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Unveiling Fraud in The Application for Insurance

I. THE QUESTIONS AND RESPONSES CONTAINED WITHIN THE APPLICATION FOR INSURANCE ARE IMPORTANT

A. AUTO INSURANCE

It is common for people to shop around to find the cheapest rate. Unfortunately, it is not uncommon for customers to withhold information, or attempt to deceive an insurance agent in order to save more money on the premium.

That's why the questions and answers that are supplied in the application for insurance are critical. The information provided contains information which the insurance company uses to determine if it will extend coverage, what coverage, how much coverage, and is used to determine the level of risk.

These are typical areas that customers provide evasive answers:

- Providing an incorrect home address;
- Denying past drunk driving offenses;
- Failing to disclose that a license had been suspended;
- Hiding prior accidents or claims in the last 36 months;
- Disclosing that there is a teenage driver in the household;
- Garaging the vehicle at a different address;
- Not identifying other regular drivers of the vehicles.
- Whether the vehicle was being used for business or pleasure;
- How far the vehicle is being driven on a regular basis.

B. WORKER'S COMPENSATION

Insurance fraud is also rampant in worker's compensation. There are so many tricks employed to escape paying worker's compensation premiums.

According to the National Coalition of Insurance Fraud, here are three examples of ways that employers attempt to cheat the system:

- **Safer jobs.** A crooked business tells the workers comp insurer that many employees work safer jobs than they really do. *Example:* A construction firm classifies crane operators as file clerks.
- **Hidden employees.** A business says it has fewer employees or a lower payroll than it actually does. *Example:* A business owner hides employees by saying they work for a seemingly legitimate dummy firm he created. The owner may falsely claim the workers are independent contractors, and thus don't count toward his workers comp premiums.
- **Avoiding coverage.** A business simply doesn't buy state-required workers comp insurance, hoping state officials won't notice. This leaves workers dangerously exposed if they're injured without insurance.

Other red flags to look for that may indicate premium fraud include:

- The policyholder uses a mail drop or post office box for the business address;
- The business is located in another area of the state from the producer's location;
- The business avoids audits by changing carriers frequently;
- Reported injuries are not consistent with the risk that was written;

C. HOMEOWNER'S INSURANCE

Disclosure is key in procuring homeowner's insurance. When an event happens, the carriers will undoubtedly review the application for the policy to see if questions were answered honestly, or incorrect.

Here are some typical red flags in the application:

- Concealing that a residence is used as a rental or in a commercial business on an insurance application;
- Overstating the value of the property;
- Failing to disclose prior claims within the home;
- Not disclosing of a dangerous animal in the house;
- Omitting the fact that there is a pool, spa, or a trampoline on the premises.

B. THE FIRST LINE OF DEFENSE

A. THE INSURANCE AGENT/BROKER

Insurance agents and brokers – who are sometimes referred to as producers – are state regulated. They all must be licensed.

Their duty is to advise the customer of potential coverages, make recommendations, and obtain the appropriate coverage. Some agents are captive, meaning they only sell insurance for one carrier; others are independent, and have free reign to shop around through multiple companies.

When looking back at the interaction between the customer and the agent, there are multiple issues to consider when the application for insurance is procured:

- Where did the conversation take place: over the phone, or in the office;
- What questions were asked by the agent;
- What documentation was supplied by the customer;
- Did the agent walk through the application with the customer?
- Is there a long-standing relationship between the agent and the customer?

Sometimes, the agent is in on the scam. For example, in November 2017, Florida insurance agent Richard Girard was arrested after allegedly submitting a fraudulent insurance policy to Citizens Property Insurance Corp., according to a statement from Florida CFO Jimmy Patronis and the Florida Department of Financial Services (DFS).

Girard, a licensed insurance agent and owner of A-Rated Insurance Group, allegedly submitted a policy application for property insurance for a Key Largo client but provided fictitious supporting documentation that falsified the age of the roof of the property.

As a result, Citizens accepted the application, initiated a policy and Girard received commission on the successful insurance sale.

Following the acceptance of the insurance application, DFS said Citizens suspected the application submitted by Girard may have been fraudulent and referred the matter to investigators with DFS' Bureau of Insurance Fraud.

As a result of the investigation, DFS investigators confirmed Girard submitted an inspection report and policy application for a property located in Key Largo, Fla October 2016. However, in order for the policy to be accepted and to receive his commission, Girard used older photos and an older inspection report from a previous property on the new application form. By doing so, Girard concealed the actual condition of the property's roof and structure, allowing him to obtain the insurance policy and receive a commission of \$1,528.

According to the National Association of Insurance Commissioners, consumers should be on the lookout for the following warning signs, as they may indicate that an insurance company is fake:

- If an agent or broker is very aggressive and pressures a consumer by saying they must sign up for a policy right away (sometimes adding...or the premiums will go up);
- The premiums from one company are a lot lower (more than 15-20% less) than other companies' comparable coverage;
- When a consumer tries to call the insurer to get more details or ask a question, they can't find a listed phone number, or it is very difficult to get through on the phone.

B. THE UNDERWRITING FILE

When in doubt, look at the underwriting file. It usually contains a wealth of information that will serve to sink or swim your case.

How many times have you seen a claimant attempt to make changes to a policy what would later turn out to be moments after a home fire, auto accident, or injury on the job? That's because they panic, and realize they did not provide full disclosure on their initial application for insurance.

The important part of the underwriting file is the documentation of events. The back-and-forth e-mails. When were documents signed (before or after an incident?)

If this is a long-standing customer, what is the habit and routine of the insurance carrier when it comes to prior occasions where there is a policy lapse? Courts look at these issues in litigation.

C. THE POLICY LANGUAGE CONTROLS

Once that application is completed, the policy of insurance is sent to the customer. Ultimately, the language contained within the policy controls. Courts across the country assume that customers have read the policy language – even if they never did.

Here is a typical insurance provision regarding information provided in the application:

MISREPRESENTATION AND FRAUD

A. This Policy was issued in reliance on the information provided on your written or verbal insurance Application. We reserve the right, at our sole discretion, to void from inception or rescind this Policy if you or a family member:

1. Made any false statements or representations to us with respect to any material fact or circumstance; or
 2. Concealed, omitted or misrepresented any material fact or circumstance or engaged in any fraudulent conduct;
- in the Application for this insurance or when renewing this Policy, requesting reinstatement of this Policy or applying for any coverage under this Policy.

A fact or circumstance will be deemed material if we would not have:

1. Written this Policy;
2. Agreed to insure the risk assumed; or
3. Assumed the risk at the premium charged.

This includes, but is not limited to, failing to disclose in the verbal or written Application all persons residing in your household or regular operators of

a covered auto.

The applicable policy provision respecting the insurer's rights concerning fraud discovered at any stage typically provides as follows:

Concealment or Fraud. The entire policy will be void if, whether before or after a loss, an

"insured" has:

- Intentionally concealed or misrepresented any material fact or circumstance;
- Engaged in fraudulent conduct; or
-
- Made false statements; relating to this insurance.

III. BRINGING DOWN THE HAMMER

A. WHAT IS MATERIAL?

The general rule requires that the fact misstated or omitted is deemed "material" if it could reasonably be considered as affecting the insurer's decision to enter into the contract, or its evaluation of the degree or character of the risk, or its calculation of the premium to be charged. Handbook on Insurance Coverage Disputes §3.01[d]. Thus, if the misstatement or omission is not material to the risk insured and has been made in good faith, courts will usually permit the insured to recover under the policy. 12A Appleman Insurance Law & Practice §7293.

It has thus been held that a material misrepresentation in an insurance application permits the insurer to invalidate the policy and to avoid responsibility for losses claimed thereunder. See *Pedersen v. Chrysler Life Ins. Co.*, 677 F Supp 472, 474 (N.D. Miss 1988) ('[i]f a party applying for insurance makes a misstatement of a material fact in the application, the insurer is entitled to declare the policy issued in reliance thereon void ab initio.');

INA Underwriters Ins. Co. v. D.H. Forde & Co., 630 F Supp 76, 77 (W.D.N.Y. 1985) (misrepresentations in the policy application render the policy void ab initio); *Shapiro v. American Home Assur. Co.*, 584 F Supp 1245, 1252 (D. Mass. 1984) (false statement in application that 'misrepresented the risk incurred' by the insurer relieved insurer of all liability under the policy).

See the recent case of: *Duarte v. Pacific Specialty Ins. Co.*, 13 Cal.App.5th 45 (Cal. app. 2017);

B. DOES IT HAVE TO BE INTENTIONAL?

THE MISREPRESENTATION NEED NOT BE INTENTIONAL. It is generally held that if the fact misrepresented or the undisclosed information is material, it does not matter whether the misrepresentation or a non-disclosure was intentional or by mistake.

Handbook on Insurance Coverage Disputes §3.01[c] states: The insurer will be relieved of liability even though the material misrepresentation was not made knowingly, willfully, or with an intent to deceive. See *Michael v. World Ins. Co.*, 254 F2d 663, 664 (6th Cir. 1958); *In re Epic Mortgage Ins. Litig.*, 701 F Supp 1192, 1242-43 (E.D. Va. 1988); *Hatch v. Woodmen Accident & Life Co.*, -12- 88 111. App. 3d 36, 409

NE2d 540, 543 (2d Dist. 1980); *Barrera v. State Farm Mut. Auto. Ins. Co.*, 71 Cal2d 659, 659 n.4, 456 P2d 674, 679 n.4, 79 Cal. Rptr. 106, 111 n.4 (1969); *Modisette v. Foundation Reserve Ins. Co.*, 77 N.M. 661, 427 P2d 21, 25 (1967); *Anaheim Builders Supply, Inc. v. Lincoln Nat'l Life Ins. Co.*, 233 Cal. App. 2d 400, 43 Cal. Rptr. 494 (5th Dist. 1965); *Metropolitan Life Ins. Co. v. Becraft*, 213 Ind. 378, 12 NE2d 952 (1938); *Piccininni v. Aetna Life Ins. Co.*, 250 A.D. 498, 294 NYS 880 (2d Dep't 1937). See generally R. Long, *The Law of Liability Insurance* § 19.08, at 19-21 (1986); 17 Couch on Insurance 2d §67:343(1983).

C. DO THE FACTS ALIGN WITH THE STATE STATUTES?

Policy provisions are tied into state statutes. Section 627.409 of the Florida Statute allows insurers, in certain limited circumstances, to rescind the policy and prevent the insured from recovering under the contract altogether because of that statement or omission. The relevant provision of the statute states:

Representations in applications; warranties. —

(1) . . . A misrepresentation, omission, concealment of fact, or incorrect statement may prevent recovery under the contract or policy only if any of the following apply:

(a) The misrepresentation, omission, concealment, or statement is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by the insurer.

(b) If the true facts had been known to the insurer pursuant to a policy requirement or other requirement, the insurer in good faith would not have issued the policy or contract, would not have issued it at the same premium rate, would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.

See the recent case of: *Mora v. Tower Hill Prime Ins. Co.*, 155 So. 3d 1224 (Fla. 2d DCA 2015).