THE INSURANCE COMPANY EXAMINATION OR STATEMENT UNDER OATH

Written by: John B. Reilly, Esq.
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About the Author

John Reilly's biography appears on the biography page of his firm's website, www.lawyers-online.us. He was an all-lines insurance claims adjuster before beginning his career in the profession of the law. During the middle portion of his career he was extensively involved in defending insurance companies and their insureds while also working closely with the Special Investigation Units ("SIUs") of several such companies. He was invited and has made several presentations to insurance companies and law-enforcement personnel before his career goals changed and he stopped accepting insurance company referrals. This article was originally presented at one of his seminars but has been revised to include more information from the insured's perspective.

Mr. Reilly is available to represent insureds in claims against insurance companies and to provide technical and/or expert opinion to assist other lawyers in cases of this type.

INTRODUCTION

In the film Double Indemnity, Edward G. Robinson unerringly detected insurance claims he felt to be suspicious by listening to his "little man" within. Today, theories abound that falsehoods can be detected by polygraphs, body language or formulas analyzing the content and composition of the statements of persons or businesses presenting what appear to be "suspicious" claims. Conclusions reached by these and similar methods may be indicators of fraudulent activity, but may also be simply displays of nervous reactions during questioning. Rarely (if

ever) will these "signs" be admitted as evidence in a court of law. If a jury is hearing about these types of conclusions, it may be in the context of a bad faith claim against an insurance company for having relied upon "hunches" of this type to deny a valid claim. In either event, it is clear that while perhaps useful in determining which cases need closer scrutiny, they form only one more part of an insurance company's proper investigatory and response plan.

This paper discusses and explores another device which insurance companies often use in searching for the truth (or trying to "catch their insured in lies") - the Statement or Examination Under Oath. This is sworn testimony taken after a claim has been made but before anyone has gone to court in a setting similar to, yet not actually that of a deposition. When properly planned, with preparation and when thoughtfully conducted, the responses received will help put previous or anticipated investigation into proper context, leading to the settlement of many claims. But it must be remembered that testimony taken will be available for use in equitable or legal proceedings, thus this process is not just a mere "formality". In short, it can be helpful to the insurance company, to the insured, to one or the other or to both, all depending on how it plays itself out.

Your author has no illusions that this topic can be exhaustively covered in anything short of a full and lengthy treatise. Furthermore, changes in insurance agreements (policies), statutes, administrative procedures and judicial interpretation continually occur. Thus the reader is cautioned to remain vigilant for changes and modifications of this subject matter. With awareness and motivation, these dynamic procedures can lead to enlightened and empowered decisions which are of great benefit to the insurer and its insureds alike.

TEMPUS UTILE[i]

Many insurance policies specify the time in which an insurer must respond to an insured's proof of loss. When faced with a suspicious claim under a contract of this type, a blank proof of loss is often furnished, asking the insured to give it prompt attention and to complete and return it by mail. The examination under oath is then planned and notice given promptly upon receipt of the completed proof of loss form. When dealing with uninsured or underinsured motorist claims there will generally be more flexibility, since there are usually no proof of loss requirements for claims of that type. The timing of a request for an examination under oath in those situations will usually be dependent upon the circumstances of a particular claim.

An examination under oath should not usually be attempted and may not be available to an insurer once a claim has been denied.[ii] The demand must be made within a reasonable time.[iii] One day's notice has been found to be unreasonable.[iv] Just what is reasonable or unreasonable depends on the particular situation.

Should an insured's appearance be impossible by reason of inavailability[v] or other disability, he or she may be excused from complying until the impediment is removed. Once it has, he or she must offer to submit to the request if renewed or continuing in nature.[vi] In such circumstances the responsibility for scheduling the time, place and persons before whom the examination will take place will probably remain with the insurer.[vii]

Potential or pending criminal charges against an insured will not excuse an insured from compliance with a request for examination. Thus, an insured's promise to answer questions under oath after criminal proceedings have been completed has been deemed a breach of the insuring agreement.[viii]

LOCATION, LOCATION, LOCATION

At one time, the Reo did not immediately bring South America to mind. Native Americans did not keep Pierce Arrows in quivers and one would never have been thought crazy to drive a Locomobile. But using one of these vintage vehicles to get to a county line could involve the better part of a day's journey. Some things have changed, some have not.

The State of Washington was admitted to the union in November, 1889. Then, as now, the Evergreen State was comprised of some 68,192 square miles.[ix] The Cascade Range separates population centers such as Seattle on the Puget Sound from eastern sections such as Whitman County, adding to travel challenges in the early years of this century. Not surprisingly, therefore, we find that in Washington's "horseless carriage" days, it was felt that when an insurance claim was involved, the interests of all concerned would be best served and balanced by requiring any examinations under oath to take place in the county where the loss took place. This was outlined in the oft-quoted decision of Pierce v. Globe & Rectors Fire Ins. Co., 107 Wash. 501, 182 P. 586 (1919).

The Pierce court seemed to follow an earlier Illinois decision in the matter of American Central Ins. Co. v. Simpson, 43 Ill.App. 98 (1892). But we have not found any decisions of this type from smaller states and doubt that this "rule" would be unhesitatingly applied in, for example, the States of Rhode Island and Delaware due to their small size.

Reasonableness is probably the more modern approach to concerns about the proper place at which an insurance company can demand to conduct an examination of its insured. Insistence on using the location of the place where the claim took place for an examination under oath might be unreasonable under some circumstances, but not if, for example, a precious ring was lost on a cruise. The best course thus seems to be to put the "county of loss" at the top of the

list alongside the insured's area of residence or business. But if there are reasons dictating some other location they should also be considered and explored. An insured can complain about unreasonable locations, but such complaints will ring hollow if alternate arrangements are made to pay for or make travel more convenient.

The modern trend seems to be that the reasonableness of such requests are fact questions and do not automatically result in forfeiture of a party's rights. See Northern Assur. Co. of America v. Karp, 354 S.E.2d 129 (Georgia 1987) and Ayoub v. American Guarantee and Liability Ins. Co., 605 F.Supp 713 (S.D.N.Y. 1985) (examination in counties other than where loss took place approved where policy provided it could be taken at "reasonable time and place" designated by the insurance company).

Finally, there are true "horror stories" about examinations conducted by former police officers employed by insurance companies' "Special Investigation Units". These situations have generally involved multiple questioners and take place at the offices of the insurance company. It confronted with this type situation, an insured should announce that they are getting a lawyer and leave immediately. Personal abuse should never be tolerated by either an insured or a claims professional and there are many ways to assure that it does not continue or happen again.

AN OFFER THAT CANNOT BE REFUSED

An examination under oath offers the insured an opportunity to explain a variety of matters and is required by many insurance policies. To assure that this happens, any scheduling notice should be sent in plain, understandable terms. It should not "invite" attendance yet on the other hand must not be too overbearing. A polite request to utilize this examination procedure,

making reference to the provisions of the policy that supposedly require it, shows that the insurer will adhere to the policy, seeking the truth in good faith.

The notice itself should be in writing. It should clearly state the date, time of day and street address of the place at which the examination is being scheduled. There are many decisions dealing with the requisites of proper notification.[x] Several decisions require that the notice also include the identity of "the person before whom the examination will be taken". Generally, this last requirement will be satisfied by identifying the court report/notary public authorized to take oaths and the person who will be asking the questions.

It is best that notification to an insured be sent by both regular and certified mail, return receipt requested, and to all known addresses. If the insured is represented by counsel, the notice should be directed to and through the insured's legal representative. Some states seem to require that if an insured is represented by counsel, the scheduling notice should go to both the attorney and client/insured.[xi]

Deliberate avoidance of the notification by an insured may be considered refusal to cooperate and/or to submit to examination.[xii] This can allow an insurance company to deny a claim. On the other hand, a defective notice may be "cured" if the insured appears and submits to questioning.[xiii]

THE SHADOW KNOWS

When Blue Coal of Pennsylvania sponsored The Shadow in the early days of radio, it probably hoped for name recognition at least as long-lasting and durable as the alter ego name of the character known as "the shadow", Lamont Cranston. Yet while the coal bin itself went the way of the ice box, subsequent generations still heard and many people still recognize the show's introduction:

Who knows what evil lurks
In the hearts of men?
The Shadow knows ...

The search for truth can often be confounded by those who do not want their deeds and true records to see the light of day. Turning the radio to KDKA or to WLS or WBZ will no longer allow us to hear or experience an all-knowing super sleuth. Dark shadows usually resist all but the most determined efforts to probe and dispel their effect. Since accurate documentation often has the amazing ability to cure a multitude of problems, establishing a good record is essential to getting to the heart of matters.

Generally, an insurance company can request documentation in advance of an examination under oath or can do so by appending an attachment of such requests to the notice of examination under oath. Sometimes, sending an extensive list of documents to an insured who is not represented by counsel will cause the insured to hire an attorney. In some circumstances, the insured can be asked to bring "all documentation and records pertaining to the claims being presented" or something of that generic nature. Therefore, whether or not (and how) to request documentation in advance of examination is a tactical consideration for the insurer or its attorney in each case. Furthermore, an insurer must be prepared to show that the requested information is "material" to its consideration of the claim.[xiv] It cannot engage in a "fishing expedition" that seeks immaterial things. The best definition of "material" that we have heard is "something that really matters".

The financial condition of an insured at the time a claim occurs is usually highly significant, material and relevant. Thus, it has almost universally been held that insurers are entitled to information of that type.[xv] This is probably true even though the documents which are

necessary to examine and determine such financial condition may otherwise be protected by rights of privacy.[xvi]

An insured may also be required to submit income tax returns.[xvii] If the insured furnishes an authorization to obtain such records, it will be the insurer's obligation to obtain them from the appropriate authority unless it can somehow show that it was prejudiced by getting authorizations as opposed to being furnished records by the insured (showing prejudice would normally be quite difficult for an insurer if it has been given an authorization). Among the documents which an insured may also be required to produce will be those showing income and bank accounts.[xviii]

The Federal Rules of Civil Procedure have been adopted in one form or another in many, if not most, states. The language of Rule 26(b) illustrates the scope of "discovery" during litigated proceedings:

> Unless otherwise limited by order of the court in accordance with (the federal) rules, the scope of discovery is (that) (p)arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. F.R.C.P. 26(b)(1).

It is suggested that the right arising from a contract, such as a policy of insurance, may be at least as broad in nature, if not more so. It is useful to keep this in mind while considering the peculiarities of policy rights, obligations and defenses. In doing so, it will be clear that an insurer is entitled to proper and complete documentation, including information that addresses motive, opportunity, and the nature and extent of claimed damages.

DUPLICITY, LIKE VIRTUE, IS SOMETIMES ITS OWN REWARD[xix]

Sometimes an insured gives evasive answers to questions or simply refuses to give a response to certain inquiries. At other times, objections may be posed by counsel or the insured may invoke his or her right against self-incrimination under the state of federal law, or both.[xx] Yet another situation may find an offer being made to answer "all questions", but only in written form. If an insurance company agrees to these things, it can not complaint at a later time. But it does not require an exorcist for an insurer to turn many of these moments into sockdolagers.[xxi]

Unless the inquiry has drifted beyond the bounds of propriety (relevance/materiality, for example), such approaches are jejune. The most appropriate manner for an insurance company to deal with this sort of development is to first remind counsel and/or the insured that one important purpose for which the examination is being taken is to give the insured an opportunity to explain the claim(s) presented. If no straightforward answers are given the result will be an obfuscation of the circumstances rather than revelation of the truth. Placing this squarely "on the record" is one way in which insurers attempt to show they are taking a good faith approach to their investigation.

Secondly, the witness (and counsel, if applicable) should be aware and can be advised that his or her failure to answer the questions may result in a forfeiture of the right to maintain the claim(s) presented or, alternatively, cause delay in consideration of the claim until the points are answered or clarified.[xxii] Under certain circumstances an insured's attorney may one day face a professional negligence claim if the non-cooperation persists, is based solely counsel's advice and results in denial of a claim due to lack of cooperation.

Assertions of one's rights against self-incrimination may (surprisingly) be the easiest of these situations for an insurer to handle. Here, the examinee should realize and be told that remaining silent under these various constitutional guarantees is a decision to which he or she is entitled will have to make. However, the failure of an insured to answer questions may be a violation of the policy contract and constitutional guarantees of this type are not part of the policy.[xxiii] Neither the company nor its counsel are law enforcement officials. An insured should be aware and reminded of this and thus given another opportunity to answer. Of course, sometimes the use of "the fifth" is necessary, but its use should be carefully considered and used sparingly.

If the insured persists in "taking the fifth", the insurance company examiner should ask most, if not all, questions pertinent to the situation. The inexperienced examiner may ask the insured or insured's attorney after one or two questions whether the witness will assert the right against self-incrimination to each and every question that is going to be asked. Sometimes, upon hearing an affirmative response, the questioning ends abruptly. This liberates the examinee from the dominion of absolutes. Stated otherwise, the insured is then free to later claim that his or her refusal to respond was due to the impression that the questions were going to focus entirely upon or involve certain matters but that he or she "certainly" would have answered questions if they had only known they were going to be about other things and/or to have been truly material to the claims(s). Failure to move forward with questioning also places impeachment and other trial opportunities in jeopardy for the insurance company, but gives an insured an advantage.

Given enough time, a mighty oak springs from the small acorn, the gently flowing stream will carve a deep canyon, and the duplicitous insured will guess his insurer's line of questioning, their importance and perhaps its overall strategy. An offer to submit documents and answer

written questions in lieu of a spontaneous statement under oath is an attempt to gain time to carefully craft responses. This is insufficient[xxiv] and will invariably not be acceptable to the insurer.

If the insured is truly being given the opportunity to produce all information and documents supporting his or her claim(s) and to explain questions the company has about the situation, it follows that the insured's counsel be allowed to place questions at an examination under oath. This is a practical approach, some hard-line precedent disallowing that opportunity to the contrary.[xxv]

Objections to the "form" of questions being asked give the examiner the chance to rephrase a question to make it understandable. Also, they allow correction for other reasons which might otherwise disallow use of the question and answer if the matter proceeds into litigation. But an insured should never answer a question that they do not understand and have the right to confer with their attorney before answering particular questions, especially when the questions may involve privileges, trade secrets, or other such things.

More problematic are the "instructions" sometimes given the insured by his or her own attorney. Often couched in the guise of an objection, they are interposed for the sole purpose of "cluing" the lawyer's client to potential pitfalls in the testimonial path ahead. Through the natural implication of their asservations, these counsel seem to want to testify themselves. This spreads the Alarm quite well and is inappropriate.[xxvi] Recently, there has been growing criticism of attempts to engage in this and other types of duplicitous "advocacy" in civil depositions and the reasoning seems appropriate for application to an examination under oath setting as well.[xxvii]

It is thus often best for the insured to confer with his or her attorney in private to avoid the appearance of non-cooperation by the interference of counsel from appearing on the transcript record.

Should any party to an examination get too “cute”, (or abrasive), one should do their best to stay the course and compile an appropriate record. Fairness on the one side contrasted with obstructive or oppressive tactics on the other may ultimately result in a denial of benefits, a finding of non-cooperation, or incredibility in the way a judge and jury views the circumstances and credibility of the examinee, or even a determination that the insurer has engaged in “bad faith” tactics. After all, duplicity, like virtue, is sometimes its own reward.

DON'T TRUST THE HEADNOTES

Like newspaper headlines, the headnotes to reported court decisions are useful guides to the topics discussed or issues decided. They are not, however, usually placed there by the judges who authored the opinion nor by those who dissented. Generally a credible job is done but there are exceptions. Inadvertence can cause these summaries to omit or miss points and important distinctions. In short, there is no substitute for reading the entire story or text and experiencing the particular court’s own emphasis to gain a good, working understanding of a decision’s importance.

Many insuring agreements expressly provide for examinations under oath. Most also have cooperation clauses. Traditionally, insurers and their counsel urged that the cooperation concept included the right to take sworn statements under oath. The omission of express language allowing examinations renews an old controversy with insureds arguing that since the company drafted the agreement, the absence of the provision should be strictly construed against requiring examinations under oath.

Several insurance company "fraud" seminars have featured speakers who contended that if the examination under oath provision is missing, several courts have decided that the company has the right to take an examination under the authority of the cooperation clause. The cases they have cited do not stand for that proposition. To use any or all of these to support an argument of that type becomes an exercise in repeating inaccurate headnotes and reliance upon these decisions may be extremely embarrassing to an insurer and helpful to an insured. These cases are:

> Dlugose v. Exchange Mutual Insurance Company, 176 A.D.2d 1011, 574 N.Y.S.2d 864 (N.Y. 1991);
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> Stover v. Aetna Casualty & Surety Co., 658 F.Supp 156 (S.D.W.Va. 1987);
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> Ausch v. St. Paul Fire & Marine Ins. Co., 125 A.D.2d 123, 511 N.Y.S.2d 919 (N.Y. 1987); and
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> Calvert v. Safeco, 660 S.W.2d 265 (Mo.App. 1983)

Of further concern were the opinions expressed by a federal court interpreting Missouri law in the matter of Safeco Ins. Co. of America v. McGuire, 652 F.Supp 1520 (E.D.Mo. 1987). In that case, Safeco's fire policy provided for statements under oath. After two (2) fires took place, the company took a recorded statement which, when transcribed, was twenty-four (24) pages long. About two (2) months later, counsel for the company requested an examination under oath, presumably a more formal proceeding than the recorded interview had been. The insured did not submit to examination but months later swore in an affidavit that the information provided during the interview was accurate and that she had nothing further to add.

The insured contended that a Safeco claims adjuster told her attorney that the claims from the second fire loss would not be paid as it resulted from arson. The company disputed that

"fact" and continued to request statements, not only of the insured, but also of her children. The insured claimed this to have been "tantamount to demanding discovery before anyone had filed suit".

Litigation began and the insured made a written offer to allow her deposition to be taken in the action filed with the court. Safeco refused and asked the Court to declare that it was released from liability under the policy due to the lack of cooperation by the insureds in refusing to give statements. The court denied Safeco's request as the company did not demonstrate it had been prejudiced and could adequately continue its defense of the claims presented in a related state court action.

A different approach was shown when a federal court in Illinois weighed actions by insureds unfavorably under an insuring agreement in Purze v. American Alliance Ins. Co., 781 F.Supp 1289 (N.D.Ill. 1991). The company had taken three (3) recorded interviews. Transcribed, they were seventeen (17), thirty-eight (38) and eighty-three (83) pages long respectively. The court called them "brief and general" and pointed out that none was under oath.

Three (3) months later, insurance counsel requested that documents be furnished, to be followed by statements under oath. There were limited responses relating to the data being sought and a failure to appear for examination. Finally, the attorney representing the Purzes "volunteered" to take an oath in support of the statements they have given previously, but little more. American Alliance denied the claim for non-cooperation. Four (4) months later, the insureds offered to produce all documents and submit to statements under oath, provided the company waive its defense of non-cooperation. American Alliance rejected that "offer". The

court noted that "prejudice" is probably "almost impossible to prove - how would the insurer know which turns the investigation would have taken had more information been produced?"

The American Alliance policy had clauses requiring questioning under oath, cooperation in general, and that the company be allowed to audit the insureds' books and records. This rendered prejudice less important in the face of breach of contract provisions. The court sustained the company's position, but stated that the result might have been difficult if the insureds had produced some documents, balked at others, and submitted to examination under oath "while objecting to questions at the fringe of relevance". Having thus explained the decision, note the reporter's brief headnotes in the Purze decision.

1. **Insurance - 514.17**

   Insureds' disregard of obligations under cooperation clause in insurance policy prevented collection when fire destroyed insured building.

2. **Insurance - 514.18(1)**

   Insureds' making of genuine offer to cooperate with insurer for first time more than 17 months after fire was insufficient cooperation under cooperation clause.

CONCLUSION

It has been said that an insurer "is not required to pay every claim presented to it". Thus, while there is a duty to deal fairly and in good faith with an insured, a company "also has a duty to its other policyholders and to the stockholders (if it is such a company) not to dissipate its reserves through the payment of meritless claims". In drawing such conclusion, it was noted that payment under such circumstances "inevitably would prejudice the insurance seeking public because of the necessity to increase rates, and would finally drive the insurer out of business". Austero v. National Cas. Co., 84 Ca1.App.3d 1, 30, 148 Cal.Rptr. 653 (1978).

Of course, not all suspicious claims are exaggerated or fraudulent. Both fiscal responsibility and the ongoing duty of insurance companies to proceed with a good faith approach to the individual merits of each policyholder's claim(s) are equally valid considerations. Denial of meritorious losses may result in litigation expenses and, potentially, punitive or exemplary damages. The well prepared and conducted examination under oath can be one of the best methods available to the insurer of achieving a proper balance of these considerations, understanding of the claims presented and reach a proper decision to pay or deny a claim.

The claims professional should confer with counsel in advance of any action so that proper consideration may be given to the need for and scope of proposed examinations under oath. In that way, counsel's expertise and experience can best be tailored to the company's specific needs in a cost effective manner. In like manner, an insured should confer with counsel experienced in insurance law so that the company's requests can be scrutinized and the most cost effective responses given to meet the insured's legal needs in pursuing a claim. After all, success is a journey, not a destination. The end.

Tempus Utile

[i] Tempus Utile, in the civil law, was a "profitable or advantageous period of time". Black's Law Dictionary, 4th Ed.
[ii] Linitz Mutual Ins. Co. v. Lengocher, 248 F.2d 850 (7th Cir. 1957). See, also, 17A Appleman, Insurance Law and Practice § 9783 (1970).
[iii] 5A Appleman, Insurance Law and Practice § 3551 (1990).
[iv] Mier v. Niagra Fire Ins. Co., 205 F.Supp 108 (1962).
[v] Roberto v. Hartford Fire Ins. Co., 177 F.2d 811 (7th Cir. 1949) (deportation).
[vi] The Home Ins. Co. v. Olmstead, 355 So.2d 310 (Miss. 1978); Bergeron v. Employers' Fire Ins. Co., 115 Ca1.App. 672, 2 P.2d 453 (Ca. 1931).
[vii] McCullough v. Travelers Co., 424 N.W.2d 542 (Minn. 1988).
[viii] Lentini Bros. Moving & Storage Co., Inc. v. N.Y. Property Ins. Underwriting Assoc., 76 A.D.2d 759, 428 N.Y.S.2d 625, aff'd, 53 N.Y.2d 835, 440 N.Y.S.2d 174, 422 N.E.2d 819 (1981); Dyno-Brite, Inc. v. Travelers Companies, 439 N.Y.S.2d 558, 80 A.D.2d 471 (1981).

Location, Location, Location

[ix] By contrast, New England's states seem to have a total area of 66,608 square miles. In descending order of size, we find Maine (33,215), Vermont (9,609), New Hampshire (9,304), Massachusetts (8,257), Connecticut (5,009) and Rhode Island (1,214). Hamond, Contemporary World Atlas.

An Offer That Cannot Be Refused

[x] Higgins v. Hartford Ins. Co., 650 F.Supp 38 (E.D.N.C. 1986); Weber v. General Acc. Fire & Life Assur., 10 Ohio App.3d 305, 462 N.E.2d 422 (Ohio App. 983); Brookins v. State Farm Fire & Cas. Co., 529 F.Supp. 386 (S.D.Ga. 1982); Saft America, Inc. v. Insurance Co. of North America, 271 S.E.2d 641 (Ga. 1980); C-Suzanne Beauty Salon Ltd. v. General Insurance Co. of America, 574 F.2d 106 (2nd Cir. 1978); Nicolai v. Transcontinental Ins. Co., 61 Wash.2d 695, 378 P.2d 287 (1963); Krauss v. Brooklyn Fire Ins. Co., 130 N.J.L. 300, 33 A.2d 100 (N.J. 1943); Bergeron v. Employers' Fire Ins. Co., 115 Cal.App. 672, 2 P.2d 453 (Ca. 1931); Citizens Ins. Co. v. Herpolsheimer, 77 Neb. 232, 109 N.W. 160 (1906).
[xi] Weber, above, and American Export & Inland Coal Corp. v. Matthew Addy Co., 112 Ohio St. 186, 147 N.E. 89 (Ohio 1925).
[xii] See, for example, Harris v. Phoenix Ins. Co., 35 Conn. 310 (1936).
[xiii] Davidson v. Providence Washington Ins. Co., 9 N.J. Misc. 1085, 157 A. 148 (N.J. 1931).

The Shadow Knows

[xiv] Couch on Insurance § 49:732; 5A Appleman, Insurance Law and Practice § 3552 (1970).
[xv] Fine v. Bellefone Underwriters Ins. Co., 725 F.2d 179 (2nd Cir. 1984), cert. den., 469 U.S. 874, 83 L.Ed.2d 162, 105 S.Ct. 233 (1984). Later case, 758 F.2d 50, 1 F.R.Serv. 3d 304 (2nd Cir. 1985), cert. den., 474 U.S. 826, 88 L.Ed.2d. Conaway, 674 F.Supp. 1270 (N.D. Miss. 1987); Kisting v. Westchester Fire Ins., Co.Kisting v. Westchester Fire Ins., Co., 290 F.Supp. 141, aff'd, 416 F.2d 967 (7th Cir. 1969).
[xvi] Cf., Ransom v. Selective Ins. Co., 550 A.2d 1006 (N.J. 1988).
[xvii] Hines v. State Farm Fire and Cas. Co., 815 F.2d 648 (11th Cir. 1987); Ransom (above); Heathman v. U.S. Dist. Ct. for the Central Dist. of Calif., 503 F.2d 1032 (9th Cir. 1974); Busch v. Penn. Millers Mut. Ins. Co., 1981-1982 Fire & Cas. (CCH 162) (S.D.N.Y. 9/22/81); Stover v. Aetna Cas. & Surety Co., 658 F.Supp. 156 (W.V. 1987). See, generally, 4 Moore's Federal Practice 26.61 (5-2) (noting that the majority of courts have held that copies of (federal) income tax returns in the possession of a party are not privileged, and that their production can be compelled in an appropriate case; and, further, that if a party does not have copies, he or she can be compelled to secure them from the Internal Revenue Service). See, also Halperin v. Berlandi, 114 F.R.D. 8 (D.Mass. 1986).
[xviii] Halcome v. Cincinnati Ins. Co., 334 S.E. 2d 155 (Ga. 1985).

Duplicity, Like Virtue,
Is Sometimes Its Own Reward

[xix] Circuit Judge Bruce Selya in Borden v. Paul Revere Life Ins. Co., 935 F.2d 370 (1st Cir. 1991). Some of the underscored terms which follow in this section are taken from that opinion.
[xx] We have even seen it stated that the examinee "wishes to remain silent" because he "heard about a guy named Miranda" or because his attorney "has a gut feeling". These may indicate much greater sophistication than appears at first glance.
[xxi] Sockdolager; n., something so effective or forceful as to be final or decisive.
[xxii] See, e.g., Twin City Fire Ins. Co. v. Harvey, 662 F.Supp 216 (D.Ariz. 1987); Kisting v. Westchester Fire Ins. Co., above; and, generally, 13A Couch on Insurance § 49A:362.
[xxiii] Pervis v. State Farm Fire & Cas. Co., 901 F.2d 944 (11th Cir. 1990); Standard Mutual Ins. Co. v. Boyd, 452 N.E.2d 1074 (Ind.App. 1983).
[xxiv] Boston Ins. Co. v. Mars, 246 Miss. 714, 148 So.2d 718(1963).
[xxv] Liverpool & London & Globe Insurance Co. v. Cargill, 145 P. 1134 (Okla. 1914).
[xxvi] See, for example, Shelter Insurance Co. v. Spence, 656 S.W.2d 36 (Tenn. App. 1983); Gordon v. St. Paul Fire & Marine Ins. Co., 197 Mich. 226, 163 N.W.2d 956 (Mich. 1970).
[xxvii] Kelvey v. Coughlin, 625 A.2d 775 (R.I. 1993), quoting with approval Shapiro v. Freeman, 38 F.R.D. 308 (S.D.N.Y.1965); Ralston Purina Co. v. McFarland, 550 F.2d 967 (4th Cir. 1977) and W.R. Grace & Co. v. Pullman, Inc., 74 F.R.D. 80 (W.D.Okla. 1977). Also, see Hall v. Clifton Precision, 150 F.R.D. 525 (E.D.Pa. 1993).