

A business executive was answering questions for an application for a \$3 million life insurance policy that named as the beneficiary a company he had started with others. He answered in the negative when asked the common question as to whether he “engaged in auto, motorcycle or boat racing, parachuting, skin or scuba diving, skydiving, or hang gliding or other hazardous avocation or hobby.” In fact, on about 20 occasions, the executive had gone heli-skiing, which involves skiing down remote mountain trails after being dropped off by a helicopter. Only three months after the policy was issued, the executive was killed in an avalanche while heli-skiing. The tragedy for his survivors and former business partners was compounded in the courtroom when a federal appeals court upheld the life insurer’s rescission of the life insurance policy on the ground of a misrepresentation on the application. A reasonable person in the position of the life insurance policy applicant would have known that his heli-skiing avocation constituted a hazardous activity, as that term was used in the application. The applicant clearly was aware of the heightened avalanche risks associated with heli-skiing, as compared to resort skiing. He had routinely signed waivers to that effect whenever he engaged a company that made arrangements for such excursions. It was hardly necessary for the insurer to point out, in making this argument, that heli-skiing commonly involves rescue and survival training and the use of specialized lights and breathing devices meant to increase one’s chances of surviving an avalanche. About three weeks after the executive had completed the insurance application by telephone, an underwriter making calls for the insurer called him with some follow-up questions, including the same inquiry about “any hazardous activities.” This time, the executive mentioned in the conversation that he enjoyed skiing and golf, among other things, but still there was no mention of heli-skiing. Nor did the executive show any concerns or confusion over what the term “hazardous activities” meant. The beneficiary under the rescinded policy unsuccessfully sought to use this exchange to argue that the life insurer was chargeable with knowledge of the insured’s concealment of his heli-skiing avocation, and thus was precluded from seeking rescission. The court ruled that the insured’s “skiing” statement, when combined with the negative responses to the general question of whether he engaged in hazardous activities, would not have put a prudent underwriter on notice of the need to investigate further. Otherwise, any report by an applicant of a generally low-hazard recreational activity, such as wrestling, juggling, or fishing, would unreasonably require the insurer to investigate the myriad possible “extreme” variants of such activities. Instead, to make an insurer legally chargeable with knowledge of an undisclosed fact, generally it must be shown that it had knowledge of evidence indicating that the applicant was not truthful in answering a particular application question. In this case, there was no such “red flag” that might have allowed the policy beneficiary to avoid the consequences of the executive’s untruthfulness.

FDIC INSURANCE UPDATE

In October 2008, Congress increased the basic limit on federal deposit insurance coverage from \$100,000 to \$250,000. The limit is scheduled to return to \$100,000 on January 1, 2014. The

temporary limit now in effect has not changed the fact that a customer has various means by which to effectively raise the applicable limit for the customer's collection of deposits at any one institution. The basic limit applies separately to different ownership categories. A single account in one name is insured up to \$250,000; a joint account for two or more people is insured up to the same limit, per owner; certain retirement accounts, such as IRAs, are covered up to the limit; and deposits meant to pass on to named beneficiaries on the death of the owner can be protected up to \$250,000 for each named beneficiary. This last category of deposits is a revocable trust account. There also are other recent changes that favor depositors in insured institutions. For example, it used to be that the only beneficiaries under a revocable trust account who qualified for additional deposit insurance coverage were the account owner's spouse, child, grandchild, parent, or sibling. Now an account owner can name almost any beneficiary, such as a more distant relative, a friend, or a charitable organization, and each beneficiary will still benefit from the additional coverage.