

AIDA - RIO CONGRESS 2018

DISCLOSURE DUTIES IN INSURANCE

Poland

General Reporter: Peggy SHARON

Please answer the questions and clarify whether your response is based on legislation, court judgments or directives of any regulatory/supervisory authority.

Finally, your remarks and comments from your point of view will be appreciated.

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?

Under Polish law (article 815 of Civil Code):

- the insuring party (policy holder) is obliged to disclose to the insurer only the facts about which the insurer inquires either in the offer form or in other documents submitted prior to the insurance contract being concluded. If the policy holder concludes contract by representative, this obligation is incumbent on the representative and include circumstances known to him as well. In the event of conclusion of insurance contract by insurer despite the absence of answers to single questions, the omitted circumstances are deemed to be insignificant;
- if, during the policy term, any changes occur in the facts about which the

insurer initially inquired, the policy holder is only obliged to immediately notify the insurer of these changes, but only if the insurance contract so provides. This obligation does not apply to life insurance;

- in the event of conclusion of insurance contract in favour of third party, disclosure obligations apply to both the policy holder and the insured, unless the insured was unaware that insurance contract had been entered into in his favour.

- 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?

Under Polish law (article 815 of Civil Code), if, during the policy term, any changes occur in the facts about which the insurer initially inquired, the policy holder is only obliged to immediately notify the insurer of these changes, but only if the insurance contract so provides. This obligation does not apply to life insurance.

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?

Under Polish law (article 815 of Civil Code), the applicant's disclosure duty is limited to all known to him circumstances about which the insurer inquires either in the offer form or in other documents submitted prior to the insurance contract being concluded. The significant fact is, that if the policy holder concludes contract by representative, this obligation is incumbent on the representative and include circumstances known to him as well.

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?

There are some general rules concerning the methods of calculating premiums. In accordance with the Polish Act on Insurance and Reinsurance Activity

(Art. 33 of the Act), the premium should be fixed at a level which should, at least, assure the fulfillment of all the obligations resulting from insurance contracts and the coverage of the costs of performing insurance activity by insurance companies. To comply with that regulation, it is necessary to conduct proper risk assessment based on key indicators concerning the applicant.

Additionally, recommendations of Polish Financial Supervision Authority (KNF) for insurance companies on the system of product management also provide obligations to ensure that the insurance product is consistent with the customer's expectations, needs, interests and financial abilities.

Also the draft of the Act on insurance distribution (implementing Insurance Distribution Directive) provides that, in order to avoid cases of misselling, the sale of insurance products should always be accompanied by a demands-and-needs test on the basis of information obtained from the customer and any insurance product proposed to the customer should always be consistent with the customer's demands and needs.

There are some additional regulations concerning unitlinked and structured life insurance products. The Polish Act on Insurance and Reinsurance Activity (article 21 of the Act), protects consumers' rights with respect to unit-linked and structured life insurance products. Before concluding such insurance contract, the insurer must analyse the clients' needs, knowledge and experience in the area of life insurance and his or her financial position. Based on that analysis, the insurer must provide a suitable insurance offer together with a justification explaining how this offer corresponds to the clients' needs. This requirement applies also with respect to third-party insurance contracts - the analysis in such case must be conducted with respect to each client before he or she agrees to be covered under the policy.

- 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 Polish Act on Insurance and Reinsurance Activity (article 21 of the Act), protects consumers' rights with respect to unitlinked and structured life insurance products. Before concluding such insurance contract, the insurer must analyse the clients' needs, knowledge and experience in the area of life insurance and his or her financial position. Based on that analysis, the insurer must provide a suitable insurance offer together with a justification explaining how this offer corresponds to the clients' needs. This requirement applies also with respect to third-party insurance contracts - the analysis in such case must be conducted with respect to each client before he or she agrees to be covered under the policy. If the product is not suitable, given the clients' experience, knowledge or financial position or if there is no insurance product that would meet his or her needs, the insurer must inform the client that it is unable to offer suitable insurance. In such case, the insurance contract may only be concluded following a written demand from the client.

In accordance with article 19 of the Polish Act on Insurance and Reinsurance Activity, in the case of third-party insurance contracts, if the insured consent for service of the insurance protection is necessary or financing of the insurance premium cost is accepted by the insured, an insurance company must deliver to the insured persons the terms of the contract before he or she consents to financing of the insurance premium. In case of the failure to deliver these terms, the insurance company cannot rely on any provisions that limit or exclude the insurance company's liability, introduce consequences of breach of contract by the insured or impose on him or her additional obligations.

The Act (article 15) provides that the general terms and conditions of insurance, the insurance contract and template agreements must be formulated in an unambiguous and intelligible way (understandable). The provisions of the insurance contract, general insurance conditions or other standard contracts which are formulated ambiguously, must be interpreted in favour of the policy holder, the insured, beneficiary or the person entitled to it under insurance contract.

Additionally, the insurer is obligated to publish general insurance terms and conditions and other template agreements on his website.

In accordance with article 17 the Polish Act on Insurance and Reinsurance Activity, insurer is also obliged to include in the template agreements that it uses, in particular in the general terms and conditions of the insurance, information relating to:

- 1) circumstances for payment of indemnity and other benefits or insurance buyout value,
- 2) limits and exclusion of insurer liability leading to the refusal to payment of indemnity or other benefits or to limit amount of compensation,
- 3) the rules for the determination of the amount of costs and all other charges deducted from insurance premiums or from insurance capital fund or through redemption of insurance capital fund units,
- 4) insurance buyout value in specific periods of duration of insurance protection and period, in which insurance buyout claim is not available.

That information = a table specifying the numbers of paragraphs or points of the contract setting out the provisions listed below.

In the event of the insurance conclusion for the benefit of third party, the insurance company is obliged deliver (in writing, or, in case of consent of the interested party, with another means of communication) information mentioned above, by the policy holder to the interested party, prior to accession to such insurance contract.

Additionally, recommendations of Polish Financial Supervision Authority (KNF) for insurance companies on the system of product management also provide obligations to ensure that the the client obtains all necessary information on the insurance product.

Also the draft of the Act on insurance distribution (implementing Insurance Distribution Directive) provides that, any insurance product proposed to the customer should always be consistent with the customer's demands and needs and be presented in a comprehensible form to allow that customer to make an informed decision. There are also provisions stating that prior to the conclusion of a contract, the insurance distributor (e.g.

insurer) shall provide the customer with the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision, while taking into account the complexity of the insurance product and the type of customer.

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?

Under Polish law (article 815 of Civil Code), if, during the policy term, any changes occur in the facts about which the insurer initially inquired, the policy holder is only obliged to immediately notify the insurer of these changes, but only if the insurance contract so provides. This obligation does not apply to life insurance. In the event of conclusion of insurance contract in favour of third party, disclosure obligations apply to both the policy holder and the insured, unless the insured was unaware that insurance contract had been entered into in his favour.

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

Polish law uses a term of “circumstance which results in significant change of accident likelihood”. According to article 816 of Civil Code, in the event of the disclosure of circumstance which results in significant change of accident likelihood, each of the parties may request relevant change of the premium amount, from the moment when this circumstance occurred, however not earlier than from the begin of the current insurance period. In the event of reporting such request, the other party may within 14 days terminate the contract with the immediate effect. This provision does not apply to life 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.)?

In accordance with article 817 of Civil Code, the insurer is obliged to provide benefit within thirty days, from the date of receiving the notification on accident. If in the term referred to above the explanation of circumstances necessary to determine the insurer's liability or the benefit amount shall appear to be impossible, the benefit should be provided within 14 days from the day on which, with a due diligence, the explanation of these circumstances was possible. However, the insurer should provide for the indisputable part of the benefit within thirty days, from the date of receiving the notification on accident. The insurance contract and the general terms and conditions of the insurance may include provisions which are more favourable for the beneficiary than the ones stipulated above.

Additionally, in accordance with article 29 of the Polish Act on Insurance and Reinsurance Activity, having received a notification of the occurrence of a fortuitous event covered by insurance protection, the insurance undertaking is obliged, within 7 days following the day of receipt of the notification, inform the policy holder or insured / successor of the insured about the event, if they are not the persons that submitted the notification. The insurer is also obliged, within 7 days following the day of receipt of the notification mentioned above, to:

- commence proceedings to establish the facts concerning the event, the legitimacy of the submitted claims and the amount of benefit,
- inform the claimant in writing or in any other way the claimant has consented to about the documents necessary to establish the liability of the insurance undertaking or the amount of the benefit, if it is necessary to conduct the proceedings further.

The provisions mentioned above do not apply to events covered by insurance protection under the insurance contract referred to in Section II class 2 and 18 of the Annex to the Act and medical insurance referred to in Section I class 5 of the Annex to the Act, if the benefit is settled immediately after notification of a fortuitous event covered by insurance protection or without conducting

proceedings aimed at establishing the facts relating to the event, the validity of submitted claims and the amount of benefit.

If, within the time-limits specified in the contract or in the Act, the insurer does not pay the benefit, it is obliged to notify in writing the claimant and insured (in the event of the insurance conclusion for the benefit of third party, if he is not the persons that submitted the notification) of the causes making it impossible to satisfy his/her claims in whole or in part, but the insurer is obliged to pay out the undisputed part of the benefit.

If the benefit is not due or the amount due is different to that specified in the claim, the insurer is obliged to notify the claimant and insured (in the event of the insurance conclusion for the benefit of third party, if he is not the persons that submitted the notification) in writing, indicating the circumstances and the legal basis substantiating the entire or partial refusal to pay out the benefit. The information from the insurer must contain an instruction on the possibility of availability of enforcement of claims by recourse to the law.

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)?

Under Polish law (article 815 of Civil Code), the insurer is not liable for the effects of circumstances, about which, with the breach of the obligations mentioned in response to question 1, he had not been informed. If the breach of the preceding paragraphs occurred due to intended fault, in case of any doubts it shall be assumed that the accident provided for in the contract and its consequences shall be the effect of the circumstances referred to in the preceding sentence.

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

Under Polish law:

1. article 818 of Civil Code: The insurance contract and the general terms and conditions of the insurance may provide for that the policy holder shall be obliged to notify the insurer on the accident in

specified time. In the event of conclusion of insurance contract for the benefit of third party, that obligation may be incumbent on both the policy holder and the insured, unless the insured knew about contract conclusion in his favour. In the event of breach due to intended fault or gross negligence of the obligations mentioned above, the insurer may accordingly decrease the benefit if the breach contributed to greater damage or made it impossible for the insurer to determine the circumstances and consequences of the accident. The consequences of failure to notify the insurer on the accident do not occur if the insurer in the term designated for notification received information on circumstances he required.

2. article 826 of Civil Code: In the event of accident the policy holder and the insured are obliged to use all resources available to him to rescue the insurance subject or to prevent damage or to decrease its sizes. If the policy holder/insured intentionally or as result of gross negligence does not use all resources available to him to rescue the insurance subject or to prevent damage or to decrease its sizes, the insurer is released from responsibility for damage resulted from that reason. This does not apply to personal insurance.