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NEWSLETTER

Misrepresentations by Employee of Law Firm Imputed to Firm

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The Michigan Court of Appeals has held that misrepresentations made by an employee of a law firm on an insurance application are imputed to the law firm, and that the law firm cannot avoid the terms of that policy after it has received the benefit of the policy. *NCMIC Ins. Co. v. Dailey*, 2006 WL 2035597 (Mich. Ct. App. July 20, 2006).

The employee of a law firm submitted an inaccurate insurance application despite the instructions of the sole proprietor of that law firm not to submit the application. The sole proprietor had signed part of the application, and the insurance application indicated that the law firm was the applicant. The policy provided that the policy "will be voided if you mislead us, misrepresent yourself or defraud us. . . on matters concerning this policy." The policy defined "you" to include "anyone receiving coverage under the policy," which included any employee of the firm.

The court explained that "[a]n agent's unauthorized acts bind the principal if the agent acted with apparent authority or the principal ratifies the unauthorized act." The court further stated that "[a] principal ratifies its agent's unauthorized acts by accepting the benefits of the unauthorized acts with knowledge of the material facts." Thus, because the law firm attempted to obtain the benefits of the insurance contract, the court held that it had ratified the employee's act and was bound by the terms of the contract. The court also noted that "[g]iven this broad definition of 'you,'" which included all employees, "there is no reasonable basis for concluding" that the misrepresentations were not imputed to the firm.

The law firm next argued that the insurer waived its right to rescind the policy by retaining the insurance premiums, but the court disagreed. The court stated that "it would be unreasonable to infer from [the insurer's] retention of the insurance premiums that it was intentionally relinquishing its right to seek rescission [because] . . . [i]t was appropriate for [the insurer] to seek a declaration of its rights in the trial court without returning the insurance premiums." The court stated, however, that because the insurer rescinded the contract, it must now return all premiums "to restore[] defendants to the pre-contract status quo."

Finally, the court stated that it was not necessary for the insurer to issue a reservation-of-rights letter specifically retaining the right to reimbursement of attorney fees paid pre-rescission to defend the law firm in order to seek such reimbursement. The court stated that, in general, attorney fees are not recoverable. The

court explained, however, that where, as here, the award of reasonable attorney fees and costs is necessary "to reach a fair result when failing to do so would be inequitable," such fees may be awarded. The court thus held that the insurer was entitled to restitution of reasonable defense costs.