr. Toolio's customers, Jimmy, came up in Mr. Toolio's cell phone records that were obtained pre-suit. Once the telephone number was matched with Jimmy's name, discovery of his criminal history concerned both insurance companies. Attempts to serve Jimmy with deposition subpoenas were met with active resistance from his family and then the trail went cold, temporarily.

Law enforcement was involved early on, but the investigation became active the fall of 2012, when a Washington County Sheriff's Office Detective called the insurer's counsel regarding the status of the litigation with Mr. Toolio. The County's Interagency Drug Enforcement Team recently arrested someone with personal knowledge of the truck's demise. In order to negotiate a probable prison sentence, this arrestee informed detectives that Mr. Toolio and his friend, Jimmy, disposed of the tools and the truck. With this new information, the detective located and interviewed Jimmy, who broke down, admitting his involvement but denying he burned the truck. Armed with the admissions of two involved cohorts, detectives tracked down Mr. Toolio at his makeshift farm one winter night in early 2013.

Much to the pleasure of two insurance companies and their respective counsel, Mr. Toolio finally admitted his involvement, but would not admit that he knew the truck would be burned. He did admit he knew the truck was not coming back after he gave it over to Jimmy that Friday when Mr. Toolio went to see his daughter. Mr. Toolio gave the tools to Jimmy to sell to various shops because he believed the insurance companies would quickly pay his claim, and he would be saved from his financial woes.

Mr. Toolio and Jimmy's criminal cases are still pending. Upon obtaining the initial police reports, the insurance companies contacted the court to request the re-opening of discovery to depose all involved. Mr. Toolio's attorneys, who likely invested hundreds of thousands of dollars in attorney fees, quickly asked the federal court for permission to withdraw. The insurance companies are waiting for the final dismissal papers at this time.

The moral of this story is that in some cases where there are numerous red flags but no smoking gun, the persistence of the two insurers working together to follow through eventually paid off. Many insurers would consider settling a case like this to cut off further defense costs and the potential exposure if the plaintiff prevailed. Each case must be evaluated on its own merit, but the temptation to throw in the towel should be resisted when standing on principle. Though costly, perseverance, cooperation and taking a principled approach to fight fraud won the day.

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Frank T. Zeigon, RPA, CCLA, LPCC, PLCS, CLCS, PCLA, FCLA, is a highly accomplished expert witness and consultant with almost fifty years of Insurance Claims experience. Mr. Zeigon has worked as a [branch level adjuster](#), supervisor, claims unit manager, home office examiner, and regional and zone level supervisor during his many years working in the Insurance Industry. He is experienced in both direct handling and supervising the most complex claim issues.

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