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Insurance Coverage ALERT

Insurance Agent's Misrepresentations at Time of Sale Binds Insurer Notwithstanding Contrary Policy Exclusion

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By: **Matthew R. Watson**

In March 2006, the insured met with an insurance agent to prepare an application for homeowner's insurance. The insured had an existing homeowner's policy, which afforded $500,000 in personal liability coverage. Although the insured did not wish to change her coverage limits, she was interested in finding a plan with lower rates.

The insurance agent reviewed the prior declarations page with the insured to ensure that the coverage provided under the prospective policy would be "of like kind and extent" as her prior policy. The insurance agent also inquired about dog ownership, whereupon the insured stated that her family owned an American Bull Dog. The insurance agent explained that only certain listed breeds were excluded from coverage under the new policy and that the American Bull Dog was not one of the listed breeds.

At the conclusion of the meeting, the insurance agent printed the insured's application, illustrating personal liability coverage limits of $500,000, which they both signed. The insurance agent also generated a document entitled "Verification of Coverage," which showed that the insured had personal liability coverage under the policy for up to $500,000.

The policy issued by the insurer, however, was subject to an animal liability endorsement that limited coverage for claims arising from animal bites to $25,000 per occurrence. There was no exception provided for American Bull Dogs.

After issuance of the policy, the insured's American Bull Dog bit plaintiff in the face, causing significant injury. In February 2009, plaintiff and his wife obtained a judgment against the insured in excess of $250,000. The insured paid plaintiff the $25,000 afforded by the policy and, thereafter, assigned plaintiff her claim against the insurer. Plaintiff, as assignee, asserted claims against the insurer for negligence and mutual mistake.

The Massachusetts Superior Court determined that plaintiff was entitled to coverage from the insured for the full value of his damages (in excess of $250,000), notwithstanding the policy endorsement limiting coverage for animal bites to $25,000. According to the court, the insured and the insurance agent were mutually mistaken as to the contents and legal effect of the language in the policy with respect to animal liability. Specifically, the court reasoned that, based on the representations of the

insurance agent, the insurance agent believed she was selling — and the insured believed she was purchasing — a policy that afforded up to $500,000 in liability coverage for dog bites. Based on this mutual mistake, the court determined that the proper remedy was to reform the policy to remove the language from the animal liability endorsement, which limited the insured's personal liability coverage for dog bites to $25,000. The court entered final judgment against the insurer for the full value of plaintiff's damages in excess of $250,000.

It bears noting that the court's decision fails to explain how the insurance agent's mistaken representation served to legally bind the insurer. In all likelihood, the insurance agent's misapprehension was imputed to the insurer pursuant to traditional agency principles.

Practice Note

Insurance agents must be mindful that representations made to a prospective purchaser of a policy regarding the scope and extent of coverage may, in certain circumstances, create and/or expand coverage where none otherwise exists under the express terms of the policy. Insurers are advised to instruct their insurance agents about the scope of their policies and keep them abreast of any significant policy amendments.
