

Getting Back to Basics can Impact Coverage

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Insurance coverage litigation is costly for insurers and insureds. While there are instances in which litigation cannot be avoided, getting back to basics may help reduce conflicts over coverage. The following three "basics" are briefly touched upon below: 1) have the insured sign the application; 2) follow up on inspections and resulting recommendations; and, 3) question apparent inconsistencies.

Have the insured sign the application. When asked to review a matter for coverage, among the things we review are the insurance policy and the underwriting file. Surprisingly, we have encountered instances where applications, whether for new or renewal policies, are unsigned or are signed by the insured's agent on behalf of the insured. It is important, for the protection of the insured and the insurer, to have the **insured** complete and sign the insurance application.

Among the benefits to the insured in completing and signing his or her own application is that there is a reduction in "mis-communication" in the underwriting process, which may lessen subsequent coverage issues. For example, when underwriting a commercial property policy, the description of the building, its uses, and its contents should come from the insured, not from the agent's understanding of what the insured described. Remember the child's game called "Whisper Down The Lane"? What one person meant or said is often not what the last person heard. If the insured completes and signs his or her own application, the insurer, in issuing the policy, can rely on the completed and signed application. If the representations are actually **misrepresentations**, the insurer may possibly rely on that completed and signed application to rescind.¹

Follow up on inspections and resulting recommendations. If an underwriter fails to follow up on requested/required inspections or the recommendations that result, this may be detrimental to the insured and the insurer. On one hand, the insured may face a disclaimer of coverage for something that an inspection would have revealed and possibly have allowed him or her to cure. From the insurer's perspective, the failure to follow up on recommendations stemming from an inspection conducted at the insurer's request may operate as an estoppel or waiver to what may have otherwise resulted in a disclaimer of coverage.²

¹Risha v. The Farmers Fire Insurance Agency, 56 Pa. D. & C.4th 194 (Fayette Cty. CCP 2001)(holding that, as a matter of law, the fire policy at issue was void as to insured who signed an application containing misrepresentation but not as to insured who had not signed the application).

²See Argonaut Great Central Ins. Co. v. Phil's Tavern, Inc., 2001 U.S. Dist. LEXIS 17670 (E.D. Pa. 2001)(finding that a party trying to establish estoppel must prove: 1) an inducement, whether by act, representation, or silence, that causes one to believe certain facts; 2) justifiable reliance on that inducement; and 3) prejudice to the one who relies if the inducer is permitted to deny such fact). The Argonaut Court also recognized that an insurer may waive its rights by voluntarily and intentionally relinquishing a known right.

Question apparent inconsistencies. Confirm information that seems inconsistent or gives you pause. In other words, follow your gut. The benefit to both the insured and the insurer in doing so is the increased likelihood that appropriate coverage is placed, and that all necessary endorsements/conditions are included in the policy. For example, if a corporation applies for insurance but has "0" employees, it may subcontract out all of its work. If so, an endorsement requiring that the corporation be added as an additional insured on its subcontractor's policies may be warranted. Also, an insured designated as a restaurant that serves alcohol, but based on an inspection is clearly a bar/tavern, may not otherwise be entitled to coverage under a certain program and, consequently, may require alternative coverage.³ As mentioned in the preceding paragraph, if the underwriter fails to respond to information learned from an inspection, such as the true business activities of the insured, the insurer may later be estopped from disclaiming coverage on that particular basis. Finally, for example, an insured with multiple homeowners' policies on which properties are identified as that insured's "primary residence" or as "owner-occupied" suggests that perhaps a commercial or rental policy may be needed for some of those properties.

The foregoing are simply some examples of what can, and occasionally does, happen during the underwriting process. It is important for both parties to the insurance contract that as little as possible be left to chance. Putting appropriate guidelines and procedures in place during the underwriting process, and following them, will help the parties to the contract realize their expectations/intentions.

If you would like any additional information on any of these issues, or would like to discuss other questions or concerns from a legal perspective, please let us know.

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³United National Insurance Co. v. Gallagher, 41 Pa. D. & C.3d 177 (Phila. Cty. CCP 1985)(finding tavern was not entitled to coverage for claims arising from the sale of alcohol because it secured only general liability coverage, which contained an exclusion for liquor liability).