

Policy *Void Ab Initio* Because of Material Misrepresentations

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In an unpublished opinion, a Maryland federal court, applying Maryland law, has granted an insurer's motion for summary judgment, holding that a professional liability policy is *void ab initio* because of a material misrepresentation on the initial and renewal applications. *Scottsdale Ins. Co. v. Nat'l Center on Institutions & Alternatives, Inc.*, 2005 WL 1367079 (D. Md. June 7, 2005).

A company provided residential care to disabled adults. During an activity run by a different entity, one of the residents received permanent brain damage. The Maryland Developmental Disabilities Administration investigated and issued a Notice of Intent to Impose Intermediate Sanctions, finding that the company failed to comply with applicable regulations. Subsequently, the company applied for a professional liability policy. On the application, the company did not disclose the incident and responded that it was not aware of circumstances that may lead to a claim or lawsuit. The policy subsequently was renewed, with the policyholder again not disclosing the incident on its renewal application. Subsequently, suit was filed on behalf of the injured resident. The insurer defended subject to a reservation of its right to rescind the policy based on non-disclosure of the incident on the applications.

The court held that failure to disclose the incident was a material misrepresentation and allowed the insurer to rescind the policy. In doing so, the court first noted that, under Maryland law, insurance policies are *void ab initio* if (1) a misrepresentation is made in the application process and (2) that misrepresentation is material. The court then found that failure to disclose the event was a misrepresentation.

The court rejected the policyholder's argument that it did not foresee a suit because the Maryland Developmental Disabilities Administration investigated and did not suspend its license. The court explained that the insured's belief that it had avoided liability did not excuse it from disclosing the event, as "[a]n insurer may avoid a policy issued in reliance on a material misrepresentation, regardless of whether the misrepresentation was made intentionally, or through mistake and in good faith."

The court then found that the misrepresentation was material. "A misrepresentation is material if the information omitted could reasonably have affected the insurer's determination of the acceptability of the risk. " While the court observed that this materiality is normally a jury question, it also stated that if "it is manifest from uncontradicted testimony or from the nature of the misrepresentations that the insured's false

misrepresentations have been material to the risk, the court must find so as a matter of law." Based on the severity of the injuries, which had left the claimant in a persistent vegetative state, the court found that the misrepresentation was material and allowed the insurer to rescind the policy.

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