Contents

Acknowledgments xliii
Foreword xliv
About the Editor xlvii
About the Contributors xlix

PART I
STATES AND THE DISTRICT OF COLUMBIA

Alabama 3
Betsy P. Collins
Atoyia A. Scott

I. The Claim 3
   A. Prima Facie Case 3
   B. Statutes Governing Misrepresentations 4
      1. Application Attached to the Policy 4
      2. Incontestability 5
      3. Affordable Care Act 5
   C. Material Misrepresentations as a Matter of Law 6
   D. Increased Risk of Loss 7
   E. Fraudulent Misrepresentations 8
   F. Changes between Time of Application and Issuance of Policy 8
   G. Relationship between Misrepresentation and Loss 8
   H. Remedies and Process 9

II. Defenses 9
   A. Knowledge of Agent 9
   B. Errors in Recording 10
   C. Innocent Misrepresentations 10
   D. Failure or Inability to Read 11
   E. Duty to Inquire 11
   F. Statute of Limitations 12
   G. Estoppel/Waiver 12
      1. Acceptance of Premium 12
      2. Failure to Act 13
Alaska 15

Michael B. Baylous
Brewster H. Jamieson

I. The Claim 15
A. Prima Facie Case 15
B. Statutes Governing Misrepresentations 16
C. Material Misrepresentations as a Matter of Law 16
D. Increased Risk of Loss 16
E. Fraudulent Misrepresentations 17
F. Changes between Time of Application and Issuance of Policy 17
G. Relationship between Misrepresentation and Loss 17
H. Remedies and Process 17

II. Defenses 18
A. Knowledge of Agent 18
   1. Faithless Agent 18
B. Errors in Recording 18
C. Innocent Misrepresentations 18
   1. Knowledge and Belief 18
D. Failure or Inability to Read 18
E. Duty to Inquire 18
F. Statute of Limitations 18
   1. Tolling 19
   2. Discovery Rule 19
G. Estoppel/Waiver 19
   1. Acceptance of Premium 19
   2. Failure to Act 19

Arizona 21

Stephen M. Bressler
Jason M. Porter

I. The Claim 21
A. Prima Facie Case 21
B. Statutes Governing Misrepresentations 22
   1. Affordable Care Act 22
C. Material Misrepresentations as a Matter of Law 23
D. Increased Risk of Loss 23
E. Fraudulent Misrepresentations 23
F. Changes between Time of Application and Issuance of Policy 24
G. Relationship between Misrepresentation and Loss 25
H. Remedies and Process 25
   1. Retention of Premiums and Interest 25
   2. Rescission Process 25
   3. Costs and Attorneys’ Fees 26
II. Defenses 27
   A. Knowledge of Agent 27
   B. Errors in Recording 27
   C. Innocent Misrepresentations 27
   D. Failure or Inability to Read 27
   E. Duty to Inquire 28
   F. Statute of Limitations 28
      1. Disability and Health Insurance 28
      2. Life Insurance 28
   G. Estoppel/Waiver 29
      1. Acceptance of Premium 29
      2. Failure to Act 29

Arkansas 31
David M. Donovan
I. The Claim 31
   A. Prima Facie Case 31
   B. Statutes Governing Misrepresentations 32
      1. Application Attached to Policy 32
      2. Incontestability 32
      3. Reinstated Policies 32
      4. Affordable Care Act 32
   C. Material Misrepresentations as a Matter of Law 33
   D. Increased Risk of Loss 33
   E. Fraudulent Misrepresentations 34
      1. Intent to Deceive 34
   F. Changes between Time of Application and Issuance of Policy 34
   G. Relationship between Misrepresentation and Loss 34
   H. Remedies and Process 35
      1. Retention of Premium 35
      2. Interest 35

II. Defenses 35
   A. Knowledge of Agent 35
      1. Faithless Agent 36
   B. Errors in Recording 36
   C. Innocent Misrepresentations 36
      1. Knowledge and Belief 36
   D. Failure or Inability to Read 37
   E. Duty to Inquire 37
      1. Post-Claim Underwriting 37
   F. Statute of Limitations 37
      1. Tolling/Discovery Rule 38
   G. Estoppel/Waiver 38
      1. Acceptance of Premium 38
      2. Failure to Act 38
Contents

California 39
Nicole Y. Blohm
Jason A. James
Linda M. Lawson
I. The Claim 39
   A. Prima Facie Case 39
   B. Statutes Governing Misrepresentations 39
      1. Application Attached to Policy 39
      2. Incontestability 40
      3. Reinstated Policies 41
      4. Affordable Care Act 41
   C. Material Misrepresentations as a Matter of Law 42
   D. Increased Risk of Loss 42
   E. Fraudulent Misrepresentations 42
   F. Changes between Time of Application and Issuance of Policy 43
   G. Relationship between Misrepresentation and Loss 43
   H. Remedies and Process 44
II. Defenses 45
   A. Knowledge of Agent 45
      1. Faithless Agent 45
   B. Errors in Recording 45
   C. Innocent Misrepresentations 46
   D. Failure or Inability to Read 46
   E. Duty to Inquire 47
      1. Post-Claim Underwriting 47
   F. Statute of Limitations 47
      1. Tolling 48
      2. Discovery Rule 48
   G. Estoppel/Waiver 48
      1. Acceptance of Premium 49
      2. Failure to Act 49

Colorado 51
Clinton P. Swift
I. The Claim 51
   A. Prima Facie Case 51
   B. Statutes Governing Misrepresentations 52
      1. Application Attached to Policy 52
      2. Incontestability 52
      3. Affordable Care Act 53
   C. Material Misrepresentations as a Matter of Law 53
   D. Increased Risk of Loss 54
   E. Fraudulent Misrepresentations 54
   F. Changes between Time of Application and Issuance of Policy 54
G. Relationship between Misrepresentation and Loss 54
H. Remedies and Process 55

II. Defenses 55
   A. Knowledge of Agent 55
      1. Faithless Agent 55
   B. Errors in Recording 56
   C. Innocent Misrepresentations 56
      1. Knowledge and Belief 56
   D. Failure or Inability to Read 56
   E. Duty to Inquire 57
      1. Post-Claim Underwriting 57
   F. Statute of Limitations 57
      1. Tolling 57
      2. Discovery Rule 58
   G. Estoppel/Waiver 58
      1. Acceptance of Premium 59
      2. Failure to Act 59

Connecticut 61
   Patricia R. Rich 61
I. The Claim 61
   A. Prima Facie Case 61
   B. Statutes Governing Misrepresentations 62
      1. Application Attached to Policy 62
      2. Incontestability 62
      3. Reinstated Policies 63
      4. Connecticut Health Insurance Fraud Act 63
      5. Affordable Care Act 63
   C. Material Misrepresentations as a Matter of Law 64
   D. Increased Risk of Loss 65
   E. Fraudulent Misrepresentations 65
   F. Changes between Time of Application and Issuance of Policy 66
   G. Relationship between Misrepresentation and Loss 66
   H. Remedies and Process 66
      1. Retention of Premium 66
      2. Interest 66
II. Defenses 67
   A. Knowledge of Agent 67
      1. Faithless Agent 67
   B. Errors in Recording 67
   C. Innocent Misrepresentations 68
   D. Failure or Inability to Read 68
   E. Duty to Inquire 68
      1. Post-Claim Underwriting 69
   F. Statute of Limitations 69
      1. Tolling/Discovery Rule 69
Contents

G. Estoppel/Waiver 70
  1. Acceptance of Premium 70
  2. Failure to Act 70

Delaware 71
Randi F. Knepper
I. The Claim 71
  A. Prima Facie Case 71
  B. Statutes Governing Misrepresentations 72
    1. Application Attached to Policy 72
    2. Incontestability 73
    3. Affordable Care Act 73
  C. Material Misrepresentations as a Matter of Law 74
  D. Increased Risk of Loss 75
  E. Fraudulent Misrepresentations 75
    1. Intent to Deceive 75
  F. Changes between Time of Application and Issuance of Policy 76
  G. Relationship between Misrepresentation and Loss 76
  H. Remedies and Process 76
    1. Retention of Premium 76

II. Defenses 77
  A. Knowledge of Agent 77
    1. Faithless Agent 77
  B. Errors in Recording 77
  C. Innocent Misrepresentations 78
    1. Knowledge and Belief 78
  D. Failure or Inability to Read 78
  E. Duty to Inquire 78
  F. Statute of Limitations 79
    1. Tolling 79
    2. Discovery Rule 79
  G. Estoppel/Waiver 79
    1. Acceptance of Premium 80
    2. Failure to Act 80

District of Columbia 81
Dawn B. Williams
I. The Claim 81
  A. Prima Facie Case 81
  B. Statutes Governing Misrepresentations 81
    1. Application Attached to Policy 81
    2. Incontestability 82
    3. Affordable Care Act 82
  C. Material Misrepresentations as a Matter of Law 83
Contents  ix

D. Increased Risk of Loss 83
E. Fraudulent Misrepresentations 84
   1. Intent to Deceive 84
F. Changes between Time of Application and Issuance
   of Policy 84
G. Relationship between Misrepresentation and Loss 85
H. Remedies and Process 85
   1. Retention of Premium 85
   2. Interest 85
II. Defenses 85
   A. Knowledge of Agent 85
      1. Faithless Agent 86
   B. Errors in Recording 86
   C. Innocent Misrepresentations 86
      1. Knowledge and Belief 86
   D. Failure or Inability to Read 87
   E. Duty to Inquire 87
      1. Post-Claim Underwriting 87
   F. Statute of Limitations 88
      1. Tolling 88
      2. Discovery Rule 88
   G. Estoppel/Waiver 89
      1. Acceptance of Premium 89
      2. Failure to Act 89

Florida 91
Daniel L. Burkard
Betsy P. Collins
Gillian W. Egan
I. The Claim 91
   A. Prima Facie Case 91
   B. Statutes Governing Misrepresentations 92
      1. Application Attached to Policy 92
      2. Incontestability 92
      3. Affordable Care Act 93
   C. Material Misrepresentations as a Matter of Law 94
   D. Increased Risk of Loss 94
   E. Fraudulent Misrepresentations 94
   F. Changes between Time of Application and Issuance
      of Policy 95
   G. Relationship between Misrepresentation and Loss 95
   H. Remedies and Process 95
II. Defenses 96
   A. Knowledge of Agent 96
   B. Errors in Recording 96
Contents xi

C. Material Misrepresentations as a Matter of Law 110
D. Increased Risk of Loss 111
E. Fraudulent Misrepresentations 112
  1. Intent to Deceive 112
F. Changes between Time of Application and Issuance
   of Policy 112
G. Relationship between Misrepresentation and Loss 112
H. Remedies and Process 112
  1. Retention of Premium 113
  2. Interest 113
II. Defenses 113
   A. Knowledge of Agent 113
      1. Faithless Agent 113
   B. Errors in Recording 114
   C. Innocent Misrepresentations 114
      1. Knowledge and Belief 114
   D. Failure or Inability to Read 114
   E. Duty to Inquire 114
      1. Post-Claim Underwriting 114
   F. Statute of Limitations 114
      1. Tolling 115
      2. Discovery Rule 115
   G. Estoppel/Waiver 115
      1. Acceptance of Premium 115
      2. Failure to Act 115
Idaho 117

Samuel A. Diddle 117

I. The Claim 117
   A. Prima Facie Case 117
   B. Statutes Governing Misrepresentations 118
      1. Affordable Care Act 118
   C. Material Misrepresentations as a Matter of Law 119
   D. Increased Risk of Loss 119
   E. Fraudulent Misrepresentations 119
   F. Changes between Time of Application and Issuance
      of Policy 120
   G. Relationship between Misrepresentation and Loss 120
   H. Remedies and Process 120
II. Defenses 120
   A. Knowledge of Agent 120
   B. Errors in Recording 120
   C. Innocent Misrepresentations 121
   D. Failure or Inability to Read 121
   E. Duty to Inquire 121
   F. Statute of Limitations 121
Contents

G. Estoppel/Waiver 122
  1. Acceptance of Premium 122
  2. Failure to Act 122

Illinois 123
Clark H. Cole
Wilbur L. Tomlinson
I. The Claim 123
  A. Prima Facie Case 123
  B. Statutes Governing Misrepresentations 124
    1. Application Attached to Policy 124
    2. Incontestability 125
    3. Reinstated Policies 126
    4. Affordable Care Act 127
  C. Material Misrepresentations as a Matter of Law 128
  D. Increased Risk of Loss 130
  E. Fraudulent Misrepresentations 130
    1. Intent to Deceive 130
  F. Changes between Time of Application and Issuance of Policy 131
  G. Relationship between Misrepresentation and Loss 132
  H. Remedies and Process 132
    1. Retention of Premium 132
    2. Interest 133
II. Defenses 133
  A. Knowledge of Agent 133
  B. Errors in Recording 133
  C. Innocent Misrepresentations 134
  D. Failure or Inability to Read 134
  E. Duty to Inquire 134
    1. Post-Claim Underwriting 135
  F. Statute of Limitations 135
    1. Tolling 135
    2. Discovery Rule 135
  G. Estoppel/Waiver 136
    1. Acceptance of Premium 136
    2. Failure to Act 137

Indiana 139
Eric P. Mathisen
I. The Claim 139
  A. Prima Facie Case 139
  B. Statutes Governing Misrepresentations 140
    1. Contestability Period 140
    2. Application Attached to Policy 140
    3. Misrepresentation Material to Risk 140
4. False Statements in Insurance Applications 140
5. Tolling 140
6. Affordable Care Act 141
C. Material Misrepresentations as a Matter of Law 141
D. Increased Risk of Loss 142
E. Fraudulent Misrepresentations 142
F. Changes between Time of Application and Issuance of Policy 143
G. Relationship between Misrepresentation and Loss 143
H. Remedies and Process 143
II. Defenses 144
A. Knowledge of Agent 144
B. Errors in Recording 144
C. Innocent Misrepresentations 145
D. Failure or Inability to Read 145
E. Duty to Inquire 145
F. Statute of Limitations 146
G. Estoppel/Waiver 146

Iowa 149

Michael W. Thrall

I. The Claim 149
A. Prima Facie Case 149
B. Statutes Governing Misrepresentations 150
  1. Application Attached to Policy 150
  2. Incontestability 150
  3. Reinstated Policies 151
  4. Affordable Care Act 151
C. Material Misrepresentations as a Matter of Law 152
D. Increased Risk of Loss 152
E. Fraudulent Misrepresentations 152
  1. Intent to Deceive 152
  2. Justifiable Reliance 153
F. Changes between Time of Application and Issuance of Policy 153
G. Relationship between Misrepresentation and Loss 153
H. Remedies and Process 153
  1. Retention of Premium 153
  2. Interest 153
II. Defenses 154
A. Knowledge of Agent 154
  1. Faithless Agent 154
B. Errors in Recording 154
C. Innocent Misrepresentations 154
  1. Knowledge and Belief 155
D. Failure or Inability to Read 155
E. Duty to Inquire 155
   1. Post-Claim Underwriting 155
F. Statute of Limitations 156
   1. Tolling/Discovery Rule 156
G. Estoppel/Waiver 156
   1. Acceptance of Premium 156
   2. Failure to Act 156

Kansas 157
Karrie J. Clinkinbeard
Clark H. Cole
Kevin W. Prewitt
I. The Claim 157
   A. Prima Facie Case 157
   B. Statutes Governing Misrepresentations 158
      1. Application Attached to Policy 158
      2. Incontestability 159
      3. Obligation to Tender Premiums 159
      4. Affordable Care Act 159
   C. Material Misrepresentations as a Matter of Law 160
   D. Increased Risk of Loss 160
   E. Fraudulent Misrepresentations 161
   F. Changes between Time of Application and Issuance of Policy 161
   G. Relationship between Misrepresentation and Loss 162
   H. Remedies and Process 162

II. Defenses 162
   A. Knowledge of Agent 162
      1. Faithless Agent 163
   B. Errors in Recording 163
   C. Innocent Misrepresentations 163
   D. Failure or Inability to Read 164
   E. Duty to Inquire 164
   F. Statute of Limitations 164
      1. Tolling/Discovery Rule 165
   G. Estoppel/Waiver 165

Kentucky 167
Michelle Turner
I. The Claim 167
   A. Prima Facie Case 167
   B. Statutes Governing Misrepresentations 167
      1. Affordable Care Act 169
   C. Material Misrepresentations as a Matter of Law 170
   D. Increased Risk of Loss 171
   E. Fraudulent Misrepresentations 171
Contents xv

F. Changes between Time of Application and Issuance of Policy 172
G. Relationship between Misrepresentation and Loss 172
H. Remedies and Process 172

II. Defenses 173
A. Knowledge of Agent 173
B. Errors in Recording 173
C. Innocent Misrepresentations 174
D. Failure or Inability to Read 175
E. Duty to Inquire 175
F. Statute of Limitations 175
G. Estoppel/Waiver 176

Louisiana 177
Virginia N. Roddy 177

I. The Claim 177
A. Prima Facie Case 177
B. Statutes Governing Misrepresentations 177
   1. Application Attached to Policy 179
   2. Reinstated Policies 179
   3. Incontestability 179
   4. Affordable Care Act 180
C. Material Misrepresentations as a Matter of Law 180
D. Increased Risk of Loss 181
E. Fraudulent Misrepresentations 181
   1. Intent to Deceive 181
F. Changes between Time of Application and Issuance of Policy 182
G. Relationship between Misrepresentation and Loss 182
H. Remedies and Process 182
   1. Retention of Premium 182
   2. Interest 183

II. Defenses 183
A. Knowledge of Agent 183
   1. Faithless Agent 183
   2. Statutory Limitations on Agent 183
B. Errors in Recording 184
C. Innocent Misrepresentations 184
D. Failure or Inability to Read 184
E. Duty to Inquire 185
F. Statute of Limitations 185
   1. Tolling 186
   2. Discovery Rule 186
G. Estoppel/Waiver 186
   1. Acceptance of Premium 187
   2. Failure to Act 187
Maine

Byrne J. Decker
Kyle N. Kirby

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

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

Maryland

Jeaneen J. Johnson
Colleen K. O’Brien
J. Snowden Stanley, Jr.
Scott M. Trager

I. The Claim
   A. Prima Facie Case
   B. Statutes Governing Misrepresentations
      1. Rescission Restrictions and Underwriting Obligations for Health Benefit Plans
      2. Affordable Care Act
Contents

C. Material Misrepresentations as a Matter of Law 200
D. Increased Risk of Loss 201
E. Fraudulent Misrepresentations 201
F. Changes between Time of Application and Issuance of Policy 201
G. Relationship between Misrepresentation and Loss 201
H. Remedies and Process 202

II. Defenses 202
A. Knowledge of Agent 202
B. Errors in Recording 203
C. Innocent Misrepresentations 203
D. Failure or Inability to Read 203
E. Duty to Inquire 204
F. Statute of Limitations 204
G. Estoppel/Waiver 205

Massachusetts 207
Joseph M. Hamilton
Joan O. Vorster 207

I. The Claim 207
A. Prima Facie Case 207
B. Statutes Governing Misrepresentations 208
1. Application Attached to Policy 208
2. Incontestability 208
3. Affordable Care Act 209
C. Material Misrepresentations as a Matter of Law 210
D. Increased Risk of Loss 211
E. Fraudulent Misrepresentations 211
F. Changes between Time of Application and Issuance of Policy 212
G. Relationship between Misrepresentation and Loss 213
H. Remedies and Process 213
1. Retention of Premium 213
2. Interest 213

II. Defenses 213
A. Knowledge of Agent 213
B. Errors in Recording 213
C. Innocent Misrepresentations 214
D. Failure or Inability to Read 214
E. Duty to Inquire 214
1. Post-Claim Underwriting 215
F. Statute of Limitations 215
G. Estoppel/Waiver 215

Michigan 217
K. Scott Hamilton 217

I. The Claim 217
A. Prima Facie Case 217
<table>
<thead>
<tr>
<th>Mississippi</th>
<th>235</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andrew S. Harris</td>
<td></td>
</tr>
<tr>
<td>Robert B. House</td>
<td></td>
</tr>
<tr>
<td>Christopher R. Shaw</td>
<td></td>
</tr>
<tr>
<td>I. The Claim</td>
<td>235</td>
</tr>
<tr>
<td>A. Prima Facie Case</td>
<td>235</td>
</tr>
<tr>
<td>B. Statutes Governing Misrepresentations</td>
<td>235</td>
</tr>
<tr>
<td>1. Application Attached to Policy</td>
<td>235</td>
</tr>
<tr>
<td>2. Incontestability</td>
<td>236</td>
</tr>
<tr>
<td>3. Materiality</td>
<td>236</td>
</tr>
<tr>
<td>4. Misstatement of Age</td>
<td>236</td>
</tr>
<tr>
<td>5. Affordable Care Act</td>
<td>236</td>
</tr>
<tr>
<td>C. Material Misrepresentations as a Matter of Law</td>
<td>237</td>
</tr>
<tr>
<td>D. Increased Risk of Loss</td>
<td>237</td>
</tr>
<tr>
<td>E. Fraudulent Misrepresentations</td>
<td>237</td>
</tr>
<tr>
<td>1. Intent to Deceive</td>
<td>238</td>
</tr>
<tr>
<td>F. Changes between Time of Application and Issuance of Policy</td>
<td>238</td>
</tr>
<tr>
<td>G. Relationship between Misrepresentation and Loss</td>
<td>238</td>
</tr>
<tr>
<td>H. Remedies and Process</td>
<td>238</td>
</tr>
<tr>
<td>II. Defenses</td>
<td>238</td>
</tr>
<tr>
<td>A. Knowledge of Agent</td>
<td>238</td>
</tr>
<tr>
<td>1. Faithless Agent</td>
<td>239</td>
</tr>
<tr>
<td>B. Errors in Recording</td>
<td>239</td>
</tr>
<tr>
<td>C. Innocent Misrepresentations</td>
<td>239</td>
</tr>
<tr>
<td>1. Knowledge and Belief</td>
<td>239</td>
</tr>
<tr>
<td>D. Failure or Inability to Read</td>
<td>239</td>
</tr>
<tr>
<td>E. Duty to Inquire</td>
<td>240</td>
</tr>
<tr>
<td>F. Statute of Limitations</td>
<td>240</td>
</tr>
<tr>
<td>G. Estoppel/Waiver</td>
<td>240</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Missouri</th>
<th>243</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clark H. Cole</td>
<td></td>
</tr>
<tr>
<td>Matthew S. Shorey</td>
<td></td>
</tr>
<tr>
<td>I. The Claim</td>
<td>243</td>
</tr>
<tr>
<td>A. Prima Facie Case</td>
<td>243</td>
</tr>
<tr>
<td>B. Statutes Governing Misrepresentations</td>
<td>244</td>
</tr>
<tr>
<td>1. Application Attached to Policy</td>
<td>244</td>
</tr>
<tr>
<td>2. Incontestability</td>
<td>244</td>
</tr>
<tr>
<td>3. Reinstated Policies</td>
<td>244</td>
</tr>
<tr>
<td>4. Failure to Tender Premium</td>
<td>245</td>
</tr>
<tr>
<td>5. Affordable Care Act</td>
<td>245</td>
</tr>
<tr>
<td>C. Material Misrepresentations as a Matter of Law</td>
<td>246</td>
</tr>
<tr>
<td>D. Increased Risk of Loss</td>
<td>246</td>
</tr>
</tbody>
</table>
E. Fraudulent Misrepresentations 246
   1. Intent to Deceive 246
F. Changes between Time of Application and Issuance of Policy 247
G. Relationship between Misrepresentation and Loss 247
H. Remedies and Process 247
   1. Retention of Premium 247
   2. Interest 248

II. Defenses 248
   A. Knowledge of Agent 248
      1. Faithless Agent 248
   B. Errors in Recording 248
   C. Innocent Misrepresentations 248
      1. Knowledge and Belief 249
   D. Failure or Inability to Read 249
   E. Duty to Inquire 249
      1. Post-Claim Underwriting 250
   F. Statute of Limitations 250
      1. Tolling/Discovery Rule 250
   G. Estoppel/Waiver 250
      1. Acceptance of Premium 250
      2. Failure to Act 250

Montana 251
Katherine S. Somervell 251
I. The Claim 251
   A. Prima Facie Case 251
   B. Statutes Governing Misrepresentations 252
      1. Application Attached to Policy 252
      2. Incontestability 252
      3. Affordable Care Act 253
   C. Material Misrepresentations as a Matter of Law 253
      1. Insurer’s Reliance 254
   D. Increased Risk of Loss 254
   E. Fraudulent Misrepresentations 254
      1. Intent to Deceive 254
   F. Changes between Time of Application and Issuance of Policy 255
   G. Relationship between Misrepresentation and Loss 255
   H. Remedies and Process 255

II. Defenses 255
   A. Knowledge of Agent 255
      1. Faithless Agent 255
   B. Errors in Recording 255
   C. Innocent Misrepresentations 255
      1. Knowledge and Belief 255
   D. Failure or Inability to Read 256
   E. Duty to Inquire 256
Contents  xxv

F. Statute of Limitations  256
G. Estoppel/Waiver  257
  1. Acceptance of Premium  257
  2. Failure to Act  257

Nebraska  259

Steven D. Davidson
Krista M. Eckhoff

I. The Claim  259
  A. Prima Facie Case  259
    1. Intent to Deceive  259
    2. Reliance and Injury  260
  B. Statutes Governing Misrepresentations  260
    1. Application Attached to Policy  260
    2. Incontestability  260
    3. Reinstated Policies  261
    4. Affordable Care Act  261
  C. Material Misrepresentations as a Matter of Law  262
  D. Increased Risk of Loss  262
  E. Fraudulent Misrepresentations  262
    1. Intent to Deceive  262
  F. Changes between Time of Application and Issuance of Policy  262
  G. Relationship between Misrepresentation and Loss  262
  H. Remedies and Process  262
    1. Retention of Premium  263
    2. Interest  263

II. Defenses  263
  A. Knowledge of Agent  263
    1. Faithless Agent  263
  B. Errors in Recording  263
  C. Innocent Misrepresentations  264
    1. Knowledge and Belief  264
  D. Failure or Inability to Read  264
  E. Duty to Inquire  264
    1. Post-Claim Underwriting  264
  F. Statute of Limitations  264
    1. Tolling/Discovery Rule  264
  G. Estoppel/Waiver  265
    1. Acceptance of Premium/Failure to Act  265

Nevada  267

Ann-Martha Andrews
Todd D. Erb

I. The Claim  267
  A. Prima Facie Case  267
B. Statutes Governing Misrepresentations 268
  1. Application Attached to Policy 268
  2. Incontestability 268
  3. Reinstated Policies 271
  4. Affordable Care Act 271
C. Material Misrepresentations as a Matter of Law 271
D. Increased Risk of Loss 272
E. Fraudulent Misrepresentations 272
F. Changes between Time of Application and Issuance of Policy 272
G. Relationship between Misrepresentation and Loss 272
H. Remedies and Process 273
  1. Retention of Premium 273
  2. Interest 273
  3. Attorneys’ Fees 274
II. Defenses 274
  A. Knowledge of Agent 274
  B. Errors in Recording 275
  C. Innocent Misrepresentations 275
    1. Knowledge and Belief 275
  D. Failure or Inability to Read 275
  E. Duty to Inquire 275
  F. Statute of Limitations 275
    1. Discovery Rule 275
  G. Estoppel/Waiver 276
    1. Failure to Act 276
New Hampshire 277
Byrne J. Decker
Kyle N. Kirby

I. The Claim 277
  A. Prima Facie Case 277
  B. Statutes Governing Misrepresentations 278
    1. Application Attached to Policy 278
    2. Incontestability 278
    3. Reinstated Policies 278
    4. Affordable Care Act 278
  C. Material Misrepresentations as a Matter of Law 279
  D. Increased Risk of Loss 280
  E. Fraudulent Misrepresentations 280
    1. Intent to Deceive 280
  F. Changes between Time of Application and Issuance of Policy 280
  G. Relationship between Misrepresentation and Loss 280
  H. Remedies and Process 280
    1. Retention of Premium 280
    2. Interest 280
II. Defenses 280
   A. Knowledge of Agent 280
      1. Faithless Agent 281
   B. Errors in Recording 281
   C. Innocent Misrepresentations 282
      1. Knowledge and Belief 282
   D. Failure or Inability to Read 282
   E. Duty to Inquire 282
      1. Post-Claim Underwriting 282
   F. Statute of Limitations 282
      1. Tolling/Discovery Rule 282
   G. Estoppel/Waiver 282
      1. Acceptance of Premium 282
      2. Failure to Act 283

New Jersey 285
B. John Pendleton
Joanne Wilcomes
Sofia S. Lipman
2014 Revision by:
William A. Cambria
Randi F. Knepper

I. The Claim 285
   A. Prima Facie Case 285
   B. Statutes Governing Misrepresentations 286
      1. Application Attached to Policy 286
      2. Incontestability 286
      3. Reinstated Policies 287
      4. Affordable Care Act 287
   C. Material Misrepresentations as a Matter of Law 288
   D. Increased Risk of Loss 288
   E. Fraudulent Misrepresentations 289
      1. Intent to Deceive 289
   F. Changes between Time of Application and Issuance of Policy 289
   G. Relationship between Misrepresentation and Loss 289
   H. Remedies and Process 289
      1. Retention of Premium 290
      2. Interest 290

II. Defenses 291
   A. Knowledge of Agent 291
      1. Faithless Agent 291
   B. Errors in Recording 291
   C. Innocent Misrepresentations 291
      1. Knowledge and Belief 291
   D. Failure or Inability to Read 292
E. Duty to Inquire 292
   1. Post-Claim Underwriting 292
F. Statute of Limitations 293
   1. Tolling 293
   2. Discovery Rule 293
G. Estoppel/Waiver 293
   1. Acceptance of Premium 293
   2. Failure to Act 293

New Mexico 295
James H. Johansen
Quiana A. Salazar-King
I. The Claim 295
   A. Prima Facie Case 295
   B. Statutes Governing Misrepresentations 296
      1. Application Attached to Policy 296
      2. Incontestability 296
      3. Affordable Care Act 296
   C. Material Misrepresentations as a Matter of Law 297
   D. Increased Risk of Loss 297
   E. Fraudulent Misrepresentations 297
   F. Changes between Time of Application and Issuance of Policy 298
   G. Relationship between Misrepresentation and Loss 298
   H. Remedies and Process 298
II. Defenses 299
   A. Knowledge of Agent 299
   B. Errors in Recording 299
   C. Innocent Misrepresentations 299
   D. Failure or Inability to Read 299
   E. Duty to Inquire 299
   F. Statute of Limitations 299
   G. Estoppel/Waiver 300

New York 301
Peter Jason
I. The Claim 301
   A. Prima Facie Case 301
   B. Statutes Governing Misrepresentations 302
      1. Application Attached to Policy 302
      2. Incontestability 302
      3. Reinstated Policies 302
      4. Affordable Care Act 303
   C. Material Misrepresentations as a Matter of Law 304
   D. Increased Risk of Loss 304
Contents  xxv

E. Fraudulent Misrepresentations 304
   1. Intent to Deceive 304
F. Changes between Time of Application and Issuance of Policy 304
G. Relationship between Misrepresentation and Loss 305
H. Remedies and Process 305
   1. Retention of Premium 305
   2. Interest 305
II. Defenses 306
   A. Knowledge of Agent 306
      1. Faithless Agent 306
   B. Errors in Recording 306
   C. Innocent Misrepresentations 306
      1. Knowledge and Belief 306
   D. Failure or Inability to Read 307
   E. Duty to Inquire 307
      1. Post-Claim Underwriting 307
   F. Statute of Limitations 307
      1. Tolling 308
      2. Discovery Rule 308
   G. Estoppel/Waiver 308
      1. Acceptance of Premium 309
      2. Failure to Act 309

North Carolina 311
George K. Evans, Jr.
William F. Womble, Jr.
I. The Claim 311
   A. Prima Facie Case 311
   B. Statutes Governing Misrepresentations 312
      1. Affordable Care Act 313
   C. Material Misrepresentations as a Matter of Law 313
   D. Increased Risk of Loss 314
   E. Fraudulent Misrepresentations 314
   F. Changes between Time of Application and Issuance of Policy 314
   G. Relationship between Misrepresentation and Loss 315
   H. Remedies and Process 315
II. Defenses 315
   A. Knowledge of Agent 315
   B. Errors in Recording 316
   C. Innocent Misrepresentations 316
   D. Failure or Inability to Read 318
   E. Duty to Inquire 318
   F. Statute of Limitations 318
   G. Estoppel/Waiver 319
North Dakota 321
Gregory A. Bromen
Andrew J. Sveen
I. The Claim 321
   A. Prima Facie Case 321
   B. Statutes Governing Misrepresentations 321
      1. Application Attached to Policy 322
      2. Incontestability 322
      3. Reinstated Policies 322
      4. Affordable Care Act 322
   C. Material Misrepresentations as a Matter of Law 323
   D. Increased Risk of Loss 324
   E. Fraudulent Misrepresentations 324
      1. Intent to Deceive 324
   F. Changes between Time of Application and Issuance of Policy 325
   G. Relationship between Misrepresentation and Loss 325
   H. Remedies and Process 325
      1. Retention of Premium 325
      2. Interest 325
II. Defenses 325
   A. Knowledge of Agent 325
      1. Faithless Agent 325
   B. Errors in Recording 326
   C. Innocent Misrepresentations 326
      1. Knowledge and Belief 326
   D. Failure or Inability to Read 326
   E. Duty to Inquire 326
      1. Post-Claim Underwriting 326
   F. Statute of Limitations 327
   G. Estoppel/Waiver 327
      1. Acceptance of Premium 327
      2. Failure to Act 327
Ohio 329
F. James Foley
Michael J. Hendershot
Carlos A. Yunsan
I. The Claim 329
   A. Prima Facie Case 329
   B. Statutes Governing Misrepresentations 330
      1. Prima Facie Statutes 330
      2. Misrepresentations Not in the Application 330
      3. Special Statutory Treatment of Age Misstatements 330
      4. Application Attached to Policy 330
      5. Incontestability 331
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Life</td>
<td>331</td>
</tr>
<tr>
<td>7. Health and Disability</td>
<td>331</td>
</tr>
<tr>
<td>8. Policy Conditions</td>
<td>331</td>
</tr>
<tr>
<td>9. Reinstated Policies</td>
<td>331</td>
</tr>
<tr>
<td>10. Affordable Care Act</td>
<td>331</td>
</tr>
<tr>
<td>C. Material Misrepresentations as a Matter of Law</td>
<td>332</td>
</tr>
<tr>
<td>D. Increased Risk of Loss</td>
<td>333</td>
</tr>
<tr>
<td>E. Fraudulent Misrepresentations</td>
<td>333</td>
</tr>
<tr>
<td>1. The Patient-Physician Privilege</td>
<td>334</td>
</tr>
<tr>
<td>F. Changes between Time of Application and Issuance of Policy</td>
<td>334</td>
</tr>
<tr>
<td>G. Relationship between Misrepresentation and Loss</td>
<td>334</td>
</tr>
<tr>
<td>H. Remedies and Process</td>
<td>335</td>
</tr>
<tr>
<td><strong>II. Defenses</strong></td>
<td>335</td>
</tr>
<tr>
<td>A. Knowledge of Agent</td>
<td>335</td>
</tr>
<tr>
<td>B. Errors in Recording</td>
<td>336</td>
</tr>
<tr>
<td>C. Innocent Misrepresentations</td>
<td>336</td>
</tr>
<tr>
<td>D. Failure or Inability to Read</td>
<td>336</td>
</tr>
<tr>
<td>E. Duty to Inquire</td>
<td>337</td>
</tr>
<tr>
<td>1. Post-Claim Underwriting</td>
<td>337</td>
</tr>
<tr>
<td>F. Statute of Limitations</td>
<td>337</td>
</tr>
<tr>
<td>G. Estoppel and Waiver</td>
<td>337</td>
</tr>
<tr>
<td><strong>Oklahoma</strong></td>
<td>339</td>
</tr>
<tr>
<td><em>Leasa M. Stewart</em></td>
<td></td>
</tr>
<tr>
<td><strong>I. The Claim</strong></td>
<td>339</td>
</tr>
<tr>
<td>A. Prima Facie Case</td>
<td>339</td>
</tr>
<tr>
<td>B. Statutes Governing Misrepresentations</td>
<td>339</td>
</tr>
<tr>
<td>1. Application Attached to Policy</td>
<td>340</td>
</tr>
<tr>
<td>2. Incontestability</td>
<td>340</td>
</tr>
<tr>
<td>3. Reinstated Policies</td>
<td>341</td>
</tr>
<tr>
<td>4. Affordable Care Act</td>
<td>341</td>
</tr>
<tr>
<td>C. Material Misrepresentations as a Matter of Law</td>
<td>341</td>
</tr>
<tr>
<td>D. Increased Risk of Loss</td>
<td>342</td>
</tr>
<tr>
<td>E. Fraudulent Misrepresentations</td>
<td>342</td>
</tr>
<tr>
<td>1. Intent to Deceive</td>
<td>342</td>
</tr>
<tr>
<td>F. Changes between Time of Application and Issuance of Policy</td>
<td>342</td>
</tr>
<tr>
<td>G. Relationship between Misrepresentation and Loss</td>
<td>343</td>
</tr>
<tr>
<td>H. Remedies and Process</td>
<td>343</td>
</tr>
<tr>
<td>1. Retention of Premium</td>
<td>343</td>
</tr>
<tr>
<td>2. Interest</td>
<td>343</td>
</tr>
<tr>
<td><strong>II. Defenses</strong></td>
<td>343</td>
</tr>
<tr>
<td>A. Knowledge of Agent</td>
<td>343</td>
</tr>
<tr>
<td>B. Errors in Recording</td>
<td>344</td>
</tr>
<tr>
<td>C. Innocent Misrepresentations</td>
<td>344</td>
</tr>
<tr>
<td>D. Failure or Inability to Read</td>
<td>344</td>
</tr>
</tbody>
</table>
xxviii  Contents

E. Duty to Inquire 344
F. Statute of Limitations 344
G. Estoppel/Waiver 345
  1. Acceptance of Premium 345
  2. Failure to Act 345

Oregon 347
Katherine S. Somervell
Nels J. Vulin
I. The Claim 347
  A. Prima Facie Case 347
  B. Statutes Governing Misrepresentations 348
    1. Application Attached to Policy 348
    2. Incontestability 348
    3. Affordable Care Act 348
  C. Material Misrepresentations as a Matter of Law 349
    1. Insurer’s Reliance 350
  D. Increased Risk of Loss 351
  E. Fraudulent Misrepresentations 351
    1. Intent to Deceive 351
  F. Changes between Time of Application and Issuance of Policy 352
  G. Relationship between Misrepresentation and Loss 352
  H. Remedies and Process 352
II. Defenses 352
  A. Knowledge of Agent 352
    1. Faithless Agent 354
  B. Errors in Recording 354
  C. Innocent Misrepresentations 354
    1. Knowledge and Belief 354
  D. Failure or Inability to Read 354
  E. Duty to Inquire 355
  F. Statute of Limitations 355
  G. Estoppel/Waiver 356
    1. Acceptance of Premium 356
    2. Failure to Act 356

Pennsylvania 357
B. John Pendleton
Joanne Wilcomes
Sofia S. Lipman
2014 Revision by:
Randi F. Knepper
William A. Cambria
I. The Claim 357
  A. Prima Facie Case 357
Contents xxix

B. Statutes Governing Misrepresentations 358
   1. Application Attached to Policy 358
   2. Incontestability 358
   3. Reinstated Policies 359
   4. Affordable Care Act 359
C. Material Misrepresentations as a Matter of Law 360
D. Increased Risk of Loss 360
E. Fraudulent Misrepresentations 361
   1. Intent to Deceive 361
F. Changes between Time of Application and Issuance of Policy 361
G. Relationship between Misrepresentation and Loss 361
H. Remedies and Process 361
   1. Retention of Premium 362
   2. Interest 362
II. Defenses 363
   A. Knowledge of Agent 363
      1. Faithless Agent 363
   B. Errors in Recording 363
   C. Innocent Misrepresentations 363
      1. Knowledge and Belief 363
   D. Failure or Inability to Read 363
   E. Duty to Inquire 364
      1. Post-Claim Underwriting 364
   F. Statute of Limitations 364
      1. Tolling 364
      2. Discovery Rule 364
   G. Estoppel/Waiver 365
      1. Acceptance of Premium 365
      2. Failure to Act 365

Rhode Island 367
Nicholas P. Brown 367
Brooks R. Magratten 367
I. The Claim 367
   A. Prima Facie Case 367
   B. Statutes Governing Misrepresentations 368
      1. Misrepresentations Generally 368
      2. Application Attached to Policy 368
      3. Incontestability 368
      4. Affordable Care Act 369
   C. Material Misrepresentations as a Matter of Law 370
   D. Increased Risk of Loss 370
   E. Fraudulent Misrepresentations 370
   F. Changes between Time of Application and Issuance of Policy 370
G. Relationship between Misrepresentation and Loss 370
H. Remedies and Process 371

II. Defenses 371
A. Knowledge of Agent 371
   1. Faithless Agent 371
B. Errors in Recording 371
C. Innocent Misrepresentations 371
D. Failure or Inability to Read 371
E. Duty to Inquire 372
F. Statute of Limitations 372
   1. Tolling 373
   2. Discovery Rule 373
G. Estoppel/Waiver 373
   1. Acceptance of Premium 373

South Carolina 375
Stephen P. Groves, Sr.

I. The Claim 375
   A. Prima Facie Case 375
   B. Statutes Governing Misrepresentations 376
      1. Affordable Care Act 377
   C. Material Misrepresentations as a Matter of Law 378
   D. Increased Risk of Loss 379
   E. Fraudulent Misrepresentations 379
   F. Changes between Time of Application and Issuance of Policy 380
   G. Relationship between Misrepresentation and Loss 380
   H. Remedies and Process 380

II. Defenses 381
A. Knowledge of Agent 381
B. Errors in Recording 381
C. Innocent Misrepresentations 382
D. Failure or Inability to Read 382
E. Duty to Inquire 383
F. Statute of Limitations 383
G. Estoppel/Waiver 384

South Dakota 385
Kent R. Cutler
Nichole J. Mohnling
Kimberly R. Wassink

I. The Claim 385
   A. Prima Facie Case 385
   B. Statutes Governing Misrepresentations 386
      1. Application Attached to Policy 386
      2. Incontestability 386
      3. Reinstated Policies 386
4. Affordable Care Act 386
C. Material Misrepresentations as a Matter of Law 387
D. Increased Risk of Loss 387
E. Fraudulent Misrepresentations 388
1. Intent to Deceive 388
F. Changes between Time of Application and Issuance of Policy 388
G. Relationship between Misrepresentation and Loss 389
H. Remedies and Process 389
1. Retention of Premium 389
2. Interest 389

II. Defenses 389
A. Knowledge of Agent 389
1. Faithless Agent 389
B. Errors in Recording 390
C. Innocent Misrepresentations 390
1. Knowledge and Belief 390
D. Failure or Inability to Read 390
E. Duty to Inquire 390
1. Post-Claim Underwriting 391
F. Statute of Limitations 391
1. Tolling/Discovery Rule 391
G. Estoppel/Waiver 391
1. Acceptance of Premium 391
2. Failure to Act 391

Tennessee 393
S. Russell Headrick
Carlos A. Yunsan

I. The Claim 393
A. Prima Facie Case 393
B. Statutes Governing Misrepresentations 394
1. Application Attached to Policy 394
2. Incontestability 394
3. Affordable Care Act 395
C. Material Misrepresentations as a Matter of Law 396
D. Increased Risk of Loss 396
E. Fraudulent Misrepresentations 396
1. Intent to Deceive 396
F. Changes between Time of Application and Issuance of Policy 397
G. Relationship between Misrepresentation and Loss 397
H. Remedies and Process 397

II. Defenses 397
A. Knowledge of Agent 397
1. Faithless Agent 398
B. Errors in Recording 398
C. Innocent Misrepresentations 398
   1. Knowledge and Belief 398
D. Failure or Inability to Read 398
E. Duty to Inquire 399
F. Statute of Limitations 399
G. Estoppel/Waiver 399
   1. Acceptance of Premium 400
   2. Failure to Act 400

Texas 401

Jill B. Davenport

I. The Claim 401
   A. Prima Facie Case 401
      1. Elements 401
      2. Timing 402
      3. 90-Day Rule 403
   B. Statutes Governing Misrepresentations 403
      1. Application Attached to Policy 403
      2. Incontestable Provisions 404
      3. Reinstated Policies 404
      4. Affordable Care Act 404
   C. Material Misrepresentations as a Matter of Law 405
   D. Increased Risk of Loss 405
   E. Fraudulent Misrepresentation 406
   F. Changes between Time of Application and Issuance of Policy 407
   G. Relationship between Misrepresentation and Loss 407
   H. Remedies and Process 407

II. Defenses 408
   A. Knowledge of Agent 408
   B. Errors in Recording 408
   C. Innocent Misrepresentations 408
   D. Failure to Read 409
   E. Duty to Inquire 409
   F. Statute of Limitations 409
   G. Estoppel/Waiver 410

Utah 411

Clint R. Hansen
David N. Kelley
Scott M. Petersen

I. The Claim 411
   A. Prima Facie Case 411
   B. Statutes Governing Misrepresentations 412
      1. Application Attached to Policy 412
      2. Incontestability 412
3. Reinstated Policies 412
4. Affordable Care Act 412
C. Material Misrepresentations as a Matter of Law 413
D. Increased Risk of Loss 414
E. Fraudulent Misrepresentations 414
1. Intent to Deceive 415
F. Changes between Time of Application and Issuance of Policy 415
G. Relationship between Misrepresentation and Loss 415
H. Remedies and Process 415
1. Retention of Premium 416
2. Interest 416
II. Defenses 416
A. Knowledge of Agent 416
1. Faithless Agent 416
B. Errors in Recording 417
C. Innocent Misrepresentations 417
1. Knowledge and Belief 417
D. Failure or Inability to Read 417
E. Duty to Inquire 417
F. Statute of Limitations 418
1. Tolling 418
2. Discovery Rule 418
G. Estoppel/Waiver 419
1. Acceptance of Premium 419
2. Failure to Act 419

Vermont 421
Ryan B. Gardner 421
I. The Claim 421
A. Prima Facie Case 421
B. Statutes Governing Misrepresentations 421
1. Application Attached to Policy 422
2. Incontestability 422
3. Reinstated Policies 422
4. Misstatements Concerning Age of Applicant 422
5. Effect of Misrepresentations 423
6. Affordable Care Act 423
7. Vermont Health Care Reform 424
C. Material Misrepresentations as a Matter of Law 424
D. Increased Risk of Loss 425
E. Fraudulent Misrepresentations 425
1. Intent to Deceive 425
F. Changes between Time of Application and Issuance of Policy 425
G. Relationship between Misrepresentation and Loss 426
H. Remedies and Process 426
  1. Retention of Premium 427
  2. Interest 427
II. Defenses 427
  A. Knowledge of Agent 427
    1. Faithless Agent 427
  B. Errors in Recording 428
  C. Innocent Misrepresentations 428
    1. Knowledge and Belief 428
  D. Failure or Inability to Read 428
  E. Duty to Inquire 428
    1. Post-Claim Underwriting 429
  F. Statute of Limitations 429
    1. Tolling 429
    2. Discovery Rule 429
  G. Estoppel/Waiver 430
    1. Acceptance of Premium 430
    2. Failure to Act 430
Virginia 431
Robert B. “Chip” Delano, Jr.
I. The Claim 431
  A. Prima Facie Case 431
  B. Statutes Governing Misrepresentations 432
    1. Reinstated Policies 433
    2. Affordable Care Act 433
  C. Material Misrepresentations as a Matter of Law 434
  D. Increased Risk of Loss 434
  E. Fraudulent Misrepresentations 435
  F. Changes between Time of Application and Issuance of Policy 435
  G. Relationship between Misrepresentation and Loss 435
  H. Remedies and Process 435
    1. Retention of Premium 436
    2. Interest 436
II. Defenses 436
  A. Knowledge of Agent 436
  B. Errors in Recording 436
  C. Innocent Misrepresentations 437
  D. Failure or Inability to Read 437
  E. Duty to Inquire 437
    1. Post-Claim Underwriting 438
  F. Statute of Limitations 438
  G. Estoppel/Waiver 438
Washington
Brian K. Keeley

I. The Claim
   A. Prima Facie Case
   B. Statutes Governing Misrepresentations
      1. Statutes Prohibiting Misrepresentations
      2. Statutes Making Misrepresentations a Crime
      3. Statutes Governing Proof of Misrepresentations
      4. Statutes Governing Contestability Period
      5. Affordable Care Act
   C. Material Misrepresentations as a Matter of Law
   D. Increased Risk of Loss
   E. Fraudulent Misrepresentations
      1. Intent to Deceive
   F. Changes between Time of Application and Issuance of Policy
   G. Relationship between Misrepresentation and Loss
   H. Remedies and Process

II. Defenses
   A. Knowledge of Agent
      1. Faithless Agent
      2. Not Applicable to Broker
   B. Errors in Recording
   C. Innocent Misrepresentations
   D. Failure or Inability to Read
   E. Duty to Inquire
   F. Statute of Limitations
   G. Estoppel/Waiver
      1. Acceptance of Premium

West Virginia
David A. Bosak
Charity K. Flynn
Eric W. Iskra
Grant P.H. Shuman

I. The Claim
   A. Prima Facie Case
   B. Statutes Governing Misrepresentations
      1. Affordable Care Act
   C. Material Misrepresentations as a Matter of Law
   D. Increased Risk of Loss
   E. Fraudulent Misrepresentations
   F. Changes between Time of Application and Issuance of Policy
   G. Relationship between Misrepresentation and Loss
   H. Remedies and Process
II. Defenses
A. Knowledge of Agent
B. Errors in Recording
C. Innocent Misrepresentations
D. Failure or Inability to Read
E. Duty to Inquire
   1. Post-Claim Underwriting
F. Statute of Limitations
G. Estoppel/Waiver

Wisconsin
*Paul E. Benson*
*Tanya M. Salman*

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

II. Defenses
A. Knowledge of Agent
B. Errors in Recording
C. Innocent Misrepresentations
D. Failure or Inability to Read
E. Duty to Inquire
F. Statute of Limitations
   1. Tolling
   2. Discovery Rule
G. Estoppel/Waiver
   1. Acceptance of Premium
   2. Failure to Act

Wyoming
*James D. Bramer*
*Clinton "Paul" Swift*

I. The Claim
A. Prima Facie Case
B. Statutes Governing Misrepresentations
   1. Application Attached to Policy
   2. Incontestability
3. Reinstated Policies 467
4. Affordable Care Act 467
C. Material Misrepresentations as a Matter of Law 468
D. Increased Risk of Loss 468
E. Fraudulent Misrepresentations 468
   1. Intent to Deceive 468
F. Changes between Time of Application and Issuance of Policy 468
G. Relationship between Misrepresentation and Loss 469
H. Remedies and Process 469
   1. Retention of Premium 469
II. Defenses 470
   A. Knowledge of Agent 470
      1. Faithless Agent 470
   B. Errors in Recording 470
   C. Innocent Misrepresentations 471
      1. Knowledge and Belief 471
   D. Failure or Inability to Read 471
   E. Duty to Inquire 471
      1. Post-Claim Underwriting 471
   F. Statute of Limitations 472
      1. Tolling 472
      2. Discovery Rule 472
   G. Estoppel/Waiver 472
      1. Acceptance of Premium 473
      2. Failure to Act 473

PART II
ERISA

First Circuit 477
Courtney Cruz
Jay P. Symonds

I. Preemption of Misrepresentation Claims 477
II. Misrepresentations by the Insured 479
   A. Rescission of Coverage under Federal Common Law 479
III. Misrepresentations by the Insurer 481
   A. Estoppel under Federal Common Law 481
      1. General Principles of Federal Estoppel 481
      2. Estoppel Arising out of Misrepresentations at the Time of Application 482
      3. Estoppel/Tolling Arising out of Misrepresentations Regarding the Contractual Limitations Period 483

Second Circuit 485
Amanda E. Gordon
Theodore J. Tucci
I. Preemption of Misrepresentation Claims 485
   A. Misrepresentation Claims Held to Be Completely Preempted 487
   B. Misrepresentation Claims Held Not Completely Preempted 489

II. Misrepresentations by the Insured 491

III. Misrepresentations by the Insurer 492

Third Circuit 493

Randi F. Knepper

I. Preemption of Misrepresentation Claims 493
   II. Misrepresentations by the Insured 494
      A. Rescission of Coverage under Federal Common Law 494
         1. Affordable Care Act 494
         2. Delaware 495
         3. New Jersey 496
         4. Pennsylvania 496
      III. Misrepresentation Claims by Plan Participant against an ERISA Fiduciary 497
         A. Estoppel under Federal Common Law 499
            1. General Principles of Federal Estoppel 499
            2. Estoppel Arising out of Misrepresentations at the Time of Application 500

Fourth Circuit 503

E. Ford Stephens

I. Preemption of Misrepresentation Claims 503
   II. Misrepresentations by the Insured 504
      A. Rescission of Coverage under Federal Common Law 504
         1. Affordable Care Act 506
      III. Misrepresentations by the Insurer 507
         A. Estoppel under Federal Common Law 507
            1. General Principles of Federal Estoppel 507
            2. Estoppel Arising out of Misrepresentations at the Time of Application 509

Fifth Circuit 511

Jennifer M. Lawrence

I. Preemption of Misrepresentation Claims 511
   II. Misrepresentations by the Insured 512
      A. Rescission of Coverage under Federal Common Law 512
         1. Affordable Care Act 513
      III. Misrepresentations by the Insurer 514
         A. Estoppel under Federal Common Law 514
            1. General Principles of Federal Estoppel 514
            2. Estoppel Arising out of Misrepresentations at the Time of Application 515
Contents  xxxix

Sixth Circuit  517
S. Russell Headrick
D. Eric Setterlund
  I. Preemption of Misrepresentation Claims  517
  II. Misrepresentations by the Insured  518
     A. Rescission of Coverage under Federal Common Law  518
        1. Affordable Care Act  518
  III. Misrepresentations by the Insurer  519
     A. Estoppel under Federal Common Law  519
        1. General Principles of Federal Estoppel  519
        2. Estoppel Arising out of Misrepresentations at the Time of Application  520

Seventh Circuit  521
Eric P. Mathisen
  I. Preemption of Misrepresentation Claims  521
  II. Misrepresentations by the Insured  522
     A. Rescission of Coverage under Federal Common Law  522
        1. Affordable Care Act  522
  III. Misrepresentations by the Insurer  523
     A. Estoppel under Federal Common Law  523
        1. General Principles of Federal Estoppel  523
        2. Estoppel Arising out of Misrepresentations at the Time of Application  524

Eighth Circuit  527
William D. Hittler
Elizabeth M. Winchell
  I. Preemption of Misrepresentation Claims  527
     A. Eighth Circuit ERISA Preemption, Generally  527
     B. Eighth Circuit Preemption of Misrepresentation Claims  528
  II. Misrepresentations by the Insured  528
     A. Rescission of Coverage under Federal Common Law  528
        1. Availability of Rescission  528
        2. Materiality Thresholds  529
  III. Misrepresentations by the Insurer  529
     A. Estoppel under Federal Common Law  529
        1. General Principles of Federal Estoppel  529
        2. Estoppel Arising out of Misrepresentations at the Time of Application  530

Ninth Circuit  531
Nicole Y. Blohm
Jason A. James
Linda M. Lawson
I. Preemption of Misrepresentation Claims 531
II. Misrepresentations by the Insured 533
   A. Rescission of Coverage under Federal Common Law 533
      1. Affordable Care Act 533
III. Misrepresentations by the Insurer 534
   A. Estoppel under Federal Common Law 534
      1. General Principles of Federal Estoppel 534
      2. Estoppel Arising out of Misrepresentations at the Time of Application 536

Tenth Circuit 539
Clinton “Paul” Swift
I. Preemption of Misrepresentation Claims 539
II. Misrepresentations by the Insured 540
   A. Rescission of Coverage under Federal Common Law 540
      1. Affordable Care Act 541
II. Misrepresentations by the Insurer 541
   A. Estoppel under Federal Common Law 541
      1. General Principles of Federal Estoppel 541
      2. Estoppel Arising out of Misrepresentations at the Time of Application 543

Eleventh Circuit 547
Elizabeth J. Bondurant
Manning A. Connors
Peter A. Rutledge
I. Misrepresentations Claims Governed by ERISA 547
   A. ERISA Preempts State Laws That “Relate to” a Plan but Not Those That “Regulate Insurance” 547
   B. The Two Types of Preemption 548
      1. Complete Preemption 548
      2. Defensive Preemption 549
   C. “Relate to” Is Broadly Construed 549
   D. Laws That Regulate Insurance 550
II. Misrepresentations by the Insured 551
III. Misrepresentations by the Insurer 551
   A. Estoppel under Federal Common Law 551

D.C. Circuit 553
Dawn B. Williams
I. Preemption of Misrepresentation Claims 553
II. Misrepresentations by the Insured 554
   A. Rescission of Coverage under Federal Common Law 554
      1. Affordable Care Act 554
III. Misrepresentations by the Insurer
   A. Estoppel under Federal Common Law
      1. General Principles of Federal Estoppel
      2. Estoppel Arising out of Misrepresentations
         at the Time of Application

Table of Cases

Index