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SPECIAL REPORT

HONESTLY COMPLETED APPLICATIONS ALWAYS CONTAIN MISREPRESENTATIONS

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In the insurance profession every business insurance policy starts with either a paper or online application. The questions that are not answered accurately could result in a claim denial based upon misrepresentation.

I recall a case of a denial of an office building bursting water pipes claim of almost \$1,000,000. The agent answered the question on an online BOP application regarding the occupancy of the building inaccurately. The loss was denied and the agent was sued.

Unless an insured is dealing direct with an on-line insurance company, virtually all applications are actually completed by insurance agents. As respects commercial accounts, almost all of these applications are signed by the agent and not by the insured. Statements made in an application are binding on the insured even though the insured seldom, if ever, sees or signs the application.

In Michigan, because the insurance agent is the agent of the insured, it is the same as the insured completing an application when the agent completes the application. When a large claim occurs, the application is typically reviewed for accuracy to see if there are any misrepresentations. The problem is that an honestly completed application always will contain misrepresentations.

Let's take a look at some of the questions on the Accord application used by agents and submitted to insurance carriers.

1. *Any exposure to flammables, explosives, chemicals?*

The typical answer to this would be "no." However, every account will have some flammables and chemicals.

2. *Any catastrophe exposure?*

Every account has a catastrophe exposure; however, an insurance agent will typically answer "no" to this question.

3. *Any policy or coverage declined, cancelled or non-renewed during the prior three years?*

An agent typically will answer “no” without knowing if an insured has shopped the account elsewhere and had something declined or non-renewed.

4. *Any past losses or claims relating to sexual abuse or molestation allegations, discrimination, or negligent hiring?*

An agent would typically answer “no” without knowing if these types of claims have been made over the entire history of a business. (Note: There is no time limitation.)

5. *Any uncorrected fire code violations?*

How would you know how to answer this without checking with the fire marshal? Furthermore, this question does not give you a time period. Does this ask whether or not those violations are as of the moment or last year or whenever?

6. *Enter all claims or losses (regardless of fault and whether or not insured) or occurrences that may give rise to claims for the prior five years.*

In order to answer this question, you would have to find out every incident that occurred, whether it was a property, liability, or automobile claim, even if the insured was not a fault and even if there was no insurance. Furthermore, this question requires that you provide information about occurrences which may give rise to claims. How would an agent or insured know whether an injury could give rise to a claim? Virtually every incident on a premises could give rise to a claim.

7. The general liability application contains the following question: *Do your subcontractors carry coverages or limits less than yours?*

This question does not give a time period, and the only answer to this would be “yes.” It asks the question about “coverages” or “limits.” The only way to truly answer this is to secure all of the insurance policies of every subcontractor and do an analysis of their coverages and limits as compared to your insurance coverage. This is not possible in the real world.

8. *Are subcontractors allowed to work without providing you with a certificate of insurance?*

Businesses will use all sorts of subcontractors to do work, whether for snow removal, janitorial work, or simple maintenance. There is no way to confirm that each of these independent contractors actually has insurance or if a certificate of insurance has been obtained from that subcontractor.

9. *Have any crimes occurred or been attempted on your premises within the last three years?*

The word “crimes” is not defined. In any sizable business there certainly will be crimes of one type or another, such as theft from an employee’s locker, theft of office supplies, and so forth.

10. The workers' compensation application has the following question: *Any employees under 16 or over 60 years of age?*

The only answer to this would be "yes" because it is highly likely that there would be employees over 60 years of age in any business.

11. *Any employees with physical handicaps?*

The only answer to this would be "yes" because almost everyone has some sort of physical handicap, depending on how you define it.

When completing applications, you should avoid definitive answers to any of these questions. You can answer "unknown," "always possible," or "to be determined."

Also, you should include an additional caveat when applications have to be signed. If the application is completed by the insurance agent, indicate: "Completed by agent to the best of his/her knowledge and belief, not reviewed by client." If the application was completed by the insured, indicate: "This application was completed to the best of my knowledge and belief." If possible, do not sign the application at all.

Of course, it is always preferable for an insured to review and sign the application. However, the reality is that the client will likely sign the application without reviewing the information. Therefore, it is important to be certain that the questions are honestly answered but in such a way that there cannot be allegation of misrepresentation.

In addition, when looking at management practices applications, such as for employment practices coverage, try to utilize insurance carriers with the least amount of questions on the applications.

Be certain also that renewal applications with the same carrier do not ask warranty-type questions, such as: "Is any applicant aware of any fact, circumstance, or situation involving any 'insureds' that might reasonably be expected to result in a 'claim,' as defined?" While this question may be appropriate on a new business application, it is not appropriate on a renewal application with the same carrier.