


BOGGS RISK & INSURANCE CONSULTING

Cussing, Lying & Disclaiming

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Today's Fun


- Insurance Cuss Word
- Ambiguities and Lying: Insurance Applications
- Disclaiming Disclaimers



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Insurance Cuss Words: Don't Use that Kind of Language Around Me



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“Blanket” Additional Insured

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“Blanket” Additional Insured

- There is NO SUCH ANIMAL in the ISO world
- ISO created two “flavors” of “Automatic Additional Insured” endorsements
 - One requires “Privity of Contract”
 - One is based on the language and requirements within the Contract
- ISO’s two “flavors”

Privity of Contract	Required Status by Contract
CG 20 33	CG 20 38
CG 20 39	CG 20 40

- Yes, some carriers have proprietary forms using this terminology, but be careful of the language

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“Full Coverage”

- There is a difference between what we “mean” and what is heard and understood
 - We think (or intend) for this to mean: Liability, Medical Payments and Physical Damage (collision and other-than-collision) and maybe even Uninsured and/or Uninsured/Underinsured coverage
- How “Full” is “Full”?
- What does the insured understand or misunderstand?
 - Is Physical Damage on a replacement cost basis?
 - Does a deductible apply to Physical Damage
 - Are there any driver exclusions?

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“All Risk”

- We use this term to mean “Special Causes of Loss” or “Open Peril” coverage
 - What is not excluded or limited is covered
 - But, there are exclusions and limitations that apply
- To the court, this means everything that happens is covered
- There is only one TRULY “All Risk” coverage within property forms - Removal

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“Replacement Cost”

• Uh oh!

Reconstruction Cost
Ordinance or Law
Blanket Limits
Inflation Guard
100% Insurance to Value
Replacement Cost

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Ambiguities and Lying in Insurance Applications

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Applications: The Beginning of the Insurance Relationship

- An insured's offer to purchase insurance is made in the form of the application, **supposedly** completed by the insured
- Ultimate acceptance flows from the insurance carrier in the form of a policy
- Issuance of the policy is based on the insurance carrier's reliance upon accurate representation of the fact in the insurance application
- The insurance negotiation begins with the application

Uberrimae Fidei

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Insurance Applications: 3 Factors to Consider

- How did the insured interpret the application question
- Did the insured answer truthfully based on his/her understanding
- Was all pertinent information provided

"Material Misrepresentation"

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"Does Your Dog Bite?"

Schultz v. Tilley, 2017 Mass. App. LEXIS 62 (Mass. Ct. App. May 18, 2017)

American bulldog named "Bocephus"

4. ARE THERE ANY ANIMALS OR EXOTIC PETS KEPT ON PREMISES?

ANIMAL TYPE	BREED	BITE HISTORY (Y/N)

Who or what?

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Other “Ambiguous” Application Findings

Graham v. Lloyd’s Underwriters at London, 964 So. 2d 269 (Fla. Dist. Ct. App. 2007)

- Distance from the “gulf”
- Driving or “as the crow flies”
- Is it 1¼ or over 2 miles?

UnionAmerica Ins. Co. v. Fort Miller Group, Inc., 590 F. Supp. 2d 1254 (N.D. Cal. 2008)

- “Largest value and average value of products manufactured”
- Is this the cost to manufacture or the sales value?

Ocean’s 11 Bar & Grill v. Indem. Ins. Corp. RRG, 2012 U.S. Dist. LEXIS 157585 (S.D. Fla. Nov. 2, 2012)

- “Square footage”
- Is it the square footage of the area open to the public or the entirety of the building?

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The Courts’ Reasoning

- There were multiple reasonable interpretations of the questions meaning (there was ambiguity)
- The insured answered truthfully based on his/her understanding of the question
- “Bite,” “Distance,” “Manufacture” and “Square Footage”
 - Not technical terms
 - Not defined
 - Subject to more than one possible interpretation
- E&O Advice
 - Do NOT complete applications “on behalf” of insureds
 - Be careful explaining the intent of the question

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Creative “Lying” in Applications

BUILDING IMPROVEMENTS	
<input type="checkbox"/> WIRING, YR:	<input type="checkbox"/> PLUMBING, YR:
<input type="checkbox"/> ROOFING, YR:	<input type="checkbox"/> HEATING, YR:
<input type="checkbox"/> OTHER: _____	YR: _____

**Key underwriting questions not asked in the application!
Be CAREFUL!**

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Disclaiming Disclaimers

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What is a Disclaimer

- A formal statement saying that the disclaiming party is not legally responsible for something, such as the information given in a book or on the internet, or that the disclaiming party has no direct involvement in it. * (*Cambridge Dictionary)
- Disclaimers notify the reader that the information provided may not be all the information relevant to the reader and should not be relied upon as the final or primary source of information.
- A disclaimer notifies the reader that he or she is responsible for seeking out all relevant information.
- The disclaimer places the risk of researching all relevant information on the reader.

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Why Use Disclaimers

- Agents generally do not list every possible exclusion or limitation in a proposal or renewal, only a few are highlighted - often only those added by endorsement
- The unendorsed policy language already contains exclusions and limitations
- Short of listing every exclusion, gap or limitation, the only way the agent can adequately warn the insured about exclusions and limitations is by use of a well-worded disclaimer
- Disclaimers are necessary to remove the need to be this precise in every proposal

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Guidelines for Writing a Disclaimer

- Disclaimers should not address one or a few specific exposures or exclusions
- Disclaimers should be broad enough to warn the prospect and client that there are exclusions and limitations that may not be addressed in the proposal
- Disclaimers should point the insured to the specific policy language, warning the insured to not depend on the proposal for any interpretation of coverage
- Disclaimers should clearly state that coverage determinations are often fact-based and are determined by the carrier
- Disclaimers should address the agent's market access - this means that the agent makes known to the insured that they have not researched the entire marketplace to see if a specific coverage is available; but they have researched their available markets

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A Sample Disclaimer

"All insurance policies contain exclusions and limitations either within policy language or added to the policy by attachment of an endorsement. Not all exclusions or limitations are addressed in this proposal. Exclusions and limitations can be absolute or conditional based on the specific circumstances and allegations of a loss or claim. Policy language dictates coverage. [Name of Agency] offers the coverage options available from the insurance carriers it is licensed to represent or from those with which it has a relationship; the agency makes no representations regarding coverages, exclusions or limitations in policies from any carriers not represented by the agency nor does the agency make representations regarding the availability of coverage to cover any specific risk of loss in the broader insurance marketplace."

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