# Beware of Ambiguity—Material Misrepresentations in Applications for Insurance

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**By Peabody & Arnold on August 10, 2017**

The Massachusetts Appeals Court recently held that ambiguity in the language of a policy application prevented an insurer from prevailing on a rescission claim based on alleged material misrepresentations made by an insured. In *Schultz v. Tilley*, 91 Mass. App. Ct. 539 (May 18, 2017), the Appeals Court overturned a trial court's entry of judgment in favor of an insurer where the insurer declined coverage and attempted to rescind the policy based on an insured's material misrepresentations.

The case involved interpretation of a homeowner's insurance policy. After the insured's pet bulldog attacked and injured passing terriers and their owners, the insured submitted the matter for coverage. The insurance company declined coverage, determining that the homeowner's policy was void as a result of material misrepresentations made in the application for insurance. Specifically, the insured had indicated that his pet had "no biting incidents" in response to an inquiring of "biting history," and had indicated that there was no "loss history" at the insured location. In fact, the bulldog had previously bit other dogs on two separate occasions and the insured had paid the resulting veterinary bills. The insured testified that he was aware of the two dog-bite incidents at the time he filled out the insurance application.

The Appeals Court determined that neither of insured's representations could constitute material misrepresentations allowing the insurer to deny coverage on those bases because the relevant questions in the application were ambiguous. First, the "biting incident" inquiry was ambiguous because it could have reasonably referred only to incidents where the dog bit humans (as the insured testified); a bite causing bodily injury or damage to another's pet (as the underwriter testified); or the dog's history of biting anything or anybody (the trial judge's ruling). Because there were multiple reasonable interpretations to the language, the Appeals Court gave the insured the benefit of the doubt and applied his interpretation of the language. Given that interpretation, the insured's answer to the application was honest and could not be labeled a misrepresentation. Similarly, the court concluded that the loss history question "reasonably could be read to mean losses at a threshold level at which an insurance company would be interested in order to accurately assess risk." Given that the insured's previous "losses" were minimal, and because the insured was entitled to a favorable interpretation of the pertinent language, the insured's answers did not constitute a misrepresentation.

The insurer has appealed the decision to the Supreme Judicial Court, and whether the Supreme Judicial Court will take on this issue further is yet to be seen.

 