

Montevideo, Uruguay, September 20th, 2017

From: INTERNATIONAL ASSOCIATION OF INSURANCE LAW

URUGUAYAN SECTION-

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To: GENERAL REPORTER: Dr. PEGGY SHARON

AIDA - RIO WORLD CONGRESS 2018

Subject: DISCLOSURE DUTIES IN INSURANCE

I. NECESSARY CLARIFICATIONS.

In the Oriental Republic of Uruguay, the insurance contract is regulated by the Code of Commerce, which dates from the year 1865. The articles pertaining to this contract contain very general regulations, and on a few types of insurance.

The lack of detailed legal regulation, determined a great development of contractual regulation based on the autonomy of the will of the contracting parties. Increasingly complex policies and increasingly detailed general conditions made up for the regulatory vacuum of the law.

That private regulation was possible because the old code:

A) Established few mandatory or prohibitive provisions.

B) Stated that the contract may have as its object all interest estimated in money and all kinds of risks; that is, wisely, it did not freeze the existing reality at the time of its sanction.

C) And more importantly, it defined that "The determination of insurance conditions will be at the discretion of the parties", which allowed the autonomy of the will to fill all legal gaps, adapting to the times that elapsed between 1865 and the present.

Currently, an Insurance Law bill is under study in our Legislative Branch, and it has a great consensus among the people related to this industry. This project is impregnated with the transnational consumer law, which imposes on States the duty to intervene in the markets through the enactment of public order laws that guarantee minimum standards of quality, satisfaction and protection of the rights of the insured. And as a public order law, it means that the legal solution can no longer be modified by "agreement of parties", unless such modification is more beneficial to the insured.

We sincerely hope that next time that we report to AIDA, we can refer to a new legal regulation, in accordance with the most advanced legislation on the matter.

Having presented these very brief clarifications in order to contextualize the reader, we can proceed with the questionnaire that has been forwarded to us without further ado.

II. QUESTIONNAIRE.

1. **The Insured's Pre-Contractual Disclose Duty**

a. Does your National Law impose a duty to answer questions put to the applicant/insured by the insurer?

* Although national legislation does not expressly state this, it is clearly implicit. And in common practice, what usually happens is that the insurer prior to the contract, in the insurance application forms used by the insured, establishes a questionnaire that must be answered by those who wish to buy insurance.

b. Does your National Law impose upon the applicant/insured a duty to disclose information upon the applicant's own initiative? If so - under what circumstances?

* Yes, the law establishes that the insured's reluctance to inform circumstances known to him, even if done in good faith, may determine the nullity of the insurance, if in the opinion of experts, had the Insurer been informed of the true situation, it would not have agreed or it would have done it under other conditions.

It is understood that at the time of requesting the insurance contract, the applicant must provide the Insurer with all relevant information to determine the true state of risk. Therefore, even if it has not been specifically asked by the Insurer, the applicant must provide in good faith all relevant information for the delimitation of the state of risk for which it is intended.

2. Scope of the Applicant's Disclosure Duty – Subjective or Objective?

Is the applicant's disclosure duty limited to the applicant's actual knowledge or includes also information which he or she should have been aware of?

- The applicant's disclosure duty refers to all circumstances known to him. However, no one can be exonerated based on their own fault. Therefore, if the insured does not disclose an event or circumstance that is truly relevant to the determination of the state of risk, claiming that it was not known to them, the specific case should be examined to determine if it is possible that such circumstances may have been unknown, or if such ignorance is the result of an intentional or grossly negligent conduct of the insured.

3. The Insurers' Pre-Contractual Duties

- a. Does your law impose on an insurer a pre-contractual duty to investigate the applicant's business in order to obtain the relevant information?

No. The information that the Insurer considers indispensable to know the risk and accept the request, usually arises from the forms themselves that the applicant must complete. If necessary, the insured is required to provide the necessary information for these purposes.

The law does not impose any obligation on the Insurer.

b. Does your law impose on an insurer a duty to ascertain the insured's understanding of the scope of the insurance, and to draw the insured's attention to exclusions and limitations?

- The current legislation, specifically related to the insurance contract, does not establish this obligation. However, general consumer protection rules, which impose adequate information duties, may be applicable. It is also a common practice of the market, to emphasize and highlight in the General Conditions of the Contracts, all those clauses limiting the rights of the insured. It is considered of capital importance in this regard the role of the professional insurance advisor, who is a professional freely chosen by the insured, becomes of paramount importance. One of the essential tasks of these professionals is to properly advise and explain to the insured all aspects related to the contract that will be signed.

4. The Insured's Post-Contractual Disclosure Duty

a. Does an insured have the duty to notify the insurer of a material change in risk? If so - what is the scope of the duty?

* Yes. It is a principal obligation of the Insured to maintain the state of risk --- that is, not to aggravate it unilaterally --- as well as to communicate to the Insurer any circumstance that implies or means an aggravation of the risk.

b. What is defined in your jurisdiction as a material change?

It is understood as such any fact or circumstance relevant and influential in relation to the state of risk existing at the time of buying the insurance.

5. The Insurer's Post Contractual Duty

Does your law impose on an insurer disclosure duties after the occurrence of an insured event (such as, the duty to provide coverage position in writing within a limited period, duty to disclose all reasons for declination etc.)?

* The regulations currently in force, specifically related to the insurance contract, do not establish this obligation or a term for this purpose. However, general rules of consumer protection may apply, which impose on the Insurer the obligation to rule unequivocally, although there is no predetermined term for such purposes. There is also a consistent jurisprudential practice in the sense that, in the absence of a ruling by the Insurer, the Insured may appeal to the courts for the purpose of requesting an express ruling from the Insurer. In the bill currently under study by Parliament, a specific term is established so that, after a claim is filed, the Insurer must rule. Failure to do so within the term established by the Law, its silence will be interpreted positively, that is, as acceptance of the coverage of the filed claim.

6. Remedies in Case of Breach of the Insured's Disclosure Duties

- a. What is the insurers' remedy in case an insured breached his/her pre-contractual disclosure duty ("all or nothing" rule or partial discharge)?

* If the non-compliance is credited, the consequence is the total nullification of the insurance.

b. What is the insurers' remedy in case an insured breached his/her post-contractual disclosure duty ("all or nothing" rule or partial discharge)?

* Failure to comply with the post-contractual disclosure duty, frees the Insurer from its obligation to indemnify the insured in that specific case. In addition, and according to the solutions provided in each policy, it may determine the termination of the insurance contract or its maintenance, adjusting for the future the price of the policy to the true entity of the insured risk.

We remain at your disposal to expand on or clarify any of our answers.

Finally we wish to greet you fraternally and convey our best wishes for success in your mission, which will undoubtedly contribute to ensuring an excellent World Congress of AIDA Rio 2018.-

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