

Washington Law Review

Volume 10 | Number 2

4-1-1935

Intent to Deceive in Applications for Insurance Policies

Leo D. Bloch

University of Washington School of Law

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Insurance Law Commons](#)

Recommended Citation

Leo D. Bloch, *Intent to Deceive in Applications for Insurance Policies*, 10 Wash. L. Rev. 78 (1935).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol10/iss2/3>

This Article is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

INTENT TO DECEIVE IN APPLICATIONS FOR INSURANCE POLICIES

LEO D. BLOCH*

In any type of insurance, the determination of the insurance company to assume the risk with regard to any particular person or thing is based on the application submitted by the person desiring the insurance. It is through the medium of the application that the company secures the information which it desires with regard to the particular risk. Logically, therefore, the insurance company should be protected if incorrect statements are made in the application. On the other hand, the insured is entitled to be protected by the insurance when he has been paying premiums and basing his conduct on the supposition that he has an effective coverage. A court is thus faced with a conflict between these two policies. It may resolve this difficulty by adopting any one of three possible viewpoints it may allow the insurance company a defense in any case where there has been a material misstatement in the course of negotiation, or it may allow the defense only if the applicant is in a position where he knows or should know of the falsity of the statement at the time he makes it, or it may go further and require an intent to deceive on the part of the applicant.

In Washington, before 1911, the common law was applied with regard to representations and warranties. As to the latter, the court held that any breach of any kind, whether material or immaterial, was sufficient to avoid the policy.¹ In regard to representations, the rule was that the falsity of the representation had to be material to the risk in order to defeat the contract. It would seem that the court required that the applicant at least be in a position where he should have known of the falsity of his statement at the time he made it to justify avoidance by the insurer, but made no requirement of any showing of bad faith on his part. Thus, a lack of ordinary care was sufficient to avoid the policy if the representation was a material one, even though the applicant was acting in good faith.³

* University of Washington Law School.

¹ *Hoeland v. Western Union Life Ins. Co.*, 58 Wash. 100, 107 Pac. 866 (1910) *Miller v. Commercial Union Assurance Co.*, 69 Wash. 529, 125 Pac. 782 (1912).

² See note 1, *supra*.

³ *Poultry Producers' Union v. Williams*, 58 Wash. 64, 107 Pac. 1040 (1910). See *Bank of Ellensburg v. Palatine Ins. Co.*, 82 Wash. 55, 143 Pac. 447 (1914) (where court does not look for bad faith.)

This rule was changed by statute in 1911, the legislature evidently intending to create a rule more favorable to the insured. As modified in 1915, the statute now reads.

*“No oral or written misrepresentation or warranty made in the negotiation of a contract or policy of insurance, by the assured or in his behalf shall be deemed material to defeat or avoid the policy or prevent it attaching, unless such misrepresentation or warranty is made with the intent to deceive. If any breach of a warranty or condition in any contract or policy of insurance shall occur prior to a loss under such policy, such breach shall not avoid the policy nor avail the insurer to avoid liability, unless such breach shall exist at the time of such loss under such contract or policy.”*⁴

The scope of this paper is limited to the italicized sentence, which has remained unchanged since 1911. It should be noted that this statute does not apply to marine,⁵ accident and health,⁶ and fraternal⁷ insurance.

The court has also held that certain types of cases do not come within the purview of this sentence. One class consists of those cases in which no representation or promise of any type is made, but there is stated a condition which must exist at the time the policy is delivered for it to go into effect.⁸ An example of such a condition precedent is.

*“Said policy shall not take effect until the same shall be issued and delivered by the said company and the first premium paid in full, while my health, habits, and occupation are the same as described in this application.”*⁹

In such conditions there is no promise by the insured, so there is clearly no question of intent to deceive. These are simply conditions that, by agreement of the parties, must exist at the time stated for the policy to become effective. So also, no intent to deceive need be found in the case of breach of a continuing warranty. In the case of *Smith Lum. & S. Co. v. Netherlands F & L Ins. Co.*,¹⁰ the court clearly brings this out

“It was a promise to maintain the sprinklers after the insurance was effected, and if it be held that the misrepresentation with respect to their existence does not

⁴ Rem. Rev. Stat., sec. 7078.

⁵ Rem. Rev. Stat., sec. 7171.

⁶ Rem. Rev. Stat., sec. 7233; *Tison v. American National Ins. Co.*, rehearing, 163 Wash. 522, 3 Pac. (2d) 998 (1931).

⁷ Rem. Rev. Stat., sec. 7262.

⁸ *Logan v. New York Life Ins. Co.*, 107 Wash. 253, 131 Pac. 906 (1919).

⁹ *Guarascio v. Prudential Ins. Co. of America*, 110 Wash. 1, 187 Pac. 405 (1920).

¹⁰ 135 Wash. 547, 554, 238 Pac. 565 (1925).

defeat or void the contract because not made with intent to deceive, it does not follow that the failure of the insured to maintain them is without consequence. Nor can we so hold. The legislation affects the first, but not the last, and to the last the courts are at liberty to apply the usual and ordinary rules."

The court reaches the same result where the clause is one which describes the risk. In *Johnson v. Franklin Ins. Co.*,¹¹ the fire insurance policy involved contained a stipulation that the goods were insured only while at the designated location and that the policy should be void if they were moved without the insurance company's consent. The court held that such a clause does not come within either the first or second sentence of the statute and is neither a warranty nor a condition but an essential part of the contract.

In those cases in which the court finds the misrepresentation or warranty to be made in the negotiation¹² of the insurance within the meaning of the statute the intent to deceive is an affirmative defense to be alleged and proved by the insurance company.¹³ The presence of this intent is generally a question of fact. Although no Washington cases have been found, it would seem that the Washington court would require that the insurance company show that the misstatement made with intent to deceive is a material one, on the theory that the statute was intended to lessen the insurance company's right to avoid.¹⁴ Clearly the burden of the insurance company is sustained if it can introduce convincing evidence of a direct nature to show such intent, such as evidence of a conspiracy between the insured and the agent to deliberately misrepresent a material fact known to both to be material. However, it is the rare case in which this is possible.

Usually the insurance company must rely on indirect evidence. Realizing this, the Washington court has established a rebuttable presumption of intention to deceive where the insurance company can establish that the material representations were false to the insured's knowledge.¹⁵ When there is a conflict in the evi-

¹¹ 90 Wash. 631, 156 Pac. 567 (1916).

¹² Representations and warranties made in the course of negotiation within the meaning of the statute apparently include statements made in the written application and also oral statements made in addition thereto or in substitution therefor. *Workman v. Royal Exch. Assurance*, 96 Wash. 559, 165 Pac. 488 (1917). *McCann v. Reeder et al. & Mercer Casualty Co.*, 78 Wash. Dec. 111, 34 Pac. (2d) 461 (1934).

¹³ *Brigham v. Mutual Life Ins. Co.*, 95 Wash. 196, 163 Pac. 380 (1917). *Askey v. New York Life Ins. Co.*, 102 Wash. 27, 172 Pac. 887 (1918).

¹⁴ Cf. *Johnson v. National Life Ins. Co.*, 123 Minn. 453, 144 N. W. 218 (1913).

¹⁵ *Quann v. Mutual Life Ins. Co.*, 91 Wash. 542, 158 Pac. 82 (1916). *Day v. St. Paul Fire & Marine Ins. Co.*, 111 Wash. 49, 189 Pac. 95 (1920).

dence such that reasonable minds might differ, the court has held that the presence of the intent to deceive is a question of fact for the jury to decide.¹⁶ However, in a number of cases, the court has felt that the evidence was so clear that reasonable minds could not differ and, using this presumption, has held as a matter of law that the intent to deceive was present. The first of these cases was that of *Day vs. St. Paul & Marine Ins. Co.*¹⁷ Here the applicant represented that the car was a 1911 Winton touring car bought new by him and costing \$3,400. Actually it was a 1910 model which he had bought second-hand for \$2,000. The court said

“We have gone far in maintaining, as a question of fact, the intent accompanying false and fraudulent representations, and have allowed to be submitted to the jury for its determination the question of intent where there has been very slight proof that the applicant for insurance might have had no idea of procuring the policy by misrepresentations, but the rule should not be so far extended as to include a case such as this and allow insurance to be enforced which was not procurable had the truth been told, where it was issued relying upon fraudulent statements and the proof of honest intent consists merely in the applicant's bare affirmation that his intent was honest. The proof of the making of false and fraudulent representations raises a presumption of dishonest motive, which must be overcome by evidence establishing an honest motive honesty and fair dealing would seem to require that, in order to overcome the presumption, there must be some testimony more concrete than was here given when an applicant admits, as he does here, that the representations were made with the knowledge that they were untrue.”¹⁸

Applicant had not stated the engine number correctly in his application, although the court did not stress this point. In the later case of *Devenny vs. Auto. Owners Inter-Ins. Ass'n*,¹⁹ where applicant stated that a 1915 truck was a 1917 model, the court did stress the fact that applicant correctly gave the factory and engine numbers, from which the year could be ascertained, in finding that the question of intent to deceive was one of fact for the jury. If the applicant places information in the insurance company's hands from which the correct answer to the question asked could be easily ascertained, the court thus considers it strong evidence rebutting any intent to deceive.

In two other cases, the court has held that the evidence was so

¹⁶ *Brigham v. Mutual Life Ins. Co.*, note 13, *supra*, *Goertz v. Continental Life Ins. & Inv. Co.*, 95 Wash. 358, 163 Pac. 938 (1917) *Askey v. New York Life Ins. Co.*, note 13, *supra*.

¹⁷ 111 Wash. 49, 189 Pac. 95 (1920).

¹⁸ *Id.*, p. 58-9.

¹⁹ 124 Wash. 453, 214 Pac. 833 (1923).

clear that the question of intent to deceive was a question of law. In the one case²⁰ it was shown that insured had been told by a physician that she had a cancer and it was self-evident that she had at least a tumor prior to the making of her application for life insurance, but nevertheless stated in her application that she had neither. The court said that there was a conclusive presumption arising from the evidence that she had an intent to deceive. In the other case²¹ insured had just been told by an eye specialist that he was going blind, and nevertheless stated that he had no eye trouble. These cases indicate that the court will make the presumption conclusive only where the applicant knows the question is important and knows the answer is false, that is, where the jury would not be justified in finding otherwise.

In all of these cases the court is apparently requiring proof of a subjective intent to deceive, a showing that in this case *this* man must have intended to deceive. *Houston vs. New York Life Ins. Co.*²² is an illustrative case. In this case, insured stated in the application for reinstatement of a life insurance policy that within the past twenty-four months he had made only one visit to a doctor and that was six months before for grippe. As a matter of fact, he had visited a physician about a month and a half before making the application, and had been informed by the physician that he had appendicitis and should have an operation. The operation took place, successfully, a month after the application was made. Insured died about a year later of heart disease. Although the insured did consider the question asked broad enough to cover an attack of a minor ailment such as the grippe about six months before, the court said that it was a question of fact for the jury to determine whether in this case he had construed the question as not covering temporary or minor ailments and whether he had considered the possibility of an appendectomy such a minor ailment that it was not intended to be covered by the question asked. It should be noted that the court used language indicating that there was doubt in its own mind whether this actually was a material misstatement.

It frequently occurs that the insurance company's agent²³ has

²⁰ *Walker v. Metropolitan Life Ins. Co.*, 132 Wash. 615, 232 Pac. 694 (1925).

²¹ *Mutual Life Ins. Co. of N. Y. v. Campbell*, 170 Wash. 485, 16 Pac. (2d) 836 (1932).

²² 159 Wash. 162, 292 Pac. 445 (1930), reported on second trial in 166 Wash. 611, 8 Pac. (2d) 434 (1932).

²³ Under the insurance code, an agent of the insurer is one whom the insurance company has appointed to solicit applications and effect insurance for the company. Anyone else who solicits such applications is a broker for whose acts and with whose knowledge the insurance company is not chargeable. Rem. Rev. Stat., sec. 7033; *Reynolds v. Pacific Marine*

affirmative knowledge that the statement made in the written application is untrue. In such cases, both before and after the passage of the statute, the Washington court has held that the knowledge of the agent is the knowledge of the company and has denied the company the use of these false statements as a defense.²⁴ The court has held that the insurance company is estopped by delivering the policy and accepting the premiums, saying that it will not permit the insurance company to testify that it was committing a fraud upon the insured by accepting his money when it knew that he had no right to the insurance.²⁵ This result is quite consistent with the result reached by the court in the tort cases of deceit, where plaintiff is denied recovery unless he can show that he was justified in relying on defendant's statements.²⁶ The knowledge of the agent has also been used to show that the insured actually had no intent to deceive in those cases in which the insured told the agent the truth or in which the truth was self-evident from the insured's physical condition, and yet the agent wrote false answers in the application.²⁷ The court has thus permitted the insured to rely on the agents of the insurance company and has held the insurance company responsible for their careless or unscrupulous acts.²⁸

Finally, the court has held in certain cases that if the insurance company or its agent fails to make inquiry as to the title of the property insured and the applicant makes no representations with regard thereto, the company waives the condition of unencumbered title even though the condition is present in the insurance policy

Ins. Co., 115 Wash. 629, 197 Pac. 913 (1921) *Eaton v. National Casualty Ins. Co.*, note 17, *supra*.

²⁴ Before statute: *Mesterman v. Home Mutual Ins. Co.*, 5 Wash. 524, 32 Pac. 458 (1893) *Foster v. Pioneer Mut. Ins. Co.* 37 Wash. 288, 79 Pac. 798 (1905) *Staats v. Pioneer Ins. Ass'n*, 55 Wash. 51, 104 Pac. 185 (1909) *Turner v. American Casualty Co.*, 69 Wash. 154, 124 Pac. 486 (1912). After statute: *Brigham v. Mutual Life Ins. Co.* note 13, *supra*; *Workman v. Royal Exch. Assurance*, note 12, *supra*, *Robbins v. Milwaukee Mechanics Ins. Co.*, 102 Wash. 539, 173 Pac. 634 (1918) *Stebbins v. Westchester Fire Ins. Co.*, 115 Wash. 629, 197 Pac. 913 (1921) *Eaton v. National Casualty Co.*, 122 Wash. 477, 210 Pac. 779 (1922) *Small v. Standard Accident Ins. Co.*, 144 Wash. 523, 258 Pac. 33 (1927) *Tison v. American National Ins. Co.*, first hearing, 163 Wash. 522, 1 Pac. (2d) 859 (1931).

²⁵ *Workman v. Royal Exch. Assurance*, note 12, *supra*; *Stebbins v. Westchester Fire Ins. Co.*, note 24 *supra*; *Small v. Standard Accident Ins. Co.*, note 24, *supra*.

²⁶ *Zilke v. Woodley*, 36 Wash. 84, 78 Pac. 299 (1904) *Rhodes v. Owens*, 101 Wash. 324, 172 Pac. 241 (1918) *Fitch v. Miles*, 133 Wash. 368, 233 Pac. 916 (1925) *Sims v. Robison*, 142 Wash. 555, 253 Pac. 788 (1927).

²⁷ *Eaton v. National Casualty Co.*, note 24, *supra*, *Tison v. American National Ins. Co.*, note 24, *supra*.

²⁸ When the property insured is overvalued in the policy, there is a presumption of fact that the agent knew the value, created by statute. Rem. Rev. Stat., sec. 7150, 7151. But held that this does not prevent proof of an intent to deceive by clear and convincing evidence. *Myles v. Northern Assurance Co.*, 113 Wash. 158, 193 Pac. 703 (1920).

itself.²⁹ It is difficult to find that a man intended to deceive when he didn't know that he was making a representation or warranty

A similar situation was presented in the case of *Hayes vs. Automobile Ins. Exch.*³⁰ In this case insured signed a blank application which insurer's agent filled out, having asked insured only how much he paid for the car insured. The application, contained in full in the policy,³¹ thus embodied certain untrue statements to-wit, that the car had not been in any prior wreck, that no other company had cancelled or refused insurance on the car, and that there existed no unmentioned incumbrance on the auto. The court held that the insured could not contend that he had not read the policy, saying that it was his duty to read it. As to the agent's knowledge, the court said that the cases holding the insurance company liable where the agent has so acted do not go so far as to relieve the insured when he has not acted in good faith. Reasoning thus, the court held for the insurance company. The case might be justified if the court found that insured knew that the facts he was concealing were such that the insurance would not have been granted to him if he had truthfully filled out the application himself. Then it would be possible to find an intent to deceive in signing the blank application. However, Judge Pemberton, in the dissent, took the view that insured was ignorant of the necessities of securing the insurance and thought no more was necessary than was asked of him. He did answer the question asked of him truthfully. If the court took this view of the facts, it is more difficult to follow the court's reasoning in finding an intent to deceive. The majority of the court must have felt that the insured evidently knew, from his previous experience with insurance, of the questions which he should have been asked and that they were material, hence he was properly chargeable with an intent to deceive as a matter of law on the basis of the false

²⁹ *Dooly v. Hanover Fire Ins. Co.* 16 Wash. 155, 47 Pac. 507 (1896) *Neher v. Western Assurance Co.*, 40 Wash. 157, 82 Pac. 166 (1905) *Greger-son v. Phenix Fire Ins. Co.*, 99 Wash. 639, 170 Pac. 331 (1918). Although some of the statements made by the court have been general in terminology, nevertheless the cases following this rule have all been cases involving the condition of unencumbered title, a condition which is not very material to the risk.

³⁰ 126 Wash. 487, 217 Pac. 252 (1923) on rehearing 129 Wash. 202, 224 Pac. 594 (1924).

³¹ The written application has been held inadmissible in evidence to show misrepresentations inducing the policy where it is not attached to or incorporated in the policy when the policy is issued, under Rem. Rev. Stat., sec. 7075. Oral statements made at the time of the application to the agent would apparently be admissible, however. *Washington Fire Relief Ass'n v. Albo*, 130 Wash. 114, 226 Pac. 264 (1924) *Bryan v. Fidelity & Casualty Co.*, 171 Wash. 457, 18 Pac. (2d) 482 (1933). Cf. Rem. Rev. Stat., sec. 7231 as to life insurance policies and Rem. Rev. Stat., sec. 7235 as to accident and health policies.

statements in the policy. The court said that although the answers filled in by the agent were not representations made by insured, the court would regard him as making those statements from the time that he accepted the policy, charging him with a duty to read the policy. The court might, perhaps, have treated it as a case of fraudulent concealment. Even so, because of the knowledge of the insurer's agent it is still a difficult case to reconcile unless we also say that the court must have felt the agent was so much a party to the fraud that he could not be regarded as an agent of the company in this transaction.

The court has relied on this *Hayes* case in its two most recent decisions interpreting the statute. Both cases, that of *Perry vs. Continental Ins. Co.*³² and that of *McCann vs. Reeder et al. & Mercer Casualty Co.*³³ are based on reasoning that is somewhat difficult to reconcile with the rules and principles above stated. In the *Perry* case insured signed a written application already filled out by insurer's agent on the basis of answers made to the questions by the insured. The court found that insured knew when she signed the application that the agent had written that she had had no previous fires. On the witness stand she offered testimony that she had told the agent that she had had a previous fire for which she had collected insurance. The court held that the presumption of intent to deceive was unrebutted, reversing as a matter of law the verdict of the jury for the plaintiff. In so holding, the court said that insured was charged with having read the policy and the application and thus with knowledge that the statement with regard to the previous loss by fire was false. This extension of the *Hayes* case is doubtful. Its adoption seems inconsistent with the rule that knowledge of the agent is the knowledge of the company. The court found that insured's testimony that she had told the agent the truth did not even make the question of intent to deceive one of fact since she knew that the statement as made in the application was false, despite the fact that it is difficult to conceive of insured's having a subjective intent to deceive when she makes such a statement to insurer's agent. From the dicta in this case it would appear that the applicant cannot even deny that he made such false statements to the agent if they are in the application, once he has accepted the policy. The court charges the insured with having read the policy and estops him on this basis. This view of the court is less favorable to the insured than the view

³² 78 Wash. Dec. 18, 33 Pac. (2d) 661 (1934), two judges dissenting.

³³ 78 Wash. Dec. 111, 34 Pac. (2d) 461 (1934), two judges dissenting.

adopted prior to the enactment of Rem. Rev Stat., sec. 7078. In *Turner vs. American Casualty Co.*³⁴ the court said

“ this court has steadfastly held that a policy will not be held void, nor will a warranty clause in a policy be held to have been breached, for a cause known to the agent before the application for the policy was signed, where the insured fully and truthfully related the facts to the solicitor, and false answers were written in the application by him. (Cases cited.) The underlying principle of these cases is that the knowledge of the agent is the knowledge of the principal, without regard to whether the agent communicates the facts to it, that where the insured makes full and truthful statements to the agent who procures the policy of insurance, the insurer will be held to have waived the written warranties in so far as they are not in harmony with the facts disclosed ”

Moreover the view adopted in the *Perry* case is difficult to reconcile with the case which regards a failure to inquire as to title a waiver of that condition in the policy³⁵

The *Perry* case also seems inconsistent with the decision in the recent case of *Bowden vs. General Ins. Co.*³⁶ in which the court said

“True, the policy recites, as we have already noticed, that Bowden purchased the automobile new in 1921, and that it was a 1921 model. These, however, are but statements by the insurance company in its policy, and even these statements did not purport upon the face of the policy to have been made by Bowden. He did not notice these incorrect statements in the policy. We have seen that the automobile was sufficiently described in the policy to clearly identify it as the insured property. Under the circumstances, we do not think Bowden should be charged with representing the facts as incorrectly stated in the policy, as an inducement of the company to issue the policy. We conclude that the insurance company is not absolved from the liability upon the ground of fraud on the part of Bowden in inducing the issuance of the policy ”

In this case insured told the agent that he bought the car second-hand in 1923, but the policy stated that he bought it new in 1921. Yet the court affirmed the decision of the lower court for the insured. The cases might be distinguished on the ground that the insured in the *Perry* case knew that the agent was misstating the answer in the application, whereas Bowden did not so know. But this distinction appears to be inadequate because in both cases

³⁴ Note 24, *supra*, at p. 160.

³⁵ Note 29, *supra*.

³⁶ 152 Wash. 199, 203, 277 Pac. 443 (1929).

the agent was told the truth and because in the *Perry* case the court, in effect, said it would have charged the plaintiff with a duty to read the application and so with knowledge if it had not found that she actually knew, a statement which is equally applicable to the *Bowden* case. Thus, in the case of *Tison v. American National Ins. Co.*³⁷ the court said that the question of intent to deceive was properly submitted to the jury where insured stated in his application that his vision was not impaired, although he was blind in one eye as was readily apparent to anyone who looked at him, the court regarding the agent's necessarily acquired knowledge of the defect as admissible evidence properly bearing on the question of Tison's intent to deceive. Here insured himself made the misstatement. The *Perry* case would also seem to disregard the theory of estoppel on the basis of delivery of the policy and acceptance of premiums when the agent knows at the time of delivery of facts which are contrary to the conditions stated in the policy³⁸

The other recent case, the *McCann* case, may perhaps be more easily reconciled with the past decisions of the Washington court. The conflict, if any, is one purely of policy as compared with that expressed in the case of *Houston v. New York Life Ins. Co.*³⁹ In this case a clause in the policy warranted that the applicant (for an automobile liability policy) had had no accidents within the past three years as the result of the ownership or operation of an auto vehicle. The evidence showed that within the three-year period about fourteen accidents had occurred involving automobiles which either insured or a corporation in which insured was a principal stockholder owned or operated. Insured denied any intent to deceive, testifying that he though the inquiry in the policy was in regard to accidents in which insured had been at fault. In all of these accidents no liability had been fastened on the insured or his corporation. The decisions of the trial court for the plaintiff was reversed, the appellate court finding an intent to deceive as a matter of law. The court seems to say that the number of Reeder's accidents and the frequency thereof was such that Reeder could not possibly omit reporting them without having an intent to deceive. If such is the basis on which the court rests its opinion, as it seems to be, there is no possible question as to the holding of this case. In other places in the opinion, however, the court seems to say that the question is one of construction of the clause in the policy and the court would thus seem to be deciding

³⁷ Note 34, *supra*.

³⁸ Compare also *Eaton v. National Casualty Co.*, note 24, *supra*, which may be distinguished on the ground that the applicant thought the falsity of the statement was immaterial at the time he made it.

³⁹ Note 22, *supra*.

the construction placed on the policy by the insured as a matter of law. In so far as the court is doing this in arriving at its decision, the case seems to diverge from the policy expressed in the *Houston* case of permitting the jury to decide as a question of fact what the construction placed by the insured upon the question in the insurance policy was.

It is submitted that these two most recent decisions of the Washington Supreme Court represent a departure from the older cases in that the court seems to be holding that an objective intent to deceive is a sufficient basis for avoidance by the insurance company, rather than requiring proof of the subjective intent to deceive as in the older cases. The court is throwing the responsibility for the acts of careless or unscrupulous agents on the insured rather than on the insurer as it formerly did. Such a holding tends to encourage unscrupulous agents and unscrupulous insurance companies, a result which would seem undesirable. If the insurer places great reliance on the statements made in the application, it should be required to see that its agents correctly explain the meaning of the questions and stress the importance of giving correct answers to them. If there is any failure on the part of the agent to do so, the insurer should be charged therewith. The insurer is in a superior position to that of the insured since it knows what information it wants, whereas the insured does not, and since it is the insurer that selects the agent.⁴⁰

⁴⁰For other notes on this same topic see Note, 6 Wash. L. Rev. 34 (1931) Note, 9 Wash. L. Rev. 168 (1934).