

CASE INFORMATION SHEET  
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**COUNTY AND COURT:**

Brevard County Circuit Court  
Fifth District Court of Appeal

**NAME OF CASE:**

WALTER A. HOWARD AND TAMARA HOWARD,

Plaintiffs/Appellants,

v.

UNIVERSAL PROPERTY & CASUALTY INSURANCE COMPANY,

Defendant/Appellee.

**CASE DOCKET NO.:** 05-2007-CA- **TRIAL** John D. Moxley, Jr.  
70854 **JUDGE:**

**CASE DOCKET NO.:** 5D10-615 **5th DCA** Jacqueline R. Griffin,  
**JUDGES:** Vincent G. Torpy Jr. &  
Kerry I. Evander

**PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL** [full names, firm and  
city]:

Leslie A. Davis, Esquire  
Douglas R. Beam, Esquire  
Douglas R. Beam, P.A.  
Melbourne, FL

**DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL** [full names, firm and  
city]:

Jason R. Urbanowicz, Esquire  
Rissman, Barrett, Hurt,  
Donahue & McLain, P.A.  
Orlando, Florida

**AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT** [at time of accident or occurrence]:

N/A

**FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:**

N/A

**DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:**

September 4, 2006, Plaintiffs' home.

**KIND OF LOSS:** [factual description including allegations and defenses on liability]:

A house fire occurred at the Plaintiffs' home on September 4, 2006. The estimated amount of the damage to the Plaintiffs' home was \$17,288.20.

**DESCRIPTION OF LOSS AND DAMAGE:** [please be specific concerning injuries, treatment and medical testimony]:

The Howards purchased a homeowner's insurance policy from Universal Property and Casualty Insurance Company for their residence in Palm Bay, Florida.

As part of the application process, the Howards were asked to complete a written policy application. The policy application asked whether the Howards had filed for bankruptcy in the past 60 months. Walter Howard placed a check mark in the box entitled "NO" thereby indicating that he had not declared bankruptcy in the past 60 months.

Walter Howard signed the insurance application on May 3, 2006, thereby attesting to the truth of all statements made in the application. In fact, the Howards had filed for Chapter 7 bankruptcy on April 9, 2004. Walter Howard knew that he and his wife had previously filed for bankruptcy at the time he filled out the insurance application.

The Howards submitted a claim for benefits under the above-referenced insurance policy on November 22, 2006 after sustaining damage from a grease fire in the kitchen.

Universal did not discover that the Howards had previously filed for bankruptcy until after the Howards had submitted the claim.

As a result of the misrepresentation, Universal denied coverage for the subject claim. Universal sent the Howards a denial letter, via certified mail, on November 22, 2006 indicating coverage was denied for material misrepresentations made at the time coverage was initiated. Plaintiffs filed suit for breach of contract on December 3, 2007.

During his deposition, the Vice President of Underwriting for Universal testified that Universal would not have issued the policy to the Howards if UPCIC had known the Howards had previously filed for bankruptcy in the 60 months preceding the application. This policy was also documented in Universal's Underwriting Guidelines.

During the deposition of Walter Howard, he conceded that he and his wife had filed bankruptcy, that he had read the application but that he had simply made a mistake.

Universal then filed a Second Motion for Final Summary Judgment on August 25, 2009. Universal's Motion was heard on February 1, 2010. At the hearing, the parties were in agreement as to the pertinent contractual provision for the court's review. More specifically, the Howards' insurance policy stated:

Sections I and II - CONDITIONS (of the policy)  
provides as follows:

2. Concealment or Fraud

- a. Under Section I - Property Coverages, with respect to all "insureds" covered under this policy, we provide **no coverage** for loss under Section I - Property Coverages if, whether before or after a loss, one or more "insureds" have:

- (1) Intentionally concealed or misrepresented any material fact or circumstance;
- (2) Engaged in fraudulent conduct;  
or
- (3) Made **false statements**; relating to this insurance.

**(emphasis added)**

The Howards argued that this provision required that the "false statement" be made intentionally. The trial court interpreted the language to be unambiguous. The trial court found that false statements need not be made intentionally.

The trial court also applied the undisputed facts to the pertinent Florida Statute governing misrepresentations in the application for insurance.

A Final Summary Judgment was entered on February 1, 2010 granting Universal's Motion for Summary Judgment. Plaintiffs filed a Notice of Appeal on February 11, 2010. Appellant's Initial Brief was filed on September 28, 2010.

Oral arguments were heard on September 22, 2011 before Judges Griffin, Torpy and Evander of the 5th DCA. A per curiam affirmance opinion was issued on October 4, 2011.

**PLAINTIFF'S EXPERT WITNESSES** [include full name, degree, specialty and city]:

N/A

**DEFENDANT'S EXPERT WITNESSES** [include full name, degree, specialty and city]:

N/A

**CHECK APPROPRIATE SPACE:**        X   Summary Judgment

**DATE OF SUMMARY JUDGMENT:**

February 1, 2010 - Circuit Court entered Final Summary Judgment for Defendant

October 4, 2011 - per curiam affirmance by 5th DCA

**COMPARATIVE NEGLIGENCE** [if applicable]:

N/A

**JUDGMENT:**

For Defendant, Universal Property and Casualty Insurance Company

**DATE OF JUDGMENT:**

February 1, 2010

**DEFENDANT'S OFFER:**

\$500 proposal for settlement

**PLAINTIFF'S DEMAND:**

\$17,500 inclusive of fees and costs

**ATTORNEY'S COMMENTS:**

Plaintiff filed a Motion for Rehearing, Reconsideration **En Banc**, and for a Written Opinion on October 17, 2011. It was denied.

Submitted Jason R. Urbanowicz, Date: January 30, 2012  
By: Esquire

Firm: Rissman, Barrett, Hurt, Donahue  
& McLain, P.A.

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