Foreword

This book, a project of the Life Insurance Law Committee of the Tort Trial and Insurance Practice Section of the American Bar Association, is intended to provide practitioners with an overview of the law in each of the 50 states, the District of Columbia, and the federal circuits regarding misrepresentations in the context of life, health, and disability applications.

The book is organized by jurisdiction. There is a chapter for each state and the District of Columbia that addresses how state common law and statutes address misrepresentations in the life, health, and disability insurance application context. In addition, there is a chapter for each federal circuit that provides an overview of misrepresentations in the context of an employee welfare benefit plan governed by the Employee Retirement Income Security Act (ERISA).

You will find each of the state law chapters are organized according to the following outline:

I. The Claim
   A. Prima Facie Case
   B. Statutes Governing Misrepresentations
      • Application Attached to Policy
      • Incontestability
         — Reinstated Policies
      • Affordable Care Act
   C. Material Misrepresentations as a Matter of Law
   D. Increased Risk of Loss
   E. Fraudulent Misrepresentations
      • Intent to Deceive
   F. Changes between Time of Application and Issuance of Policy
   G. Relationship between Misrepresentation and Loss
   H. Remedies and Process
      • Retention of Premium
      • Interest

II. Defenses
   A. Knowledge of Agent
      • Faithless Agent
   B. Errors in Recording
   C. Innocent Misrepresentations
      • Knowledge and Belief
D. Failure or Inability to Read
E. Duty to Inquire
   • Post-Claim Underwriting
F. Statute of Limitations
   • Tolling
   • Discovery Rule
G. Estoppel/Waiver
   • Acceptance of Premium
   • Failure to Act

The purpose of this book is to address how misrepresentations by the applicant/insured are treated under the applicable law. It does not address misrepresentations by an insurer, except in the context of an ERISA plan.

Many hours of effort have gone into this publication. This is the second edition of this book, which was first published in 2009. The authors and editors are experienced attorneys who have practiced in this area of law for years. We believe that the book will be a useful tool for any practitioner—whether representing an insured or an insurer—or in-house counsel. We hope we have touched on all of the relevant issues that arise in the context of a misrepresentation claim concerning a life, health, or disability insurance policy. However, we intend to keep this publication current. Readers are invited to submit any comments regarding the current or proposed content. We hope you find this to be a valuable tool in your practice.

Joseph M. Hamilton