

Property Casualty 360

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A Public Adjuster Asks: Are Claims for Illegal Goods Eligible for Payment?

Barring 'indisputable documentation,' probably not

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After this article appeared in the April, 2013 issue of *Claims*, I received an email from a public adjuster who asked the following question:

"Hi Tom. I read your article about Cuban cigars in Claims Magazine today. I'm curious why you state that 'the insured would need to possess indisputable documentation'. The policy covers all the insured's personal property. I think the burden of proving that any property is excluded rests with the carrier. Can you provide the policy language that supports your position?"

Although my article focused on valuation, this gentleman's question focused on policy language and coverage. Despite the fact that I didn't initially address the existence or non-existence of coverage, I thought it would be interesting to explore this reader's question in more depth publicly.

As surprising as it may be, there are many policies that do not contain specific exclusionary language regarding illegal items. I would agree with this reader that without exclusionary language, an illegal item would be technically "covered" under many policies. However, I am of the opinion that being in possession of an illicit item and not having a legitimate marketplace in which to sell such an item, the value/payment would be \$0.

See related article: [Top 10 Art Crimes](#)

Appraised values should always take into account only legitimate market sales and can never consider illegitimate black market activities.

So I responded to this public adjuster that while I agreed that many policies do not contain specific exclusionary language regarding illegal items, the inability to legally possess or sell post-embargo Cuban cigars should result in zero value/payment. The adjuster then responded as follows:

"Ok. I think the insurance company would have the burden of proving the cigars were post embargo." (Illegal)

When a law places restrictions on either the possession, or sale of, an item, the law squarely places the burden of proof on the owner to be able to prove his items are legal or risks having them confiscated without compensation.

The Burden of Proof

If a claim is made for an item subject to a law restricting its possession or sale, then I strongly disagree with the reader's assertion that the burden of proof rests with the carrier to prove the illicit nature of the item. I absolutely believe the burden of proof rests with the insured.

Furthermore, the policyholder has a contractual obligation to fully disclose the details surrounding the objects he is claiming. Any misrepresentation hiding the illicit nature or omitting known facts regarding the legality of a restricted object would be a material misrepresentation.

An example we can all relate to would be controlled prescription drugs. A policyholder who was prescribed a controlled narcotic by a licensed physician for medical reasons (and legally purchased his prescribed narcotic medication from a licensed pharmacy), can make a claim for the drug if damaged from a covered peril. The value would be the cost of replacement in the legitimate marketplace, at a licensed pharmacy, not the street price being charged by a corner drug dealer.

A policyholder without a prescription who purchased controlled drugs illegally in some back alley could also make claim for what they paid their drug dealer. Yet without indisputable documentation that they purchased and possessed the drug legally, the carrier has every right to place zero value on the item resulting in zero payment for these illegal items.

Does the policy you work with exclude illicit items? What do you think? We want to hear from you.

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