

THOUGHT LEADERSHIP

News

INSURED'S FAILURE TO DISCLOSE CRIMINAL RECORD RENDERS POLICY VOID & LEADS COURT OF APPEALS TO RENDER TAKE-NOTHING JUDGMENT

Newsbrief

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The San Antonio Court of Appeals last week reversed a trial court judgment on a jury verdict awarding \$154,251.31, and entered a take-nothing judgment based in large part on the insured's misrepresentation of her criminal history. In *Texas Farm Bureau Mut. Ins. Co. v. Rogers*, — S.W.3d —, 2011 WL 3120645 (Tex. App.—San Antonio July 27, 2011), the jury had found that the insured made a material misrepresentation in her policy application, and that the insurer ratified the policy. The Court of Appeals held that the misrepresentation rendered the policy void but the void policy was not susceptible to ratification.

In two applications for an insurance policy, the insured denied she had ever been convicted of a criminal offense. In fact, she had been convicted for DWI, public intoxication, theft, assault, possession of a controlled substance, burglary and forgery, along with numerous probation violations. The insured's house was destroyed by a fire, and during the insurer's investigation, she admitted to her criminal record. The insurer rescinded the policy as of the original application date and returned the insured's premium payment. The jury was asked whether the insured made a material misrepresentation in her applications, and answered "yes." The Court of Appeals therefore held that the policy was void and, as a result, the jury's second finding that the policy was ratified could not stand.

In a separate issue, the Court held that the insured's heirs could not maintain her Deceptive Trade Practices Act claim. The insured died during the pendency of the lawsuit and DTPA claims do not survive the death of the original consumer.