



July 2017

THE INSURANCE & RISK REPORT

***Commentary on Risk Management and
Insurance Issues Facing Executives***

IT'S ALL FUN AND GAMES UNTIL SANTA CHECKS THE NAUGHTY LIST

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One of the worst representations of the insurance industry relates to insurance applications. They are traps for the unwary, often asking for a representation of information in questions that no one could ever possibly answer accurately.

Your 18-year-old son lives in my basement. Last year he was convicted of DUI. Since he won't be driving my car, do you have to list him on the insurance application? Can't I just underestimate my property insurance values on an application or statement of values to save on premium?

Do you have to disclose to the insurance company that your property is vacant?

Your daughter just turned 16 years old. She only drives your car on the weekends. Since your policy automatically covers family members, do you have to tell the insurance company she is a new driver?

When my insurance company asked about my garaging location, I gave them my parent's address. The premiums would be twice as much if I told them the actual garaging location.

Often, insurance applications are looked upon as an administrative afterthought. The truth is applications are one of an insurance company's first lines of defense when attempting to deny a claim. Accordingly, it is imperative that these documents be reviewed to ensure accurate information prior to submission.

Expect that your insurer will look closely at your underwriting file after a major claim. Misstatements, misrepresentations, failures to disclose information? The insurer may well find that you are now on the naughty list and you are getting nothing.

Our work as attorneys and insurance expert witnesses allows us to confidently say that misrepresentation claims are one of the most frequent coverage defenses asserted by property and casualty insurance companies.

In life insurance, the insurer generally only has two years to determine any misrepresentation. Not so with business insurance where the insurer has the right to make this assertion at any time.

At the time of a claim, insurers may be quick to pull the rug out from under the policyholder if it finds that any information presented was inaccurate, even if the applicant did not intend to defraud the insurer. And, it may not need to do anything more than to send you a letter and return the premium.

Most insurance policies contain some sort of provision governing concealment, misrepresentation, or fraud. These provisions allow the insurance company to void the policy if any insured conceals or misrepresents a material fact relating to coverage, the covered property, their interest in the covered property, or a claim presented under that coverage part.

Some of the standard policy provisions are as follows:

The actual insurance application also contains a warranty statement which the insured must sign. The following is an excerpt from most standard insurance applications.

INSURANCE APPLICANT'S STATEMENT

I HAVE READ THE ABOVE APPLICATION AND ANY ATTACHMENTS. I DECLARE THAT THE INFORMATION PROVIDED IN THEM IS TRUE, COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS INFORMATION IS BEING OFFERED TO THE COMPANY AS AN INDUCEMENT TO ISSUE THE POLICY FOR WHICH I AM APPLYING.

Insurance companies can deny coverage if they can establish that the insured misrepresented or concealed material information on the initial application for insurance or during a subsequent claim. "Material" generally means that had the insurer known of the information it would have either not insured the person or company or would have charged a higher premium. This may not be difficult to do.

In some cases, we have seen insurers deny coverage for information that was not disclosed by the insured, even if it was not asked on the application!

In one case we were involved with, an insurer denied coverage to its insured after a major fire, stating that the application which was completed by the agent represented that the building was

26 years old when it was more than 50 years old. The insurer's underwriter testified that the insurer would not have issued replacement cost coverage had it known the right age. That representation, therefore, was material. Interestingly, the applicant did not fill out the application with that inaccurate information; The insurance agent did.

In a May 2017 case filed by an insurance company in California, the insurer pointed out language in the application requiring the insured to point out any material changes even after the application is signed:

“THE APPLICANT AGREES TO NOTIFY THE COMPANY OF ANY MATERIAL CHANGE IN THE ANSWERS TO THE QUESTIONS ON THIS APPLICATION WHICH MAY ARISE PRIOR TO THE EFFECTIVE DATE OF ANY POLICY ISSUED PURSUANT TO THIS APPLICATION AND THE APPLICANT UNDERSTANDS THAT ANY OUTSTANDING QUOTATIONS MAY BE MODIFIED OR WITHDRAWN BASED UPON SUCH CHANGES.”¹

Some of the questions asked on applications are so vague that it would be virtually impossible to answer them accurately. For example, most property insurance applications ask the question “are there any uncorrected fire code violations?” Really? How is an insured supposed to be able to answer this? How would it know?

In short, applications can be major problems for insureds and should be treated with extreme caution. Writing in the margins can help to clarify answers. So can avoiding answering questions that you cannot answer.

Otherwise, you may end up on the naughty list.

¹ MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY, Plaintiff, vs. DANIEL HOLMAN; SPICA HOLDINGS, LLC, a Delaware limited liability company; FRAZIER LAND AND PROPERTY, LLC, a California limited liability company; SCOTT F. FRAZIER. Defendants. UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA