

Texas Doubles Down on “Intent to Deceive” as Requirement to Void Insurance Policy

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The Texas Supreme Court reinforced common law precedent that insurers cannot avoid liability under an insurance policy based on a misrepresentation in an insurance application unless the insurer can establish that the insured intended to deceive or induce the insurer to issue the policy, among other requirements. In *American National Insurance Co. v. Arce*, the insured’s response to medical history questions in his life insurance application was inaccurately recorded as “no” by the agent, despite disclosing some adverse medical history. Upon the insured’s death shortly thereafter, his mother, the policy’s beneficiary, submitted a claim that was later denied, prompting her to sue the insurer for breach of contract and violations of the Texas Insurance Code. Section 705.051 of the Texas Insurance Code states that “[a] misrepresentation in an application for a life, accident, or health insurance policy does not defeat recovery under the policy unless the misrepresentation (1) is of a material fact and (2) affects the risks assumed.” Before section 705.051 was re-codified in 2003, the Texas Supreme Court had established a five-part common law test that required proof of “intent to deceive” in order to void a policy based on an insured’s misrepresentation. In *Arce*, the insurer claimed that no benefits were owed under the policy due to material misstatements of fact in the insured’s application that affected the risks the insurer assumed in issuing the policy. The insurer argued that the language in section 705.051 encompassed every element of the common law test except the intent to deceive, thus indicating that the statute did not require intent to deceive. However, the Texas Supreme Court rejected this argument, finding that under this interpretation, insurers could avoid paying on an insurance policy based on an innocent, unknowing, or careless misstatement in an insurance application, so long as the misstatement was of a material fact and either induced the policy’s issuance or affected the premium charged. The Texas Supreme Court analyzed the history of the 2003 re-codification of the statute, finding that the Texas legislature not only declared that the 2003 recodification was nonsubstantive, but it also left section 705.051’s language materially unchanged. Thus, based on precedent, the lack of substantive change showed that the legislature’s intent was not to eliminate the common law requirement. In analyzing the plain

text of the statute, the court next rejected the insurer’s argument that the language in the statute encompassed every element of the common law test except intent to deceive. The court focused on the statute’s use of the word “unless,” which implied that the two enumerated elements in the statute were merely necessary, not sufficient, to defeat recovery. The court further stated that, “as written, section 705.051 does not guarantee that the insurer can ‘defeat recovery under the policy’ if both of the stated conditions are satisfied; it only guarantees that recovery cannot be defeated if one or the other is not.” The court further stated that even taking “unless” to mean “except if,” as the insurer urged, did not alter the plain meaning of section 705.051 as establishing minimum conditions that did not guarantee denial of recovery. Thus, the court found that the statute did not inherently or necessarily conflict with settled law requiring pleading and proof of intent to deceive in addition to the statutorily mandated conditions. Accordingly, the Texas Supreme Court held that insurers must plead and prove intent to deceive to avoid contractual liability based on a misrepresentation in an application for life insurance, regardless of whether the policy is contestable. Proof of a material inaccuracy is not enough.

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