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ON THE COVER
Learn about the changes the Supreme Court and General Assembly have made regarding insurance agents' liability for what their clients sign. *Cover design by Landry Butler. Photo Jupiter Images*

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'Morrison,' 'Allstate' and the 'But I Didn't Read It' Rule

By Donald Capparella and Candi Henry

In the span of less than two years, the Tennessee Supreme Court has rendered opinions in two cases determining that an insurance agent is liable for professional errors, even if the insured failed to read materials related to the transaction.[1] The opinions in both cases represented a 3-2 split by the court. As a result, the insurance industry, lawyers, and many commentators have weighed in on the effect of the decisions. After the most recent case, the Tennessee General Assembly swung into action to pass legislation directly in response to this issue. This article discusses the law before the two rulings, the rulings themselves, the legislation passed in their wake, and the potential impact of the new law.

***Smith v. Tennessee Farmers :* 'But I didn't read it' is no defense.**

In 2006, the Tennessee Court of Appeals concisely addressed a longstanding matter of policy in Tennessee statutory and case law.

Essentially, the court noted that, just as ignorance of the law is no excuse, failing to read a document provides no reprieve from the consequences of one's signature on the contract.

> We have addressed the "but I didn't read it" defense many times before, and the law in Tennessee on this issue has been long settled. The failure to read an application for insurance does not insulate an applicant from errors or omissions in a signed application. A party's signature binds him or her as matter of law to the representations in the signed document.[2]

In *Smith*, the deceased had applied for life insurance. During the required medical exam, the nurse asked questions and marked Mr. Smith's answers on the application. Mr. Smith then signed the completed application. On his application, in response to questions regarding whether he had ever had a driver's license suspended and whether he had ever been arrested for drug- or alcohol-related problems, the answer "No" was marked. However, Mr. Smith had, in fact, had a DUI.

After Mr. Smith's death, the insurance company learned of the DUI as well as other serious medical issues. As the policy was fewer than two years old and thus "contestable," the insurance company declined to pay, citing *Tenn. Code. Ann.* § 56-7-103. The statute, when read in conjunction with *Tenn. Code. Ann.* § 56-7-2307(3), provides that if an insured makes a misrepresentation on an application with actual intent to deceive, or if the misrepresentation increases the risk of loss to the insurance company, the insurance company is entitled to void the policy within the first two years after issuance.

The trial court determined that Mr. Smith's misrepresentations didn't increase the insurance company's risk of loss and, thus, that the insurance company should pay the proceeds of the policy to his widow. In the ensuing appeal, the Court of Appeals noted that, in addition to the testimony alluded to by the insurance company that persons with DUI convictions have a higher risk of death, as a matter of common sense, a DUI conviction can increase the risk of loss to a life insurer. Accordingly, the Court of Appeals reversed the trial court.

So doing, the Court of Appeals rebuffed Ms. Smith's assertion that her husband had never actually read the application he signed — refusing to accept "but I didn't read it" as a defense. However, the court was careful to drop in a footnote, pointing out circumstances under which it might have reached a very different conclusion.

> Ms. Smith has never claimed that Mr. Smith answered the questions fully and truthfully and that Mr. Spence or the nurse recorded his answers incorrectly. Even if she had, *Tenn.Code Ann*. § 56–7–103 would still have applied as long as Mr. Smith thereafter signed the application filled out by the agent. However, the outcome could have been different had Mr. Smith signed a blank application that was later filled out by the insurance agent.[3]

This distinction would make all the difference when the Court of Appeals and, later, the Tennessee Supreme Court, would address another situation where a mistake was made by the agent when filling out the application for the insured. The insured did not read his application and catch the agent's mistake, and the Supreme Court found, in Morrison v. Allen,[4] that the failure of the insured to read the application did not allow the agent to avoid liability.[5]

Smith stands for the proposition that, where written agreements are concerned, if someone fills out a form and signs it, he or she will be bound by the contents. The implications for insurance agents are that, while it's a good idea to remind clients to read their applications, the client will bear responsibility for incorrect information personally supplied on the application.

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Morrison v. Allen

"But I didn't read it" is no excuse for inattentive insurance producers.

Just over two years after its decision in *Smith*, the Court of Appeals again found itself addressing the effect of an unread insurance application. This time both the Court of Appeals and the Supreme Court would determine that the "but I didn't read it" defense will not insulate an insurance producer from the consequences of his mistakes.

In January 2004, Howard and Kristen Morrison met with Paul Allen and Jody Roberts, certified financial planners and life insurance producers. Roberts recommended a $1 million life insurance policy for Mr. Morrison and a $250,000 policy for Mrs. Morrison, both with American General. A short time later, the Morrisons received a packet in the mail containing several financial planning documents, including the life insurance applications. There was no cover letter or other instructions, but there were "sticky notes" directing the Morrisons to "sign here." The Morrisons did what they were told — they signed the paperwork but did not read the applications.

American General ultimately issued a $1 million life insurance policy on the life of Mr. Morrison. On the advice of the brokers, Mr. Morrison allowed his existing, non-contestable life insurance policy to lapse.[6] Two months later, Mr. Morrison died as the result of a single-car accident — no alcohol was involved.

When Ms. Morrison made a claim for benefits, American General exercised its right to contest the policy and denied coverage because of an incorrect answer to question 17E on the application: "In the past five years, have any proposed insureds been charged with or convicted of driving under the influence of alcohol or drugs or had any driving violations?" On the application form, the answer to this question was marked "No." Mr. Morrison had previously been convicted of a DWI.

Eventually, Ms. Morrison filed suit against American General, Roberts and Allen, and their employer, pursuing claims on the following theories of recovery: 1) breach of contract for failure to procure an enforceable life insurance policy; 2) breach of fiduciary duty, negligence and negligent misrepresentation; and 3) a Tennessee Consumer Protection Act (TCPA) claim for "reckless and unfair and deceptive practices." American General settled with Mrs. Morrison prior to trial for $900,000, likely because a nurse's report in American General's possession indicated that Mr. Morrison had answered truthfully when asked whether his driver's license had been restricted or suspended within the previous five years.

During trial Allen acknowledged that he filled out the application for Mr. Morrison and agreed that he (1) did not ask Mr. Morrison question 15 on the application, which inquired whether the proposed insureds had any existing life insurance policies, and (2) stated that Mr. Morrison did not use tobacco, even though he knew Mr. Morrison to be a smoker. Allen claimed that he had, in fact, asked Mr. Morrison question 17E regarding driving under the influence and that he answered "no" on two occasions, but there was no reference to the question in his office file. Further, although Allen answered "yes" to a question on the Agent's Report section of the application asking whether he had personally seen the applicants on the date of the application, asked each question, and accurately recorded the answers, Allen admitted at trial that he had not done any of those things.

Following a bench trial, the court found that the defendants had breached their employment contract by failing to procure an enforceable life insurance policy, and awarded Ms. Morrison damages of $1 million plus pre-judgment interest. The trial court also awarded Mrs. Morrison $300,000 for the loss of the First Colony policy based on theories of breach of fiduciary duty, negligence and negligent misrepresentation. The trial court doubled the award to $600,000 on the TCPA and granted pre-judgment interest.

The trial court found no comparative fault on the part of the Morrisons. The trial court found that both Allen and Roberts were reckless in the application, sales and fiduciary process in which they were involved. No credit was awarded to the brokers and their employer for the $900,000 settlement by American General.

The Court of Appeals affirmed in part, agreeing that the agent had never asked Mr. Morrison the DUI question. The Court of Appeals disagreed with the trial court's decision not to permit a credit for the settlement with American General and reduced the award by $900,000. The Court of Appeals affirmed the TCPA award and the doubling of damages, but denied Ms. Morrison's request for attorney's fees on appeal. The Defendants filed a Rule 11 Application, which was granted by the Supreme Court.

Supreme Court Ruling

The Supreme Court held that the defendants breached their contract with the Morrisons by failing to procure an enforceable insurance policy, reasoning that "if an agent undertakes to obtain an insurance policy for an insured, and the policy obtained is contestable due to the acts or omissions of the agent, then the applicant has the same right to recover for failure to procure as he or she would

have had if policy had not issued at all." The court found that any other holding would deprive an insurance client from receiving the benefit of the bargain, noting that "[i]nsurance that is obtained but later voided because of acts or omissions by an agent is just as worthless as no insurance or inadequate insurance."

On an issue of first impression, the court held that an insured's failure to read the contents of an application prepared by the agents of the insured does not insulate the agents from a suit based upon the procurement of a contestable policy. In this case, the court found "ample evidence to support the trial court's determination that [Mr.] Morrison was never asked about his driving record and that the defendants' failure to do so resulted in a policy that was successfully contested by American General."[7] Regardless of the Morrisons' failure to read the policy applications, a failure to procure claim was established because 1) the defendants undertook to procure life insurance for the Morrisons as a part of their professional duties; 2) the defendants failed to use reasonable diligence to procure enforceable life insurance; and 3) the defendant's actions warranted the Morrisons' assumptions that they had the life insurance coverage sought.

The court also reiterated that an agent's duty to procure an insurance policy is distinct from the duty of the insurer to pay under its policy, which gives rise to an independent cause of action for failure to procure. The court specifically disagreed with the defendants' argument that a failure to read the policy shields them from any liability, finding that "[i]nsurance professionals and other fiduciaries [must be held] to higher standards."[8] The Supreme Court thus affirmed the $1 million award for failure to procure and the award of prejudgment interest at 10 percent, dating back to 30 days after Mr. Morrison's death.

On the issue of the $900,000 credit claimed by the defendants because of the insurance company's settlement, the Supreme Court noted that, normally, an independent insurance agent sued under a breach of contract theory for failure to procure is entitled to an offset in damages by the insurance company's settlement on the policy. However, in this case, the court found that American General's settlement could not be used to offset the damages awarded because American General was sued on multiple theories and entered into a general release of any and all claims. On the negligence, negligent misrepresentation, and breach of fiduciary duty claims, the court held that Mrs. Morrison failed to prove that the defendants' conduct caused the loss of the $300,000 policy and declined to award damages on the $300,000 policy based on violations of the TCPA. Because no damages were awarded in tort, the Supreme Court did not address the issue of comparative fault.

The majority opinion was written by Justice Wade, joined by Justices Holder and Lee. Two separate dissents were filed, reflecting a 3-2 split on the issue of whether the defendants were entitled to a credit for the damages paid by the insurance company. In her dissent, Chief Justice Clark concluded that the defendants were entitled to an offset of $900,000, representing the insurance company's settlement with Ms. Morrison on the million-dollar policy. Justice Koch agreed with Justice Clark that the defendants were entitled to a credit but asserted that he would have decided the matter as a breach of fiduciary duty issue, rather than a contract claim for failure to procure. Thus, Justice Koch's analysis, though different than Chief Justice Clark's dissenting opinion, would have reached the same result excusing the failure to read and issuing a judgment for the plaintiff for $100,000.

Morrison's impact for the purchaser-agent relationship here is fairly straightforward. An insurance agent must procure the requested policy if it is available. An insurance agent may not allow an application to be submitted if the

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agent knows it contains incorrect information — whether or not the client signed the application. Finally, an insurance agent must give reasonable information and instructions to his or her clients, who are entitled to rely upon their agent's expertise.

Impact of 'Morrison'

Lots of people read it! (The opinion, that is.)

The decision in *Morrison v. Allen* was rendered on Feb. 16, 2011. It quickly became an oft-cited case in both legal opinions and secondary sources of authority. At least one commentator said that the case had "totally revamped and redefined the law of agent liability in the State of Tennessee."[9] Indeed, less than two years later, the case is now referenced in the *ALR; Couch on Insurance; Tennessee Circuit Court Practice; Tennessee Practice on Contracts; Tennessee Practice on the Law of Comparative Fault; Am Jur. Proof of Facts; Am. Jur. on Insurance; Am. Jur on Negligence; CJS on Insurance*; and *CJS on Trial*, among others.[10]

However, it is arguable that *Morrison* didn't really break any radically new legal ground. To paraphrase one business litigation blog, the upshot of the ruling is that insurance agents should be "much more careful (or much less dishonest)" when the agents are the ones filling out applications.[11] In *Morrison*, all the justices agreed that there were no damages for TCPA purposes. Also, although the justices were split as to whether the claim was properly considered a breach of contract or a breach of fiduciary duty, everyone agreed that when the agent was at fault, the customer should not be penalized for following the agent's instructions (i.e., signing where a "sign here" sticky note indicated). That's hardly a startling proposition in the field of agent liability. The question as to the credit for the settlement by the insurance company is a fascinating damages discussion, but it doesn't provide the practitioner with any clear take-away point other than to draft settlement agreements carefully. However, *Morrison* did represent an exception to the "but I didn't read it rule." The insurance industry and its agents were also evidently watching this area of law closely, because when the Tennessee Supreme Court issued another agent liability case in March 2012, the General Assembly would take action.

'Allstate v. Tarrant'

"But I didn't read it" still doesn't work for inattentive insurance producers.

Allstate v. Tarrant[12] was not a "failure to read" case. However, it did present another situation in which the Tennessee Supreme Court found that if an agent breaches its contract to procure insurance, the insured should not bear the consequences when the policy issued does not provide the requested coverage.

John and Diana Lynn Tarrant owned and operated Blue Ribbon Cleaning Inc. Since 1990, the Tarrants had been customers of the Lonnie Jones Agency, through which they purchased both commercial and individual automobile insurance policies from Allstate Insurance Company. The vehicles owned by Blue Ribbon were insured as part of a commercial fleet.

Mr. Tarrant usually called Mr. Jones before each annual renewal in an attempt to lower his premium payments. After one such phone call in March 2004, three commercial vehicles were moved to personal policies. The personal policies had lower limits than the commercial policies. One of the transferred vehicles was a 2002 Chrysler minivan. At the time, Jones Agency records showed that Mr. Tarrant was the owner of the van, although it is undisputed that the Jones Agency knew that the van was actually leased in the name of Blue Ribbon.

Allstate sent Mr. Tarrant a letter noting the amended policy declarations in place as a result of the coverage change, although Mr. Tarrant did not recall receiving the letter. Subsequently, Allstate billed Mr. Tarrant for his commercial policy, and the policy did not show the van as a commercially insured vehicle. Allstate also billed Mr. Tarrant for the personal policies, which indicated that the van was insured as a personal vehicle and provided amended policy declarations. Mr. Tarrant paid the bills but stated that he did not read them.

We can all guess what happened next: the van was involved in an accident. The Tarrants and Allstate could not agree as to whether the van should be subject to the higher commercial policy limits. A declaratory judgment action followed.

The evidence at trial showed that vehicles are to be insured pursuant to their use, and it was undisputed that agents should inquire about usage purposes. The Jones Agency agent, although lacking a specific memory regarding her March 2004 conversation with Mr. Tarrant, noted that she would have inquired about the usage. Mr. Jones himself testified that, ultimately, the agents would do what the client asked. Mr. Tarrant, however, stated that he would never have asked the minivan to be insured on an individual policy.

Allstate argued that, notwithstanding the factual dispute regarding how the minivan was moved to an individual policy, Mr. Tarrant's act of paying the new lower premium on the personal policy operated as a ratification of the

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new contract. Alternatively, Allstate argued that even if the new contract had not been ratified, Allstate should not be estopped from denying coverage of the van under the commercial policy.

The trial court determined that there had been a good faith misunderstanding regarding the use of the term "vans." Evidently, Ms. Smith did not interpret "van" to include the minivan and, thus, did not leave the minivan on the commercial policy. The trial court further determined that Mr. Tarrant had ratified the change because he had received the letter denoting changes to his coverage and had received and paid subsequent premium charges. Thus, Allstate was bound by the personal policy with lower limits of coverage.

The Court of Appeals determined that Allstate had failed to follow Mr. Tarrant's instructions and that Mr. Tarrant's subsequent actions did not operate to relieve Allstate from liability for its mistakes. However, addressing Mr. Tarrant's estoppel argument, the Court of Appeals noted that the general rule that insurance companies could be estopped from denying coverage for their agent's mistake did not apply. According to the Court of Appeals, the difference in this case was that Allstate was not denying coverage but just offering coverage under a different policy. The Tennessee Supreme Court granted Allstate's application for permission to appeal.

Supreme Court Ruling

The Supreme Court began by reviewing the trial court's determinations of fact. The trial court found both Mr. Tarrant and Jones Agency employee Ms. Smith to be credible. Ms. Smith's testimony only concerned her usual practice, as she had no specific memory of the conversation with Mr. Tarrant. Mr. Tarrant's testimony, however, was that he had instructed that the vans be placed on commercial policies. Thus, the effect of the trial court's ruling was a determination that the Jones Agency made a mistake in placing the van on the personal policy.

The court then noted that "ratification" can only occur when "one approves, adopts, or confirms a contract previously executed by another[,] in his stead and for his benefit, but without his authority."[13] The Tennessee Code holds that, in controversies surrounding the application or insurance of a policy, an insurance producer is the agent of the insurer.[14] Thus, the Supreme Court determined that Ms. Smith and the Jones Agency could not have been acting in Mr. Tarrant's stead to modify the policy. Further, the Jones Agency and Allstate benefitted by the transaction because they kept Mr. Tarrant's business, so they could not have been working for Mr. Tarrant's benefit. Since no one acted in Mr. Tarrant's stead and for his benefit to create the new contract, he could not have ratified it.

Regarding whether Allstate was estopped from denying coverage, the Supreme Court disagreed with the Court of Appeals and determined that Allstate was, in fact, subject to an estoppel argument because to hold otherwise would place the burden on the insureds to discover and protect themselves from the mistake of their agent and would relieve the insurer from any responsibility for the errors of its agent. The Supreme Court noted specifically that this is not a "failure to read" case. The agent made a unilateral mistake, and the insurance company should bear responsibility for it.

As was the case in *Morrison*, Justice Koch and Justice Clark dissented. Essentially, their take was that Mr. Tarrant did, in fact, fail to read his contract with the insurance company and that, as a matter of contract law, he should be bound by the coverage afforded through the individual policy.

Regarding the confusion over the term "vans," the dissent would have found that there was failure of mutual assent in the resulting contract. However, Mr. Tarrant (as owner of both vans and a minivan) should have known that there was the potential for confusion, and the applicant for insurance has the obligation to clarify the type of insurance requested. In the dissent's view, "Had Mr. Tarrant undertaken even the most cursory examination of the numerous communications from Allstate regarding these policies, he would have quickly ascertained that Ms. Smith's, and, therefore, Allstate's, understanding of the term 'vans' differed from his own."[14] Thus, the dissent would have absolved Allstate from liability.

Allstate seems to reiterate the theme of *Morrison*. Agents must procure the policy requested if it is available. Agents who fail to follow client instructions can make their principal, the insurance company, liable for the failures of the agent.

Impact of Allstate

Clearly, the General Assembly read it!

While *Morrison* quickly gained widespread attention in secondary authorities and legal commentaries, the impact of *Allstate* was much more direct. Within weeks, the Tennessee General Assembly moved to protect the insurance industry.

Senate Bill 2271 was filed for introduction on Jan. 11, 2012.[16] It concerned the import and effect of certificates of insurance. It required a disclosure that certificates of insurance could not amend the underlying policies. It was referred to committee,

where it lay dormant. The companion bill in the House, HB 2454, followed a similar path.

The Tennessee Supreme Court rendered its decision in *Allstate* on March 26, 2012. On April 2, the House Bill was referred to the Commerce Committee and placed on the calendar for action the next day. Things moved quickly in the Senate as well.

By April 11, sponsoring Sen. Jim Tracy appeared before the Senate Commerce and Agriculture Committee. Citing the decision in *Allstate*, he informed the committee that the opinion suggested insurance companies are strictly liable for the results of any policy change regardless of whether insured requested the change, signed a form or paid a premium. Stating that such a decision could cause insurance companies to decline to allow online or telephone changes to policies and that consumers would be inconvenienced, he introduced an "amendment" to SB 2271. The amendment rewrote the bill entirely, deleting all references to the certificates of insurance and instead substituting the following language:

> (a) The signature of an applicant for or party to an insurance contract on an application, amendment, or other document stating the type, amount, or terms and conditions of coverage, shall create a rebuttable presumption that the statements provided by the person bind all insureds under the contract and that the person signing such document has read, understands, and accepts the contents of such document.
>
> (b) The payment of premium for an insurance contract, or amendment thereto, by an insured shall create a rebuttable presumption that the coverage provided has been accepted by all insureds under the contract.

By April 30, the bill had passed both houses and been sent to the governor for a signature. The bill was signed on May 10 and became 2012 Public Chapter 913 by May 15, 2012 — seven weeks and one day after the *Allstate* decision. The law was codified at *Tenn. Code. Ann.* § 56-7-135.

Although the rights of the Tennessee consumer were invoked in Sen. Tracy's speech, the bill was, without question, the product of the insurance industry lobby. Insurors Tennessee, a professional organization of insurance agents, claimed that it, "in conjunction with Tennessee Farm Bureau and Property Casualty Insurance passed PC0913."[17] The impact of this law remains to be seen, and whether it will have any discernible impact on court rulings is an open question, in light of existing case law.

Impact of the Rebuttable Presumption Rule

The duty to read always has and still does protect the insuror, just as it did in *Smith*. In *Morrison*, although a signed-but-not-read application was involved, the matter was not a traditional failure to read case: the failure to read was excused in *Morrison* because the agents failed to follow the directive of the clients to procure a policy. The duty to read still protected the insurance company. When the insurance company ultimately settled with the plaintiff, it was not because the insurance company was vulnerable on its failure to read defense. Rather, it was because the insurance company was forced to admit that it already knew about Mr. Morrison's DUI because of the disclosure on the medical examination form. Therefore, the insurance company could not say that the omission of the information on the application was material to its decision to issue the policy.

Allstate, too, is distinguishable from *Smith*. Notably, in *Allstate* there was not even a signed application involved. Rather, *Allstate*, like *Morrison*, was a case in which the conduct of the agents did not comport to the insured's directives. In both cases, the court determined that the insured should not be held responsible for catching and correcting the errors of the broker whose job it was to procure the policy.

As of this writing in early January 2013, there are apparently no appellate cases or secondary authorities interpreting the new statute. Until we have some guidance from the courts, we will not know what proof a plaintiff must offer in order to overcome the presumption. However, it is not a bold prediction to state that the furor prompting the statute may make little sound in the case law. Insurance agents are professionals who have specialized training and superior information. They are not generally the agents of their clients, so the clients will not ordinarily be made to bear responsibility for the agents' mistakes. Ultimately, the rebuttable presumption means that the insurance applicant bears the burden of proving some irregularity in the insurance application process (usually by the agent) that excuses the applicant's failure to notice a key provision of the insurance policy. This was true before — the burden was and is on the plaintiff to prove its case. Only time will tell if the new presumption will set the bar higher for the plaintiff — and the bar was fairly high before.

DONALD CAPPARELLA is a member of Dodson Parker Behm & Capparella PC in Nashville. His practice is concentrated in the area of appellate advocacy and general civil litigation. He is the co-author of the *Tennessee Law of Comparative Fault* (Tenn. Prac. Vol. 17) and has been named to Best Lawyers in the fields of appellate practice and insurance law. He has taught legal writing at Vanderbilt Law School and the Nashville School of Law.

CANDI HENRY, an associate at Dodson Parker Behm & Capparella PC, practices appellate litigation and serves as counsel to businesses and municipal agencies. She is the associate editor of the *Tennessee Tort Law Letter* and assistant editor of the *Tennessee Appellate Practice Handbook*. She is a member of the Tennessee Bar Association Young Lawyers Division Board of Directors.

Notes

1. *Morrison v. Allen*, 338 S.W.3d 417 (Tenn. 2011); *Allstate v. Tarrant*, 363 S.W.3d

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508 (Tenn. 2012).

2. *Smith v. Tennessee Farmers Life Reassurance Co.*, 210 S.W.3d 584, 591 (Tenn. Ct. App. 2006)(citations omitted).

3. *Id.*(citations omitted).

4. The authors of this article were counsel of record for Ms. Morrison.

5. *Morrison v. Allen*, M2007-01244-COA-R3-CV, 2009 WL 230220 (Tenn. Ct. App. Jan. 30, 2009) aff'd in part, rev'd in part, 338 S.W.3d 417 (Tenn. 2011).

6. Generally, an incontestability clause provides that after two years an insurance company cannot deny coverage because of misrepresentations made in the application or any other failure to comply with conditions in the insurance contract. See *Morrison v. Allen*, 338 S.W.3d 417, 421 (Tenn. 2011).

7. *Morrison v. Allen*, 338 S.W.3d at 430.

8. *Id.* at 431.

9. Brandon McWherter, "Tennessee Supreme Court Redefines the Law of Insurance Agent Liability," Tennessee Insurance Litigation Blog, http://www.tninsurancelitigation.com/ tags/morrison-v-allen/ (last accessed Sept. 19, 2012).

10. A WestlawNext search for citing references of the case lists 39 secondary authorities.

11. Pepper & Brothers, "Nashville Insurance Agents Liable for Inaccurate Information in Policy," March 11, 2012, http://www.nashvillebusinesslitigationlawyersblog.com/ 2011/03/nashville-insurance-agents-lia.html (last accessed Sept. 19, 2012).

12. *Allstate v. Tarran*t, 363 S.W.3d 508 (Tenn. 2012).

13. *Id*. at 517 (citing *Webber v. State Farm*

Mut. Ato. Ins. Co., 49 S.W.2d 265, 260 (Tenn. 2001)).

14. *Tenn. Code. Ann.* § 56-6-115(b) (2008).

15. *Allstate v. Tarrant*, 363 S.W.3d at 529-30 (J. Koch, dissenting).

16. The dates and legislative history, along with a copy of the original bill and all proposed amendments, can be found at http://wapp.capitol.tn.govapps/BillInfo/Default.aspx?BillNumber=percent20SB2271&ga=107 (last accessed Oct. 1, 2012).

17. Ashley Arnold, "Life After 'Morrison,' 'Allstate' and PC0913," *The Tennessee Insuror* July/August 2012 edition, at pp. 31-32. It is also of note that the sponsor of the bill is an insurance agent himself, which he properly declared pursuant to Senate rules. (http://tnga.granicus.com/MediaPlayer.php?view_id=196&clip_id=5337&meta_id=102477)(last accessed Oct. 1, 2012)(invoking "Rule 13," located at http://www.capitol.tn.gov/senate/publications/Temp percent20Rules percent20Of percent20Orderpercent20107th percent20-percent20Amended percent205-9-11.pdf).

Where There's A Will

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hands of the decedent, this constitutes a step-up of the basis and built-in appreciation is eliminated. If, however, the property depreciated in the decedent's hands, the property will receive a step-down in basis.

8. This could be accomplished through a modification under *Tenn. Code Ann.* § 35-15-411(a) or by decanting pursuant to *Tenn. Code Ann.* § 35-15-816(b)(27).

9. Remember the lingering Tennessee inheritance tax before eliminating helpful tax planning before 2016.

10. The income from the trust is likely available to the beneficiary spouse's creditors because the income must be distributed to or for the beneficiary spouse.

11. *Tenn. Code Ann.* §35-16-101 et seq.

Ask the TBA Membership Maven

RENEW & ADVANCE

The *Tennessee Bar Journal* barely caught up with the TBA Membership Maven as she darted around preparing for the TBA member renewal season that started April 1.

TBJ: Maven, I can't help but notice … you are really sweating a lot. Are you OK?
MM: I AM OK. **April 1 started the member renewal period** and it is my favorite thing! We are working, working to help members renew so no one has a lapse in service! Its got me sweating like a long-tailed cat in a rocking chair factory.

TBJ: I understand the TBA has a long history of exceptional benefits and services but what's new and exciting?
MM: Geez, there's so much it makes my head spinny. We added LawPay to the impressive list of benefits providers, hired an expert insurance agent just for members, started a lawyers' mentoring task force, operated our diversity job fair, tracked tons of important legislation, conducted more than 100 CLE courses, hosted a fantasteriffic convention … (47 minutes later) … whoosh! See why I'm sweaty?

TBJ: I do! That's astonishing. What is the big…
MM: AND! We offer firm billing now! So, your firm can get one invoice for the whole office and just pay with one check. It's so convenient and easy you can't even believe it! A firm has to call or email the TBA to set it up, but it only takes 3 minutes and that's if you're a slow talker.

TBJ: That's so efficient for the attorney and administrator.
MM: I know that's right! Talk about a time-saver — pay 2013-2014 dues now and we won't bring up the issue again! No reminder emails, no paper invoices, no late night phone calls, just the news and information members want!

TBJ: Sounds too good to be true. How does a member pay their dues online?
MM: 4 easy steps, my friend! 1) go to TBA.ORG 2) Click 'Renew Online' 3) Login using your email and password. Can't remember your pw; click 'Request New Password'. It's-such-a-cinch! 4) Pay your dues. BAM, you're done!

TBJ: Maven, thanks for stopping by long enough for a few questions.
MM: Mwah, Darling! Spread the good word, it's time to renew and it's easier then ever!

To ask the TBA Membership Maven a question please email maven@tnbar.org or her alter-ego, Kelly Stosik, the Tennessee Bar Association's membership director.