



November 2011 Loss Prevention Tip

Negligent Misrepresentation

Claim Scenario

Agent sells Client a disability income insurance policy with an additional purchase benefit. Four years later and again a year later, Client exercised her additional purchase benefit option to increase the amount of her disability income insurance benefits. Based on agent's negligent misrepresentations, client believed that she was purchasing additional amounts of disability income insurance coverage that was identical in scope to the coverage under the original policy. However, the policy states that any additional purchase benefit policies will be in the form then being issued by the company, not when the original policy was purchased. In this case, the company was limiting psychological claims to 2 years. While Client disputes that the exclusion should apply to her condition, she specifically contends that she is entitled to benefits (notwithstanding the 24-month limitation, which she says should be removed from the policies) based on Agent's misrepresentations at the time of sale (i.e., that she would get policies identical to the original policy). If Client prevails and obtains all benefits under both policies to age 65, the present day valuation of these benefits is nearly \$500,000.

Risk Prevention Tip:

Negligent misrepresentation is a frequently recurring claim for life agents. While many factors can impact the result of a negligent misrepresentation claim (juror sympathy, client and agent credibility, jurisdiction, etc) the best defense for an agent is to be familiar with the policy terms and have a well-documented file. Reviewing the policy with the client at inception is the first opportunity to discuss the policy coverage and document specific terms and conditions with the client. A second opportunity to discuss the nature of the coverage occurs when the client wishes to exercise specific policy benefit options. A discussion and follow up letter to the client explaining the specific coverage benefit would have prevented exposure to a \$500,000 claim.

For more information and/or to apply online, visit www.naifaeo.com or call 888-833-2304. The NAIFA team at CalSurance is ready to answer your questions and provide any assistance.