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## **Precap: *United States v. Didier***

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**PRECAP: *United States v. Didier*****Lucas Hamilton**

No. 13-30233

United States Court of Appeals for the Ninth Circuit

Oral Argument: Monday, November 17, 2014 at 9:00 a.m. in the  
Portland Pioneer Courtroom, Portland, Oregon.

## I. INTRODUCTION

“Simply because a statement is false or misleading does not automatically make it material.”<sup>1</sup> For a defendant facing charges of mail fraud, the jury instruction on the element of materiality cuts both ways. Yes, you may have made some statements that were false or misleading, but that does not mean you are guilty—after all, your lies have to be *material*. The instruction entrusts the jury with picking which lies count and which lies do not. Any defendant relying on materiality argues from knee-deep in a hole dug with their own words.

When Christin Didier, a former Miss Montana USA, was indicted on charges of mail fraud, the jury had to determine the materiality of her characterization of a “rustic”<sup>2</sup> cabin as an expensive, expansive, mansion replacement. The jury found Didier guilty of mail fraud, but the district court set aside the verdict and granted her motion for acquittal, citing a lack of evidence in the government’s case proving materiality. The government has appealed to the United States Court of Appeals for the Ninth Circuit, where the materiality of Didier’s lies and the ambiguity of her homeowner’s insurance policy will be the focal points of oral argument.

II. FACTUAL AND PROCEDURAL BACKGROUND<sup>3</sup>

On January 27, 2008, Didier, moved out of her \$1.1 million mansion in Somers, Montana. Built in 1903, the mansion had fourteen bedrooms, three bathrooms, and a ballroom. The property included nearly five acres of land with views of Flathead Lake. Didier, her

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<sup>1</sup> Opening Br. of the U.S., *U.S. v. Didier*, at \*19 (9th Cir. Feb. 4, 2014) (No. 13-30233) (quoting from the “stock Ninth Circuit instruction”).

<sup>2</sup> *Id.* at \*23.

<sup>3</sup> The facts presented here are drawn from the following documents: (1) Order, *U.S. v. Didier*, 2013 WL 5524592, at \*\*1–7 (D. Mont. Oct. 4, 2013) (No. CR 12-36-M-DWM); (2) Opening Br. of the U.S., *supra* n. 1, at \*\*19–21; and (3) Opening Br. of Def.-Appellee, *U.S. v. Didier*, at \*\*6–13 (9th Cir. May 27, 2014) (No. 13-30233).

mother, and her “twenty to thirty Pugs”<sup>4</sup> had lived in the mansion since 2005, but the historic property was in dire need of repairs. A tornado damaged the mansion in July of 2007, and six months later, a fire left it uninhabitable. Didier lived in the fire-damaged mansion for more than two weeks while her insurer, Chubb Insurance, searched for temporary accommodations.

Unfortunately for Chubb, no ordinary accommodations would do. When Didier purchased the mansion, she also bought a Chubb Masterpiece Policy with a nearly \$1,000 per month price tag. For this steep premium, Chubb was obligated to cover the reasonable expenses necessary to maintain Didier’s “usual standard of living.”<sup>5</sup> Chubb contracted with ALE Solutions, Inc., to search for accommodations that would match Didier’s standard of living. ALE recommended a fully furnished, eight-bedroom home, but Chubb’s adjuster rejected the \$40,000 per month price tag. Chubb directed ALE to search for a property in the \$10,000 to \$15,000 per month price range. Eventually, ALE found a six-bedroom bed and breakfast in Whitefish, Montana, but Didier rejected it for being too far from home.

On January 28, 2008, Didier told ALE she had a lead on a promising property in Rollins, Montana. Didier gave ALE contact information for Surayya Nasir, who claimed to be a broker for the Didier Family Trust, which owned the Rollins property. Didier proceeded to fill out a form for ALE in which she represented the property as a 6,900-square-foot, five-bedroom, two-bathroom home with a \$15,250 monthly rent, and \$13,500 in one-time deposits and fees. For her part, Nasir claimed \$10,875 in fees. ALE questioned Didier’s relationship to the property, but Didier claimed the property was held in trust by her extended family. After an email exchange between Didier and Chubb on January 31, 2008, Chubb’s adjuster approved the Rollins property to “shut this lady up.”<sup>6</sup>

After Chubb began making payments on the Rollins property through ALE, Chubb’s investigators took a closer look at Didier’s claim. Chubb discovered the Rollins property was not the expansive home described on the form, but an 860-square-foot cabin with no indoor plumbing. Chubb’s investigators interviewed Didier twice, and Didier admitted she controlled the Didier Family Trust and thus owned the Rollins property.

Based on these facts, Didier and Nasir were charged with mail fraud and conspiracy to commit mail fraud. Both defendants argued the evidence presented was insufficient to support conviction and moved for acquittal at the close of the government’s case. The district court reserved its decision on the motions until after the jury returned its

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<sup>4</sup> Order, *U.S. v. Didier*, *supra* n. 3, at \*3.

<sup>5</sup> *Id.* at \*2.

<sup>6</sup> *Id.* at \*5.

verdict.<sup>7</sup> On March 22, 2013, the jury found Didier and Nasir guilty on all counts. On October 4, 2013, the court granted both defendants' motions, finding the government failed to prove Didier's misrepresentations about the Rollins property were material—an essential element of mail fraud.<sup>8</sup>

Central to the district court's order to acquit was its conclusion that the policy language was ambiguous as a matter of law. To find a policy ambiguous, the court must read the policy "from the viewpoint of a layperson."<sup>9</sup> If a policy is ambiguous, courts will construe the language in favor of more liberal coverage.<sup>10</sup> The court found the policy's extra living expenses clause could be read in two ways: either it covered the actual costs of temporary housing, or it covered the cost of her "usual standard of living"<sup>11</sup> in a mansion. Reading that language in a light most favorable to the insured, the only limit on the policy's benefit was Didier's standard of living, which Chubb had already expressed a willingness to value in the neighborhood of \$15,000. Because Chubb ultimately paid approximately what it thought was reasonable for Didier's standard of living, the actual value of the Rollins property and the fact that Didier owned it could not have been material to Chubb's obligation to pay Didier.

The district court explained its reasoning with a handful of hypothetical insurance scenarios. For example, if a policyholder has a fender-bender, sends her insurer quotes from three repair shops, but pockets the savings of actually repairing the car elsewhere, has she committed mail fraud? The district court answered no. By the district court's reasoning, once the loss event occurs and coverage is not reasonably in dispute, the insurer is obligated to pay. If a policyholder makes false or misleading statements about a claim, but the statements do not substantially increase the insurer's obligation to pay, the misrepresentations are immaterial.

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<sup>7</sup> See Fed. R. Crim. P. 29(b) (reserving decision on motion for acquittal).

<sup>8</sup> 18 U.S.C. § 1341 (2014) (mail fraud statute); *Neder v. U.S.*, 527 U.S. 1, 23 (1999) (incorporating materiality as an element from the common-law).

<sup>9</sup> *Giacomelli v. Scottsdale Ins. Co.*, 221 P.3d 666, 672 (Mont. 2009).

<sup>10</sup> *Id.*

<sup>11</sup> Order, *U.S. v. Didier*, *supra* n. 3, at \*2.

## III. ARGUMENTS FROM THE PARTIES' BRIEFS

A. Government's Arguments on Appeal<sup>12</sup>

1. *The extra living expenses clause was not legally ambiguous, and if it was, the jury was adequately instructed to resolve the ambiguity.*

The government argues that the policy language, read in context, only obligated Chubb to pay if Didier's reasonable living expenses went up. The government emphasizes the use of the word "increase"<sup>13</sup> and the title of the "extra living expenses"<sup>14</sup> clause, arguing that these terms clearly limit the policy's coverage to actual increases in living expenses.

Even if the policy was ambiguous, the government argues the jury was properly instructed to decide what the language meant. The district court gave the jury instructions about ambiguity in insurance policies, the parameters of deciding what the policy meant, and the meaning of materiality. In essence, the government argues that the court predicted the potential ambiguity and properly charged the jury with sorting out the policy language. Thus, the jury's guilty verdict should stand.

2. *The district court's reading of the policy language is not an acceptable interpretation.*

Assuming that the policy was ambiguous, the government still argues that the court's interpretation of the language is inappropriate. While the court concluded that the "extra living expense"<sup>15</sup> language conflicted with the promise to maintain Didier's "usual standard of living,"<sup>16</sup> the government argues that the two excerpts work in tandem to limit Didier's coverage. If Didier incurred additional expenses by moving to a residence that maintained her standard of living, Chubb would be on the hook. However, if Didier chose to move into a small cabin with no plumbing, she incurred no increase in her living expenses and Chubb had no obligation to pay. The court's interpretation of the policy, the government argues, was completely at odds with the plain language.

3. *The government introduced sufficient evidence to prove materiality.*

The government provided testimony from Chubb's adjuster about the terms of Didier's Chubb Masterpiece Policy. In ordering

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<sup>12</sup> All arguments come from Opening Br. of the U.S., *supra* n. 1.

<sup>13</sup> Opening Br. of the U.S., *supra* n. 1, at \*32.

<sup>14</sup> *Id.* at \*31.

<sup>15</sup> Order, *U.S. v. Didier*, *supra* n. 3, at \*10.

<sup>16</sup> *Id.*

acquittal, the district court concluded the adjuster's testimony simply proved that Chubb's payments to Didier were in line with the policy's ambiguous terms. On appeal, the government argues the adjuster's testimony made clear Chubb would only pay for extra costs associated with temporary housing. Because Didier incurred no cost in moving into the cabin she owned, Chubb owed her nothing under the policy. Thus, the forms Didier embellished for the Rollins residence induced Chubb to pay more than it would have and the materiality element mail fraud was satisfied.

*B. Didier's Arguments on Appeal*<sup>17</sup>

*1. The extra living expenses clause was ambiguous.*

Didier insists that if Chubb intended the policy to be interpreted by the government's view, the policy would simply state coverage extended to "the reasonable increase in your normal living expenses."<sup>18</sup> Didier argues the added standard of living language makes the coverage more liberal, or alternatively, obscures Chubb's real meaning. In the latter case, Didier argues the extra language makes the policy ambiguous and allows the district court to read it in favor of the policyholder.

Didier also advances her argument at trial that carbon monoxide poisoning left her with extensive brain damage. The language of the insurance policy, already ambiguous in the eyes of the district court, would be all the more incomprehensible for someone in Didier's mental state. Moreover, Didier argues her condition made it impossible to form the requisite intent to commit mail fraud.

*2. Didier's description of the Rollins property was not material.*

By Didier's reading of the policy, Chubb's obligation to pay was tied not to Didier's actual cost of temporary housing, but by her "usual standard of living"<sup>19</sup> as it was in the Somers mansion. Thus, regardless of where Didier lived, the cost to Chubb remained the same. By the same reasoning, if Didier misrepresented the cabin's size and amenities, her statements would only be material if it caused Chubb to pay more than what the company already reasonably owed. Didier contends she was free to "downgrade"<sup>20</sup> and pocket the difference between the price of living in a mansion and living in a cabin. Because Chubb's actual payments were in line with its obligations under the policy, Didier's statements must not have been material.

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<sup>17</sup> All arguments come from Opening Br. of Def.-Appellee, *supra* n. 3.

<sup>18</sup> *Id.* at \*20.

<sup>19</sup> *Id.* at \*\*14-15.

<sup>20</sup> *Id.* at \*15.

## IV. ANALYSIS

Didier's argument on materiality relies on the Ninth Circuit either finding ambiguity in the policy language or concluding that its plain language means something other than Chubb's "extra living expense" interpretation. After all, if Chubb's interpretation is correct, it would owe Didier nothing. But by not even addressing the policy's "reasonable increase" and "extra living expenses" language, Didier puts a lot of weight on the "usual standard of living" to keep her acquittal intact. While the "standard of living" phrase alone could be read as a blank check, the surrounding language places relatively clear boundaries on Chubb's promise to pay. The Ninth Circuit would have to read the policy through a pinhole to agree with Didier's interpretation.

In arguing for the jury's verdict to stand, the government leans heavily on the Chubb adjuster's testimony on materiality. In its order, the district court notes the Chubb adjuster was not involved in the final decision to pay for the Rollins property. Instead, the adjuster's supervisor gave final approval, and thus only the supervisor could testify about what facts were material in making that decision. Indeed, by the adjuster's own unflattering words, he might have approved the Rollins property simply to "shut [Didier] up."<sup>21</sup> But even if the Ninth Circuit finds the government's evidence on materiality on the slim side, it would be a stretch to uphold the acquittal solely on those grounds. Determining materiality is the province of the jury,<sup>22</sup> and the district court provided thorough jury instructions on the issue. The jury apparently found the adjuster convincing, in spite of his dubious customer service.

Ultimately, the Ninth Circuit will pick which interpretation of the policy is more persuasive. On one hand, Chubb's version requires it to pay only if Didier incurs actual increases in her living expenses. The jury apparently found this view compelling. On the other hand, Didier believes she is owed the reasonable value of her usual standard of living. The district court favored this reading. Because the policy has reasonably clear boundaries on coverage, the Ninth Circuit should be wary of Didier's narrow interpretation. Any reading that opens the door to an insured's creative massaging of facts risks disaster. Once a policyholder is willing to lie to her insurer, a thin, blurry line separates lies that count and lies that do not.

Lower Court: United States District Court, D. Montana, Missoula Division, No. CR 12-36-M-DWM; Honorable Donald W. Molloy, District Judge.

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<sup>21</sup> Order, *U.S. v. Didier*, *supra* n. 3, at \*5.

<sup>22</sup> *U.S. v. Carpenter*, 95 F.3d 773, 776 (9th Cir.1996).

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