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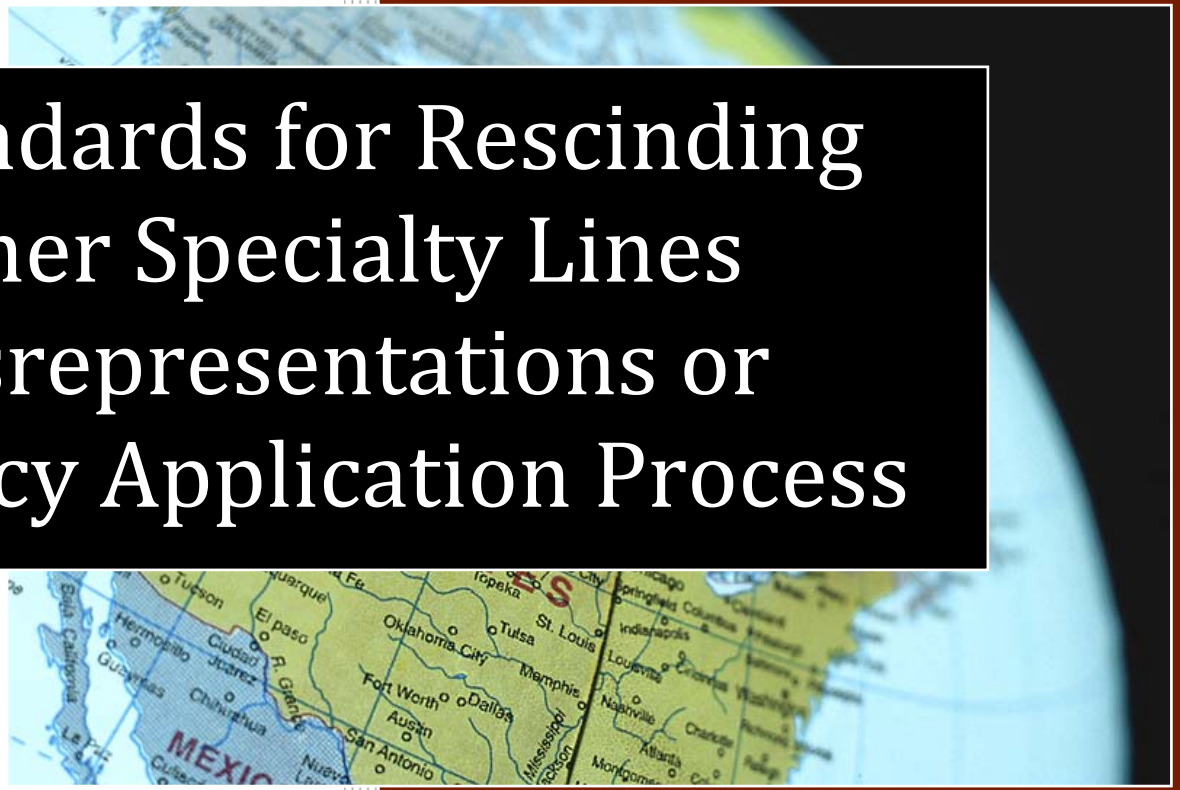
50 State Survey: Standards for Rescinding D&O Liability and Other Specialty Lines Policies Based on Misrepresentations or Omissions in the Policy Application Process



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Please note that statutes and case law vary from state to state and from time to time. This survey does not encompass all possible exceptions to statutes and it does not discuss all possible case law variations. In addition, choice of law rules may impact the result in certain cases.©

50-STATE SURVEY:
STANDARDS FOR RESCINDING D&O LIABILITY AND OTHER SPECIALTY LINES POLICIES BASED ON MISREPRESENTATIONS OR OMISSIONS IN THE POLICY APPLICATION PROCESS

I. INTRODUCTION

This updated 50-State Survey is intended to address statutory and case law standards applicable to rescission of an insurance policy. Although many of the more noteworthy decisions in recent years have emanated from the areas of specialty lines insurance, including in particular D&O policies, the standards to be applied in rescinding a policy are often the same regardless of the type of insurance. A number of states have statutes applicable to specific types of insurance policies such as compulsory automobile liability policies and those in the life, health and accident arena, but there are typically no codes or other law specific to specialty lines insurance.

Thus, in most instances, the case law and statutes cited in this Survey have applicability to all types of insurance policies. That being said, however, a number of the decisions in this Survey address issues that more often arise in the context of D&O and other specialty lines policies, e.g., the concept of severability and rescission based upon financial statements provided in connection with the application for insurance.

II. ELEMENTS TO RESCISSION

In addition to the issues broadly identified in this Survey, there may be a number of other jurisdiction-specific or policy-specific issues to be considered.

For example, a small number of jurisdictions may still require the physical attachment of the application and documents submitted in connection with the application to the policy itself when it is issued. Failure to comply with this requirement may preclude the insurer from successfully rescinding based upon misrepresentations contained in the application and such documents.

Also, while the general rule is that any misrepresentation that could give rise to rescission will result in a rescission as to all insureds under the policy, "severability" provisions typically found in D&O and other specialty lines policies may afford a considerable degree of protection against rescission to "innocent insureds" who had no knowledge of the misrepresentation made.

In addition, one needs to consider varying requirements among the states as to whether a return of premium must be tendered along with a rescission, and whether any interest factor need be added to such premium. There also may be waiver or estoppel issues if rescission of the policy is not raised as soon as possible in the course of handling a claim.

This updated Survey is limited to identifying the basic requirements in each jurisdiction to support policy rescission, and is not intended to be an exhaustive accounting of all issues to be addressed in each jurisdiction.

A. Making a False Representation

The first two elements of rescission, that the insured made a representation that was false, are common to all states. Usually, this element is not disputed if the insurer establishes that the insured's answer to a question in an application is false.

B. Materiality

Almost every state requires that the insured's misrepresentation be material in order to justify rescission of the policy. Typically, in the insurance context, a misrepresentation is deemed material if it would affect the premium charged or exposure to the risks of providing the coverage. *See*, *e.g.*, Bogatin v. Federal Ins. Co., 2000 WL 804433 (E.D.Pa. 2000).

To determine materiality, most courts focus on whether knowledge of the truth would have reasonably influenced the decision of the underwriter. In cases concerning restated earnings, the carrier would have to show that the original stated earnings were material to the insurer's evaluation of the risk. This burden will likely be met because, as one court explained, "the general financial condition of the corporation in the present as well as the past is very important." Shapiro v. American Home Assurance Co., 584 F.Supp. 1245, 1249 (D.Mass. 1984). *Accord*, ClearOne Communications, Inc. v. National Union Fire Insurance Company of Pittsburgh, Pennsylvania, No. 05-4294 (10th Cir. July 25, 2007) ("We do not see how ClearOne's financial records, which give an account of the financial health of the company, could not influence National Union's assessment of the company's risk.")

The testimony of the underwriter is frequently the only evidence presented on this issue. However, in a New York case, Chicago Ins. Co v. Kreitzer & Vogelman, 210 F.Supp.2d 407 (S.D.N.Y. 2002), the court refused to grant summary judgment for an insurer on the materiality element where the insurer only presented the subjective testimony of its underwriter and did not produce objective evidence of its underwriting practices and criteria, such as written underwriting manuals or rules. *See also* Fire & Casualty Insurance Company of Connecticut v. 2077 7th Avenue Restaurant Corp., 2004 WL 1933781 (S.D. N.Y. August 30, 2004) for a very similar result.

C. Reliance

The element of reliance is usually considered closely related to materiality. In some states, reliance is not treated as a separate requirement because the standard of materiality is such that any statement that is shown to be material is one so central to the risk being insured that the insurer is presumed to have taken it into consideration in making the underwriting decision. Shapiro, 584

F.Supp. at 1250. However, most states require an insurer to establish that it relied upon the insured's representation in its underwriting of the policy.

D. Scienter or Intent

While the majority of states (including New York and California) do not require intent to deceive the insurer, a minority of states also requires proof that the insured intended to deceive the insurer in order to rescind. The specific requirements of the intent element vary from state to state. For example, some states such as Connecticut, Delaware, and Ohio require the insurer to establish that the insured specifically intended to deceive the insurer. In contrast, other states such as Massachusetts and New Hampshire require the insurer to show that either the misrepresentation was made with actual intent to deceive *or* the misrepresentation caused an increase in the risk of loss. Illinois goes so far as to hold that where the application contains language representing that the applicant's responses are "true and complete to the best of [his] knowledge and belief," a lesser standard of accuracy applies than that imposed under §5/154, the state's rescission statute. Golden Rule Ins. Co. v. Schwartz, 203 Ill.2d 456, 466 (2003).

III. OTHER ISSUES TO CONSIDER

There are, of course, numerous other issues to consider when dealing with the potential rescission of a D&O or other Specialty Lines policy. For example, as a condition to rescission based upon false statements in an application, a few states require that the application be physically attached to the policy. Additionally, while as a general rule courts have held that the misrepresentations of any one insured in an application can void the policy as to all insureds, Specialty Lines policies can include a "severability" provision that protects innocent insureds. Evaluation of the right of rescission would require a review of any such "severability" language in the policy and how courts have treated severability provisions in the applicable jurisdiction. Other issues may include whether an insurer has waived the right to, or would be estopped from, rescinding the policy, and when and under what circumstances a return of the policy premium will be required in order to have a valid rescission of the policy. This updated Survey only identifies the basic elements in each jurisdiction for rescission of a Specialty Lines policy, and it is not intended to address all of the issues that may potentially arise when rescission of a Specialty Lines policy is being considered.

STATE	STANDARD	CASES AND STATUTES
Alabama	All statements and descriptions in any application for an insurance policy or annuity contract, or in negotiations therefore, by, or in behalf of, the insured or annuitant shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts and incorrect statements shall not prevent a recovery under the policy or contract unless either: (1) Fraudulent; (2) Material either to the acceptance of the risk or to the hazard assumed by the insurer; or (3) The insurer in good faith would either not have issued the policy or contract, or would not have issued a policy or contract at the premium rate as applied for, or would not have issued a policy or contract in as large an amount or would not have provided coverage with respect to the hazard resulting in the loss if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.	ALA. CODE §27-14-7 (1975); Statute entitles insurer to void policy even if innocent misrepresentation is made. Alfa Life Ins. Corp. v. Lewis, 910 So. 2d 757 (Ala. 2005); Duren v. Northwestern Nat. Life Ins. Co., 581 So. 2d 810 (Ala. 1991). The fraudulent representations of the applicant were pleadable, and the application admissible though not made part of the policy. United Sec. Life Ins. Co. v. Wisener, 113 So. 2d 530 (Ala. App. Ct. 1959). Therefore, Alabama statutory law provides three alternatives for rescission if in the application or in "negotiations therefore," the insured made misstatements that were either: fraudulent (made intentionally with knowledge); or, were material to the risk (although innocently made); or, affected the insurer's good faith decision to issue the policy for which the insured applied. *See*, In re: HealthSouth Corp. Ins. Litig., 308 F.Supp.2d 1253 (N.D. Ala. 2004); *citing*, State Farm Gen Ins. Co. v. Oliver, 658 F. Supp. 1546, 1549 (N.D. Ala. 1987). In order to defeat an insurance policy because of misrepresentations in the application, (1) the misrepresentation must be false, (2) the misrepresentation must be made with "actual intent to deceive or the misrepresentation increased the risk of loss" and (3) the insurer must have relied on the misrepresentation to its prejudice. Bankers Life & Cas. Co. v. Long, 345 So.2d 1321 (Ala. 1977). While the materiality of a misrepresentation is generally a jury question under Alabama law, some misrepresentations may be deemed material as a matter of law. Alfa Life Ins. Corp., *supra*, 910 So.2d at 762. The Alabama Supreme Court, relying on the Oliver decision *supra* has held that "the legislature intended that § 27-14-7 apply to *initial* policies and the applications therefore." In addition, an insurance policy cannot be rescinded under §27-14-7 (a)(3) unless the policy was issued "in direct and immediate

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		response to a false application." In re: HealthSouth Corp. Ins. Litig., 308 F.Supp.2d 1253 (N.D. Ala. 2004). The insurance policy or the application must also place the insured on notice of the "disastrous result of an innocent misstatement to invoke § 27-14-7 (a)(3)." *Id.* An insurer's misrepresentation defense based on §27-14-7, Ala. Code 1975, is an affirmative defense which the insurer has the burden of proving and which, if not properly pled in accordance with Rule 8(c) of the Alabama Rules of Civil Procedure, is deemed waived. Meador v. Cincinnati Ins. Co., 915 S0. 2d 60 (Ala.Civ.App. June 10, 2005); Patterson v. Liberty Nat'l Life Ins. Co., 903 So.2d 769 (Ala. 2004). An insurer may limit grounds for rescission to standard that allows more protection for the insured than those provided in Alabama rescission statute, thereby waiving one or more grounds for rescission. In re: HealthSouth Corp. Ins. Litig., 308 F.Supp.2d 1253 (N.D. Ala. 2004). Insurer waived statutory right to rescind policy in its entirety by including severability clause in policy. Insurer could not rescind based on innocent material misrepresentation and could rescind only as to an insured who personally made a knowing misrepresentation.
Alaska	All statements and descriptions in an application for an insurance policy or annuity contract, or in negotiations for the policy or contract, by or in behalf of the insured or annuitant, shall be considered to be representations and not warranties. Misrepresentations, omissions, concealment of facts, and incorrect statements may not prevent a recovery under the policy or contract unless either: (1) fraudulent; (2) material either to the acceptance of the risk, or to the hazard assumed by the insurer; or (3) the insurer in good faith would either not have issued the policy or contract, or would not have issued a policy or contract in as large an	ALASKA STAT. §21.42.110 (Michie 1966). When an applicant misrepresents a material fact, which affects the risk to the insurer, §21.42.110 permits the insurer to deny coverage under the policy or binder. §21.42.110 has been construed to codify the availability of rescission as a remedy. Bennett v. Hedglin, 995 P.2d 668, 673 (Alaska 2000); Zurich Am. Ins. Co. v. Whittier Properties, Inc., 356 F.3d 1132 (9th Cir. 2004).

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	amount, or at the same premium or rate, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherw ise.	
Arizona	Coverage may not be denied unless the insurer can prove that all three conditions of Arizona Rev. Stat. § 20-1109 have been satisfied. All statements and descriptions in any application for an insurance policy or in negotiations therefore, by or on behalf of the insured, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts and incorrect statements shall not prevent a recovery under the policy unless: (1) Fraudulent; (2) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; (3) The insurer in good faith would either not have issued the policy, or would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or otherwise. An actual intent to deceive is not required where the question asked is one where the facts are presumably within the personal knowledge of the insured and where the insurer would naturally contemplate the insured's answers represented the actual facts.	ARIZ. REV. STAT. §20-1109 (1990). State Comp. Fund v. Mar Pac Helicopter Corp., 752 P.2d 1 (Ariz. Ct. App. 1987). Rescission is not permitted under the statute merely because the insurer would have charged a higher premium for the coverage in the policy. Greves v. Ohio State Life Ins. Co., 821 P.2d 757, 764 (Ariz. Ct. App. 1991). To void coverage of an insured risk in an insurance policy based on an insured's misrepresentation in the application, an insurer must prove the insured committed actual or legal fraud that was material to the insurer's accepting that risk. For this purpose, actual fraud requires an intent to deceive while legal fraud does not. Valley Farms, Ltd. v. Transcon. Ins. Co. d/b/a CNA, 78 P.3d 1070, 1074 (Ariz. Ct. App. 2003), *citing* Equitable Life Assurance Soc'y of the United States v. Anderson, 727 P.2d 1066, 1068 (Ariz. Ct. App. 1986)."Legal fraud" exists if a misrepresentation is in an insurance application, whether or not the insured intended to deceive. The question to ask is whether the facts are presumably within the personal knowledge of the insured and are such that the insurer would naturally have contemplated that the insured's answers represented the actual facts; but where the question is of such a nature that a reasonable man would know that it represented merely the opinion of the insured, there must be an actual intent to deceive and bad faith on the part of the insured to constitute fraud. Valley Farms, Ltd., *supra*, *citing* Ill. Bankers' Life Ass'n v. Theodore, 34 P.2d 423, 427 (Ariz. 1934).

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Arkansas	(a) All statements in any application for a life or accident and health insurance policy or annuity contract, or in negotiations therefore, by or in behalf of the insured or annuitant, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless either: (1) Fraudulent; (2) Material either to the acceptance of the risk or to the hazard assumed by the insurer; or (3) The insurer in good faith would not have issued the policy or contract or would not have issued a policy or contract in as large an amount or at the same premium or rate or would not have provided coverage with respect to the hazard resulting in the loss if the facts had been made known to the insurer as required by the application for the policy or contract or otherwise. (b) In any action to rescind any policy or contract or to recover thereon, if any misrepresentation with respect to a medical impairment is proved by the insurer and the insured or any other person having or claiming a right under the contract shall prevent full disclosure and proof of the nature of the medical impairment, then the misrepresentation shall be presumed to have been material. (c) In any action to rescind any policy or contract or to recover thereon, a misrepresentation is material if there is a causal relationship between the misrepresentation and the hazard resulting in a loss under the policy or contract.	ARK. CODE ANN. §23-79-107 (Michie 1989). (This Code only applies to life, accident or health insurance policies or annuity contracts. However, this is the only codified law dealing with rescission where there is a misrepresentation.) An insurance company may generally retroactively rescind a policy because of fraud or misrepresentation of the insured. Neill v. Nat'l Mut. Fire Ins. Co., 139 S.W.3d 484 (Ark. 2003), *citing* Ferrell v. Columbia Mut. Cas. Ins. Co., 816 S.W.2d 593 (Ark. 1991). Where there are misrepresentations of material facts, which if known by the insurer would have affected whether they issued the policy, rescission is the proper remedy. *Id.* Also, if the misrepresentation was made with the intent to deceive the insurer, the insurer may rescind the policy. Mo. State Life Ins. Co. v. Witt, 256 S.W. 46 (Ark. 1923), *citing* Metro. Life Ins. Co. v. Johnson, 150 S.W. 393 (Ark 1912). Since § 23-79-107 states that misrepresentations shall not prevent recovery unless they are fraudulent or material, the burden remains on the insurance company to prove that the undisclosed facts were material to the risk assumed or that in good faith it would not have issued the policy had it known the true facts. Burnett v. Philadelphia Life Ins. Co., 101 S.W.3d 843 (Ark. App. 2003). Furthermore, an insurance policy may be unilaterally rescinded, without court action, by a proper restoration of benefits to the contracting party and by a "clear statement that rescission of the agreement is what is intended." Douglass v. Nationwide Mut. Ins. Co., 913 S.W.2d 277 (Ark. 1996). However, such unilateral rescission can only occur in the absence of third-party claims. *Id.* McQuay v. Arkansas Blue Cross and Blue Shield, 98 S.W.3d 454 (Ark. App. 2003).
California	Fraudulent intent to deceive is not necessary for rescission of an insurance policy where the insured has made a false representation as to a material	CAL. INS. CODE §330 (definition of concealment); §331 (concealment, whether intentional or unintentional, entitles the

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	fact. Concealment, whether intentional or unintentional, entitles the injured party to rescind the insurance. If the misrepresented or concealed fact is not a "material fact," the insurer is required to show that any misstatements on the insured's application were made with knowledge and with intent to defraud in order to rescind the policy.	injured party to rescind the insurance); §334 (definition of materiality), and §359 (if a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time the representation becomes false). (West 1993). Fireman's Fund Am. Ins. Co. v. Escobedo, 145 Cal. Rptr. 785 (Cal. Ct. App. 1978); Imperial Cas. & Indem. Co. v. Sogomonian, 243 Cal. Rptr. 639 (Cal. Ct. App. 1988); Provident Life & Accident Ins. Co. v. Chandrasena, 23 Fed.Appx. 745 (9th Cir. 2001); Fraker v. Sentry Life Ins. Co., 23 Cal. Rptr.2d 372 (Cal. Ct. App. 1993); Taylor v. Sentry Life Ins. Co., 729 F.2d 652 (9th Cir. 1984). CAL. INS. CODE §650 ("rescission [based on misrepresentation] shall apply to all insureds under the contract, including additional insureds, unless the contract provides otherwise." Fed. Ins. Co. v. Homestore, Inc., 144 Fed. Appx. 641, 2005 WL 1926483 (9th Cir. Aug. 12, 2005) (applying Cal. law), (holding that California public policy does not prevent insurers from rescinding coverage for "innocent" directors and officers based on the misrepresentation of the signer of an application). Materiality may be determined as a matter of law where no reasonable person can disagree as to the materiality of the representation. A policy may be rescinded retroactively so as to avoid all liability even if a claim for coverage is currently pending. A rescission is effective despite the effect upon the rights of third parties. *See also* Amtel Corp. v. St. Paul Fire & Marine, No. 04-04082SI, (U.S.D. Ct. N.D. Calif.) (October 7, 2005 Order) noting that California case law and statutory law suggests that no duty to defend exists if an insurer has unilaterally rescinded a policy unless the rescission has been set aside). The fact that an insurer has requested answers to specific questions in an application for insurance may be sufficient to

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		establish materiality as a matter of law. Thompson v. Occidental Life Ins. Co., 109 Cal. Rptr. 473 (Cal. 1973); Butcher v. Gulf Ins. Co., 2005 WL 1514086 (N.D. Cal. June 15, 2005). Even though E&O insurer was precluded by statute from unilaterally rescinding its policy after the insured had filed suit to enforce the policy, the insurer could still raise rescission as an affirmative defense or as a counterclaim. Amtel Corp. v. St. Paul Fire & Marine Ins. Co., 2006 WL 436171 (N.D. Cal. Feb. 21, 2006). D&O Insurer had the right to rescind its excess policy in its entirety as to all insureds where the application upon which the excess policy was issued contained factual misrepresentations which were made with the actual intent to deceive and which were material to the acceptance of the risk and the hazard assumed by the insurer, and the signatory of the application, the insured's former CFO, knew such misrepresentations to be untrue at the time he signed the application and as of the inception date of the policy. TIG Ins. Co. of Mich. v. Homestore, Inc., 40 Cal. Rptr. 3d 528 (Cal. Ct. App. Mar. 13, 2006).
Colorado	To void the policy, the omission or misrepresentation must be material or have been the basis on which the policy was issued, and the applicant must have knowingly made false or misleading statements. To void the insurance policy, you need proof of knowledge, and you do not need to establish a separate element of an "intent to deceive."	While there exist some exceptions, the majority rule requires proof of an element of "knowledge" while dispensing with proof of an "intent to deceive." Wade v. Olinger Life Ins. Co., 560 P.2d 446, 452 (Colo. 1977), *citing* Hollinger v. Mut. Benefit Life Ins. Co., 560 P.2d 824, 826 (Colo. 1977). In determining if potential claims should be disclosed, courts look at the language in the policy application. Fed. Ins. Co. v. Curon Med. Inc., 2004 WL 2418318 (N.D. Cal. 2004).
Connecticut	Under Connecticut law, an insurer has a right to rescind for a material misrepresentation on an insurance application if it is not an innocent misrepresentation, but rather one known by the insured to be false when	The insurer must prove that the applicant made: (1) A misrepresentation or untrue statement;

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	made.	(2) Knowingly; and (3) That it was material to the insurer's decision whether to insure. Middlesex v. Mut. Assurance Co. v. Walsh, 590 A.2d 957 (Conn. 1991); Pinette v. Assurance Co. of Am., 52 F.3d 407, 409 (2nd Cir. 1995); Mt. Airy Ins. Co. v. Millstein, 928 F.Supp. 171, 174 (D.Conn. 1996). Statements and answers contained in insurance applications become part of any contract of insurance issued on it. Paul Revere Life Ins. Co. v. Pastena, 725 A.2d 996 (Conn. App. 1999). If the material misrepresentations are untrue, they invalidate the policy without further proof of actual conscious design to defraud. *Id*. Also, an insurer has the right to rescind an insurance policy for material misrepresentation in an insurance application if it is not an innocent misrepresentation, but one "known by the insured to be false when made." *Id*. "Innocent misrepresentations made because of ignorance, mistake or negligence are not adequate grounds for rescission." Conn. Indem. Co. v. Perrotti, 390 F.Supp.2d.158 (D.Conn. Sept. 30, 2005).
Delaware	All statements and descriptions in any application for an insurance policy or annuity contract by or in behalf of the insured or annuitant shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts and incorrect statements shall not prevent a recovery under the policy or contract unless either: (1) Fraudulent; or (2) Material either to the acceptance of the risk or to the hazard assumed by the insurer; or (3) The insurer in good faith would either not have issued the policy or contract, or would not have issued it at the same premium rate or would not have issued a policy or contract in as large an amount or would not have provided coverage with respect to the hazard resulting in the loss	DEL. CODE ANN. TIT. 18 §2711 (1989) (codifies common law relating to misrepresentation made in negotiating an insurance policy).

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	if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.	
District of Columbia	An applicant's affirmative false statement on a material matter in an application for insurance constitutes a sufficient ground for voiding the policy. An insurer seeking to cancel a policy must prove, by a "preponderance of clear and satisfactory evidence," that the statement was: (1) False; and (2) Material, either by showing that it affected the insurer's risk of loss in issuing the policy, or that the statement was made with intent to deceive.	Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Mason, Perrin & Kanovsky, 765 F.Supp. 15 (D.D.C. 1991).
Florida	(1) Any statement or description made by or on behalf of an insured or annuitant in an application for an insurance policy or annuity contract, or in negotiations for a policy or contract, is a representation and is not a warranty. A misrepresentation, omission, concealment of fact, or incorrect statement may prevent recovery under the contract or policy only if any of the following apply: (a) The misrepresentation, omission, concealment, or statement is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by the insurer. (b) If the true facts had been known to the insurer pursuant to a policy requirement or other requirement, the insurer in good faith would not have issued the policy or contract, would not have issued it at the same premium rate, would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss. (2) A breach or violation by the insured of any warranty, condition, or provision of any wet marine or transportation insurance policy, contract of insurance, endorsement, or application therefore does not void the policy or contract, or constitute a defense to a loss thereon, unless such breach or	FLORIDA STAT. ANN. Title 37, §627.409 (West 1996). There is no scienter requirement in the statute; even an unintentional misstatement will prevent coverage if it materially affects the risk or if the insurer would have altered the policy's terms had it known the true facts. First Nat'l Bank Holding Co. v. Fid. and Deposit Co. of Md., 885 F.Supp. 1533 (N.D.Fla. 1995); Motors Ins. Corp. v. Marino, 623 So.2d 814 (Fla. Dist. Ct. App. 1993). An insurer seeking to avoid coverage or rescind under the statute bears the burden to plead and prove the misrepresentation, its materiality, and the insurer's detrimental reliance. Griffin v. Amer. Gen. Life & Acc. Ins. Co., 752 So.2d 621 (Fla. App. 1999). The insurer has the right to unilaterally rescind a policy on the basis of misrepresentation in the application. Towers v. Clarendon Nat'l Ins. Co., 927 So.2d 913 (Fla. App. 2d 2006). However, contractual provisions, such as arbitration clauses, become unenforceable by the insurer once it has unilaterally rescinded the contract. *Id*.

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	violation increased the hazard by any means within the control of the in sured.	
Georgia	Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless: (1) Fraudulent; (2) Material either to the acceptance of the risk or to the hazard assumed by the insurer; or (3) The insurer in good faith would either not have issued the policy or contract or would not have issued a policy or contract in as large an amount or at the premium rate as applied for or would not have provided coverage with respect to the hazard resulting in the loss if the true facts had been known to the insurer as required either by the application for the policy or contract or otherwise.	GA. CODE ANN. §33-24-7 (Harrison 1994); Thompson v. Permanent Gen. Assurance Corp., 519 S.E.2d 249 (Ga. Ct. App. 1999). Material representations in insurance application are grounds for forfeiture regardless of whether insurer relies on answers and where application is attached to and made part of the contract. Prudential Ins. Co. of Am. v. Perry, 174 S.E.2d 570 (Ga. Ct. App. 1970). Circumstances making rescission improper were demonstrated in Executive Risk Indemnity, Inc. v AFC Enterprises, Inc., 04-2523 (Sep. 21, 2007). There Executive sought rescission of its D&O policy issued to AFC based on the theory they made a material misrepresentation in its application. AFC made a decision to restate its financials for 2001 and the first three quarters of 2002 as a result of changing accounting firms from Arthur Anderson to KPMG and a change in the methodology used from market basis accounting to site bases accounting. The decision was made after the policy came into effect and as soon as the announcement was made a number of securities actions and derivative actions were filed, triggering the full liability limits of the policy. The actions were all tendered to Executive, however they denied coverage, returned the premiums and rescinded the policy. AFC returned the premiums, refusing to accept rescission. Under Georgia law a material misrepresentation must be a false statement made with the intent to defraud. Further the parties can contract to limit the right of rescission, which was done in this case based on the language of the application and attached endorsement. Additionally, the underwriter authorized to issue

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		the policy knew of the potential for restating the financials and issued the policy anyway. The court also found that under Georgia law, an insurer cannot assert a fact as material to the risk if it was not an inquiry made during the application process. The restatement of the financials would not have changed any of the responses to the application questions. Further there were no warranties in the application as to the accuracy of the responses other than the answers were true and correct to the best of the signators' knowledge and belief. As a result the action for rescission was dismissed with prejudice and AFC was awarded the full amount of the policy, plus post-judgment interest in the amount of $24,295,890.40 as well as all costs of the action.
Hawaii	All statements or descriptions in any application for an insurance policy or in negotiations therefore, by or on behalf of the insured, shall be deemed to be representations and not warranties. A misrepresentation shall not prevent a recovery on the policy unless made with actual intent to deceive or unless it materially affects either the acceptance of the risk or the hazard assumed by the insurer.	HAW. REV. STAT. Title 24, §431:10-209 (1993).
Idaho	Misrepresentations, omissions, concealment of facts and incorrect statements shall not prevent a recovery under the policy unless: (1) Fraudulent; (2) Material either to the acceptance of the risk , or to the hazard assumed by the insurer; (3) The insurer in good faith would either not have issued the policy, or would not have issued a policy in as large an amount, or would have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.	IDAHO CODE ANN. §41-1811 (1991); Wardle v. Int'l Health & Life Ins. Co., 551 P.2d 623 (Idaho 1976).
Illinois	215 ILCS 5/154	215 ILL. COMP. STAT. 5/154 (West 1996)

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	No misrepresentation or false warranty made by the insured or in his behalf in the negotiation for a policy of insurance, or breach of a condition of such policy shall defeat or avoid the policy or prevent its attaching unless such misrepresentation, false warranty or condition shall have been stated in the policy or endorsement or rider attached thereto, or in the written application therefore. No such misrepresentation or false warranty shall defeat or avoid the policy unless it shall have been made with actual intent to deceive or materially affects either the acceptance of the risk or the hazard assumed by the company.	Policy may not be voided for misrepresentation or false warranty unless such misrepresentation or false warranty shall have been stated in the policy or endorsement or rider attached thereto, or in the written application therefore. The misrepresentation or false warranty shall have been made with actual intent to deceive or materially affect either the acceptance of the risk or the hazard assumed by the company. Provides that certain types of policies may not be rescinded after the policy has been in effect for one year or one policy term, whichever is less. Under 215 ILCS 5/154, a misrepresentation, even if innocently made, can serve as the basis to void a policy. Campbell v. Prudential Ins. Co. of Am., 155 N.E.2d 9 (Ill. 1958). However, where the application contains language representing that the applicant's responses are "true and complete to the best of [his] knowledge and belief," a lesser standard of accuracy applies than that imposed under §5/154. Golden Rule Ins. Co. v. Schwartz, 786 N.E.2d 1010 (Ill. 2003). The focus then shifts from whether the facts asserted were true to whether, on the basis of what it knew, the applicant believed them to be true. The statute renders a policy issued based on a material misrepresentation voidable, not void *ab initio*; therefore, the insurer may waive its right to assert the defense to rescind the policy. Ill. St. Bar Ass'n Mut. Ins. Co. v. Coregis Ins. Co., 821 N.E.2d 706 (1st Dist. 2004). Whether a statement is material is determined by whether a reasonably careful and intelligent person would have regarded the facts stated as substantially increasing the chances of the events insured against, so as to cause a rejection of the application or different conditions. Ratliff v. Safeway Ins. Co., 628 N.E.2d 937 (Ill. App. Ct. 1993); QBE Int'l Ins. Ltd. v. Clark, No. 01 C 0508, 2003 WL 22433117 (N.D. Ill. Oct. 24, 2003). Severability and "best knowledge" provisions in a D&O policy

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		did not foreclose insurer's claim for rescission where insurers sufficiently pled that the individual who signed the application knew of the falsity of the misstatements made in the application at the time that he signed the application, triggering an exception to non-imputation language in the policy. Travelers Indem. Co. v. Bally Total Fitness Holding Corp., 448 F.Supp.2d 976, 2006 WL 2660930 (N.D. Ill. 2006). *See also*, Barth v. State Farm Fire & Casualty Company, No. 104378 (Ill. March 20, 2008), where a "concealment and fraud" exclusion voided coverage when the insured concealed or misrepresented a material fact, related to the policy, either before or after a loss. The court found that although the term "fraud" is not defined in the policy, the exclusionary language "unambiguously conveys the contours of the exclusion." The language of the exclusion voided coverage, even absent proof of "reasonable reliance" of the insurer and "injury" to the insurer, both elements of common law fraud.
Indiana	A policy may be rescinded where a false statement is made with actual intent to deceive or where the false statement materially affects the acceptance of the risk or hazard assumed by the insured.	A material misrepresentation or omission of fact in an insurance application, relied on by the insurer in issuing the policy, renders the coverage voidable at the insurance company's option. Foster v. Auto-Owners Ins. Co., 703 N.E.2d 657 (Ind. 1998), *citing* Colonial Penn Ins. Co. v. Guzorek, 690 N.E.2d 664, 672 (Ind. 1997). The material misrepresentations prevent a meeting of the minds as to the risk to be insured. *Id*. A misrepresentation or omission is material if knowledge of the truth would have caused the insurer to refuse the risk. *Id*. False representations concerning a material fact, which mislead, will void an insurance contract regardless of whether the misrepresentation was innocently made or made with a fraudulent design. Metro. Life Ins. Co. v. Becraft, 12 N.E.2d 952, 954 (Ind. 1938). The measure of materiality is whether knowledge of the true facts might have lead the company to decline the risk, or accept it only for a higher premium. *Id*. at

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		955. The question of materiality is generally a question of fact for the jury to resolve unless under the evidence there could be no reasonable difference of opinion. *Id*. at 956.
Iowa	There may be equitable rescission of a contract where there has been a false representation of a material matter made with an intent to induce the insurer to act or refrain from acting and the insurer justifiably relied upon the representation. It is not necessary that there be an intent to deceive.	In general, "fraudulent misrepresentations leading to the creation of a contract give rise to a right of rescission." Robinson v. Perpetual Servs. Corp., 412 N.W.2d 562, 568 (Iowa 1987); *accord* Hyler v. Garner, 548 N.W.2d 864, 870 (Iowa 1996). When a party relies on the doctrine of equitable rescission to void a contract, five elements must be proven: "(1) a representation, (2) falsity, (3) materiality, (4) an intent to induce the other to act or refrain from acting, and (5) justifiable reliance." Hyler, at 872; Schmidt v. Fortis Ins. Co., 349 F.Supp.2d 1171, (N.D.Iowa Jan 03, 2005). Intent to deceive is not a necessary element of proof. Rubes v. Mega Life & Health Ins. Co., 642 N.W.2d 263, 269 (Iowa 2002). Materiality has been found where a fact influences a person to enter into a transaction, where it deceives that person or induces that person to act, or where the transaction would not have occurred without it. Utica Mut. Ins. Co. v. Stockdale Agency, 892 F.Supp. 1179, 1194 (N.D. Iowa 1995).
Kansas	An insurer may rescind an insurance policy where the policy was procured through the insured's fraudulent misrepresentation of a material fact in the application for insurance, and the insurer relied upon the misrepresentation to its detriment.	To rescind an insurance contract based on a fraudulent misrepresentation, the insurer must show by clear and convincing evidence: (1) an untrue statement of fact by the insured, (2) that the insured knew the statement was untrue, (3) the insured made the statement with the intent to deceive or recklessly with disregard for the truth, and (4) the insurer justifiably relied on the statement and acts to its injury and detriment. Waxse v. Reserve Life Ins. Co., 809 P.2d 533, 536 (Kan. 1991). A fraudulent misrepresentation is a statement made by the insured as a fact of something which is untrue, and which the insured states with the knowledge that it is untrue and with an intent to deceive, or which he states positively as true without knowing it to be true, and which has a tendency to mislead,

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		where such fact is material to the risk. Am. States Ins. Co. v. Erlich, 701 P.2d 676, 678 (Kan. 1985). A misrepresentation is material if knowledge of the truth would have reasonably influenced the insurer in accepting the risk, in estimating the degree or character of the risk, or in fixing the premium. *Id*. at 679. Case law indicates that Kansas would not generally allow an insurance policy to be rescinded based on a mere negligent misrepresentation or omission. Van Enter., Inc. v. Avemco Ins. Co., 231 F.Supp.2d 1071, 1090-91 (D.Kan. 2002). Both subjective and objective components apply in determining if a misrepresentation on an application is such that coverage may be void: 1) Subjectively, what facts were known to the applicant at the time the application for the policy was completed; 2) Objectively, could the known facts reasonably be expected to give rise to a claim. American Special Risk Management v. Cahow, 2007 WL 1964952 (Kan. App. July 6, 2007).
Kentucky	A misrepresentation voids an insurance policy if it is "material" to the acceptance of the risk or if the insurance company would not have issued the policy if the true facts were known. To void the policy on the grounds the misrepresentation was fraudulent, the court looks to the common law definition of fraud.	KY. REV. STAT. ANN. § 304.14-110 All statements and descriptions in an insurance policy by or on behalf of the insured shall be deemed to be representations and not warranties. Misrepresentations, omissions, and incorrect statements shall not prevent a recovery under the policy or contract unless: (1) fraudulent; (2) material either to the acceptance of the risk, or to the hazard assumed by the insurer; or (3) the insurer in good faith would not have issued the policy or contract, would not have issued it at the same premium rate, would not have issued the policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the

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		loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise. State Farm Mut. Auto. Ins. Co. v. Crouch, 706 S.W.2d 203 (Ky. Ct. App. 1986).
Louisiana	No oral or written misrepresentation or warranty made in the negotiation of an insurance contract, by the insured or in his behalf, shall be deemed material or defeat or void the contract or prevent it attaching, unless the misrepresentation or warranty is made with the intent to deceive.	LA. REV. STAT. ANN. § 22:619A; Darby v. Safeco Ins. Co. of Am., 545 So.2d 1022, 1025 (La. 1989). A misrepresentation is material if the insurer would not have issued the policy had the misrepresentation not been made. Breaux v. Bene, 664 So. 2d 1377 (La. Ct. App. 1995). *See also* LA. REV. STAT. ANN., § 22:636.4, which relates to cancellation of certain commercial policies for among other reasons, fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy.
Maine	All statements and descriptions in any application for insurance or for an annuity contract, by or in behalf of the insured or annuitant, are deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts and incorrect statements may not prevent a recovery under the policy or contract unless either:(1) Fraudulent; or (2) Material either to the acceptance of the risk, or to the hazard assumed by the insurer, such that the insurer in good faith would either not have issued the insurance or contract, or would not have issued it at the same premium rate, or would not have issued insurance in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.	ME. REV. STAT. ANN. Tit. 24-A § 2411 Section 2411 is to be read in the disjunctive. York Mut. Ins. Co. v. Bowman, 746 A.2d 906 (Me. 2000). Misrepresentations, whether intentional or otherwise, and the breach of warranties, have rendered the policies void. Mailhoit v. Metro. Life Ins. Co., 32 A. 989 (Me. 1895).
Maryland	An insurance policy is void ab initio if the insured makes a material misrepresentation of fact in the application. Whether the misrepresentation is material depends upon whether the misrepresentation of the true facts would reasonably have affected the	Hartford Accident and Indem. Co. v. Sherwood Brands, Inc., 680 A.2d 554 (Md. Ct. Spec. App. 1996), *vacated on other grounds*, 698 A.2d 1078 (Md. 1997). An untrue statement does not nullify the policy unless the

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	determination of the acceptability of the risk. The insurer must have relied upon the misrepresentation.	representation was made with bad faith or is material. Continental Casualty Co. v. Pfeifer, 229 A.2d 422 (Md. 1967).
Massachusetts	No oral or written misrepresentation or warranty made in the negotiation of a policy of insurance by the insured or in his behalf shall be deemed material or defeat or void the policy or prevent its attaching unless such misrepresentation or warranty is made with actual intent to deceive, or unless the matter misrepresented or made a warranty increased the risk of loss.	MASS. GEN. LAWS ch. 175, § 186 Shapiro v. Am. Home Assurance Co., 584 F. Supp. 1245 (D. Mass. 1984). Insurer can void the effect of policy rider on basis of misrepresentation in application for policy only if misrepresentation was made with actual intent to deceive or if it effected an increase in risk of loss. Kaufman v. Nat'l Cas. Co., 174 N.E.2d 35 (Mass. 1961) An insurer may avoid a policy if a misrepresentation on the application is material and it is made with actual intent to deceive or if it increases the risk of loss. A.W. Chesterton Co. v. Mass. Insurers Insolvency Fund, 838 N.E.2d 1237, 1246 (Mass. 2005). Measured objectively, a fact is material if it would naturally influence an underwriter's judgment "in making the contract at all, or in estimating the degree and character of the risk, or in fixing the rate of the premium. *Id.*
Michigan	An insurer may rescind an insurance policy where the policy was procured through the insured's intentional misrepresentation of material fact in the application for insurance. There is a split in authority as to whether a policy may be rescinded where a misrepresentation was made, even if without fraudulent intent, if the misrepresentation was material to the risk the insurer accepted.	Under Michigan common law, there is both precedent for and against the proposition that an insurance policy may be rescinded for an untrue statement made in good faith or in ignorance of its falsity, if such misrepresentation materially affected the assumption of risk by the insurer. *See* Howard v. Golden State Mut. Life, 231 N.W.2d 655 (Mich. Ct. App. 1975) and cases cited therein. Courts may look to the definition of "representation" contained in MCL 500.2218(2) for support for the proposition that "misrepresentation" requires something more than just a false representation and that there must also be a finding that the representation was made as an inducement or with fraudulent intent. A misrepresentation is "material" where communication of it would have had the effect of substantially increasing the chances of loss insured against so as to bring about a rejection of the risk

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		or the charging of an increased premium. Oade v. Jackson Nat'l Life Ins. Co., 632 N.W.2d 126 (Mich. 2001); Old Line Life Ins. Co. of Amer. v. Garcia, 411 F.3d 605, 611 (Mich. 2005). Even though it only applies to life insurance policies and disability insurance policies, courts may look to MICH. COMP. LAWS § 500.2218(1) for guidance on what is "material" in other situations. ("No misrepresentation shall be deemed material unless knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make the contract.") Representations must be statements of past or present fact. Future promises cannot be considered misrepresentations. Old Line Life Ins. Co. of Amer. v. Garcia, 411 F.3d 605, 611 (Mich. 2005). A federal court in Michigan has recently held that, absent an express severability provision "a material representation by one insured permits rescission as to all insureds," even the innocent ones. American Guarantee & Liability Ins. Co. v. The Jaques Admiralty Law Firm, 2005 WL 20369 (6th Cir. 2005).
Minnesota	MINN. STAT. § 60A.08 Subd. 9 – No oral or written misrepresentation made by the assured, or in the assured's behalf, in the negotiation of insurance, shall be deemed material, or defeat or avoid the policy, or prevent its attaching, unless made with intent to deceive and defraud, or unless the matter misrepresented increases the risk of loss. MINN. STAT. § 60A.08 Subd. 11 – No misrepresentation or omission made in an application or negotiation for any policy providing directors and officers liability coverage for directors and officers of a corporation shall defeat or avoid coverage or prevent the policy from attaching for a director or officer unless the director or officer has signed the application and has actual knowledge of the facts misrepresented or omitted. The application shall be attached to and incorporated into the contract. This subdivision applies with respect to all policies governed by Chapter 60A or issued or renewed in Minnesota.	§ 60A.08 Subd. 1 – application of the insured shall not be considered a warranty or a part of the contract, except in so far as it is incorporated or attached. § 60A.08 Subd. 14 - prohibits an insurer and an insured from agreeing to rescind a policy if the insurer has knowledge of any claims against the insured that would remain unsatisfied due to the financial condition of the insured. A misrepresentation increases the risk of loss when it impairs the insurer's ability to make a reasonable decision initially to assume the risk of coverage. The risk of loss is also increased when there is a greater likelihood that the insurer will be liable in the future than there would have been if the facts were as the insured stated them to be. In re Silicone Implant Ins. Coverage, 652 N.W.2d 46, 78 (Minn. Ct. App. 2002), aff'd in part, rev'd in part

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		by 667 N.W.2d 405 (Minn. 2003). Whether a misrepresentation increased the risk of loss is a question for the trier of fact unless the evidence is conclusive one way or the other. Transam. Ins. Co. v. Austin Farm Ctr., Inc., 354 N.W.2d 503, 506 (Minn. Ct. App. 1984).
Mississippi	An insurer may rescind the policy upon proof that the insured, in the policy application, made a representation of a fact material to the risk which was not substantially true. An intent to deceive need not be shown in order to void a policy based on material misrepresentations.	A representation in the policy, if substantially true and not material to the risk, will not invalidate the policy in the absence of fraud. Sanford v. Federated Guar. Ins. Co., 522 So. 2d 214, 218 (Miss. 1988); Nat'l Cas. Co. v. Johnson, 67 So. 2d 865, 867 (Miss. 1953). A insurer is not required to show an intent to deceive in order to void a policy based on material misrepresentations. Golden Rule Ins. Co. v. Hopkins, 788 F.Supp. 295 (S.D. Miss. 1991). Mississippi makes a distinction between whether an answer given in a policy application is a "warranty" or a "representation." A warranty must be literally true and its materiality cannot be inquired into. Colonial Life & Accident Ins. Co. v. Cook, 374 So. 2d 1288, 1298 (1979).
Missouri	Policy may be rescinded for fraudulent misrepresentation of a material fact where its maker knew of the falsity, it was made with the intent to deceive, and the insurer relied on the representation. Policy may also be rescinded for misrepresentation of a material fact under limited circumstances.	Missouri law requires that the insurance company demonstrate that a representation is both false and material in order to avoid the policy when (1) the representation is warranted to be true, (2) the policy is conditioned upon its truth, (3) the policy provides that its falsity will void the policy, or (4) the application is incorporated into and attached to the policy. Otherwise, the insurance company must show that the representation was false and fraudulently made in order to void the policy. Shirkey v. Guar. Trust Life and Ins. Co., 141 S.W.3d 62 (Mo. Ct. App. 2004); Dixon v. Business Men's Assurance Co. of Am., 285 S.W.2d 619, 625 (Mo. 1955); Cova v. Am. Family Mut. Ins. Co., 880 S.W.2d 928 (Mo. Ct. App. 1994). A misrepresentation of fact is deemed material if the fact, stated truthfully, might reasonably have influenced the insurer to accept

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		or reject the risk or to have charged a different premium. Cont'l Cas. Co. v. Maxwell, 799 S.W.2d 882, 889 (Mo. Ct. App. 1990). That the fact misrepresented has no subsequent relation to the manner in which the event insured against occurred does not make it any less material to the risk. Weekly v. Mo. Prop. Ins. Placement Facility, 538 S.W.2d 375, 378 (Mo. Ct. App. 1990). When a misrepresentation is of such a nature that all minds would agree that it is or is not material, the question of materiality is appropriately considered to be a question of law. Assurance Co. of Am. Cas. Co. v. Syntrax Innovations, Inc., 2005 WL 2491462 (E.D. Mo. March 3, 2005). MO. REV. STAT. § 375.002. Grounds for cancellation of a policy.
Montana	To void policy on the grounds that there has been a misrepresentation, the statement must not only be untrue as of the time when it was made, but also material as regards the acceptance of the risk assumed by the insurer. The false statement must have been made willfully and with intent to deceive and must have been relied upon by the insurer.	MONT. CODE ANN. § 33-15-403; Mont. Auto Fin. Corp. v. Fed. Sur. Co., 278 P. 116, 121 (Mont. 1929).
Nebraska	Policy may be rescinded where (1) the misrepresentation was made knowingly with intent to deceive, (2) the insurer relied and acted upon such statement, and (3) the insurer was deceived to its injury.	NEBRASKA REV. STAT. § 44-358. No oral or written misrepresentation or warranty made in the negotiation for a contract or policy of insurance by the insured, or in his behalf, shall be deemed material or defeat or avoid the policy, or prevent its attaching, unless such misrepresentation or warranty deceived the company to its injury. The breach of a warranty or condition in any contract or policy of insurance shall not void the policy nor avail the insurer to avoid liability, unless such breaches all exist at the time of the loss and contribute to the loss, anything in the policy or contract of insurance to the contrary notwithstanding. *See* White v. Medico Life Ins. Co., 327 N.W.2d 606 (Neb. 1982). Nebraska's common law right to rescission for material misrepresentations is subject to the limitations imposed by Nebraska Revised Statutes, §44-358. Glockel v. State Farm Mut.

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		Auto Ins. Co., 400 N.W.2d 250 (Neb. 1987). A misrepresentation is material if the insurer would not have issued the policy had it been aware of the true facts. Lowry v. State Farm Mut. Auto. Ins. Co., 421 N.W.2d 775 (Neb. 1988).
Nevada	Coverage under the policy may be denied or the policy rescinded where the misrepresentation was (1) fraudulent; (2) material to the risk or the hazard assumed by the insurer; or (3) affects whether the insurer would have issued the policy or the terms they would have issued the policy under.	NEV. REV. STAT. ANN. § 687B.110. All statements and descriptions in any application for an insurance policy or annuity contract, by or on behalf of the insured or annuitant, shall be deemed to be representations and not warranties. Misrepresentation, omissions, concealment of facts and incorrect statements shall not prevent a recovery under the policy or contract unless either: (1) Fraudulent, or; (2) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or (3) The insurer in good faith would either not have issued the policy or contract, or would not have issued it at the same premium rate, or would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise. Schneider v. Cont'l Assurance Co., 885 P.2d 572, 576 (Nev. 1994).
New Hampshire	Rescission for false representations is equitable where: (1) the insurer would suffer damages if the policy were not rescinded; (2) the insured would not suffer undue hardship; and (3) rescission along with the insurer's restitution of the premiums paid by insured would restore the parties to the status quo.	Mooney v. Nationwide Mut. Ins. Co., 822 A.2d 567 (N.H. 2003); Northland Ins. Co. v. N.H. Ins. Co., 63 F. Supp. 2d 128 (D.N.H. 1999); Richards v. Durham Life Ins. Co., 1994 WL 543508 (D.N.H. 1994). "The falsity of any statement in the application for any policy covered by this chapter shall not bar the right to recovery

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		thereunder, unless such false statement was made with actual intent to deceive, or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer." N.H. REV. STAT. § 415:9 (Note: Chapter 415 applies to accident and health insurance, however, a court interpreting rescission of other types of insurance may look to Chapter 415 for guidance). *See also* N.H. REV. STAT. § 417-C:1 On fraud or material misrepresentation as grounds for cancellation of commercial insurance.
New Jersey	Under New Jersey law, an insurer may rescind a policy when the insured makes a false statement in the insurance application that materially affects the acceptance of the insurance risk.	First Am. Title Ins. v. Lawson, 798 A.2d 661 (N.J. Super. Ct. App. Div. 2002), *aff'd in part and rev'd in part by* 827 A.2d 230 (N.J. 2003); Booker v. Blackburn, 942 F. Supp. 1005, 1008 (D.N.J. 1996); In re Tri State Armored Services, 332 B.R.690, 2005 WL 2622799 (Bankr.D.N.J. Oct. 3, 2005). In First Am. Title Ins. v. Lawson, 827 A.2d 230, 239-40 (N.J. 2003), the New Jersey Supreme the Court allowed rescission of a policy as to a partnership entity as well as to two of its individuals partners, but based on equitable principles declined to rescind the policy as to another partner who was innocent of any wrongdoing. Rescission is an equitable remedy which properly depends on the totality of the circumstances in a given case and resides within a court's discretion. *Id*. 872 A.2d at 241. A material misrepresentation is one which "naturally and reasonably influence(s) the judgment of the underwriter in making the contract at all, or in estimating the degree or character of risk, or in fixing the rate of the premium." In re Tri State Armored Servs., 332 B.R. 690, 2005 WL 2622799 (Bankr. D.N.J. Oct. 3, 2005). In New Jersey, intent to deceive is not necessarily required to rescind an insurance policy based upon a theory of equitable

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		fraud. Mass. Mut. v. Manzo, 584 A.2d 190 (N.J. 1991); TIG Ins. Co. v. Privilege Care Mktg., Inc., 2005 WL 994581 (D.N.J. April 27, 2005).
New Mexico	If misrepresentations are made or information is withheld and the misrepresentations or information is material to the policy, it makes no difference whether the party acted fraudulently, negligently or innocently.	Rael v. Am. Estate Life Ins. Co., 444 P.2d 290 (N.M. 1968).
New York	An insurer may rescind an insurance policy that was issued in reliance on a material misrepresentation.	N.Y. INS. LAW § 3105 (McKinney 1985); Home Ins. Co. of Ill. v. Spectrum Info. Tech., 930 F.Supp. 825 (E.D.N.Y. 1996). In New York, intent is not required to rescind a policy. In re World Com., Inc., Securities Litigation, 354 F. Supp. 2d 455, 465 (S.D.N.Y. 2005). § 3105(a) of N.Y. Insurance Law defines misrepresentation as a "false statement as to past or present fact, made to the insurer by ... the applicant for insurance or the prospective insured, ... as an inducement to the making thereof." § 3105(b) states "no misrepresentation shall be deemed material unless knowledge by the insurer of the facts misrepresented would have lead to a refusal by the insurer to make such a contract." § 3105(c) provides that in determining the question of materiality, evidence of the practice of the insurer with respect to the acceptance or rejection of similar risks shall be admissible. A severability clause or similar provision in an insurance policy may entitle directors to coverage even when a policy is properly rescinded against the corporation. In re WorldCom, Inc. Securities Litigation, 354 F. Supp. 2d 455 at 465. Where an insurer asserts the right to rescind by notice at a time when there are outstanding claims against an insured who is seeking coverage under the policy's obligation to defend or pay defense costs, some court have held that an insurer may not

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		unilaterally rescind the policy, and the policy remains in effect until the insurer obtains a court order granting rescission and declaring the policy *void ab initio*. Until that time, any defense obligation continues, although the insurer may be able to recover the defense costs it paid if it ultimately prevails on the rescission issue. Fed. Ins. Co. v. Tyco Int'l Ltd., 784 N.Y.S.2d 920, 2004 WL 583829 (N.Y. 2004); In re WorldCom, Inc. Securities Litigation, 354 F. Supp. 2d at 465; Fed. Ins. Co. v. Kozlowsky, 792 N.Y.S.2d 397 (N.Y. App. Div. 2005) Where an insurer could not reasonably rely on allegedly false financial statements because the statements were not included in the policy application, the New York appellate court affirmed dismissal of a D&O insurer's rescission claim. Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Xerox Corp., 807 N.Y.S.2d 344 (N.Y. App. Div. 2006).
North Carolina	Statements or descriptions in any application for a policy of insurance will not prevent a recovery on the policy unless they are "material or fraudulent." False statements will void a policy if fraudulently made, irrespective of materiality; however, absent fraud, the falsity of an applicant's answer must be material to the risk in order to warrant avoidance of the policy on that ground.	N.C. GEN. STAT. § 58-3-10; Tharrington v. Sturdivant Life Ins. Co., 443 S.E.2d 797 (N.C. Ct. App. 1994).
North Dakota	An oral or written misrepresentation made in the negotiation of an insurance contract or policy by the insured or in the insured's behalf is material or defeats or voids the policy or prevents its attaching only if the misrepresentation has been made with an actual intent to deceive or unless the matter misrepresented increased the risk of loss.	N.D.CENT. CODE § 26.1-29-25. *Ingalls v. Paul Revere Life Ins. Group*, 561 N.W.2d 273 (N.D. 1997). There are also other statutory provisions which may be applicable and should be evaluated, including § 26.1-29-15 (Rescission for concealment – Exception); § 26.1-29-17 (Materiality of matters – How determined); § 26.1-29-26 (Representations on information and belief); § 26.1-29-31 (Modification of insurance contract – Exercise of right of

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		rescission); and § 26.1-30-15 (Policy may be rescinded for violation of material warranty).
Ohio	If the statement is a warranty, a misstatement voids the policy *ab initio*. If the statement is a representation, a misstatement by the insured will render the policy voidable, if it is fraudulently made and the fact is material to the risk.	Horton v. Safe Auto Ins. Co., 2001 WL 664421 (Ohio App.-10th 2001); Am. Cont'l Ins. Co. v. Estate of Gerkens, 69 Ohio App.3d 697 (Ohio App.-3d 1990).
Oklahoma	All statements and descriptions in any application for an insurance policy or in negotiations therefore, by or in behalf of the insured, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts, and incorrect statements in any application for insurance, or in negotiations therefore, shall not permit a recovery under the policy unless: (1) Fraudulent; or (2) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or (3) The insurer in good faith would either not have issued the policy, or would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or otherwise.	OKLA. STAT. tit. 36, § 3609 (1957). On Representations in Applications. *See also* OKLA. STAT. tit. 15, § 235 (on Duty of Party Attempting Rescission); *and* tit. 36, § 3601 (on policies to which § 3609 does not apply). A contract that is merely voidable (under § 3609) for fraud in the inducement creates a valid contractual relationship, which subsists in contemplation of law until the parties are relieved of their obligation by a decree of rescission. Harkrider v. Posey, 24 P.3d 821, 827 (Okla. 2000). The Oklahoma Supreme Court had interpreted § 3609 as requiring a finding of insured's intent to deceive an insurer before a misrepresentation, an omission, or incorrect statement in an application can avoid the policy under § 3609. Scottsdale Ins. Co. v. Tolliver, 127 P.3d 611, 614 (Okla. 2005).
Oregon	A false warranty voids the policy whether it was material to the risk or not. To void an insurance policy based on a false representation it must be: (1) Contained in a written application for the insurance policy; (2) A copy of the application is attached to, or otherwise reproduced in, the insurance policy when issued; (3) It is material and the insurer relied on it; and (4) It was either fraudulent or material to the acceptance of the	OR. REV. STAT. §742.013 (distinguishes between representation and warranty and provides elements necessary to avoid policy for a misrepresentation, omission, concealment of fact or incorrect statement) § 742.702 (grounds for policy cancellation of commercial liability insurance; notice) Brock v. State Farm Mut. Auto. Ins. Co., 98 P.3d 759, 763-764 (Or. Ct. App. 2004) (interpreting § 742.013 to mean that misrepresentations must be in a written application attached to

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	risk or to the hazard assumed by the insurer.	the policy or otherwise be reproduced in the policy itself)
Pennsylvania	An insurance policy is void or may be rescinded for misrepresentation if the insurer can establish by clear and convincing evidence the following three elements: (1) That the representation was false; (2) That the insured knew that the representation was false when made or made it in bad faith; (3) That the representation was material to the risk being insured.	Bogatin v. Fed. Ins. Co., 2000 WL 804433, *25 (E.D. Pa. 2000); A.G. Allebach, Inc. v. Hurley, 540 A.2d 289, 294 (Pa. Super. Ct. 1988). In order to show a policy is void *ab initio* on the basis of fraud, the insurer must prove that the intent to deceive was deliberate. Rohm & Haas Co. v. Cont'l Ins. Co., 732 A.2d 1236, 1251 (Pa. Super. Ct. 1999), *aff'd by* 781 A.2d 1172 (Pa. 2001). When an insured makes false statements in a policy application, bad faith or fraud is presumed from knowledge of the falsity. Solodky v. Peoples Benefit Life Ins. Co., 2005 WL 3307536, *5 (E.D. Pa. 2005); The Nw. Mut. Life Ins. Co. v. Babayan, 430 F.3d 121, 130 (3d. Cir. 2005) (bad faith can be inferred as a matter of law). In Associated Elec. & Gas Ins. Servs. Ltd. v. Rigas, 382 F.Supp.2d 685 (E.D. Pa. 2004), *motion to alter, amend or stay judgment denied* April 7, 2004, 2004 WL 838140, the court held that even though insurers had unilaterally attempted to rescind their policies, the insurers were still obligated to advance the insureds' defense costs until an adjudication of the rescission issue could be obtained. The court also held that a return of the policy premiums paid was a prerequisite to a finding that an insurance policy had been unilaterally rescinded.
Rhode Island	A material misrepresentation, even though innocently made, is basis for rescinding an insurance policy. But, if the insurer or his agent knew there was a misrepresentation in the policy, the insurer may be estopped from rescission. Material misstatement of fact in application for insurance without concomitant demonstration of fraud makes voidable an insurance contract issued upon the application.	Paul Revere Life Ins. Co. v. Fish, 910 F.Supp. 58, 63 (D.R.I. 1996); Summit Ins. v. Porcaro, No. Civ.A. 99-2521, 2004 WL 1067920 (R.I. Sup. Ct. May 5, 2004). Evora v. Henry, 559 A.2d 1038, 1040 (R.I. 1989).
South Carolina	In order to void a policy on the ground of fraudulent misrepresentation it is necessary that the insurer show not only the falsity of the statement	Strickland v. Prudential Ins. Co. of Am., 292 S.E.2d 301, 304 (S.C. 1982); Primerica Life Ins. Co. v. Ingram, 616 S.E.2d 737,

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	challenged, but also that the falsity was known to the applicant, was material to the risk, made with the intent to defraud the insurer, and relied upon by the insurer in issuing the policy	739 (S.C. App. 2005)
South Dakota	Policy may be rescinded if misrepresentations or omissions were (1) fraudulent; or (2) material to the acceptance of the risk or the hazard assumed by the insurer; or (3) the insurer in good faith would not have issued the policy, or would not have issued it on same terms, if the true facts had been made known to the insurer as required either by the application for the policy or otherwise.	S.D. CODIFIED LAWS § 58-11-44; Shepard v. Milbank Mut. Ins. Co., 437 F.Supp. 744 (D.C.S.D. 1977) (applying § 58-11-44) . A false representation as to a material matter in an application for insurance, even absent a showing of an intent to deceive, renders the policy voidable, because an insurer is entitled to rely on the truthfulness of the answers given. Braaten v. Minn. Mut. Life Ins. Co., 302 N.W.2d 48, 50 (S.D. 1981)
Tennessee	No written or oral misrepresentation or warranty therein made in the negotiations of a contract or policy of insurance, or in the application therefore, by the insured or in the insured's behalf, shall be deemed material or defeat or void the policy, unless: (1) such misrepresentation or warranty is made with actual intent to deceive, or (2) unless the matter represented increases the risk of loss. Thus, rescission is proper even where there is no intent to deceive. A misrepresentation that increases the risk of loss will void the policy whether or not made with actual intent to deceive.	TENN. CODE ANN. § 56-7-103 (1994); Nat'l Life & Accident Ins. Co. v. Lewis, 89 S.W.2d 898 (Tenn. Ct. App. 1935) (deciding insurer's claim for rescission based on older Tennessee statute); Nat'l Union Fire Ins. Co. v. FDIC, No. 03A01-9405-CH-00179, 1995 WL 48462 (Tenn. Ct. App. Feb. 8, 1995) (finding that the fact D&O liability policy was signed by a person whom, to the best of his knowledge did not know of a misrepresentation, did not protect insureds "against actual misrepresentations in financial documents" that accompanied the application) (the court next inquired pursuant to § 56-7-103 as to whether the misrepresentations increased the risk of loss) Jefferson Standard Life Ins. Co. v. Webb, 406 S.W.2d 738, 740 (Tenn. Ct. App. 1966); Gurkin v. Wood, W2003-00793-COA-R3-CV, 2004 WL 173739 (Tenn. Ct. App. Aug. 2, 2004); Metro. Prop. & Cas. Ins. Co. v. Bell, No. 04-5965, 2005 WL 1993446 (6th Cir. Aug. 17, 2005). The Legislature did not intend the phrase "increased the risk of loss" to apply to post-loss misrepresentations, but rather the factors in determining if a risk is insurable. Wassom v. State Farm Mut. Auto. Ins. Co., 173 S.W.3d 775, 784 (Tenn. Ct. App.

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		2005).
Texas	Under Texas common law, in order to rescind a contract due to an insured's misrepresentation, the insured must have made misrepresentation with the intent to deceive. However, a recent Texas insurance statute, which repealed a former statute, does not require an intent to deceive in order to make a policy void or voidable due to misrepresentation: (a) An insurance policy provision that states that false statements made in the application for the policy or in the policy make the policy void or voidable: (1) has no effect; and (2) is not a defense in a suit brought on the policy. (b) Subsection (a) does not apply if it is shown at trial that the matter misrepresented: (1) was material to the risk; or (2) contributed to the contingency or event on which the policy became due and payable. (c) It is a question of fact whether a misrepresentation made in the application for the policy or in the policy itself was material to the risk or contributed to the contingency or event on which the policy became due and payable.	Am. Nat'l. Ins. Co. v. Paul, 927 S.W.2d 239, 242 (Tex. App. 1996) (citing to (Mayes v. Mass. Mut. Life Ins. Co., 608 S.W.2d 612, 616 (Tex. 1980) (listing common law elements for rescission based on representation) TEX. INS. CODE ANN. art. 21.21A (dealing with misrepresentations in an application for insurance, was Repealed by Acts 2003, 78th Leg., ch. 1274, § 26(a)(1), eff. April 1, 2005) (current version at TEX. INS. CODE ANN. § 705.004 (Vernon 2005)). As of July 23, 2007, there appear to be no cases litigated under this new insurance statute. Cont'l Cas. Co. v. Allen, 710 F.Supp. 1088, 1092 (N.D. Tex. 1989) (discussing common law elements needed to void D&O policy due to fraud or material misrepresentation)
Utah	Insurer may rescind a policy if one of three statutory provisions is met: (1) the insurer relies on material misrepresentation made by the applicant; (2) the insurer relies on a misrepresentation that was made by the applicant with the intent to deceive; or (3) the applicant's misrepresentation contributes to the loss. However, in each instance, the threshold requirement is that the applicant has made a "misrepresentation."	UTAH CODE ANN. §31A-21-105(2) (1994); Derbidge v. Mut. Protective Ins. Co., 963 P.2d 788, 790-791 (Utah Ct. App. 1998). Misrepresentation contains a scienter element and requires "something more than an innocent misstatement". ClearOne Commc'ns, Inc. v. Lumbermen's Mut. Cas. Co., No. 05-4294 (10th Cir. July 25, 2007) (applying Utah law). False financial statements may constitute a misstatement for purposes of rescission. Incorporation of financial statements into the policy

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		does not violate Utah law. The scienter element is satisfied if the signor of the application knew or should have known of misstatements in financials. A material fact is one that "would naturally influence the insurer's judgment in making the contract, in estimating the degree and character of the risk, or in fixing the rate of insurance." Financial records, which give an account of the financial health of the company, are material in underwriting a D&O policy. A limited severability clause did not preclude rescission of the policy in its entirety where the severability clause only applied to answers to certain questions in the application and the misstatement occurred in response to a question not subject to the severability clause. An insurance policy is "voidable" when the insurer relied on material misrepresentations made by the insured. Cont'l Ins. Co. v. Kingston, 114 P.3d 1158, 1161 (Utah Ct. App. 2005). However, in the context of insurance, the Utah Supreme Court has held that "if a party claims a right to rescission and then does any substantial act that recognizes the contract as in force, that party has usually waived its right to rescind." Id. at 1162.
Vermont	The falsity of a statement in the application for a liability insurance policy shall not bar the right to recovery thereunder unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer	VT. STAT. ANN. tit. 8 § 4205 (1984) (Effect of false statement in application); McAllister v. Avemco Ins. Co., 528 A.2d 758, 759 (Vt. 1987). Haley v. Cont'l Cas. Co., 749 F. Supp. 560, 568-570 (D. Vt. 1990) (applying Vermont law, court found that liability insurer waived its defense that liability policy for school board's directors and officers was void *ab initio* for alleged misrepresentations on policy application where insurer received notice of claims letters from insureds, responded to those letters by indicating that legal expenses would be reimbursed and where it had sufficient facts from which it could have concluded at that time that there had been misrepresentations on application, even if subsequent correspondence might have made it appear as if

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		insurer was attempting to reserve its rights to disclaim coverage)
Virginia	All statements, declarations and descriptions in any application for an insurance policy or for the reinstatement of an insurance policy shall be deemed representations and not warranties. No statement in an application or in any affidavit made before or after loss under the policy shall bar a recovery upon a policy of insurance unless it is clearly proved that such answer or statement was material to the risk when assumed and was untrue.	VA. CODE ANN. § 38.2-309 (1986). An insurance company contesting a claim on the basis of an insured's alleged misrepresentation must show by "clear proof" that (1) the statement on the application was untrue, and (2) the insurance company's reliance on the false statement was material to the company's decision to undertake the risk. Cont'l Cas. Co., v. Graham & Schewe, 339 F.Supp.2d 723, 727 (E.D. Va. 2004); Minn. Lawyers Mut. Ins. Co. v. Hahn, 355 F.Supp.2d 104 (D.D.C. 2004) (applying Virginia law). In determining whether a statement is "material," Virginia courts consider whether "truthful answers would have reasonably influenced" the insurance company in making its decision to issue a policy. Id. at 108. It is usually not necessary under Virginia statute governing disclosures in insurance policy application (§ 38.2-309) for the insurer to establish that an untrue representation in a policy application was willfully false or fraudulently made; however, where the insurer asks insured to aver only that the representations are true to the best of the insured's knowledge and belief, the insurer must clearly prove that insured's answers were knowingly false. Parkerson v. Fed. Home Life Ins. Co., 797 F.Supp. 1308, 1315 (E.D. Va. 1992). Atl. Permanent Fed. Sav. & Loan Ass'n v. Am. Cas. Co., 839 F.2d 212, 214-215 (4th Cir. 1988) (enforcing policy language, under Virginia law, which stated: "this policy shall not be voided or rescinded and coverage shall not be excluded as a result of any untrue statement in the [application] form, except as to those persons making such statement or having knowledge of its untruth") (finding clause was not against public policy even though it provided greater protection than Virginia law because it was "designed to prevent misrepresentations made by the

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		particular officers responsible for preparing an application form from depriving their innocent colleagues of coverage")
Washington	Under RCW 48.18.090 (1), in order to avoid the contract or prevent it from attaching, the misrepresentation or warranty must be made with the intent to deceive.	WASH. REV. CODE ANN. § 48.18.090 (1) (1984); Truck Ins. Exch. v. Hanson, 254 P.2d 494, 496 (Wash. 1953). Cutter & Buck, Inc. v. Genesis Ins. Co., 306 F.Supp.2d 988 (W.D. Wash. 2004) (Policy's severability provision may prohibit rescission of the policy for innocent D&Os unless application's signor knows of misrepresentation and intended to deceive the insurer. Where signor knowingly intends to deceive the insurer, knowledge will be imputed to all Ds & Os and to entity.), *aff'd*, 144 Fed.Appx. 600, 2005 WL 1799397, (9th Cir. August 1, 2005) (applying Washington law).
West Virginia	All statements and descriptions in any application for an insurance policy or in negotiations therefore, by or in behalf of the insured, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealments of facts, and incorrect statements shall not prevent a recovery under the policy unless: (a) Fraudulent; or (b) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or (c) The insurer in good faith would either not have issued the policy, or would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or otherwise.	W. VA. CODE § 33-6-7 (1957). Gouge v. Penn Amer. Ins. Co., No. Civ.A. 2:04-1083, 2005 WL 1639291 (S.D. W. Va. July 12, 2005). In order to be "fraudulent" within the meaning of 33-6-7(a), misrepresentations in the application must be knowingly made with intent to deceive the insurer and relate to material facts affecting the policy. Powell v. Time Ins. Co., 181 W. Va. 289, 296 (1989). An insurer seeking rescission under 33-6-7(b) or (c) need not prove the "subjective element" that insured specifically intended to place misrepresentations, omissions, concealments of facts or incorrect statements on an application. Mass. Mutl. Life Ins. Co. v. Thompson, 460 S.E.2d 719, 724 (1995). Rescission of a contract based on a material misrepresentation is an affirmative defense that the insurer must assert and prove by a preponderance of the evidence. Gouge v. Penn Amer. Ins. Co., No. Civ.A. 2:04-1083, 2005 WL 1639291, *5 (S.D. W. Va. July 12, 2005). In determining materiality, W. VA. CODE 33-6-7 (1957), applies

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		the test of "whether a reasonably prudent insurer would consider a misrepresentation material to the contract." *Id*.
Wisconsin	Policy may be rescinded for misrepresentation or breach of affirmative warranty where person knew or should have known the misrepresentation was false and (1) the insurer relied on the misrepresentation or affirmative warranty and the misrepresentation or affirmative warranty was either material or made with an intent to deceive, or (2) the fact misrepresented or falsely warranted contributed to the loss.	WIS. STAT. 631.11(1)(b)(1)-(2) (1995) WIS. STAT. 631.11(1)(a)(2) (1995), requires that the written application have been made a part of the policy by attachment or endorsement before a misrepresentation or affirmative warranty in the application can be the basis for rescission. In order to make a written application form a part of an insurance policy by "endorsement," the insurer must specifically write across the application itself that it is an endorsement and part of the policy. Smith v. Dodgeville Mut. Ins. Co., 568 N.W.2d 31, 35-36 (Wis. Ct. App. 1997). §631.13 also generally precludes incorporation by reference of any agreement or provision not fully set forth in the policy or in an application or other document attached to and made a part of the policy at the time of its delivery. §631.11(4)(b) requires the insurer, when it acquires knowledge of sufficient facts to constitute grounds for rescission after the policy has been issued, to notify the insured within 60 days after acquiring such knowledge of its intention to either rescind the policy or defend against a claim if one should arise. Failure to do so precludes the insurer from rescinding the policy.
Wyoming	Coverage under the policy may be denied or the policy rescinded where the misrepresentation was: (1) fraudulent; (2) material to the risk or the hazard assumed by the insurer; or (3) affects whether the insurer would have issued the policy or the terms they would have issued the policy under.	WYO. STAT. ANN. § 26-15-109 (1977); WYO. STAT. ANN. § 26-35-202 (1977). The Wyoming Supreme Court decided All Am. Life & Cas. Co. v. Krenzelok, 409 P.2d 766 (Wyo. 1966), one year before Wyoming adopted § 26-15-109. In Krenzelok, the court permitted rescission of the insurance policy because insured concealed material information from the insurer during the application process. Influenced by Krenzelok, the legislature drafted § 26-15-109, which provides: "if the insurer can show

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		that the concealment was 'material' to the insurance risk at issue, then any concealment by the insured, even if made in good faith, will justify rescission of the coverage by the insurer." White v. Cont'l Gen. Ins. Co., 831 F.Supp. 1545, 1554 (D. Wyo. 1993).

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