Connecticut

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What is the required procedure for seeking rescission? If there is no required procedure, what are the acceptable or customary procedures for rescission?

There is no dispositive decision in Connecticut establishing a required procedure for rescission.

It appears that Connecticut follows what has been described as the "majority rule," which provides that rescission must be accomplished by commencing litigation. In a decision by the Connecticut Supreme Court—albeit applying New York law—the Court explained: "It is further contended that notice of cancellation and tender of the premiums paid within the contestable period amounts to a 'contest' within that period sufficient to permit the company to defend an action upon the policy brought after the expiration of the period. Under the law of New York and by the great weight of authority such notice is not sufficient to constitute a contest of the policy, but the company must proceed within the time limited, either by way of defense to an action on the policy, or by an affirmative suit to cancel it." *New York Life Ins. Co. v. Rigas*, 117 Conn. 437, 444, 168 A. 22 (1933); *see also PHL Variable Ins. Co. v. Charter Oak Trust*, No. HHDCV106012621S, 2012 Conn. Super. Lexis 1218, at *7-8 (Super. Ct. May 4, 2012); *Gilbert v. Cont'l Assur. Co.*, 1975 U.S. Dist. Lexis 14202, at *5 (D. Conn. Jan. 23, 1975).

It is common for the insurer to commence litigation seeking rescission. *See PHL Variable Ins. v. Charter Oak Trust*, 2015 Conn. Super. Lexis 2774, at *8 (action by insurer seeking declaration that life insurance policies obtained through material misrepresentations relative to employment and income, among other things, are void *ab initio*); *Quincy Mut. Fire Ins. Co. v. Nurkovic*, No. CV064005119, 2009 Conn. Super. Lexis 1380, at *1, 2009 WL 1607735 (Conn. Super. Ct. May 15, 2009) (action by insurer seeking declaratory judgment against insured and declaration that automobile insurance policy was void *ab initio*); *Danbury Ins. Co. v. Ginnetti*, No. 302CV2097, 2004 U.S. Dist. Lexis 17857, at *1, 2004 WL 2009281 (D. Conn. Aug. 5, 2004) (action by insurer seeking rescission of homeowner's insurance policy based upon insured's material misstatements regarding animals in home); *Infinity Ins. Co. v. Zbikowski*, No. CV010452163S, 2002 Conn. Super. Lexis 3439, at *1, 2002 WL 31502352 (Conn. Super. Ct. Oct. 24, 2002) (action by insurer seeking declaratory judgment that automobile insurance policy was void as to all claims arising out of an accident involving insured's child, who was not identified as a driver on the policy's application); *Paul Revere Life Ins. v. Pastena*, No. CV 960132782, at *1-2, 1997 Conn. Super. Lexis 1866, 1997 WL 408714 (Conn. Super. Ct. July 10, 1997) (action by insurer seeking rescission of disability policy due to the insured's alleged material misrepresentations made on policy application and alleged breach of the policy's terms); *Zurich Am. Ins. Co. v. Expedient Title, Inc.*, No. 3:11-cv-001633, 2015 U.S. Dist. Lexis 167998, at *1-2, 2015 WL 9165875 (D. Conn. Dec. 16, 2015) (action by insurer seeking declaratory judgment rescinding E&O policy issued to insured as void *ab initio*); *Principal Nat'l Life Ins. Co. v. Coassin*, No. 3:13cv1520, 2015 U.S. Dist. Lexis 128840, at *1-4, 2015 WL 5680320 (D. Conn. Sept. 25, 2015) (action by insurer to declare life insurance policy void *ab initio* based on misstatements relating to insured's vertigo); *Cont'l Cas. Co. v. Morris I. Olmer, LLC*, No. 3:08-cv-805, 2010 U.S. Dist. Lexis 82360, at *1-2, 2010 WL 3257673 (D. Conn. Aug. 10, 2010) (action by insurer seeking declaratory judgment that insurer was entitled to rescind professional liability insurance policy); *Northwestern Mut. Life Ins. Co. v. Gil*, No. 3:07-cv-00303, 2009 U.S. Dist. Lexis 8608, at *1-3, 2009 WL 276086 (D. Conn. Feb. 5, 2009) (action by insurer to enforce equitable remedy of rescission of life insurance policy due to material

misrepresentations in decedent's medical questionnaire); *Westport Ins. Corp. v. Gionfriddo*, 524 F. Supp. 2d 167, 170 (D. Conn. 2007) (action by insurer seeking declaratory judgment that liability insurance policy issued to defendant attorney was void *ab initio*); *Mt. Airy Ins. Co. v. Millstein*, 928 F. Supp. 171, 173 (D. Conn. 1996) (action by insurer against insured seeking declaration that professional liability insurance policy was void *ab initio*).

However, there are a number of cases where the insurer asserted rescission as a defense to a claim for benefits. *See, e.g.*, *Lassow v. Jefferson Pilot Fin. Ins. Co.*, No. CV010807131S, 2003 Conn. Super. Lexis 2562, *5-6, 2003 WL 22206242 (Conn. Super. Ct. Sept. 8, 2003) (action by executrix of estate of insured to recover life insurance benefits denied due to insurer's claim that widow's spouse materially misrepresented decedent's medical history on his life insurance application); *Sherman v. Prudential Ins. Co. of Am.*, No. CV990078688S, 2002 Conn. Super. Lexis 737, at *2, 2002 WL 467774 (Conn. Super. Ct. Mar. 6, 2002) (action by insured's beneficiary to recover life insurance benefits denied based upon decedent's material misrepresentation on application relative to status of cancer diagnosis); *La Teano v. Hartford Life Ins. Co.*, No. CV 980580409S, 2000 Conn. Super. Lexis 1625, at *1, 2000 WL 966371 (Conn. Super. Ct. June 23, 2000) (action by insured to recover benefits under term life insurance policy denied based upon alleged material misrepresentations in application); *Janush v. Nationwide Mut.*, No. CV 970157593, 2000 Conn. Super. Lexis 442, at *6, 2000 WL 254560 (Conn. Super. Ct. Feb. 22, 2000) (action by insured to recover under automobile insurance policy issued by insurer that denied coverage based on alleged misrepresentation on application relative to number of children in household); *Brinkley v. Prudential Prop. & Cas. Ins. Co.*, No. CV 960393316S, 1999 Conn. Super. Lexis 1057, at *1-2, 1999 WL 259660 (Conn. Super. Ct. Apr. 21, 1999) (action by insured seeking payments under automobile insurance policy withheld by insurer on the ground that insured made material misrepresentations on his application by backdating application to date prior to accident); *Pinette v. Assurance Co. of Am.*, 52 F.3d 407, 409 (2d Cir. 1995) (action by insured seeking payment under homeowners insurance policy after house fire that was denied by insurer on the ground that incorrect answers on the insured's application constituted material misrepresentations that rendered the contract voidable); *Murtha v. Golden Rule Ins. Co.*, No. Civ.A.3:98–CV–975JCH, 2001 U.S. Dist. Lexis 3380, at *2-4, 2001 WL 256145 (D. Conn. Mar. 5, 2001) (action by insured to recover payment of decedent's medical bills under medical insurance policy that were denied by insurer based upon material misstatements relating to an unreported pre-existing condition).

What must an insurer prove to be entitled to rescind a policy?

The seminal case on rescission of insurance policies in Connecticut is *State Bank & Trust Co. v. Connecticut Gen. Life Ins. Co.*, 109 Conn. 67, 72, 145 A. 565, 567 (1929), which holds that "[m]aterial representations … relied on by the company, which were untrue and known by the assured to be untrue when made, invalidate the policy without further proof of actual conscious design to defraud." Although *State Bank* does not lay out a specific set of elements necessary to entitle an insurance company to rescind an insured's policy, the United States District Court for the Second Circuit has summarized *State Bank* as establishing the following three elements:

> To void an insurance policy under Connecticut law, [the insurer] must prove "(1) a misrepresentation (or untrue statement) by the [insured] which was (2) knowingly made and (3) material to [the insurer]'s decision whether to insure.

Pinette v. Assur. Co. Of America, 52 F.3d 407, 409 (2d Cir. 1995).

State and federal courts in Connecticut typically cite *Pinette*'s three-pronged approach as the standard by which rescission cases should be adjudicated. *See, e.g.*, *F.D.I.C. v. Great American Ins. Co.*, 607 F.3d 288, 294 (2d Cir. 2010); *Cont'l Cas. Co. v. Morris I. Olmer, LLC*, No. 3:08-cv-805, 2010 U.S. Dist. Lexis 82360, at *1-2, 2010 WL 3257673 (D. Conn. Aug. 10, 2010) *Westport Ins. Corp. v. Gionfriddo*, 524 F. Supp.2d 167, 175 (D. Conn. 2007); *Mt. Airy Ins. Co. v. Millstein*, 928 F.Supp. 171, 174 (D. Conn. 1996); *PHL Variable Ins. v. Charter Oak Trust*, No. HHDCV106012621, 2015 Conn. Super. Lexis 2774, at *8, 2015 WL 6964586 (Conn. Super. Ct. Nov. 4, 2015); *Quincy Mut. Fire Ins. Co. v. Nurkovic*, No. CV064005119, 2009 Conn. Super. Lexis 1380, *12 (Conn. Super. Ct. May 15, 2009).

Is it required that the insured have committed an intentional or fraudulent misrepresentation on the application? Or is it sufficient that there was a material misrepresentation, regardless of intent?

Connecticut requires that the insured's misrepresentation be intentional. *State Bank & Trust Co. v. Connecticut Gen. Life Ins. Co.*, 109 Conn. 67, 145 A. 565, 567 (1929) (misrepresentations must be "known by the assured to be untrue when made"). *See also Middlesex Mut. Assur. Co. v. Walsh*, 218 Conn. 681, 590 A.2d 957, 963-64 (1991) ("We therefore hold that in order to constitute a misrepresentation sufficient to defeat recovery on an … insurance policy, a material representation on an application for such a policy must be known by the insured to be false when made."). *See also Pinette v. Assur. Co. of Am.*, 52 F.3d 407, 409 (2d Cir. 1995) (quoting *State Bank & Trust Co.*, 145 A. at 567 ("Under Connecticut law, an insurance policy may be voided by the insurer if the applicant made '[m]aterial representations …, relied on by the company, which were untrue and known by the assured to be untrue when made.'").

While the misrepresentation must be intentional, it need not be fraudulent—*i.e.*, made with scienter. *State Bank & Trust Co.*, 145 A. at 567 (1929) (rescission does not require "proof of actual conscious design to defraud"); *Cont'l Cas. Co. v. Morris I. Olmer, LLC*, No. 3:08-cv-805, 2010 U.S. Dist. Lexis 82360, at *13, 2010 WL 3257673 (D. Conn. Aug. 10, 2010) ("A 'conscious design to defraud' is not required …'" (quoting *Walsh,* 590 A.2d at 963)).

As such, "an insured makes a knowing misrepresentation only when he submits an answer to a question in the application other than that which he has reason to believe is true …" *Walsh*, 590 A.2d at 966 (*citing Lazar v. Metropolitan Life Ins. Co.*, 290 F.Supp. 179, 181 (D. Conn. 1968)). Because it is required that the insured's misrepresentation be intentional, "it follows that an insured should not be held responsible for an answer in the application if he was justifiably unaware of its falsity, had no actual or implied knowledge of its existence, and was not guilty of bad faith, fraud, or collusion." *Id.* (*citing Lewis v. John Hancock Mut. Life Ins. Co.*, 443 F. Supp. 217, 218 (D. Conn. 1977)).

Innocent misrepresentations, therefore, will not subject a policy to rescission. *Zurich Am. Ins. Co. v. Expedient Title, Inc.*, No. 3:11-cv-001633, 2015 U.S. Dist. Lexis 167998, *29-30 (D. Conn. Dec. 16, 2015) (quoting *Pinette*, 52 F.3d at 409-10 ("Misrepresentations 'made because of ignorance, mistake, or negligence,' however, are considered 'innocent' and 'are not sufficient grounds for rescission'").

"When Connecticut courts speak of 'innocent' misrepresentations, they generally have in mind the situation in which the applicant does not know that the information he is providing is false." *Pinette*, 52 F.3d at 410. Thus, "[a]n individual does not make a knowing misrepresentation if the misrepresentation was made innocently—because of ignorance, mistake, or negligence." *Morris I. Olmer, LLC*, 2010 U.S. Dist. Lexis 82360 at *13, 15 (finding "a material issue of fact exists regarding whether [the insured] knowingly made a misrepresentation on the application or whether it was a mere mistake" when the insured did not recall why he did not report a matter on the application, "but it might have been because he did not remember it or did not think about it—not because he attempted to mislead" the insurer). "'Innocent' misrepresentations occur when the applicant does not know that the information he is providing is false … or if the applicant was 'justifiably unaware of the answer's falsity [and] had no actual or implied knowledge of its existence.'" *Id.* (quoting *Mt. Airy Ins. Co.*, 928 F. Supp. at 175).

Under Connecticut law, however, a person may not claim that a misrepresentation is "innocent" solely because the person failed to read the completed application before signing it. "The law requires that the insured shall not only, in good faith, answer all the interrogatories correctly, but shall use reasonable diligence to see that the answers are correctly written." *Ryan v. World Mut. Life Ins. Co.*, 41 Conn. 168, 172 (1874) (holding the defendant not to be liable under an insurance policy when plaintiff claimed that she gave defendant's agent the right information but he recorded the wrong answer). "Thus, at least in Connecticut, an applicant for insurance has the affirmative duty 'to inform himself of the content of the application signed by him, under penalty of being bound by the representations as recorded therein.'" *Pinette*, 52 F.3d at 410 (quoting 7 George J. Couch, *Cyclopedia of Insurance Law* §35:231, at 358 (2d ed. 1985)). "The insured cannot simply claim that he did not read the application to demonstrate lack of knowledge; rather, the insured has an affirmative

duty to inform himself of the content of the application signed by him." *Morris I. Olmer, LLC*, 2010 U.S. Dist. Lexis 82360,at *13 (citation omitted). *See also Danbury Ins. Co. v. Ginnetti*, No. 302CV2097(RNC), 2004 U.S. Dist. Lexis 17857, at *6-7, 2004 WL 2009281 (D. Conn. Aug. 5, 2004) (holding that an insured cannot avoid responsibility for an alleged innocent misrepresentation in an application which he claimed to have signed without reading after an agent filled in the responses); *Kelly v. John Hancock Mut. Life Ins. Co.*, 131 Conn. 106, 110, 38 A.2d 176, 177 (1944) ("Under these circumstances the assured was under a duty to know the contents of the application signed by her. Failure to do so was inexcusable neglect").

"There is an exception to this rule in Connecticut if the insurance agent induces the applicant to sign the application without reading it." *Pinette*, 52 F.3d at 410; *see also Lewis v. John Hancock Mut. Life Ins. Co.*, 443 F.Supp. 217, 219 (D.Conn. 1977) ("If through the conduct of defendant's agent, [plaintiff] failed to read over the questions and answers in the applications, he would in effect have made no misrepresentations at all …"). This exception requires proof that the agent "actively encouraged [the applicant] to sign the application without reviewing the answers." *Pinette*, 52 F.3d at 410; *see also Kelly*, 131 Conn. at 110, 38 A.2d at 177 (without evidence of "fraud or misrepresentation on the part of the agent," the applicant was charged with knowledge of the contents of the signed application). In particular, evidence that the applicant "supplied the correct information to the agent, who then wrote down the wrong answer, is insufficient standing alone to relieve plaintiffs of responsibility for the misrepresentation. *Pinette*, 52 F.3d at 410–11. Notably, an agent's specific inducement of an applicant into signing an application without first reviewing it is the only exception which Connecticut courts recognize to the binding nature of an applicant's signature. *See id.*

Moreover, an insured cannot successfully argue that a misrepresentation was unintentional because he believed the question was unimportant. In other words, it is not within the insured's purview to evaluate the relevance or weight of the information sought. *See Ranger Ins. Co. v. Kovach*, 63 F.Supp.2d 174, 185-86 (D. Conn. 1999) (holding that prospective insured's belief that responsive information to questions on an insurance application were of "minor significance" is not a defense to a claim that misrepresentation was intentional).

Applicants should further endeavor to answer each question completely, as "[i]ncomplete answers may constitute a misrepresentation which can void the policy." *Dias v. Hermitage Ins. Co.*, No. 315371, 1997 Conn. Super. Lexis 756, *4, 1997 WL 149777 (Conn. Super. Ct. Mar. 21, 1997) (quoting G. Couch, Insurance (2d Ed. Rev. 1984) 35:146 and commenting that "the failure to make a full disclosure is as culpable as a false statement").

Of course, in order to be knowingly false, a representation must be false. In evaluating whether a statement is false, the court will "construe the question as a lay person would understand it." *Walsh*, 218 Conn. at 694, 590 A.2d at 963-64. If a lay person could construe a "question as calling for a particular response, and the response given in accordance with that understanding is not false, the response does not amount to a misrepresentation." *Id.* (holding that a question in an automobile insurance application asking whether there were "children" in household could reasonably be interpreted as concerning only minors, and that it therefore was not a misrepresentation to answer "no" when there was an adult son living in the house). *See also Quincy Mut. Fire Ins. Co. v. Gramegna*, No. 3:04–CV–480 (PCD), 2008 U.S. Dist. Lexis 17244 *14, 2008 WL 659586 (D. Conn. Mar. 5, 2008) ("Existence of an ambiguity is crucial to the resolution of [a] claim of a misrepresentation in the response to [a question on an insurance application]. The truth of an answer in an insurance application must be determined in light of the question asked, not in reference to extraneous evidence, and the language of a policy application will be construed as a layperson would understand it").

Is there a separate requisite showing of reliance by the insurer, or is reliance presumed if materiality is found?

The seminal case in Connecticut holds that reliance is a required element to establish rescission. *State Bank & Trust Co. v. Conn. Gen. Life Ins. Co.*, 109 Conn. 67, 72, 145 A. 565 (Conn. 1929) ("material representations … relied on by the [insurance] company, which were untrue and unknown by the assured to be untrue when made, invalidate the policy …"); *Paul Revere Life Ins. Co. v. Pastena*, 52 Conn.

App. 318, 325, 725 A.2d 996 (1999) (citation omitted) ("Rescission of a contract is an appropriate remedy if there has been a material representation of fact upon which a party relied and which caused it to enter the contract …")

However, the most-often cited statements of the elements of a rescission claim omits reference to reliance:

> To void an insurance policy under Connecticut law, [the insurer] must prove "(1) a misrepresentation (or untrue statement) by the [insured] which was (2) knowingly made and (3) material to [the insurer]'s decision whether to insure.

Pinette v. Assurance Co. of America, 52 F.3d 407, 409 (2d Cir. 1995).

In practice, reliance is typically considered within the context of evaluating whether a misrepresentation was "material." "A misrepresentation is material 'when, in the judgment of reasonably careful and intelligent persons, it would so increase the degree or character of the risk of the insurance as to substantially influence its issuance, or substantially affect the rate of premium.'" *Pinette*, 52 F.3d at 411 (quoting *Davis Scofield Co. v. Agricultural Ins. Co.*, 109 Conn. 673, 678, 145 A. 38 (1929)).

"Connecticut caselaw strongly suggests that an answer to a question on an insurance application is presumptively material." *Id.* In fact, such misrepresentations, when incorporated into the policy, are sometimes labeled "conclusively material," which presumably would make unnecessary evidence of materiality or reliance. *State Bank & Trust Co*, 109 Conn. at 70-71, 145 A. at 566 ("[m]atters made the subject of special inquiry are deemed conclusively material"); *Mt. Airy Ins. Co. v. Millstein*, 928 F. Supp. 171, 176 (D. Conn. 1996) ("Information in an insurance application that becomes a part of the policy is material"); *see also Westport Ins. Corp. v. Gionfriddo*, 524 F. Supp. 2d 167, 177 (D. Conn. 2007) (stating, "even in the absence of the [underwriter's] affidavit, the only reasonable conclusion on this record is that knowledge of the numerous potential claims against [defendant] for legal malpractice would have substantially influenced an insurer's decision").

The presumption that a misrepresentation on an insurance application incorporated into the policy is material was explained as follows:

> Where the representation is contained in an answer to a question contained in the application which is made a part of the policy, the inquiry and answer are tantamount to an agreement that the matter inquired about is material. The information given forms the basis of the contract and defines the risk assumed.

State Bank & Trust Co., 109 Conn. at 70, 145 A. at 566.

As such, courts have determined that a misstatement is material as a matter of law—and tacitly, that the insurer relied on the misrepresentation as a matter of law—even in the absence of supporting testimony from the insurance company. *See, e.g.*, *Northwestern Mut. Life Ins. Co. v. Gil*, No. 3:07-cv-00303, 2009 U.S. Dist. Lexis 8608, *12-13, 2009 WL 276086 (D. Conn. Feb. 5, 2009) (granting summary judgment in favor of insurance company without reference to any supporting affidavit and holding that "there is no dispute that matters of special inquiry, such as questions requiring a 'yes' or 'no' answer, are conclusively deemed material. Therefore [the insured's] misstatements are material, and grounds for rescission"); *Murtha v. Golden Rule Ins. Co.*, No. Civ.A.3:98–CV–975JCH, 2001 U.S. Dist. Lexis 3380, *15-17, 2001 WL 256145 (D. Conn. Mar. 5, 2001) (holding "as a matter of law that [the applicant] made knowing misrepresentations when he submitted answers to questions in the application other than that which he had reason to believe is true," concluding that "under well-settled Connecticut law, [the applicant]'s misrepresentations were material as a matter of law," and granting summary judgment in favor of insurance company without reference to any supporting affidavit); *Mt. Airy Ins. Co. v. Millstein*, 928 F. Supp. 171, 176 (D. Conn. 1996) (rejecting the insured's defense that the insurance company "has not shown that [the insured's] answer to question 19 was material," because "[i]nformation in an insurance application that becomes a part of the policy is material" as a matter of law, and holding "[t]hus, [the insured]'s answer to question 19 is material," and granting summary judgment in favor of the insurance company without reference to any supporting affidavit).

To be sure, an insurer seeking rescission is well advised to introduce specific evidence—typically an underwriter's affidavit—establishing that it would have responded differently to the application had the

applicant told the truth. And there are a number of cases in which the court cited such an affidavit in its decision. In *Pinette*, for example, the court noted that "[c]ommon sense tells us that an applicant's prior loss history is material to a reasonable insurance company's decision whether to insure that applicant or determination of the premium." *Pinette*, 52 F.3d at 411. The court further observed that "Connecticut courts have evaluated similar misrepresentations and found them material as a matter of Connecticut law." *Id.* It went on to uphold the district court's finding of materiality where an underwriter's affidavit stated that insurer "would have turned the plaintiffs down had they known of the earlier fire loss." *Id.*; *see also Westport*, 524 F. Supp. 2d at 177 ("[t]he affidavit of the underwriter … establishes that [the insured's] misrepresentation affected the risk assumed by [the insurer], and that [the insurer] would not have covered [the insured] under its policy had it been aware of the misrepresentations he made in his application"); *Rangers Ins. Co. v. Kovach*, 63 F. Supp. 2d 174, 186 (D. Conn. 1999) (underwriter's affidavit "unequivocally state[d] that the premium charged … would have been significantly higher, if insurance had been offered at all, had [insurer] known that his airman certificate had been revoked 3 years before due to falsification"); *Paul Revere Life Ins. v. Pastena*, No. CV 960132782, 1997 Conn. Super. Lexis 1866, at *7-9 (Conn. Super. Ct. July 10, 1997) (underwriter's affidavit establishes that if insurer had been aware of falsity of answer, it would not have issued its policy); *Zurich Am. Ins. Co. v. Expedient Title, Inc.*, No. 3:11-cv-001633, 2015 U.S. Dist. Lexis 167998 (D. Conn. Dec. 16, 2015) ("[t]he affidavit of a Zurich underwriter shows that, had Expedient disclosed the Tambini Grievance, Zurich would not have authorized the E&O Policy in the form that it was issued").

With regard to life insurance, accident insurance, and other such policies, does your jurisdiction recognize that the policy becomes "incontestable" after a certain period of time? And must an insurer, in turn, prove fraud to rescind the policy?

Individual health insurance policies issued or delivered to any person in Connecticut must include an incontestability clause reading as follows: "TIME LIMIT ON CERTAIN DEFENSES: This policy shall be incontestable, except for nonpayment of premium, after it has been in force for two years from its date of issue." Conn. Gen. Stat. §38a-483(a)(2). The purpose of an incontestability clause "is not only to protect the expectations of the insureds … but also to encourage the insurer to be diligent in performing its duty to investigate within a specified period, and to penalize it if it does not." *Thal v. Berkshire Life Ins. Co.*, No. 3:98cv11 (AHN)DW, 1999 U.S. Dist. Lexis 4891, at *10, 1999 WL 200697 (D. Conn. Mar. 24, 1999) (citing 1A John A. Appleman & Jean Appleman, *Insurance Law & Practice* §332 at 385 (1981) (explaining that "it is necessary for the insurer to act in due time if it desires to rescind the contract for fraud … once the defense of fraud is barred, it may not be set up in a court of law or a court of equity").

In contrast, there is no specific statutory mandate that a life insurance policy be rescinded within a certain period of time, nor is there a specific statute requiring that life insurance policies contain an incontestability provision. *PHL Variable Ins. Co. v. Charter Oak Trust*, No. HHDCV106012621S, 2012 Conn. Super. Lexis 1218, at *13, 2012 WL 2044416 (Conn. Super. Ct. May 4, 2012) (commenting that Connecticut, unlike many states, "does not require individual life insurance policies to contain an incontestability clause by either statute or regulation").

It is sometimes the case that incontestability provisions are, nonetheless, included in policies, even if not required. The Supreme Court, addressing contractual limitations generally, has ruled that they are enforceable as written. *Chichester v. N.H. Fire Ins. Co.*, 74 Conn. 510, 513, 51 A. 545, 546 (1902) ("The insurer's promise to indemnify is not absolute, but modified by the promise of the insured to commence his action within twelve months."). *See also Monteiro v. Am. Home Assurance Co.*, 177 Conn. 281, 283, 416 A.2d 1189, 1190 (1979) (stating that a contractual limitation provision "is a part of the contract so that it controls the rights of the parties under the contract and, hence, such rights must be governed by the rules of law applicable to contracts").

This reasoning has been applied to incontestability provisions. *PHL Variable Ins. Co*, 2012 Conn. Super. Lexis 1218, at *13 ("the two-year contestability period contained in the policy is a contractual limitation period"). However, the *PHL* case then went on to hold that the incontestability provision did not prevent the insurer from seeking to void the policy

ab initio on the ground of lack of insurable interest, explaining, and its explanation seemingly would apply to a more-typical rescission: "[b]ecause a contract that is void *ab initio* is unenforceable, a claim that a contract is void *ab initio* cannot be limited by a provision, such as an incontestability clause, in the unenforceable contract. It follows that such a claim, therefore, may be brought at any time, regardless of the contestability provisions in the policy." *Id.* at *18.

Another trial court ruled that the death of an insured within the contestability period may toll an incontestability provision in a life insurance policy. *Gilbert v. Cont'l Assurance Co.*, No. 14,605, 1975 U.S. Dist. Lexis 14202, at *12 (D. Conn. Jan. 23, 1975).

In addition, there is authority for the proposition that proof of actual fraud (*i.e.*, an intentional misrepresentation with scienter) does not permit the insurer to contest the policy beyond the contestability period. *Thal*, 1999 U.S. Dist. Lexis 4891, at *7 ("[I] f an insurer fails to investigate an insured's application for insurance [during the contestability period], it waives its right to contest the policy even where there is fraud").

Where the policy does not include a time limit on contestability, a number of cases hold that an insurer "must elect to rescind within a reasonable time after discovering the fraud [*i.e.*, material misrepresentation]," as "failure to do so constitutes a waiver of the right to rescind." *Janush v. Nationwide Mut.*, No. CV 970157593, 2000 Conn. Super. Lexis 442, at *9, 2000 WL 254560 (Conn. Super. Ct. Feb. 22, 2000) (quoting 45 C.J.S. 297, Insurance 533 (1993)) (implicitly acknowledging that five years is not a reasonable time to rescind policy). *See also Gaul v. Ciglar*, 113 Conn. 758, 759, 155 A. 58, 59 (1931) ("The contract being silent as to the time in which the plaintiff should exercise his right, the law would imply that it must be done within a reasonable time"). What constitutes a reasonable time is a mixed question of law and fact. *See, e.g.*, *La Teano v. Hartford Life Ins. Co.*, No. CV 980580409S, 2000 Conn. Super. Lexis 1625, at *31-32, 2000 WL 966371 (Conn. Super. Ct. June 23, 2000).

Conversely, there is a trial court decision, regarding a real estate contract, which held that the three-year limitation applicable to intentional torts governed the time to rescind. *Engman v. Laschever*, No. CV 92 0513197, 1994 Conn. Super. Lexis 115, at *6, 1994 WL 30052 (Conn. Super. Ct. Jan. 20, 1994).

Can an insurer rescind based on the insured's failure to volunteer material information that was not requested by the application? That is, does the insured have a duty to volunteer material information?

Though, as discussed in Section 2.b., *supra*, information sought in an application is presumptively, and sometimes conclusively, material, information can be material even if not covered in the application. Specifically, the common law confers a duty upon an applicant or insured to volunteer information "pertinent to the risk in the contract of insurance … k]nown to the insured and unknown to the insurer" regardless of whether such information was expressly requested. *Davis-Scofield Co. v. Agric. Ins. Co.*, 109 Conn. 673, 679-680, 145 A. 38, 40 (1929) (finding that concealment of plaintiff's agent's embezzlement from and attempt to set fire to plaintiff's business constituted "a fraud upon the insurer"). Concealment of information "material to the consideration of a contract of insurance" will render insurance contract voidable. *Id.* "A fact is material to the consideration of a contract of insurance when, in the judgment of reasonably careful and intelligent persons, it would so increase the degree or character of the risk of the insurance as to substantially influence its issuance, or substantially affect the rate of premium." *Id.*

Accordingly, an applicant must disclose to the insurer all that occurs to him concerning the risk and all that "would be likely to occur to an honest man of ordinary intelligence." *Beebe v. The Hartford County Mutual Fire Ins. Co.*, 25 Conn. 51, 64-65 (1856) (upholding a jury instruction that "any suppression of material facts, though by mistake and without actual fraud, would vitiate the policy, whether the result of stupidity, mistake, or inadvertence; because it operates as a fraud upon the insurer"). While the insured is not bound to go into minute details, he must "state fairly the substantial facts material to the risk." *Id.* As summarized by the Second Circuit, "[i]nsurance policies are contracts *uberrimae fidei* [of utmost good faith] and a failure by the insured to disclose conditions affecting the risk, of which he is aware, makes the contract voidable at the insurer's option." *Government Employees Ins. Co. v. Powell*, 160 F.2d 89, 92 (2d Cir. 1947) (applying Connecticut law and citing *Davis-Scofield Co. v. Agric. Ins. Co.*, 109 Conn. 673 (1929)).

One would anticipate, however, that there would be, at a minimum, a question of fact whether information not sought in an application was material. Indeed, an insurer likely would be met with an argument that the failure to specifically inquire about a matter is evidence that it is not material to the risk.

If your jurisdiction requires a showing that misrepresentations be material, what constitutes materiality? Does there need to be some sort of causal nexus between the misrepresentation and ultimate loss?

Under Connecticut law, a misrepresentation is material, "when, in the judgment of reasonably careful and intelligent persons, it would so increase the degree or character of the risk of the insurance as to substantially influence its issuance, or substantially affect the rate of premium." *Pinette v. Assurance Co. of Am.*, 52 F.3d 407, 411 (2d. Cir. 1995) (quoting *Davis Scofield Co. v. Agricultural Ins. Co.*, 109 Conn. 673, 678, 145 A. 38, 40 (1929)) (internal quotation marks omitted). *See also F.D.I.C. v. Great Am. Ins. Co.*, 607 F.3d 288, 295 (2d Cir. 2010) (same); *Assurance Co. of Am. v. Aruri*, No. CV 960559919, 1998 Conn. Super. Lexis 1621, at *6, 1998 WL 313537 (Conn. Super. Ct. May 27, 1998) (quoting *Variety Homes, Inc. v. Postal Life Ins. Co.*, 287 F.2d 320, 323 (1961)) (internal quotation marks omitted) ("A misrepresentation is material where it substantially thwarts the purpose for which the information is demanded and induces action which the insurance company might otherwise not have taken"). *Accord State Bank & Trust Co. v. Conn. Gen. Life Ins. Co.*, 109 Conn. 67, 70-71, 145 A. 565, 566 (1929) (citation omitted) ("The test of materiality is in the effect which the knowledge of the fact in question would have on the making of the contract. To be a material fact need not increase the risk or contribute to any loss or damage suffered. It is sufficient if the knowledge of it would influence the parties in making the contract").

An answer to a specific question on an application is presumptively, and perhaps conclusively, material. *Pinette*, 52 F.3d at 411 ("Connecticut case law strongly suggests that an answer to a question on an insurance application is presumptively material"). *See also State Bank & Trust Co.*, 109 Conn. at 72, 145 A. at 567 ("Material representations … relied on by the [insurance] company, which were untrue and unknown by the assured to be untrue when made, invalidate the policy without further proof of actual conscious design to defraud"); *id.*, 109 Conn. at 70-71, 145 A. at 566 (quotation omitted) ("Matters made the subject of special inquiry are deemed conclusively material"); *Mt. Airy Ins. Co. v. Millstein*, 928 F. Supp. 171, 176 (D. Conn. 1996) ("Information in an insurance application that becomes a part of the policy is material"); *Northwestern Mutual Life Ins. Co. v. Gil*, No. 3:07-CV-303, 2009 U.S. Dist. Lexis 8608, at *12-13, 2009 WL 276086 (D. Conn. Feb. 5, 2009) ("[T]here is no dispute that matters of special inquiry, such as questions requiring a 'yes' or 'no' answer, are conclusively deemed material"); *Paul Revere Life Ins. Co. v. Pastena*, 52 Conn. App. 318, 323, 725 A.2d 996, 999 (1999) ("There is no dispute that the statements and answers contained in an insurance application become part of the application and any contract of insurance issued on it, and that these statements and answers are material").

Accordingly, when materiality exists as a matter of law, reliance may be (but is not always) presumed. *See, e.g.*, *Gil*, 2009 U.S. Dist. Lexis 8608, at *12-13 (stating "there is no dispute that matters of special inquiry, such as questions requiring a 'yes' or 'no' answer, are conclusively deemed material," holding that the insured's misstatements are "[t]herefore … material, and grounds for rescission"); *Murtha v. Golden Rule Ins. Co.*, No. Civ.A.3:98–CV–975JCH, 2001 U.S. Dist. Lexis 3380, at *15-17, 2001 WL 256145 (D. Conn. Mar. 5, 2001) ("[U]nder well-settled Connecticut law, [the applicant]'s misrepresentations [in answering specific questions] were material as a matter of law"); *Millstein*, 928 F. Supp. at 176, (rejecting insured's defense that the insurer "has not shown that [the insured's] answer to question 19 was material …" because "[i]nformation in an insurance application that becomes a part of the policy is material …" as a matter of law).

"Where the materiality of a representation depends upon inferences drawn from facts and circumstances proved, the question is one for the jury. Where the representation is contained in an answer to a question contained in the application which is made a part of the policy, the inquiry and answer are tantamount to an agreement that the matter inquired about is material." *State Bank & Trust Co.*, 109 Conn. at 70, 145 A. at 566.

What types of proof can or must an insurer rely on to seek rescission?

See Sections 2.b. and 3.

Does an actionable misrepresentation in a policy application render the policy voidable or void *ab initio*?

Under Connecticut law, an actionable misrepresentation or fraudulent concealment in an insurance policy application will render it voidable, and subject to rescission or a declaration of being void *ab initio*. *Davis-Scofield Co. v. Agric. Ins. Co.*, 109 Conn. 673, 680, 145 A. 38, 40-41 (1929). Upon rescission, the policy is considered void from its inception (*ab initio*). *Zurich Am. Ins. Co. v. Expedient Title, Inc.*, No. 3:11-cv-001633 (MPS), 2015 U.S. Dist. Lexis 167998, at *2 (D. Conn. Dec. 16, 2015); *see also Westport Ins. Corp. v. Gionfriddo*, 524 F. Supp. 2d 167, 177 (D. Conn. 2007); *Mt. Airy Ins. Co. v. Millstein*, 928 F. Supp. 171, 174 (D. Conn. 1996).

A somewhat different rule applies to automobile insurance, and perhaps other forms of liability insurance. "Automobile insurance … may be rescinded at common law on the basis of intentional material misrepresentation." *Munroe v. Great Am. Ins. Co.*, 234 Conn. 182, 188, 661 A.2d 581, 584 (1995). *Munroe* held, however, that "the legislature did not intend the insurer's common law right of rescission as against an innocent third party for intentional material misrepresentation by the insured to survive the enactment of §38a-343." *Id.* 234 Conn. at 193, 661 A.2d at 586. C.G.S. §38z-343, governs *cancellation* of automobile policies. The court expressly declined to decide "whether a different result would obtain in an action directly between the insured and the insurer." *Id.* 234 Conn. at 187 n.3, 661 A.2d at 584.

Munroe suggested, *in dictum*, that a different rule might apply when the "innocent third party" was not injured by the insured, but has acquired rights through subrogation. *Id*, 234 Conn. at 190-91, 661 A.2d at 585 (citation omitted) ("a party subrogated to the rights of an assured obtains no different or greater rights against the insurer than the insured possesses and is equally subject to any defense the insurer may have against the assured under the policy. … While [prior] cases focused on the insured's alleged failure to cooperate, nothing in their holdings suggests that they would not have applied to an insured's material intentional misrepresentations to the insurer").

Upon a showing of the requisite elements of rescission, is rescission effective as to innocent insureds and third-parties?

With regard to automobile insurance, an insurer's rescission of an insurance policy based on an intentional material misrepresentation does not render the policy void *ab initio* so as to defeat the rights of innocent accident victims to collect under the policy. *Munroe v. Great Am. Ins. Co.*, 234 Conn. 182, 183, 661 A.2d 581, 582 (1995). The Court reached this conclusion by inferring from mandatory uninsured motorist insurance statutes a legislative policy to protect innocent third parties, concluding that "the compulsory automobile insurance statutes, read as a whole, abrogate the right of an insurer to rescind *ab initio* the insurance contract so as to deny recovery to an innocent third party victim." *Id*., 234 Conn. at 187, 661 A.2d at 584.

Are there any statutory or regulatory time limits on seeking rescission of a policy? If so, does the statutory or regulatory language override or supersede express policy language allowing for rescission beyond the time limitation?

See Section 2.c.

What is the requirement for an insurer to be considered to have waived its right to rescind the policy, and what other equitable defenses are available to insureds?

Does an insurer need to have actual knowledge that the insured has made a misrepresentation, or will constructive knowledge be sufficient?

A federal court applying Connecticut law held that an insurer's mere knowledge, whether actual or constructive, of a misrepresentation, without more, does not constitute waiver of the insurer's right to rescind

the policy. *See Murtha v. Golden Rule Ins. Co.*, No. 3:98-CV-975 (JCH), 2001 U.S. Dist. Lexis 3380, at *20, 2001 WL 256145 (D. Conn. Mar. 5, 2001) ("[T]he fact that [the insurer] was aware of [the insured's] misrepresentations prior to its voiding of the policy does not constitute circumstances from which it is reasonable to infer an intentional waiver of [the insurer's] rights under the contract under Connecticut law"). It should be noted however, that this ruling runs counter to other decisions within the Second Circuit applying New York law, which hold that unreasonable delay after learning of the misrepresentation can preclude rescission. *Cont'l Cas. Co. v. Marshall Granger & Co.*, 6 F. Supp. 3d 380, 393-94 (S.D.N.Y. 2014) ("An insurer who fails to rescind a policy promptly after learning of sufficient facts to justify rescission will be deemed to have forfeited the right to rescind") (collecting cases).

The authors have not located additional Connecticut case law on this issue.

Will an insurer be estopped from rescinding the policy if it waits too long to do so after acquiring actual or constructive knowledge of the misrepresentation?

The law on this point is inconsistent and not well-settled. At least one trial court, looking to cases from other jurisdictions, has determined that contracts that are void ab initio may be challenged "at any time, regardless of the contestability provisions in the policy." *PHL Variable Ins. Co. v. Charter Oak Trust*, No. HHDCV106012621S, 2012 Conn. Super. Lexis 1218, at *18, 2012 WL 2044416 (Conn. Super. Ct. May 4, 2012) ("Because a contract that is void *ab initio* is unenforceable, a claim that a contract is void *ab initio* cannot be limited by a provision, such as an incontestability clause, in the unenforceable contract. It follows that such a claim, therefore, may be brought at any time, regardless of the contestability provisions in the policy"). In another case, a trial court stated that the insurer "must elect to rescind within a reasonable time after discovering the fraud—*i.e.*, material misrepresentation—as "failure to do so constitutes a waiver of the right to rescind." *Janush v. Nationwide Mut.*, No. CV 970157593, 2000 Conn. Super. Lexis 442, at *9, 2000 WL 254560 (Conn. Super. Ct. Feb. 22, 2000) (quoting 45 C.J.S. 297, Insurance 533 (1993)) (holding that insurer did not exercise rescission rights when it sent letter to insured "nullifying" policy without attempting to return premium payments, and implicitly acknowledging that five years is not a reasonable time to rescind policy). What constitutes a reasonable time is a mixed question of law and fact. *See, e.g.*, *La Teano v. Hartford Life Ins. Co.*, No. CV 980580409S, 2000 Conn. Super. Lexis 1625 *31-32, 2000 WL 966371 (Conn. Super. Ct. June 23, 2000).

When is an insurer required to investigate application answers? If an insurer is so required, does the duty extend only to "easily ascertainable" fraud, or does it go further?

Authority does not exist in Connecticut on this point.

If the insured intentionally made the misrepresentation or otherwise acted in bad faith, can there be any waiver by the insurer at all?

Authority does not exist in Connecticut on this point. Existing case law suggests that an insurer does not risk waiver so long as the insured can be restored to her former condition upon rescission. In the case of *Paul Revere Life Ins. Co. v. Pastena*, 52 Conn. App. 318, 319-320, 725 A.2d 996, 997 (1999), a surgeon submitted an application for disability insurance in which she stated that she had existing individual disability coverage as well as group disability coverage with a hospital. In her application, the surgeon represented that the new policy applied for was intended to replace or change her existing individual disability coverage, which would be discontinued. *Id.* Based upon the statements in her application, Paul Revere issued the surgeon a new individual disability policy, but the surgeon subsequently failed to drop her prior individual disability coverage, leading Paul Revere to rescind its recently issued policy. *Id.* The applicant sued, and Paul Revere moved for summary judgment. *Id.* A trial court granted the insurance company's motion, and the surgeon appealed, arguing, among other things, that "because surgeon specific coverage is no longer available in the insurance industry, she cannot be put back into the same position that she was in before entering the contract." *Id.*, 52 Conn. App. at 325, 725 A.2d at 1000. The surgeon further argued that the insurance company "led her to believe that she could keep her [prior] coverage and, 'by

stringing [the defendant] along, [she] lost her ability to obtain surgeon specific coverage anywhere.'" *Id*.

The Appellate Court rejected the surgeon's "argument of detrimental reliance [as] without merit." *Id*. The Court opined, "[e]ven if she had somehow relied on representations of the plaintiff, she never changed her position, thereby incurring some injury. Nor is there any validity to her argument that because this particular type of insurance is no longer available, she has been injured." *Id*.

Under what circumstances must an insurer refund the premiums to the insured when rescinding a policy, and when must the refund be dispensed? Does the insurer have to refund the premiums even in situations where the insured procured the policy through willful fraud?

"A condition precedent to rescission is the offer to restore the other party to its former condition as nearly as possible." *Kavarco v. T.J.E., Inc*., 2 Conn. App. 294, 299, 478 A.2d 257, 261 (Conn. App. Ct. 1984) (citation omitted); *Barco Auto Leasing Corp. v. House*, 202 Conn. 106, 113, 520 A.2d 162, 166 (1987) (same); *Family Fin. Services v. Spencer*, 41 Conn. App. 754, 770, 677 A.2d 479, 487-88 (1996) (same). Thus, any time a policy is rescinded any premiums paid by the insured should be returned. *See Janush v. Nationwide Mut*., No. CV 970157593, 2000 Conn. Super. Lexis 442, at *3, 2000 WL 254560 (Feb. 22, 2000 Conn. Super.) (citing 45 C.J.S. 297, Insurance 534 (1993) for the principle that "to effect a rescission, the company must make a reasonable effort to tender back the premiums paid by the insured," finding that defendant did not use "reasonable efforts to return the premiums paid by the insured" and ruling that defendant therefore "has not exercised its right to rescission within a reasonable time"). *Accord Paul Revere Life Ins. Co. v. Pastena*, 52 Conn. App. 318, 325, 725 A.2d 996, 1000 (Conn. App. Ct. 1999) ("Rescission, simply stated, is the unmaking of a contract. It is a renouncement of the contract and any property obtained pursuant to the contract, and places the parties, as nearly as possible, in the same situation as existed just prior to the execution of the contract. A condition precedent to rescission is the offer to restore the other party to its former condition as nearly as possible").

In at least one case applying Connecticut law, *Danbury Ins. Co. v. Ginnetti*, 2004 U.S. Dist. Lexis 17857, 2004 WL 2009281 (D. Conn. Aug. 5, 2004), the insurer did not return the insured's home insurance premiums prior to commencing suit for declaratory relief. *See id*., at *8 (granting insurer's motion for summary judgment, rescinding homeowner's insurance policy based upon material misrepresentation in application, and ordering insurer to return defendant's premium). *Ginnetti* involved a dispute about whether a homeowner's insurance policy issued by the insurer to the insured obligated the insurer to indemnify the insured in connection with a dog bite case concurrently pending against the insured in state court, or whether the policy should be rescinded because the insured's application incorrectly stated that he had no animals or exotic pets, when in fact he had two large dogs. *Id*. at *1-2. *Ginnetti* is rather anomalous insofar as the insurer's rescission action was brought while the insurer was actively defending the insured's interests in a separate, related action.

Are there any other notable cases or issues regarding an insurer's right and ability to rescind?

There are a series of additional statutes relevant to an insurer's right and ability to rescind.

First, with regard to health insurance policies, insurers should be particularly cognizant of Conn. Gen. Stat. §38a-485(a), which provides:

> The insured shall not be bound by any statement made in an application for an individual health insurance policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state is reinstated or renewed, and the insured or the beneficiary or assignee of such policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy is not so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

But see Occidental Life Ins. Co. v. Fried, 245 F. Supp. 211, 217 (D. Conn. 1965) (limiting §38a-485(a)'s requirement to original applications for life insurance and refusing to apply it to reinstatements).

> With regard to life insurance policies, Conn. Gen. Stat. §38a-437 similarly provides:
>
> (a) Each person within this state holding a policy of insurance issued by a life insurance company doing business in this state shall be furnished by the company with a copy of the application upon which the policy was issued, upon demand made for such copy by the policyholder, or by any person upon whose life the policy was issued.
>
> (b) If the company fails for thirty days from the time of the demand to furnish to the person making the demand a copy of the application, the company shall be forever barred from setting up, by way of defense to any suit on the policy of insurance, any error, incorrectness, fraud or misrepresentation of that person, or any mistake therein; and the application shall thereafter be taken and held, so far as the application may affect any claim under the policy, or any fund secured thereby, to be in all respects true and correct.

Conn. Gen. Stat. §38a-437.

Second, Connecticut's Health Insurance Fraud Act ("CHIFA"), Conn. Gen. Stat. §53-442 *et seq*., provides health insurers with a statutory right of action to recover monetary damages incurred as a result of "an act of insurance fraud." Conn. Gen. Stat. §53-444. Because relief is limited to monetary damages, CHIFA will not provide an insurer with an alternate basis to rescind a policy if the policy's incontestability period has already run. *Thal v. Berkshire Life Ins. Co.*, No. 3:98cv11 (AHN)DW, 1999 U.S. Dist. Lexis 4891, at *8, 1999 WL 200697 (D. Conn. Mar. 24, 1999). However, an incontestability period does not impact the timeliness of a CHIFA claim: "[a]n incontestability clause does not bar an insurer's claim for damages under [CHIFA] because such a claim is not a contest to liability under a policy or an attempt to rescind a policy. Rather, it is a separate and distinct action to redress intentional fraud and deceit in the application or claims process." *Minnesota Mut. Life Ins. Co. v. Ricciardello*, No. 3:96CV2387(AHN), 1997 U.S. Dist. Lexis 15797, at *10, 1997 WL 631027 (D. Conn. Sept. 17, 1997). CHIFA is "governed by the three-year statute of limitations," which period begins running from the time the misrepresentation is made, and not from the time of its discovery. *Thal*, 1999 U.S. Dist. Lexis 4891, at *13.

Third, insurers should take note of the Patient Protection and Affordable Care Act's federal limitations on rescission:

> A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not rescind such plan or coverage with respect to an enrollee once the enrollee is covered under such plan or coverage involved, except that this section shall not apply to a covered individual who has performed an act or practice that constitutes fraud or makes an intentional misrepresentation of material fact as prohibited by the terms of the plan or coverage. Such plan or coverage may not be cancelled except with prior notice to the enrollee, and only as permitted under section 300gg–2(b) or 300gg–42(b) of this title.

42 U.S.C. §300gg. A similar limitation has been adopted by the Department of Labor, and appears at 29 C.F.R. §2590.715-2712.

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