

Misrepresentation, Fraud, and the Loss of Coverage Defences

December 10, 2025



canada's insurance
defence network



vos avocats en assurance
partout au canada

About RMC

canada's insurance
defence network



vos avocats en assurance
partout au canada

National Coverage





Zenah Hassan
Kelly Santini LLP
Ottawa



Andrew Loewen
Fillmore Riley LLP
Winnipeg



Russell Mann
CBM Lawyers
Edmonton



Émilie Nadeau
Stein Monast
Quebec City

Today's Panel

Topics

- Misrepresentation or concealment of the facts at the time of application
- Fraud during the claim
- Preserving rights after discovery of a misrepresentation

RMC Webinar– December 10, 2025

Misrepresentation or Concealment of the Facts at the Time of Application under Quebec Civil Law

Mtre Émilie Nadeau,
Partner, Lawyer



Stein Monast

Warning

The content herein does not constitute legal advice but is provided for informational purposes only and is subject to change based on developments in legislation and case law.

Please contact a lawyer for any questions or opinions regarding the subject of this presentation. Any reproduction without authorization from the author or Stein Monast LLP is prohibited.

Introduction

Legal Framework Overview

This presentation covers Articles 2408 to 2411 and 2424 of the Civil Code of Quebec governing the obligation of representation by the client or the insured at the time of application for an insurance contract.

Objectives

Explain the key legal principles regarding the duty to disclose all material information pertaining to the risk to the insurer, the consequences of misrepresentation, and discuss best practices in risk management.

The Initial Risk Disclosure

2408. The client, and the insured if the insurer requires it, is bound to represent all the facts known to him which are likely to materially influence an insurer in the setting of the premium, the appraisal of the risk or the decision to cover it, but he is not bound to represent facts that the insurer knows or is presumed to know because of their notoriety, except in answer to inquiries.

- ❖ **Limit:** No duty to disclose notorious facts the insurer is presumed to know.
- ❖ Notorious facts are those that a reasonably competent insurer must know when conducting business in a particular field.

Examples:

- ❖ The health risk posed by asbestos;
- ❖ Commercial practices of the policyholder's trade in a locality when they are sufficiently widespread and the insurer has a presence in that locality;
- ❖ Technical or scientific elements that are accessible when the insurer already covers similar risks.

Presumption of Good Faith

2409. The obligation with respect to representations is deemed properly met if the representations are such as a normally provident insured would make, if they were made without material concealment and if the facts are substantially as represented.

- ❖ Declarations are presumed to be made in good faith
- ❖ The burden of proof lies on the insurer to establish misrepresentation or concealment.
- ❖ The insured is only bound to act as a prudent, normally careful insured: therefore, the obligation of disclosure is deemed correctly executed when 3 conditions are met:
 1. The declarations are those of a normally prudent insured;
 2. They are made without material concealment;
 3. The circumstances in question are, in substance, consistent with the declarations made.

Jurisprudential Illustration – Initial Risk Disclosure

TiBoeuf inc. v. AssurExperts inc. (2025 QCCS 820)

Failure to disclose criminal record: The insurance policy was declared null and void ab initio, as the court was convinced that the insurer would never have agreed to issue the policy if it had been fully informed of the true circumstances surrounding the insured's criminal past, in particular his conviction for attempted murder and his parole, information which he had failed to disclose as a normally prudent insured would have done.

[47] Le Tribunal ne peut retenir que les défendeurs devaient mettre en doute l'information contenue dans les plumitifs et il appartenait au représentant de l'assuré, M. Alexandre, de dévoiler correctement et entièrement son dossier criminel.

Consequences of Misrepresentations or Concealment of Facts

Two possible outcomes:

a. Nullity ab initio (art. 2410 C.C.Q.)

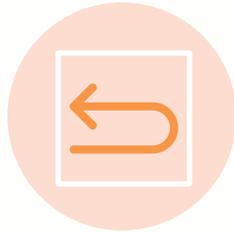
- Contract deemed never to have existed
- Grounds: fraud, or insurer would not have accepted the risk if true facts had been disclosed.

b. Proportional Indemnity (art. 2411 C.C.Q.)

- Contract maintained;
- Indemnity reduced in proportion to the premium paid vs. the correct premium;
- Applicable only in damage insurance.



**PRO RATA
INDEMNITY**



NULLITY AB INITIO

Nullity *Ab initio*

2410. Subject to the provisions on statement of age and risk, any misrepresentation or concealment of the facts by either the client or the insured **nullifies the contract at the instance of the insurer,** even with respect to losses not connected with the risks so misrepresented or concealed.

Jurisprudential Illustration

– False Declarations

A.H. c. Desjardins Sécurité financière, compagnie d'assurance vie, 2021 QCCS 2309

The disability insurance policy was declared null and void *ab initio* by the court, which was convinced that the insurer would not have agreed to issue the policy if it had been informed of the **insured's true and serious medical history (including hospitalizations for psychosis, a suicide attempt, and bipolar disorder)**, information that would have been disclosed if the insured had not falsely declared his status as an employee rather than a self-employed person, thereby preventing the insurer from adequately assessing the risk.

Borghol c. Capitale Assurances générales inc., 2024 QCCQ 2724

The auto insurance policy was declared null and void *ab initio* by the court, which was convinced that the insurer would not have agreed to issue the policy if it had been informed of the true circumstances, specifically that the vehicle was intended for rather than personal use, its odometer read instead of the declared 130,000 km, and it was at a garage at the time of subscription, all of which constituted material false declarations that prevented the insurer from adequately assessing the risk.

Jurisprudential Illustration

El Kabbouri v. Allstate Insurance Company of Canada, 2025 QCCQ 1721

- The contract was declared void *ab initio* since the Court was convinced that the insurer would not have agreed to issue the insurance policy for the vehicle if it had been informed of the true circumstances

[38] *Par ailleurs, le Tribunal est convaincu qu'elle connaissait les antécédents criminels de son conjoint. Elle aurait dû transmettre ces informations à Allstate au moment de souscrire à l'assurance.*

[39] *Le Tribunal est également convaincu, vu les témoignages entendus à l'audience à ce titre et le contexte global, qu'Allstate n'aurait pas accepté d'assurer le véhicule, s'il avait été informé de ces éléments.*

[40] *Le Tribunal est également convaincu qu'un assureur raisonnable n'aurait pas accepté ce risque.*

[42] *Compte tenu de la situation, il y a donc lieu de déclarer le contrat d'assurance nul ab initio.*

Proportional Indemnity

2411. In damage insurance, unless the bad faith of the client is established or unless it is established that the insurer would not have covered the risk if he had known the facts, the insurer remains liable to the insured for such proportion of the indemnity as the premium he collected bears to the premium he should have collected.

Rule: The insurer is still bound by the insurance contract, but the indemnity is reduced in proportion to premium paid vs. premium that should have been paid.

Formula: $\left(\frac{\text{premium received}}{\text{actual premium}} \right) \times \text{indemnity provided} = \text{reduced indemnity}$

Jurisprudential Illustration

9365-0992 Québec inc. c. L'Unique Assurances générales, 2022 QCCQ 8092

- The insurance indemnity was reduced proportionally by the Court, which was convinced that the insurer would not have agreed to the same premium if it had been informed that Mr. Beaulieu, with his driving history, was the actual primary driver, a designation that was knowingly altered to obtain a more favorable rate.

[9] En l'espèce, la prime d'assurance négociée lors de la souscription d'assurance du véhicule a été calculée en fonction du profil de M. Alain Perreault, identifié comme conducteur principal du véhicule de 9365

[10] Or, M. Perreault âgé de 70 ans au moment de la souscription d'assurance ne représentait pas le même risque que M. Beaulieu alors âgé de 31 ans, notamment à cause de leur âge, mais aussi à cause de l'historique de M. Beaulieu en qualités de conducteur impliqué dans des accidents en 2014 et 2016.

[11] Soulignons que c'est en toute connaissance de cause que M. Perreault a été désigné conducteur principal pour profiter d'un meilleur prix d'assurance et d'une prime mensuelle de 957 \$ plutôt que de 1 271 \$.

[12] Ayant découvert la situation en procédant à l'enquête sur le sinistre, l'Unique a décidé d'indemniser 9365 en proportion du pourcentage de la prime qu'elle aurait dû percevoir. C'est ainsi qu'elle a calculé devoir ne verser que 75,3 % de l'indemnité d'assurance.



Life and Health Insurance

2424. In the absence of fraud, misrepresentation or concealment as to risk does not justify the annulment or reduction of insurance which has been in force for two years.

However, this rule does not apply in the case of disability insurance if the disability begins during the first two years of the insurance.

Jurisprudential Illustration

Paul-Hus v. Sun Life Canada, Life Insurance Company, 2023 QCCS 3890
(confirmed by 2025 QCCA 41)

- Insurance policy declared void ab initio for fraudulent non-disclosure. Insured failed to disclose severe symptoms and ongoing neurological investigations.
- Misrepresentations during the March 17, 2015 phone interview (answered “no” to key medical questions).

Actual medical situation:

- Weakness in his left hand since 2013
- EMG done
- MRI + biopsy ordered
- Neurosurgeon referral

Court : Omissions were intentional and distorted risk assessment (2424 C.c.Q.).

Conclusion : Insurer would not have issued the policy and the claim is dismissed.

Jurisprudential Illustration

Rolland v. Industrial Alliance, 2025 QCCQ 1915

- Insurance policy declared void ab initio due to misrepresentation about hypertension.
- Insured claimed condition was “well controlled” despite postponed surgery and new medication.
- Insured discovered undeclared severe hypertension and repeated non-compliance.

Application of the rule for contracts of less than two years (2424 C.c.Q.)

- The insurance policy came into effect on June 20, 2018 and Mr. Rolland filed his claim for disability due to serious illness on March 30, 2020.
- **Exception for disability insurance:** When disability occurs during first 2 years, insurer is not required to prove fraud.

Court : Since the onset of Mr. Rolland’s disability occurred during the first 2 years of the insurance policy, the insurer’s proof of a simple misrepresentation or concealment was sufficient without having to prove fraud.

Conclusion : Insurer was justified in canceling the insurance policy and refunding the premiums.



Increase in Risk

2466. The insured is bound to promptly notify the insurer of any circumstances that increases the risks stipulated in the policy and that result from events within its control if they are such as to materially influence an insurer in setting the rate of the premium, appraising the risk or deciding to continue to insure it.

If the insured fails to discharge this obligation, the provisions of Article 2411 apply, adapted as required.

Jurisprudential Illustration

Weekes c. BelairDirect, 2025 QCCQ 428

- The insurance policy was retroactively terminated by the court, which was convinced that the insurer would not have maintained coverage if it had been informed that the claimant resided in Ontario, which constituted an undeclared aggravation of risk.

[15] *Le Tribunal doit déterminer si le demandeur a changé de résidence pendant la durée de la police puis, le cas échéant, si cela constitue une aggravation du risque justifiant la résiliation de la police d'assurance.*

[25] *L'appréciation des facteurs aggravant le risque, suffisamment importants pour mettre fin au contrat d'assurance, se fait selon le critère de l'assureur raisonnable placé dans les mêmes circonstances en fonction d'un critère objectif. Ainsi, une police d'assurance-automobile peut être résiliée si l'assuré manque à son devoir de déclarer une aggravation du risque.*

[26] *La défenderesse a démontré que le coût de l'assurance-automobile diffère entre le Québec et l'Ontario, étant de manière générale plus cher dans cette province, notamment en raison d'un régime juridique différent. La défenderesse ne vend pas elle-même d'assurance-automobile en Ontario puisque la tarification serait différente. Si la défenderesse avait été avisée par le demandeur qu'il résidait en Ontario, elle lui aurait donné un délai de 30 jours pour trouver un autre assureur et l'assurance n'aurait pu être maintenue au-delà de cette période.*



Best Practices For Risk Management

For insurers:

- Draft clear questionnaires;
- Document the answers carefully;
- Be proactive in renewals and follow-ups.

For brokers:

- Ensure clients understand the scope of disclosure.
- Explain consequences of omission or misrepresentation.

Misrepresentation of the Facts at the time of Application

Zenah Hassan

December 10, 2025

AGENGA

1. **Duty to disclose and coverage invalidity from misrepresentation in life insurance policies**
(Mohammad v. The Manufacturers Life Insurance Company, 2020)
2. **Availability and procedure for termination in automobile insurance policies**
(Merino v. ING Insurance, 2019)

LIFE INSURANCE POLICY RE OBLIGATION TO DISCLOSE MATERIAL FACTS

Duty to disclose

183(1) An Applicant for insurance and a person whose life is to be insured shall each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within the person's knowledge that is material to the insurance and is not so disclosed by the other. R.S.O. 1990, c. I.8, s. 183 (1).

Failure to disclose

(2) Subject to section 184 and subsection (3) of this section, a failure to disclose, or a misrepresentation of, such a fact renders the contract voidable by the insurer. R.S.O. 1990, c. I.8, s. 183 (2); 2012, c. 8, Sched. 23, s. 18 (1).

Incontestability in group insurance, creditor's group insurance

(3) In the case of a contract of group insurance or of creditor's group insurance, a failure to disclose, or a misrepresentation of, such a fact in respect of a person whose life is insured under the contract does not render the contract voidable, but,

(a) if the failure to disclose or misrepresentation relates to evidence of insurability specifically requested by the insurer at the time of application for the insurance in respect of the person, the insurance in respect of that person is voidable by the insurer; and

(b) if the failure to disclose or misrepresentation relates to evidence of insurability specifically requested by the insurer at the time of application for an addition, increase or change referred to in subsection 183 (3) in respect of the person, the addition, increase or change in respect of that person is voidable by the insurer, unless the insurance, addition, increase or change has been in effect for two years during the lifetime of that person, in which case the insurance, addition, increase or change is not, in the absence of fraud, voidable. 2012, c. 8, Sched. 23, s. 19 (3).

MOHAMMAD v. THE MANUFACTURERS LIFE INSURANCE COMPANY, 2020

Facts

- In the spring of 1997, Mahmoud and Fadia Mohammad came to Canada
- In April of 1997, Mahmoud and Fadia completed an application for life insurance
- In 2013, Mahmoud was deported to Lebanon due to his past and his misrepresentation of his past when seeking status in Canada
- In 2015, Mahmoud passed away from lung cancer. After Mahmoud passed away, Fadia submitted a claim to be paid the death benefit under the life insurance policy.
- Manulife denied payment.

MOHAMMAD v. THE MANUFACTURERS LIFE INSURANCE COMPANY, 2020

Trial Decision

- Justice O'Brien held that there was no misrepresentation in Mahmood providing his SIN or failing to disclose information about his criminal history and citizenship status.

MOHAMMAD v. THE MANUFACTURERS LIFE INSURANCE COMPANY, 2020

Test for Civil Fraud

The insurer must establish on a balance of probabilities:

1. A false representation made by the insured
2. Some level of knowledge of the falsehood or representation on the part of the insured, whether through knowledge or recklessness
3. The false representation caused the insurer to act; and
4. The insurer's actions resulted in a loss

Bruno Appliance and Furniture Inc. v Hryniak, 2014 SCC

MOHAMMAD v. THE MANUFACTURERS LIFE INSURANCE COMPANY, 2020

Trial Decision

Justice O'Brien stated that even if there was misrepresentation, the misrepresentation was not done fraudulently

- Manulife needed to prove that Mahmoud had knowledge of or was reckless in failing to disclose the information that they now say is material
- If Mahmoud is not aware of the materiality of the information, there is no fraud in the failure to communicate it.
- Mahmoud was well aware of his criminal past and his misrepresentation on entry into Canada. However, it was not established that he knew this was material to life insurance and needed to be disclosed

MOHAMMAD v. THE MANUFACTURERS LIFE INSURANCE COMPANY, 2020

Court of Appeal Decision

The Court of Appeal allowed the appeal, it set aside the trial judge's decision and dismissed the action.

The Court of Appeal found that there was a failure to reveal material facts by Mahmoud and that he intentionally hid his citizenship status and criminal history from Manulife which is sufficient to establish fraud.

MOHAMMAD v. THE MANUFACTURERS LIFE INSURANCE COMPANY, 2020

TAKEAWAYS:

- An insured has a disclosure obligation and failure to discharge said obligation could invalidate coverage.
- Some information is so fundamental to the underwriting process that an insurer does not need to specifically ask for said information as part of the application process.
- Coverage counsel should be retained promptly upon the discovery of any undisclosed facts.

MERINO v. ING INSURANCE COMPANY OF CANADA, 2019

Facts

- On September 12, 2002, Karla Merino was struck by a car driven by Timothy Klue.
- Mr. Klue and his wife, Sonia Abou-Khalil were joint owners of the car
- Mr. Klue and Ms. Abou-Khalil applied for automobile insurance coverage over 3 months before the accident occurred and the insurer, ING Insurance Company of Canada had issued a one-year policy
- However, because of non-disclosure and misrepresentations in the application, ING purported to terminate the insurance contract shortly after it issued the policy.

MERINO v. ING INSURANCE COMPANY OF CANADA, 2019

- **Facts continued**
- On July 2, 2002, ING sent a letter to Ms. Abou-Khalil and Mr. Klue to terminate the insurance contract. The letter referenced the non-disclosure and proclaimed that the policy was “void from the inception date”.
- On March 19, 2003, Ms. Merino’s lawyer sent a notice letter to Ms. Abou-Khalil. An ING adjuster responded to said letter stating that neither Mr. Klue nor Ms. Abou-Khalil had an automobile policy with it and enclosed a copy of the rescission letter dated July 2, 2002.

MERINO v. ING INSURANCE COMPANY OF CANADA, 2019

- **Facts continued**
- Based on ING's position, Ms. Merino's lawyer sued Ms. Abou-Khalil and Mr. Klue, along with Ms. Merino's mother's insurer for uninsured motorist coverage.
- Although, neither Ms. Abou-Khalil and Mr. Klue defended the action, in July 2011, Ms. Merino obtained judgement for \$2,000,000.
- In April of 2012, Ms. Merino's lawyer sued ING to recover the judgement on the basis that the policy was not validly terminated before the accident
- ING maintains that the contract of insurance between Ms. Abou-Khalil and Mr. Klue did not exist at the time of the accident because it had validly rescinded the policy on July 2, 2002.

MERINO v. ING INSURANCE COMPANY OF CANADA, 2019

ING's Position

- ING stated that upon discovery of a material misrepresentation or non-disclosure made in an application for insurance, an insurer may elect to do one of the three things:
 1. It may rescind the contract (treat the policy as void ab initio) and return all paid premiums to the purported insured. If it invokes this course of action, it must declare its election to the insured (common law);
 2. It may retain the premium and treat the contract as valid and subsisting (common law); or
 3. It may treat the policy as valid but cancel it unilaterally in accordance with the statutory conditions application to the termination of a contract of automobile insurance made pursuant to the act.

MERINO v. ING INSURANCE COMPANY OF CANADA, 2019

Motion Judgement

- Justice Verbeem held that ING was entitled to rescind the contract of automobile insurance that it made with Ms. Abou-Khalil and Mr. Klue after it discovered their material representation in the related application
- Justice Verbeem stated that the rescission was effective even though ING did not provide the required notice under Section 11 of Statutory Conditions-O. Reg. 777/93.
 - 15 days notice by registered mail OR
 - 5 days notice by personal delivery
- Justice Verbeem held that ING could rescind the policy at common law based on the doctrine of misrepresentation and in fact did so by its letter of July 2, 2002

MERINO v. ING INSURANCE COMPANY OF CANADA, 2019

Court of Appeal Decision

- The Court of Appeal set aside the judgement and reasons of the motion judge and declared that the contract of insurance remained in place on the date of the accident.
- The Court of Appeal stated that insurers had to comply with section 11 of the Statutory Conditions in order to validly terminate an automobile insurance contract.
- Insurers cannot rescind an automobile insurance contract at common law ab initio.
- In the case at bar, ING did not follow the process outlined in section 11 of the Statutory Conditions and as a result the policy was still in effect when the accident happened.

MERINO v. ING INSURANCE COMPANY OF CANADA, 2019

TAKEAWAYS

Insurers have obligations even in the case of misrepresentations and cannot act as though an insurance contract is terminated without providing notice under section 11 of the Statutory Conditions- O. Reg. 777/93.



Insurance Fraud in Alberta

Presented By:
Russell Mann, Partner



Overview

- Statutory Framework

S. 554(1)(b) and (c) of the *Insurance Act*, RSA 2000, c. I-3

- Key Case

Abbas v. Esurance Insurance Company of Canada, 2023 ABCA 36

Statutory Authority: Section 554

Section 554 of the *Insurance Act* provides that:

- A claim by an insured is invalid and they forfeit their right to recover indemnity if they:
 - Contravene a term of the contract or commit a fraud, or
 - Willfully make a false statement in respect of the claim under the contract.

Case Overview:

Abbas v. Esurance Insurance Company of Canada, 2023 ABCA 36

- Insured was a passenger in a MVA being driven by an uninsured motorist and sustained injuries
- Insured sought Section B and SEF 44 coverage through his insurer

Section B Claim:

- Insured knowingly lied about his employment status and provided adjuster with a false employer's certificate
- Admitted to the fraud and dropped his Section B claim

SEF 44 Claim:

- Commenced action against Esurance re his SEF 44 endorsement
- Esurance sought Summary Dismissal of action on basis that the insured committed fraud within the Section B claim and his right to recover indemnity was forfeited for the entirety of coverage under the insurance policy for same event

History of Decision

- Summary Dismissal denied at Master's level, who determined:
 - Would be “patently unfair” to the insured to deprive him of the SEF 44 benefits when the subject matter of fraud was entirely unrelated to the eligibility criteria for SEF 44 benefits
 - Forfeiture under s. 554 only relates to a claim that is materially connected to the fraud
- Esurance successfully appealed
- Alberta Court of Appeal upheld decision to dismiss the SEF 44 action

Main Issue

- Did the insured's fraud within the Section B claim result in a denial of coverage for the entirety of the insurance contract for the same event pursuant to s. 554 of the *Insurance Act*?

Key Determinations

The Court of Appeal confirmed the following definitions:

- **Fraud:** “a knowing misrepresentation or knowing concealment of a material fact to induce another to act to his or her detriment”
- **False Statement:** “an untrue statement knowingly made with the intent to mislead”

Key Determinations

The Court of Appeal verified that:

- The fraud/willfully false statement needs to be material to one of the claims.
- It cannot be trivial and have no impact on any claim
- If the fraud/willfully false statement is material to one of the claims, the entire policy is invalid for any claims within the policy arising out of the same event, regardless of materiality.

Key Determinations

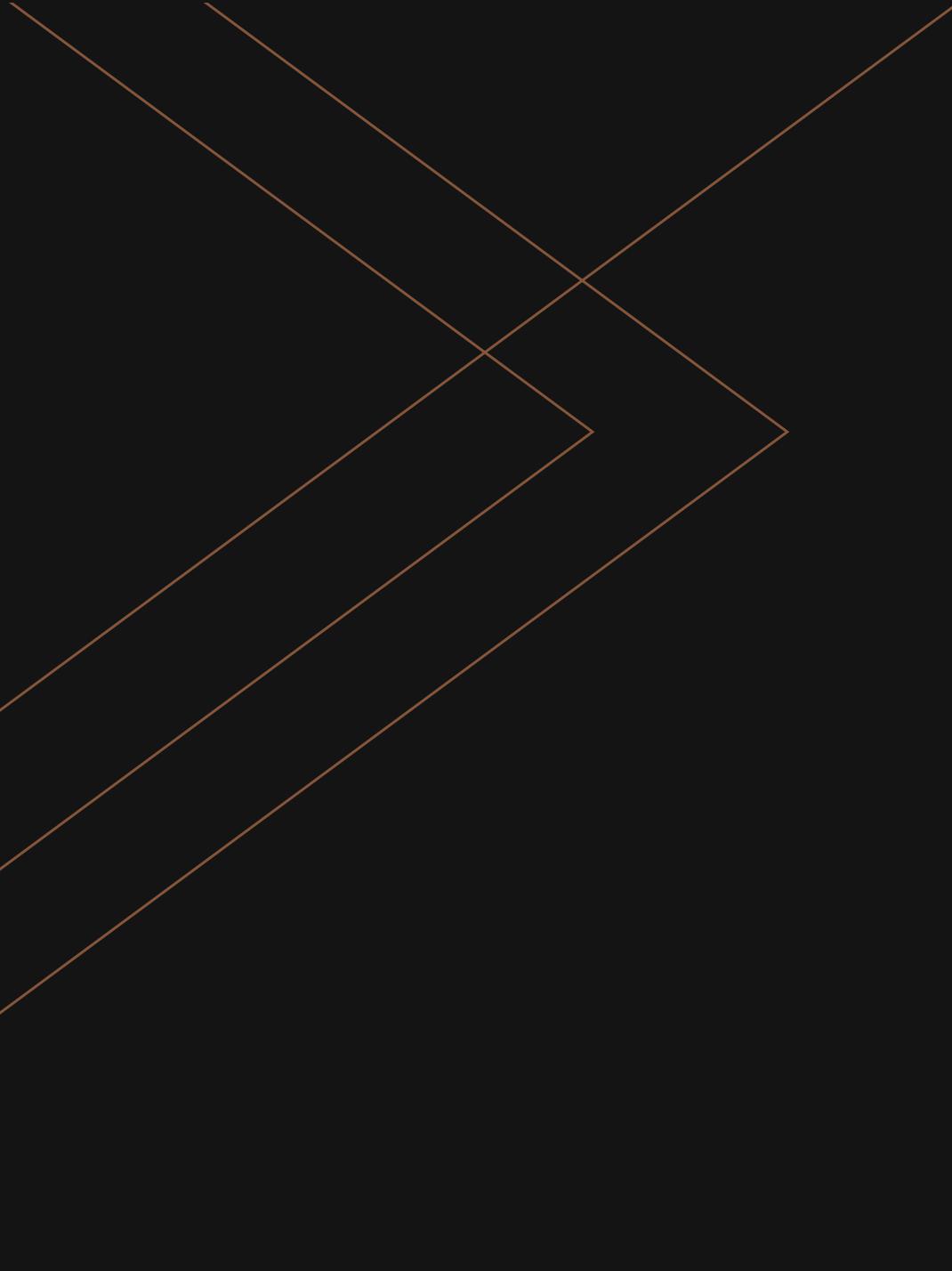
- Despite confirming the insured's fraud had no impact on his SEF 44 eligibility, the Court of Appeal upheld the decision to dismiss the insured's claim due to the fraud within his Section B claim.

Practical Considerations

- The onus is on the insurer to establish fraud
- Fraud is a serious allegation that isn't taken lightly by the Courts
- Look for:
 - Late reporting of a loss
 - Inconsistent versions of events
 - Cash payments
 - Missing receipts
 - Financial stressors
 - Repeated claims history

Fraud Investigation Best Practices

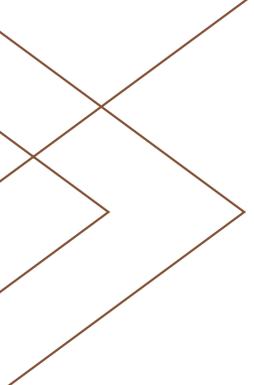
- Maintaining communication throughout all lines of an insured's claim stemming from the same event
- Maintain good notes/records throughout a claims process
- Obtain and preserve complete statements early
 - Obtaining recorded statements by an insured when possible
- Prioritize written correspondence in clear language
 - Document all conversations in writing
- Review and compare an insured's version of events across all the documentation



FillmoreRiley

Preserving Rights

Andrew Loewen



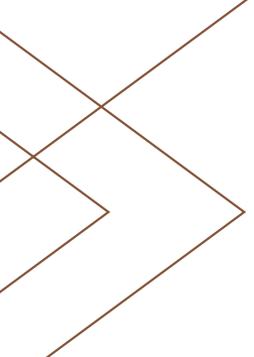
Preserving Rights

Problem: If you discover a misrepresentation or fraudulent omission, you can lose the right to void the policy and be liable for the claim.

Solution: know what to do and what not to do to preserve the right to void.

Terminology:

- Void ab initio
- voidable
- waiver
- affirming / affirmation
- estoppel
- election



Millican v. Scottish Metropolitan Assurance, 1923

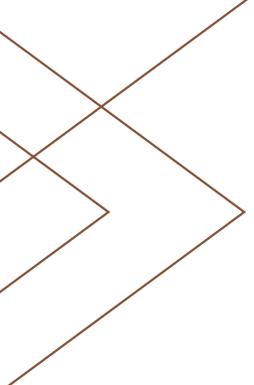
“Assuming that the misrepresentations were material ... The policy was voidable. Two courses were open to the defendant (insurer):

- (1) To **disaffirm** the policy *ab initio* and return the full year’s premium ...
- (2) To **affirm** the policy and retain the premium and allow the plaintiff to retain the money paid to him and at any time during the term, if it so desired, to cancel the policy without cause, in the manner provided by the policy, repaying the unearned portion of the current year’s premium.

“The company could elect either course but not both, the one being inconsistent with the other.”

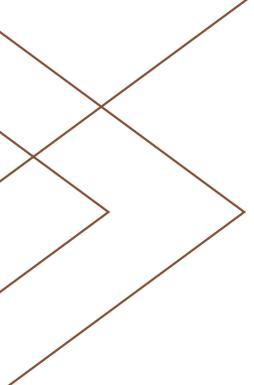
“In my opinion it exercised the second option, although it did not intend by doing so to waive the benefit of the misrepresentation.”

“The question is not whether there was an intention to waive, but whether there was an intention to do what had the effect of affirming the policy”



***Millican* (continued)**

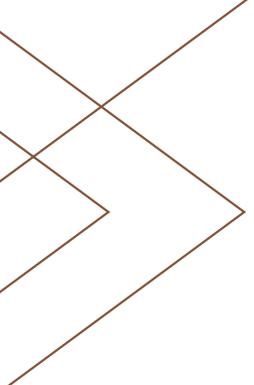
- “The cancellation of the policy from the first of September under the terms and provisions of the policy **and** the retention of the portion of the premium up to that date are surely inconsistent with the claim that the policy was void *ab initio* and amounted to an **unequivocal affirmance** of it up to the date of its cancellation.”
- While old, *Millican* has been cited fairly recently (*LeDuc v. State Farm* – 1999, *Swiss Re v. Camarin*, 2012)



Abbi v. Klippert, 1969

Similar to *Millican*, different kind of policy

- “This [misrepresentation] would have been a complete answer to the plaintiff’s claim, if the defendant had not, **with full knowledge of the facts**, treated the policy as effective, by charging premiums up to the date of cancellation.”



Hansra v. York, 1982

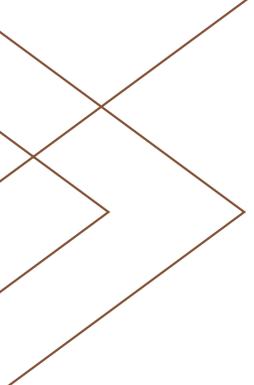
Misrep discovered *before* loss: estoppel

“On learning of a misrepresentation in an application for insurance, the insurer has three courses open to it:

(a) It may treat the policy as void *ab initio* and refund the premiums. If it chooses this position the insurance company must declare it.

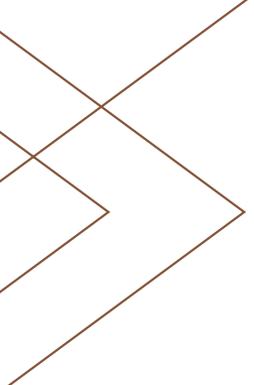
(b) It may retain the premium and treat the contract as valid and subsisting.

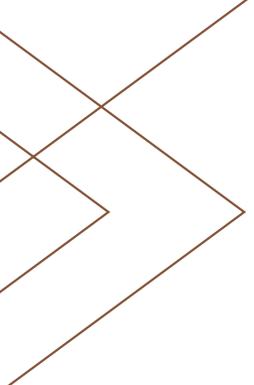
(c) It may treat the policy as valid but cancel unilaterally in accordance with the statutory conditions for unilateral termination”



Hansra (continued)

- “the plaintiff’s driving record was known ... several days before the letter of January 7, 1981, declaring the policy void and refunding the premium, was written.”
- “**By its conduct** in failing to advise the plaintiff **immediately** that it elected to treat the policy as void...and in paying the [theft] claim... **the company represented** to the plaintiff that it considered the policy as being valid and subsisting... **He relied** on the representation created by the insurer’s conduct, that his insurance was valid, and did not apply for insurance coverage with another insurer or cease to drive his car. The insurer should therefore be **estopped** from relying on the defence of Mr. Hansra’s misrepresentation.”
- “The very essence of estoppel is that it prevents a person from relying on strict contractual rights.”

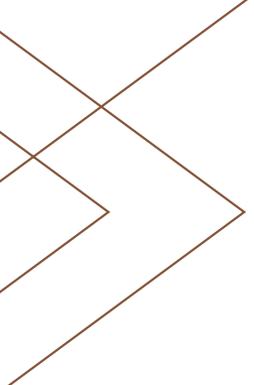
- 
- Estoppel can arise where a representation is made by way of words or conduct by one party to effect that the legal relationship between the parties will be altered, which representation is then *relied on* or *acted on* by a second party.
 - Once the second party has acted in reliance on the representation, the first party cannot revert to the previous legal relationship / status quo, if that would be unfair or unjust, in that the second party would suffer a detriment.



G.E.S Construction v. Can-Sure Underwriting, 2024

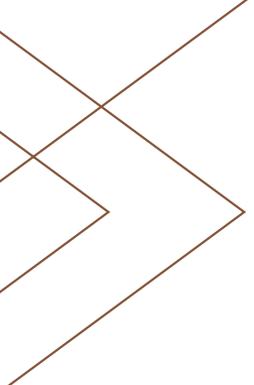
The Insurer wins!

- Insured contractor mispresents nature of business (landscaping & snow removal vs. construction);
- Insurer discovers misrepresentation, concludes it has grounds to void policy;
- Insurer accepts a renewal application & premium with full knowledge. That renewal later cancelled with ‘unearned’ portion only refunded
- Only thereafter does Insurer deny claim due to policy being void *ab initio* & return all premiums.
- Contractor sues for declaration of duty to defend and indemnify, asserts waiver and estoppel, and relies on “three options” from ***Hansra***. Argues: the renewal was inconsistent with the policy being *void ab initio*.



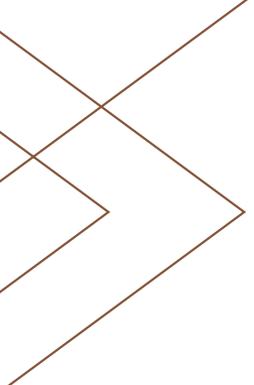
G.E.S Construction (continued)

- Why does Insurer win? Insurer had:
 - timely notified the insured of the misrepresentation;
 - issued a non-waiver letter; and
 - clearly communicated that the Renewal was tentative and contingent on the water breach claim being withdrawn.
- Court:
 - No Waiver because: Waiver requires 1) full knowledge of rights; and 2) **unequivocal and conscious intention** to abandon those rights (*Sask River Bungalows*)
 - Query: is this consistent with *Millican*?
 - No Estoppel because: misrepresentation not discovered until *after* water loss. Nothing insurer did / said after water loss could possibly be relied on by Insured to its detriment in respect of that water loss.



Mistakes to Avoid

- Any conduct or communications inconsistent with the policy being void *ab initio* taken **after** insurer has knowledge of the misrep / omission creates risk, including:
 - Terminating the policy *at a given date* (not back to its inception);
 - Returning only a portion of the premium;
 - Honouring a claim after discovery of misrep;
 - Issuing non-conditional letter confirming coverage.
- Allowing insured to incur further risk in belief coverage in place.



Things to do:

- Send Reservation of Rights letter
- Issue full premium refund
- Notify early
- Key is your conduct after knowledge of the grounds to avoid the policy

Abbi v. Klippard “with full knowledge of the facts”...



Zenah Hassan
Kelly Santini LLP
Ottawa



Andrew Loewen
Fillmore Riley LLP
Winnipeg



Russell Mann
CBM Lawyers
Edmonton



Émilie Nadeau
Stein Monast
Quebec City

Questions?