# Insurer's '600-Lb Life' Win Shows Why Fraud Suits Don't Stick

By **Robert Tugander** (December 12, 2023)

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Attorneys are taught that if the facts are against you, argue the law. If the law is against you, argue the facts. And if both the facts and law are against you, argue public policy.

In insurance litigation, policyholders faced with clear policy language will often assert arguments that go beyond the insurance contract — the corollary to the public policy argument.

For the production company behind the television show "My 600-Lb Life," that was the game plan. The production company argued its insurer fraudulently led it to believe it would have coverage for liability arising out of the show's production.

The producer alleged enough facts to get to trial, but once there, the flaws in its theory were exposed.

The U.S. District Court for the Southern District of Texas' ruling in the case — Megalomedia Inc. v. Philadelphia Indemnity Co. — illustrates why policyholders pursuing fraudulent inducement as a means to coverage will run up against some heavy roadblocks.[1]

**Fraudulent Inducement**

In simple terms, a party pursuing fraudulent inducement contends that it was tricked into a contract that it would not have entered into had the other party told the truth. So, unlike in most insurance disputes, where the policyholder must show that the insurer breached the terms of the contract, this theory looks to what the insurer did or said before issuing the policy. It challenges the validity of the insurance contract itself.[2]

And this often forecloses a policyholder from arguing in the alternative. In many jurisdictions, a litigant must elect either to affirm the contract and sue for breach, or rescind the contract and sue for tort fraud.[3]

Typically, fraudulent inducement is a theory that insurers assert against policyholders or their brokers, usually because false or inaccurate information was provided to the insurer during the application process.

For example, in Dukes Bridge LLC v. Security Life of Denver Insurance Co., an agent failed to disclose the amount of life insurance the applicant already had — three policies worth over $30 million.[4]

According to the U.S. District Court for the Eastern District of New York's 2020 decision, this was an actionable material misrepresentation because had the insurer known the truth, "it would have declined to issue [the applicant] yet another policy, to avoid 'overinsuring.'"

For insurers, the remedy is rescission. It puts the parties back to where they were, as if the policy had never been issued. The insurer returns the premiums, and the policy is voided.

That remedy does not help the policyholder much, who usually wants payment under the

policy. But most jurisdictions allow for the recovery of other damages proximately caused by fraud. So a policyholder who can prove fraudulent inducement has an adequate remedy. But proving it is no easy task.

Under Texas law, where the Megalomedia case arose, to prevail on a claim for fraudulent inducement, a plaintiff must prove: (1) a false material representation was made, (2) the representation was known to be false when it was made, (3) the false representation was intended to be acted on, (4) the false representation was relied on, and (5) the false representation caused injury.[5]

Megalomedia told a good story, but ultimately lacked the proof needed.

**Background**

Megalomedia produced several TV shows. In 2010, it submitted an insurance application to Philadelphia Indemnity Insurance Co.

The application required Megalomedia to describe each show. In its application, Megalomedia listed the shows it was producing, including "Heavy" and "Quintuplets by Surprise," identifying them as "reality based TV shows/documentaries."

Philadelphia Indemnity approved the application and issued a commercial package policy that covered general liability, commercial property, inland marine and commercial auto.

In 2011, Megalomedia sought coverage for a new production, "Cartel City," which followed the day-to-day lives of police officers.

A Philadelphia Indemnity underwriter determined whether specific productions would be classified as documentaries or reality shows. Documentaries would qualify for coverage, while reality shows would not.

Philadelphia Indemnity declined to cover the show, informing Megalomedia's broker that it sounded more like a reality show than a documentary.

It described its concerns with that production — lack of protection for the film crew, potential destruction of property and potential damage of equipment — but said it "was 'okay' with Megalomedia's other" productions.

Megalomedia disputed that Cartel City was a reality show. But Philadelphia Indemnity continued covering shows such as "Heavy," the forerunner to "My 600-Lb Life."

Philadelphia Indemnity amended the policy to add a reality TV exclusion. The exclusion applied only to Coverage A under the general liability policy, and barred coverage for bodily injury and property damage claims arising out of reality TV shows.

And when Megalomedia sought to renew its coverage, Philadelphia Indemnity said in its quote that its intent was not to cover reality shows.

Later, in 2012, Megalomedia sought to add "My 600-Lb Life" to its policy, describing it as a reality-based TV show and its production as "Reality TV & Documentaries." Philadelphia Indemnity included it within the policy.

Megalomedia had separate network-mandated general liability policies issued by insurers

other than Philadelphia Indemnity. Megalomedia described "My 600-Lb Life" as a reality show to those insurers. And upon a later renewal, Philadelphia Indemnity reminded Megalomedia's broker that the reality TV portion of the account was excluded.

In 2013, Megalomedia sought coverage for "Fugitive Recovery," which followed U.S. marshals tracking down fugitives. The element of danger posed by this production made it different from the weight-focused productions, such as "Heavy," "Half-Ton Teen" and "Half-Ton Mom."

Philadelphia Indemnity declined to cover this production. Megalomedia's representative testified that Megalomedia relied on Philadelphia Indemnity's assurances that its other shows would be covered, and that it continued to buy insurance from Philadelphia Indemnity based on these assurances.

Each year from 2011 to 2019, Philadelphia Indemnity offered to renew the policy and sent Megalomedia an insurance proposal that contained the reality TV exclusion. Megalomedia accepted it each time.

Megalomedia's representatives said they did not read the policies and did not know until 2020 that the policies had a reality TV exclusion.

In 2020, participants in "My 600-Lb Life" sued Megalomedia for negligence and intentional infliction of emotional distress. Megalomedia tendered the suits to Philadelphia Indemnity for defense, but Megalomedia declined, asserting the reality TV exclusion.

Philadelphia Indemnity filed a declaratory judgment action to get clear of the duty to defend. Megalomedia asserted several counterclaims, including fraudulent inducement. The counterclaims eventually went to trial.

**Fraudulent Inducement Claim Fails**

The essence of Megalomedia's claim was that for a decade, Philadelphia Indemnity led Megalomedia to believe that only crime-based reality shows would not qualify for coverage, and that weight-focused reality shows, including "My 600-Lb Life," would be covered.

Megalomedia asserted that Philadelphia Indemnity's position that all reality shows were not covered was communicated only after the "My 600-Lb Life" plaintiffs sued.

But this fraudulent inducement claim was really flawed from the beginning, and the court's decision explains why.

***No False Material Misrepresentation***

Factually, Megalomedia's contentions were not so. But its legal argument was deficient as well.

Philadelphia Indemnity did not fraudulently misrepresent the policy's coverage. When it declined to cover "Cartel City" and said that it "was okay' with [the] other productions," it was speaking generally about the various coverages within the commercial package. It did not misrepresent a specific policy term, as would be needed to show fraud.

Philadelphia Indemnity informed Megalomedia that it would not take on the risks associated with "Cartel City" and "Fugitive Recovery" under any of the coverages offered in the

commercial package. But it would insure the other shows, including "My 600-Lb Life," subject to the terms of those coverages.

Thus, "My 600-Lb Life" potentially qualified for coverage under the inland marine, commercial property, commercial auto and even Coverage B of the general liability policy.

But because it was a reality TV show, Megalomedia would be unable to recover under Coverage A of the general liability policy, which applied to claims seeking damages because of bodily injury and property damage. Philadelphia Indemnity never represented that the reality TV exclusion would not apply.

Without an affirmative misrepresentation, Megalomedia could still establish fraudulent inducement if it could show a material omission. But it had to first show that Philadelphia Indemnity was under a duty to disclose a material fact and that it omitted to do so.

And here, Megalomedia ran into another roadblock. Philadelphia Indemnity had no duty to inform Megalomedia what was or was not covered by the policy. So, it could not be held liable for fraud by omission for not explaining to Megalomedia that the reality TV exclusion barred coverage for bodily injury claims arising out of reality TV shows.

Nor did Philadelphia Indemnity mislead Megalomedia about its duty to defend before the "My 600-Lb Life" participants' suit. The duty to defend is determined by comparing the facts alleged to the terms of the insurance policy. That determination cannot be made before a claim is asserted.

***No Justifiable Reliance***

The fraudulent inducement claim failed for another reason. An insured has an affirmative duty to read its policy. Megalomedia was thus charged with notice of the policies' terms, including the reality TV exclusion.[6]

The reality TV exclusion was unambiguous. Had Megalomedia read any of its policies, it would have understood that reality TV shows such as "My 600-Lb Life" were excluded from Coverage A.

Because Megalomedia is charged with knowledge of the reality TV exclusion, the court ruled that it could not have justifiably relied on any earlier representation or omission by Philadelphia Indemnity.

And this is really no different from what happens in most commercial transactions. A reasonable party would not blindly rely on the other's statements. It would do its own due diligence.[7] A policyholder that fails to read its policy cannot complain that it was induced to buy renewal policies any more than a party that fails to do its due diligence can complain that it was induced to enter into a business deal.

In an ordinary insurance transaction, justifiable reliance is difficult to show. For example, in Wuertz v. Nationwide Life Insurance Co.,[8] the insured contended that the insurer's marketing representative told him that he could obtain a life insurance policy with a single premium payment.

By the end of the meeting, he signed without reading an application that required an annual premium. He later signed an application that increased both the policy's benefit and the annual premium.

The Texas Court of Appeals for the First District ruled in 2009 that the insured could not show justifiable reliance because the alleged oral representation was contradicted by the application, the amended application and the policy.

And in Kreit v. St. Paul Fire and Marine Insurance Co., the Southern District of Texas similarly found in 2006 that a policyholder could not have been misled when the unambiguous policy terms were discoverable by reading the policy itself.[9]

**Conclusion**

The Megalomedia case demonstrates why a policyholder's fraudulent inducement claim against an insurer will rarely succeed. A policyholder will have a hard time showing that the insurer knowingly misrepresented a material policy term or that the policyholder's reliance was justified when the policy itself is unambiguous.

Any confusion over what the policy covers can be cleared up simply by reading it. This is especially so when a policyholder is assisted by an insurance broker. Thus, it will take an unusual set of facts for a policyholder's fraudulent inducement claim to stick.

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[1] Megalomedia, Inc. v. Philadelphia Indemnity Co., No. 4:20-CV-01644, 2023 U.S. Dist. LEXIS 174495 (S.D. Tex. Sept. 28, 2023).

[2] Merely failing to perform contractual obligations as promised does not constitute fraud, only breach of contract. To be actionable as fraudulent inducement, a breach must be coupled with a showing that the promisor never intended to perform under the contract. Kevin M. Ehringer Enters. Inc. v. McData Servs. Corp., 646 F.3d 321, 325 (5th Cir. 2011).

[3] For example, in Blaske v. Provident Life & Acc. Ins. Co., 264 F. Supp. 2d 1212, 1213-14 (N.D. Ga. 2003), an insured sought benefits under a disability policy. The court dismissed the insured's fraudulent inducement claim because he elected to affirm the policies and was then subject to the policy's merger clause. See also Neri v. State Farm Fire & Cas. Co., No. 19-0355, 2019 U.S. Dist. LEXIS 136820 at *13-14 (E.D. Pa. Aug. 13, 2019) (explaining that the "gist of the action" doctrine bars a plaintiff from bringing a tort claim that merely replicates a claim for breach of contract, and noting that many courts presiding over breach of insurance contract claims have concluded that this doctrine bars an insured from pursuing fraud against an insurer where the parties' relationship is governed by an insurance contract).

[4] Dukes Bridge LLC v. Security Life of Denver, 10-cv-5491 (E.D.N.Y. July 20, 2020).

[5] Anderson v. Durant, 550 S.W.3d 605, 614 (Tex. 2018); Kevin M. Ehringer Enters. Inc., 646 F.3d at 325.

[6] Hunton v. Guardian Life Ins. Co. of Am., 243 F. Supp. 2d 686, 704 (S.D. Tex. 2002), aff'd, 71 F. App'x 441 (5th Cir. 2003) (charging insureds with knowledge of policy contents).

[7] Wuertz v. Nationwide Life Ins. Co., No. 01-07-00272-CV, 2009 Tex. App. LEXIS 3334 at *10 (Tex. Ct. App. May 14, 2009) ("a party to an arm's length transaction must exercise ordinary care and reasonable diligence for the protection of his own interests, and a failure to do so is not excused by mere confidence in the honesty and integrity of the other party").

[8] Wuertz, 2009 Tex. App. LEXIS 3334 at *12-13.

[9] Kreit v. St. Paul Fire & Marine Ins. Co., No. H-04-1600, 2006 U.S. Dist. LEXIS 25200 at *11 (S.D. Tex. Feb. 10, 2006) ("Regardless of what, if anything, St. Paul's representatives may or may not have told Dr. Kreit about the nature of the Policy when he purchased it, the Policy itself plainly states that St. Paul had the right to settle claims against Dr. Kreit as St. Paul deemed appropriate. Although Dr. Kreit contends that St. Paul 'hid' the fact that the Policy did not contain a 'right to consent' clause, the absence of such a 'right to consent' clause was fully apparent and easily discoverable by reading the Policy itself. This fact was therefore not 'hidden' from Dr. Kreit, to whom the Policy was delivered.").