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MISREPRESENTATIONS IN APPLICATIONS OF INSURANCE

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Overview

- Elements of a misrepresentation claim.
- What constitutes false statements?
- What is considered material?
- What does intent to deceive mean?
- Other issues to consider.



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When Can An Insurer Deny?

The insurer bears the burden of proving the defense of misrepresentation.

**REJECTED
INSURANCE
CLAIM**

1. The insured made a misrepresentation in the policy application;
2. The misrepresentation was material; and
3. The insured made the misrepresentation with the intent to deceive.

La. R.S. § 22:860

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When Can An Insurer Deny?

Policy applications have similar language:

“I hereby make application for an insurance policy in the Company designated, on the basis the statements and answers to questions made on this application and I represent that such statements and answers to questions are true.”

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MISREPRESENTATIONS/ FALSE STATEMENTS

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False Statements In The Policy Application

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False Statements In The Policy Application

Considerations


- What questions are asked?
- Who filled out the application – insured or agent?
 - Agent for insured or for the company?
- Who reviewed the application?
- Is the application complete?
- Was the application signed?

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Case Example – False Statement

State Farm Mut. Auto. Ins. Co. v. Bridges



- Amber (17 years old) drives vehicle without father's permission to a prom committee meeting and hits another vehicle.
- She obtained her driver's license two weeks prior to the accident.
- When her father procured the policy five months prior, he only listed himself and his wife and did not disclose that his daughter was a resident of the home who was over the age of 14.

36 So.3d 1142 (La. App. 2 Cir. 2010).

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Case Examples – False Statement

State Farm Mut. Auto. Ins. Co. v. Bridges



- Insurer denies claim based on misrepresentations in the application.
- Insurer's representative, who completed the application, was familiar with the father's background.
- He signed the application via electronic signature without reviewing the document.
- He did not recall anyone asking whether his daughter should be on the policy.

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Case Examples – False Statement

State Farm Mut. Auto. Ins. Co. v. Bridges



- Insurer failed to demonstrate a "false statement" by the father.
- Father did not review the application; thus the insurer cannot prove he made the false statements.
- The insurer's representative failed to list Amber on the policy and the representative's failure is not binding on the father, who is permitted to rely upon her expertise in interpreting the nature of the information sought by the insurer.

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Case Examples – False Statement

Dye v. Walker

- Ms. Harrell applies for auto insurance.
- Mr. Walker was driving her vehicle and got into an accident.
- Mr. Walker stayed in Ms. Harrell's home a majority of the time, but lived with his grandmother.
- Insurer denies, claiming that Ms. Harrell failed to list or identify Mr. Walker as a member of her household or an operator of her vehicle.



830 So.2d 429 (La. App. 2 Cir. 2002), writ denied (Jan. 31, 2003).

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Case Examples – False Statement

Dye v. Walker

- No "false statement" because the application was vague.
- The application did not require the applicant to list all members of the household and all drivers of the vehicle.
- The only question relative to a request of household or driver information was a request to list all people under the age of 25 who lived in the household.
- Ms. Harrell answered all questions correctly.



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Case Examples – False Statement



Pete Roy Ford, Inc. v. Lachney

- Willie purchased a vehicle from Pete Roy Ford, and as part of the transaction, purchased a credit life insurance policy.
- 135 days after the purchase of the auto, Willie dies (cause of death myocardial infarction) and a demand was made for the insurance proceeds.
- Insurer denies the demand, claiming that Willie failed to disclose that he had been treated for heart and circulatory disease in the application.

390 So.2d 248 (La. App. 3 Cir. 1980).

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Case Examples – False Statement



Pete Roy Ford, Inc. v. Lachney

- When asked to list his diseases, Willie left the application blank.
- The court determined there was an issue of fact as to whether Willie misrepresented the state of his health by failing to state in the application blank that he had heart disease.
- By failing to state anything, the applicant *made no representation at all*.

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Case Examples – False Statement



Pete Roy Ford, Inc. v. Lachney

The Court further explained:

“There is no mandatory duty on the part of an applicant to fill in the blanks in an application and there is no inference to be drawn from his failure to do so. On the contrary, if the insurer intends to rely on the information called for in the blanks provided, it is its duty to make sure that the blanks are filled in properly; otherwise the information called for is waived.”

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What Can We Learn?

- Agency issues:
 - If an insurer's agent fills out the application, the insurer cannot rely on misrepresentations made by that agent.
 - Surplus lines carriers have managing agents who contract with an insured's agent.
- It is the insurer's responsibility to ensure the questions are presented clearly and concisely and encompass all aspects of a query to effectively rate and issue a policy.
- It is the insurer's responsibility to follow up on questions that are not answered by an applicant.

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MATERIAL MISREPRESENTATION

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What Is A Material Misrepresentation?

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What Is A Material Misrepresentation?

- The statement was of such a nature that had it been true, the insurer would either not have contracted or would have contracted only at a higher premium rate. *Kahl v. Chevalier*, 188 So.3d 449 (La. App. 3 Cir. 2016).
- If the information given by the applicant was false and the insurance company would have issued the policy any way, the misrepresentation is not material. *Davis v. State Farm Mutual Automobile Insurance Co.*, 415 So.2d 501 (La. App. 1 Cir. 1982).


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Case Examples – Material Misrepresentation

Jamshidi v. Shelter Mutual Ins. Co.

- Shelter issues a policy to plaintiff.
- The insured vehicle was stolen, but recovered by the police.
- While plaintiff was driving the vehicle from the police station, the engine caught fire and the vehicle was damaged.
- Plaintiff made a claim with Shelter for costs due to the theft and fire.
- Shelter denied the claim.



471 So.2d 1141 (La. App. 3 Cir. 1985).

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Case Examples – Material Misrepresentation

Jamshidi v. Shelter Mutual Ins. Co.

- The application contained the following question, to which plaintiff answered “no”:
 - “During the past three years, has any driver, applicant or member of the household: (1) been involved in any auto accidents, regardless of fault; (2) been fined or convicted for a moving traffic violation; and (3) had any license or permit to drive suspended, revoked, or refused?”
- When asked to list all traffic violations and accidents, in the last three years, Plaintiff responded “none.”
- Plaintiff reported a Texas driver’s license number and informed his agent of his intent to obtain a Louisiana license.

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Case Examples – Material Misrepresentation

Jamshidi v. Shelter Mutual Ins. Co.

- When the application was completed, plaintiff had a Louisiana license and had been issued 5 traffic citations during the previous 20 months.
 - Speeding – 37 mph in a 25 mph
 - Speeding – 58 mph in a 40 mph
 - Speeding – 62 mph in a 40 mph
 - Speeding – 58 mph in a 35 mph
 - Failure to yield involving an accident



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Case Examples – Material Misrepresentation

Jamshidi v. Shelter Mutual Ins. Co.

- The trial court determined that plaintiff’s poor driving record had no bearing on the likelihood of theft, and thus, found no material misrepresentation.
- The appeal court reversed the decision.
- The true test of materiality is whether Shelter would have issued the policy if it had prior knowledge of the driving record.



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Case Examples – Material Misrepresentation

Jamshidi v. Shelter Mutual Ins. Co.

- If plaintiff would have truthfully and accurately represented his driving record, Shelter would not have issued the policy.
- The fact that the loss resulted from theft has no bearing on whether misrepresentations were material so as to defeat coverage.
- The agent would not have had any discretion because according to company policy, it would not have processed an application with so many violations.

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What Can We Learn?

- How to prove material misrepresentation
 - Underwriting guidelines/company policy
 - Company would never have issued the policy with the applicant's true background
 - Affidavit from underwriter
 - May be sufficient
 - Create credibility issues
 - Could deny summary judgment motion
 - Trial testimony from a company representative
 - Testimony from a representative that had the company known, the carrier would have declined coverage

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INTENT TO DECEIVE

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What Is Intent To Deceive?

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What Is Intent To Deceive?

- Courts have recognized the difficulty in proving intent to deceive.
- As such, "...courts look to the surrounding circumstances indicating the insured's knowledge of the falsity of the representation made in the application and his recognition of the materiality of his misrepresentations, or to circumstances which create a reasonable assumption that the insured recognized the materiality." *Perault v. Time Insurance Co.*, 633 So.2d 263, 266 (La. App. 1 Cir. 1993), writs denied (Feb. 11, 1994).
- Intent to deceive is a factual determination which should not be set aside absent manifest error.

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Case Example – Intent To Deceive

Davis v. State Farm Mut. Auto. Ins. Co.



- The insured failed to accurately report eight tickets in the preceding three years.
- The court of appeal reversed the trial court's finding and determined that such omissions were material and made with the intent to deceive.
- The court opined that the insured was aware of the importance of a safe driving record as it related to high insurance premiums.

415 So.2d 501 (La. App. 1 Cir. 1982).

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Case Example – Intent To Deceive

- Davis v. State Farm Mut. Auto. Ins. Co., 415 So.2d 501 (La. App. 1 Cir. 1982).

“It is inconceivable to this court that someone who already has insurance, in applying for insurance with another company can misunderstand the question of whether he had previous violations.”

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Case Examples – Intent To Deceive

Shelter Ins. Co. v. Cruse

- Mr. Cruse stated in his application that he had not had any accidents or tickets in the past three years.
- Upon payment of a property damage claim, it was discovered that Mr. Cruse made false statements on his application.
- Also, it was discovered that Shelter rejected Mr. Cruse's application four years prior due to his numerous traffic violations.



446 So.2d 893 (La. App. 1 Cir. 1984).

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Case Examples – Intent To Deceive

Shelter Ins. Co. v. Cruse

- The court determined that Mr. Cruse knew of the importance of his driving record to obtain auto insurance.
- Based on this knowledge, the court found an intent to deceive.
- The policy was void *ab initio* and Shelter was entitled to a return of the money.



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Case Examples – Intent To Deceive

Jamshidi v. Shelter Mutual Insurance Co.

- Plaintiff lied about the five citations and his LA license.
- Circumstances in this case creates a reasonable assumption that plaintiff had knowledge of the falsity and he intended to deceive the insurance company.
- Trial Court's written reasons:

"...It is evidence that plaintiff did mislead the defendant's agents with respect to his driving record, and particularly his denial of having a Louisiana drivers license. His reference to a Texas license (which checked out clear of traffic violations) was further substantiation that he had some idea of what he was doing. Proof of the pudding came when a check on his Texas license revealed no violations."

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Case Examples – Intent To Deceive

Pete Roy Ford, Inc. v. Lachney

- Did Willie falsely misrepresent the state of his health in his application for credit life insurance?
 - The court also found a question of fact as to whether Willie intentionally concealed his condition knowing it to be material to the risk for the purpose of defrauding the insurer when he could not read, write, or hold an intelligent conversation due to his condition.

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Case Examples – Intent To Deceive

Hancock v. Safeway Ins. Co.

- Plaintiff's vehicle was involved in an accident while being driven by her boyfriend, Tony.
- Plaintiff and her boyfriend lived together "off and on."
- Tony paid half of the rent and utilities and received mail at the residence.
- Plaintiff did not notify her agent that Tony lived in her residence and sometimes drove her vehicle.



741 So.2d 155 (La. App. 2 Cir. 1999).

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Case Examples – Intent To Deceive

Hancock v. Safeway Ins. Co.

- Safeway denied the claim on the basis that Plaintiff concealed the fact that Tony was a non-licensed driver who was a member of her household and drove her vehicle.
- Plaintiff testified that she did not notice the language stating that she warrants there are no other drivers in the household and even if she had noticed the language, she would not have changed her response.
- She did not consider Tony a member of her "household," as she believed that term referred to a spouse or blood relative.



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Case Examples – Intent To Deceive

Hancock v. Safeway Ins. Co.

- The court determined that at the time plaintiff completed her application for insurance, the information she provided was accurate.
- Upon review of the record, the court could not find that the plaintiff “possessed the actual intent to deceive when she neglected to report [Tony] as a driver of her vehicle.”



What Can We Learn?

- *Davis, Cruse, and Jamshidi* follow the theme that the insureds were aware of the benefits of a “better” driving record, were trying to find insurance at the lowest rates and intentionally relayed false material information.
- A determination of intent also turns on the credibility of a witness.

When Can The Defense Be Raised?

- Before or after and accident?
 - The defense can be asserted both before and after an accident has occurred.
 - The courts have found that the facts justified the rescission of the purported coverage because of misrepresentations that were made at the time the insurance was procured. See *Coleman v. Occidental Life Ins. Co. of N. America.*, 418 So.2d 645 (La.1982); *Cousin v. Page*, 372 So.2d 1231 (La.1979); *Gulf Wide Towing, Inc. v. Associated Ins. Managers, Inc.*, 563 So.2d 432 (La. App. 1 Cir. 1990), writ denied (Oct. 5, 1990).

When Can The Defense Be Raised For Autos?

- Auto Liability Policy v. Motor Vehicle Liability Policy
 - Courts have recognized a distinction between the two.
 - The term “motor vehicle liability policy” serves as proof of financial responsibility. By purchasing a “motor vehicle liability policy” an owner or operator satisfies the statutory requirements.
 - In contrast, an “automobile liability policy” is a voluntary policy which has not been certified as proof of a motorist’s financial responsibility and does not therefore satisfy the statutory requirements.
 - The defense can be raised to rescind an automobile liability policy which has not been certified as a “motor vehicle liability policy.”

Can The Defense Be Waived?

Yes – Green v. Brown, 212 So.3d 718 (La. App. 2 Cir. 2017), writ denied (Sept. 6, 2017).

- The insured made material misrepresentations with the apparent intent to deceive.
- Even after the insurer learned of the misrepresentation, it continued to renew the policy.
- The court determined that in continuing to accept premiums and renewing the policy after learning of the misrepresentation, the insurer waived its defense of material misrepresentation.

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Can “Bad-faith” Penalties Apply?

La. R.S. § 22:1892

All insurers shall pay the amount of an insured’s claim within thirty days after receipt of satisfactory proof of loss. When the failure to make such payment is arbitrary, capricious or without probable cause, the insurer shall be subject to a penalty, in addition to the amount of the loss, together with reasonable attorney fees.

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Can “Bad-faith” Penalties Apply?

La. R.S. § 22:1973

An insurer owes an affirmative duty to adjust claims fairly and promptly. Any insurer who breaches these duties shall be liable for any damages sustained as a result of the breach. La. R.S. § 22:1973(A). In addition to any such damages, the claimant may be awarded penalties assessed against the insurer. La. R.S. § 22:1973(C).

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Can “Bad-faith” Penalties Apply?

- Court’s will assess whether statutory penalties should apply to an insurer who asserts a misrepresentation defense as in any other case.
- An insurer’s refusal to pay is not arbitrary or capricious where serious issues regarding the plaintiff’s right to recovery are raised.
- To prevail on a claim for breach of duty, the insured must prove that the insurer knowingly committed actions which were completely unjustified, without reasonable or probable cause.
Holt v. Aetna Casualty & Surety Co., 680 So. 2d 117 (La. App. 2 Cir. 1996), writs denied (Dec. 6, 1996).

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Can “Bad-faith” Penalties Apply?

- Penal statutes are to be strictly construed.
- Therefore, sanctions should be employed only in those instances where the facts negate probable cause for nonpayment.
- Whether an insurer’s actions warrant imposition of statutory penalties depends upon the facts of the case, and those known to the insurer.
- This is primarily a factual issue and the trial court’s findings shall not be disturbed on appeal absent manifest error.

Haynes v. Shumake, 582 So.2d 959 (La. App. 2 Cir. 1991).

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Can “Bad-faith” Penalties Apply?

- In *Hancock*, the trial court found that defendant’s refusal to pay the plaintiff’s claim was not arbitrary, because defendant reasonably contended that the plaintiff had violated her contractual duties by not reporting that Tony resided with her and drove her vehicle.

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Questions

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