

### 5.3.5: Case

#### Misrepresentation to Insurer

Mutual Benefit Life Insurance Co. v. JMR Electronics Corp.

848 F.2d 30 (2nd Cir. 1988)

PER CURIAM

JMR Electronics Corporation (“JMR”) appeals from a judgment of the District Court for the Southern District of New York (Robert W. Sweet, Judge) ordering rescission of a life insurance policy issued by plaintiff-appellant The Mutual Benefit Life Insurance Company (“Mutual”) and dismissing JMR’s counterclaim for the policy’s proceeds. Judge Sweet ruled that a misrepresentation made in the policy application concerning the insured’s history of cigarette smoking was material as a matter of law. Appellant contends that the misrepresentation was not material because Mutual would have provided insurance—albeit at a higher premium rate—even if the insured’s smoking history had been disclosed. We agree with the District Court that summary judgment was appropriate and therefore affirm.

The basic facts are not in dispute. On June 24, 1985, JMR submitted an application to Mutual for a \$ 250,000 “key man” life insurance policy on the life of its president, Joseph Gaon, at the non-smoker’s discounted premium rate. Mutual’s 1985 Ratebook provides: “The Non-Smoker rates are available when the proposed insured is at least 20 years old and has not smoked a cigarette for at least twelve months prior to the date of the application.” Question 13 of the application inquired about the proposed insured’s smoking history. Question 13(a) asked, “Do you smoke cigarettes? How many a day?” Gaon answered this question, “No.” Question 13(b) asked, “Did you ever smoke cigarettes?” Gaon again answered, “No.” Based on these representations, Mutual issued a policy on Gaon’s life at the non-smoker premium rate.

Gaon died on June 22, 1986, within the period of contestability contained in policy, see N.Y. Ins. Law § 3203 (a)(3) (McKinney 1985). Upon routine investigation of JMR’s claim for proceeds under the policy, Mutual discovered that the representations made in the insurance application concerning Gaon’s smoking history were untrue. JMR has stipulated that, at the time the application was submitted, Gaon in fact “had been smoking one-half of a pack of cigarettes per day for a continuous period of not less than 10 years.” Mutual brought this action seeking a declaration that the policy is void. Judge Sweet granted Mutual’s motion for summary judgment, dismissed JMR’s counterclaim for the proceeds of the policy, and ordered rescission of the insurance policy and return of JMR’s premium payments, with interest.

Under New York law, which governs this diversity suit, “it is the rule that even an innocent misrepresentation as to [the applicant’s medical history], if material, is sufficient to allow the insurer to avoid the contract of insurance or defeat recovery thereunder.” *Process Plants Corp. v. Beneficial National Life Insurance Co.*, 366 N.E.2d 1361 (1977). A “misrepresentation” is defined by statute as a false “statement as to past or present fact, made to the insurer...at or before the making of the insurance contract as an inducement to the making thereof.” N.Y. Ins. Law § 3105(a) (McKinney 1985). A misrepresentation is “material” if “knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make such contract.” *Id.* § 3105(b)....

In the present case JMR has stipulated that Gaon’s smoking history was misrepresented in the insurance application. However, JMR disputes that this misrepresentation is material as a matter of law. JMR argues that under New York law a misrepresentation is not material unless the insurer can demonstrate that, had the applicant provided complete and accurate information, coverage either would have been refused or at the very least withheld pending a more detailed underwriting examination. In JMR’s view summary judgment was inappropriate on the facts of this case because a jury could reasonably have found that even “had appellee been aware of Gaon’s smoking history, a policy at the smoker’s premium rate would have been issued.” JMR takes the position that the appropriate remedy in this situation is to permit recovery under the policy in the amount that the premium actually paid would have purchased for a smoker.

We agree with Judge Sweet that this novel theory is without basis in New York law. The plain language of the statutory definition of “materiality,” found in section 3105(b), permits avoidance of liability under the policy where “knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make *such contract*.” (emphasis added) Moreover, numerous courts have observed that the materiality inquiry under New York law is made with respect to the particular policy issued in reliance upon the misrepresentation.

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There is no doubt that Mutual was induced to issue the non-smoker, discounted-premium policy to JMR precisely as a result of the misrepresentations made by Gaon concerning his smoking history. That Mutual might not have refused the risk on *any* terms had it known the undisclosed facts is irrelevant. Most risks are insurable at some price. The purpose of the materiality inquiry is not to permit the jury to rewrite the terms of the insurance agreement to conform to the newly disclosed facts but to make certain that the risk insured was the risk covered by the policy agreed upon. If a fact is material to the risk, the insurer may avoid liability under a policy if that fact was misrepresented in an application for that policy whether or not the parties might have agreed to some other contractual arrangement had the critical fact been disclosed. As observed by Judge Sweet, a contrary result would reward the practice of misrepresenting facts critical to the underwriter's task because the unscrupulous (or merely negligent) applicant "would have everything to gain and nothing to lose" from making material misrepresentations in his application for insurance. Such a claimant could rest assured not only that he may demand full coverage should he survive the contestability period, N.Y. Ins. Law § 3203 (a)(3), but that even in the event of a contested claim, he would be entitled to the coverage that he might have contracted for had the necessary information been accurately disclosed at the outset. New York law does not permit this anomalous result. The judgment of the District Court is affirmed.

### CASE QUESTIONS

1. When you read this case, did you assume that Gaon died from lung cancer or some other smoking-related cause? Does the court actually say that?
2. Can you reasonably infer from the facts here that Gaon himself filled out the form and signed it? That is, can you know with some degree of certainty that he lied to the insurance company? Would it make any difference if he merely signed a form that his secretary filled out? Why or why not?
3. What if Gaon died of causes unrelated to smoking (e.g., he was in a fatal automobile accident), and the insurance company was looking for ways to deny the claim? Does the court's opinion and language still seem reasonable (e.g., the statement "there is no doubt that Mutual was induced to issue the non-smoker, discounted-premium policy to JMR precisely as a result of the misrepresentations made by Gaon concerning his smoking history")?
4. If Gaon had accurately disclosed his smoking history, is it clear that the insurance company would have refused to write any policy at all? Why is this question important? Do you agree with the court that the question is irrelevant?

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