

The Adverse Consequences of Refusing to Participate in an Examination Under Oath



If your property is damaged in a fire or through some other form of peril, insurance companies often request that an insured participate in an examination under oath. During this examination, a representative of the insurance company, usually a lawyer, asks questions to ascertain information and confirm facts. The insurance company also will typically request that you produce certain documents that substantiate your loss. When an examination under oath is requested, the insured needs to participate to avoid damaging his or her claim.

A recent case decided by an appellate court in another state, *Hanover Ins. Co. v. Cape Cod Custom House Theater, Inc.*, provides an example of the consequences that can

flow from a lack of cooperation. Although this case is not controlling law in Florida, the case is still instructive in terms of the importance of participating in an examination under oath. The insured sought coverage for damage to his business caused by a burglary. The insurance company conducted an investigation and believed that the insured might have been involved in the burglary. Based on this investigation, the insurance company requested an examination under oath.

The insured failed to attend the first examination under oath and declined to answer relevant questions during the next two scheduled examinations on advice of counsel. At trial, the judge found that the insured's refusal to participate in a meaningful way in the examination under oath constituted a material breach of the insurance policy. The trial judge also concluded that the breach prejudiced the insurance company. Despite these findings by the trial judge, the court did not relieve the insurance company of the obligation to pay benefits under the policy because the judge determined that the prejudice could be cured



J.P. has built his entire career on protecting the rights of insurance policyholders, personal injury and wrongful death victims and fighting for the rights of Florida consumers and small businesses. Prior to attending law school, J.P. worked as a claims adjuster for a busy independent adjusting firm in Miami where he handled hundreds of claims. Before launching his own law practice in 1994, J.P. worked for a prominent insurance defense firm in Miami. He now uses the insight that he gained working for the insurance industry for the benefit of his clients. J.P. has recovered millions of dollars for victims of denied or underpaid insurance claims, victims of catastrophic personal injuries and wrongful death and on behalf of those that have been taken advantage of by Big Business and Big Insurance. In Miami-Dade County call J.P. at (305) 461-1095 or toll free at (866) 71-CLAIM or fill out the short online contact form at www.YourAttorneys.com.



Columbus Day

Columbus Day is the celebration of the arrival of Christopher Columbus in the Americas on October 12, 1492. In the U.S., it is celebrated by all the states but for Hawaii, South Dakota and Alaska. Columbus Day occurs on the second Monday in October each year. In 1937, President Franklin D. Roosevelt declared October 12th every year as Columbus Day. In 1971, the official holiday was moved to the second Monday in October.

Happy Halloween!

The name Halloween comes from the longer name 'All Hallow's Eve', a day set aside to honor all the Saints of Christendom. Halloween is also a popular celebration with ties to the Celtic festival of Samhain, a celebration of the end of the harvest. In the U.S., this is a popular holiday for young and old and involves dressing up in costumes and going 'trick or treating'. It is celebrated every year on the 31st of October. According to the National Retail Federation, more than 70% of Americans actively celebrate Halloween and sales for costumes, decorations and candy was over \$8 billion in 2012. The Guinness Book of World Record holder for the heaviest pumpkin (the pumpkin is a popular symbol of Halloween) was attained in October 2011 with a pumpkin weighing in at 1,818 lbs. 5 oz.



with an attorney fee award.

The appellate court reversed the trial court. The appeals court ruled that a policyholder's unexcused refusal to comply with a reasonable request for an examination is a material breach that relieves the insurer of its obligations under the policy. The appeals court indicated that the loss of eligibility for benefits when an insured wilfully refuses to participate in an examination under oath constitutes an exception to the general rule that the insurer must be prejudiced by the breach by the insured.

If you are asked to participate in an examination under oath after you submit an insurance claim, you should contact an experienced Florida insurance claims attorney. The attorney can advise you of your rights and assist you in preparing for the examination under oath. This is an important part of the claims process, so you should never simply fail to appear or attend without consulting a lawyer.

Don't quit on your insurance claim just because your insurance company quit on you!

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