



## Alerts

### Insurance Agent Not Liable for Negligent Misrepresentations

December 15, 2010

*Professional Lines Alert*

#### Insurance Agent Not Liable for Negligent Misrepresentations

Plaintiff insured purchased a flexible premium, variable life insurance policy from an insurer. His agent was also an agent for the insurer. The agent prepared several illustrations showing hypothetical results. The insured purchased the policy in 1990 and paid in excess of \$260,000 in premium payments. He also obtained loans against the policy.

The insured did not read the insurance contract but rather relied upon the agent's representations that further premium payments would not be required. The representations were not consistent with the policy's terms. The insured sued, seeking to establish that he owed no further premiums and that the full \$1 million in policy limits were guaranteed to his beneficiary.

The California Court of Appeal found the policy to be clear and not ambiguous. It had an integration provision which merged all prior oral agreements and limited the ability to orally modify the written terms of the contract. Thus, the court ruled as a matter of law that the insured could not reasonably rely upon any statements made prior to the issuance of the contract.

It was undisputed that the agent was not authorized to make any statements that would modify the terms of the policy after its inception. Indeed, the application and the policy contained statements limiting the agent's authority to modify the terms of the insurance contract. Therefore, the court found that the insured could not reasonably or justifiably rely upon any post-issuance statement by the agent. The court held that justifiable reliance was a necessary element of the claim. It determined that as a matter of law the insured could not rely upon any statement from the agent that differed from the terms of the insurance contract.

The insured was not represented by counsel. It is not clear whether this affected the court's determination that the insured could not rely upon anything other than the written documentation. Because the decision is unpublished, however, the effect of this very positive case is limited. As a caveat, there are likely to be California courts that would deny a summary ruling and allow an insured to proceed to trial in an effort to demonstrate that it was reasonable to rely upon the insurance agent rather than the written policy. The insured does not appear

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to have presented those facts to the court in this case.

This case demonstrates the important defenses that can be raised when the application and the policy expressly state that the policy cannot be modified by oral statements or negligent misrepresentations.

For further information, please contact your regular [Hinshaw attorney](#).

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