

ACC Socal Lunch Time CLE Morton's Orange County - October 15, 2025 Fogo de Chao Los Angeles – October 30, 2025

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Steven Brower – Speaker Intro

- Computer programmer before law school
- California Attorney since 1980
- 15 years representing insurance companies (St. Paul Fire & Marine and Reliance National) mostly on Computer E&O claims (coverage)
- Last 30+ years representing policyholders against insurers
- Jury trials, bench trials, appeals, arbitrations, mediations (300+) across the U.S. in technology, cybersecurity, software audits, trade secrets, data breach, e-discovery, intellectual property, contracts, real estate, fraud, shareholder rights, libel, professional liability, product liability, employment, malicious prosecution, embezzlement, construction defect, Lemon Law and appellate, among others

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Brower Law Group, APC

- ► Founded January 1, 2018
- 6 litigation attorneys (most junior is 5 years experience)
- Significant portion is insurance coverage
- Unusual breadth of practice, including appellate
- ACC sponsor over 15 years
- Represented more than 15 ACC members
- Available for last minute trials

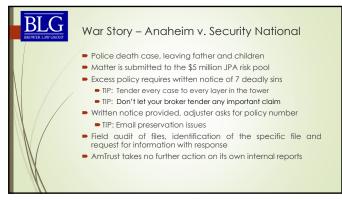
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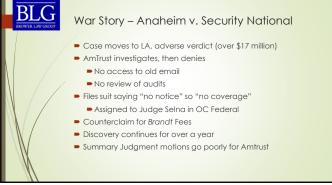


Presentation Disclaimer

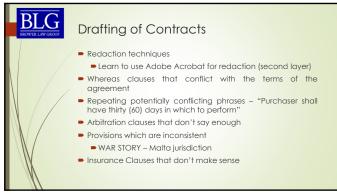
- The information in this presentation is generally based on my understanding of California law, as it existed at approximately the time of the presentation, in combination with some of my personal opinions, and does not reflect the views of any particular client or factual situation.
- The law in other states can be, and often is, materially different.
- Client names are included in this presentation only where the information was previously publicly disclosed (i.e. – pleadings and/or hearings).

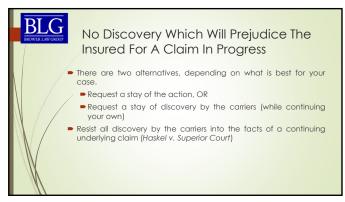


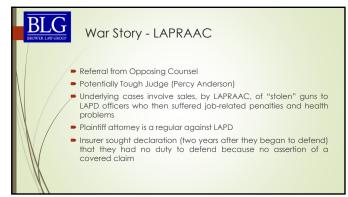


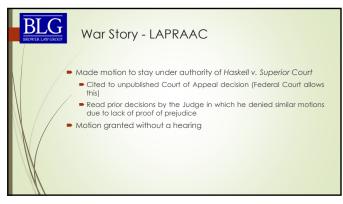


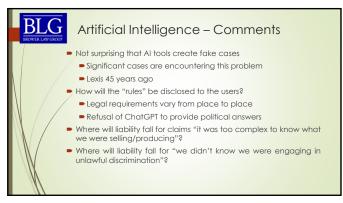














War Story - Misrepresentation in Application Cases

- The prevalence of these cases vary from insurer to insurer
- There are significant problems with Applications
 - The questions are almost always poorly/ambiguously phrased
 - Underwriters don't appreciate nuanced answers, but they often work
 - Underwriters don't even appreciate accurate answers
 - Applications are accepted by one insurer from another insurer
 - Generally, applications should be reviewed by legal before submission
 - Unique risks are particularly tough to handle

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War Story - Misrepresentation in Application Cases

 AMTRUST alleges that policy should be rescinded because our client failed to disclose that one attorney had previously worked at a controversial law firm and may have been under investigation by state bar, as shown by information in the press

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War Story - Misrepresentation in Application Cases

- An insurer can obtain rescission for any material misrepresentation in the application, even if the misrepresentation has no relationship to the claim
- LA Sound USA, Inc. v. St. Paul Fire & Marine Ins. Co.(4th Dist. 2007) 156 Cal. App. 4th 1259, 1266-67 "When a policyholder conceals or misrepresents a material fact on an insurance application, the insurer is entitled to rescind fine policy. "Each party to a contract of insurance shall communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract ... " (Ins. Code. § 332.) Concealment, which is the "[n]eglect to communicate that which a party knows, and ought to communicate" (§ 330), "entitles the injured party to rescind insurance" (§ 331). Similarly, "[if a representation is false in a material point ... the injured party is entitled to rescind the contract from the time the representation becomes false." (§ 352.) "[A] rescission effectively renders the policy totally unenforceable from the outset so that there was never any coverage and no benefits are payable." (Imperial Casualty, supra, 198 Cal. App. 3d at p. 182.)



War Story – Misrepresentation in Application Cases

- The fact that a broker prepared the application does not alter the
- ► LA Sound USA, Inc. v. St. Paul Fire & Marine Ins. Co. (4th Dist. 2007) 156 Cal. App. 4th 1259, 1268 "And an insurance broker by definition represents policyholders, not insurers. (§§ 33, 1623.) The LA Sound employee and the broker each testified the broker acted as LA Sound's agent in obtaining the policy from St. Paul. That the broker represented other policyholders in their dealings with St. Paul, as plaintiffs note, does not make him its agent. As a matter of law, "if [an insurance] application was prepared by an insurance broker (the agent of the insured), the application's contents are the insured's responsibility" (Croskey et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group 2006) ¶ 2:83, p. 2-32.1 (rev. #1, 2007); accord, Imperial Casualty, supra, 198 Cal. App. 3d at pp. 178—179 [policyholders liable for misrepresentations in broker-prepared application].) LA Sound, not its broker, is responsible for the misrepresentations in the application."

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War Story - Misrepresentation in Application Cases

- AMTRUST has a very unique definition of Application, which we had dealt with previously:
 - "Application means the application for insurance, and any material submitted therewith or incorporated therein, and any other documents submitted, along with all publicly available material published or disseminated by or about any Insured in connection with the underwriting of this Policy or any previous policies issued by the Insurer of which this Policy is a direct or indirect replacement or renewal. All such applications, attachments and materials are deemed attached to, and form a part of this Policy, as if physically attached"

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War Story - Misrepresentation in Application Cases

- We served discovery, including a Notice of Deposition for a PMK
 - Deposition notice stated that the deposition would be in person, anywhere in the United States that was near the designee's regular business location
 - Arguing over the location can cost more than the travel
 - Asking for an immediate deposition, without documents, is a good way to get real information early in the case
 - ■Taking a PMK deposition does not preclude taking an individual deposition
 - Written discovery and depo discovery asked for a copy of the "complete application" which would include, by the definition, a copy of everything published by or about the named insured, along with information about who is responsible for gathering that information on behalf of the insurer, etc.

