

## Avoiding Innocent Misrepresentation



Gregory A. Roberts

Insurers of all types, from property to life insurance, have been increasing their scrutiny of claims. This often involves a review, or even an investigation, into the information on the insurance application itself. Most consumers fill out many such applications, which are usually forms with very simple language. Insurance agents or brokers often assist in the interpretation and preparation of the forms.

Insurers have a clear right to rely on the statements and information provided in the application and that form the basis of the insurance contract. The contract can be cancelled when the applicant makes material misrepresentations. This is an obvious remedy when a misrepresentation is fraudulent or an intentional fabrication.

However, many people are unaware that in most instances, even an innocent or inadvertent misrepresentation can provide the insurer with a legal basis to deny a claim and rescind the insurance contract. As a result, it is critical that any person or corporation seeking insurance be extremely careful to make sure all disclosures are accurate and complete.

Application language can cause confusion as to what should be disclosed. Most issues can be cured by full disclosure if a question is ambiguous or imprecise.

Recently, in Michigan, an insurer challenged a claim on a

\$1 million life insurance policy after the insured was killed in a boating accident. The basis for the insurer's denial was the deceased's failure to list his five automobile moving violations in the application section inquiring about "past convictions."

The insurance agent had assured the applicant that civil infractions were not important, and only misdemeanors such as drunk driving, needed to be disclosed. The insurance company is not, however, bound by the oral assertions of its agent. In this case, the insurer lost at arbitration because the statements did not meet the Michigan standard of a material misrepresentation. However, this situation illustrates how closely insurers are scrutinizing applications to identify even minor factual inaccuracies that might support cancelling coverage.



Some other areas of misrepresentation that are usually found to be material and sufficient to rescind a contract include past losses to real or personal property. An insurance applicant must always disclose past losses whether or not they were insured. This includes losses to corpora-

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# CMDA Happenings

## Attorney to Become Military Trial Judge



Brandon Bolling, an attorney in the Firm's Livonia office, who concentrates his practice on military law, has officially been appointed and confirmed as a military trial judge from the Chief Judge of the U.S. Navy and Marine Corps Trial Judiciary in Washington, DC.

Mr. Bolling will attend the Federal Judge's School this Spring and return to the Firm in the summer. Congratulations to him on this notable honor.

## CMDA Attorney Judges MSU College of Law's Moot Court Trial Advocacy Competition

MSU College of Law asked Jim Acho, an attorney in the Firm's Livonia office, to serve on its panel of judges for the annual Moot Court Trial Advocacy Competition that recently took place.



A moot court is an extracurricular activity in which law school students take part in simulated court proceedings, usually to include drafting briefs and participating in oral argument. The competition involved 11 other law schools, including Wayne State Law School and University of Detroit Law School. The final two teams travel to the University of

Texas law school this month for the National Moot Court finals.

Competitions are often judged by legal practitioners with expertise in the particular area of law, or sometimes by sitting judges. Sitting Federal Judges Marianne Battani and Denise Page Hood also served as guest judges.

## Attorneys Hold Annual Meeting



All the attorneys at CMDA recently met on a Saturday morning at the Shenandoah Country Club in West Bloomfield, MI for the Firm's Annual Attorney Meeting.

Managing partner, T. Joseph Seward, led the day-long meeting. The attorneys discussed effective ways to the market the Firm, updates and developments in legal services and reports from every office were given. Thanks to Marcia LaCour from our Riverside, CA office for taking the photo!

## Avoiding Innocent Misrepresentation (cont.)

tions in which the applicant had an insurable interest. Similarly, omission of prior medical conditions on health insurance applications is a common oversight, especially when the medical condition appears benign or in remission. Denial of an insurance application by a different company is a common omission, but failing to disclose this information can result in cancellation of coverage later if the insurer discovers it.

Insurance applications must be complete and accurate. Even innocent misrepresentations or failure to divulge facts can result in no benefits, and an invalid policy is certainly not a bargain. Coverage will almost always be available at rates competitive in the industry if an applicant provides

an accurate claim background.

It is up to the applicant to ensure complete and enforceable responses by avoiding simple mistakes or inadvertent omissions on the application or any other forms provided to an insurance company.

Gregory A. Roberts

Mr. Roberts, an attorney in our Livonia office, concentrates his practice on employment and labor law, personal injury defense litigation, commercial litigation, corporate and business law and utility law. He can be reached by calling (734) 261-2400 or via e-mail at groberts@cmda-law.com.

## Charles Mason Photo and Fear of Violence Justify Firing



Kenneth G. Galica

It is a legitimate, non-discriminatory reason to terminate an employee if the employer believes the employee may become violent. So ruled a U.S. District Court in Tennessee in Calandriello v Tennessee Processing Center in an opinion issued December 15, 2009. The termination passed muster even though the employee had been diagnosed with bipolar disorder and was therefore arguably covered by the Americans With Disabilities Act (ADA).

The court noted that Tennessee Processing had terminated Robert Calandriello after he used company equipment to add a photo of notorious killer Charles Manson to a company poster. An internal investigation determined that Calandriello had a history of viewing online images of violence on his company computer as well.

The employee argued that because he had not destroyed equipment, threatened anyone or caused financial loss to the company, he should be exempt from disciplinary action because he was entitled to accommodation under the ADA. The federal district judge found in favor of the employer, which substantiated its termination decision on a policy that prohibits employees from visiting internet sites known to contain or suspected of containing objectionable material.

Kenneth G. Galica

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## Firm Obtains Substantial Judgment on Behalf of Utility Company



Timothy Young

CMDA partner Timothy Young has obtained a substantial judgment on behalf of a local utility company in enforcing an indemnity agreement against the City of Detroit.

The case arose out of a tragic accident in which a 10-year-old boy was electrocuted as a result of his contact with a City of Detroit power line. The utility company settled the case with the child's family for a substantial and fair sum of money in 2002. CMDA then filed suit on behalf of the utility company against the City of Detroit to recover the amount paid to the child's estate.

The utility company had supplied power to the City of Detroit through a power supply agreement that required the City of Detroit to indemnify the utility company for energy

supplied under the agreement.

CMDA obtained a judgment in favor of the utility company for the full amount of the settlement it had paid. The City of Detroit appealed to the Michigan Court of Appeals, which affirmed the judgment in 2007. Last November the Michigan Supreme Court denied the City of Detroit's application for leave to appeal. The City of Detroit now has no further remedies and must pay the judgment plus interest. The total amount of the judgment is valued at over \$3,000,000.

Mr. Young, an attorney in our Livonia office, concentrates his practice on utility law, insurance coverage, analysis and litigation and municipal law. He can be reached by calling (734) 261-2400 or via e-mail at [tyoung@cmda-law.com](mailto:tyoung@cmda-law.com).

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## Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

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