

E&O Insurer Prevails on Rescission Claim Based upon Insurance Application Misrepresentations

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On August 29, 2011, United States District Court Judge Benjamin Settle **granted summary judgment** in favor of Tudor Insurance Company in a **declaratory judgment action** filed against its insured Hellickson Real Estate ([2011 U.S. Dist. LEXIS 96768](#)).

Tudor filed the action after Hellickson **tendered defense of a Department of Licensing disciplinary proceeding**. The Department of Licensing had sent investigation notices to Hellickson before Hellickson had applied for the insurance policy, but Hellickson did not disclose those notices to Tudor in response to insurance application questions inquiring about **"any act, error, omission or other circumstances, which might reasonably be expected to be the basis of claim or suit against you."**

The only evidence that Hellickson submitted in opposition to Tudor's motion was a declaration from the same person who had completed the insurance application. She testified that the Department of Licensing action was "a complete surprise to her and her husband" and that, when she filled out the application, she thought the Department of Licensing issues had been resolved.

Judge Settle found that **the insured's declaration was insufficient to raise any genuine issue of material fact** and ruled that Tudor was entitled to rescind the insurance policy as a matter of law. In explaining his ruling, Judge Settle stated that the insured's testimony about her belief that the Department of Licensing issues had been resolved proved that the insured had knowledge of the undisclosed regulatory investigation and that this evidence reinforced, rather than rebutted, the presumption that the misrepresentation had been made with an intent to deceive.

Judge Settle also dismissed the insured's counterclaims for bad faith and violations of the **Consumer Protection Act and Washington's Unfair Claims Settlement Practices Regulation, WAC 284-30-300 to -450**. Although Tudor acknowledged that it had committed at least one technical violation of the claims handling regulations, Judge Settle found that the **insured was legally precluded from pursuing any relief on these extra-contractual claims because an insured's fraud is dispositive**.

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