

## **AIDA - RIO CONGRESS 2018**

### **DISCLOSURE DUTIES IN INSURANCE**

Reporter:

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**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?

*There is no explicit provision setting out duty of the insured to answer insurer's questions. However, insurers are authorized to use the questionnaires and put questions, should they find it appropriate for the purpose of collecting material information from the insured.*

- 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?

*According to the art. 907 of the Law of Contracts and Tort a person concluding the insurance shall be obliged to report to the insurer, at the conclusion of*

*the contract, all circumstances which are material in assessing the risk, and which were known, or could not have been unknown, to him.*

## **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?

*It is of the insured own judgment if the information should be disclosed to the insurer, or not, unless the insurer put the specific question.*

## **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. However, according to the art. 94, item 2(1) of the Law on Insurance 2014 an insurance broking undertaking has duty to determine, prior to concluding an insurance / reinsurance contract, the needs and requirements of the insurance / reinsurance policyholder and / or the insured person based on the data provided by those persons.*

- 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?

*In accordance with the article 82 of the Law on Insurance 2014, before concluding an insurance contract, the insurance undertaking shall inform the policyholder, inter alia, of the following: The policy conditions and the law applicable to the insurance contract; term of validity of the contract and the risks covered by insurance and exclusions related to the said risks.*

## **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?

*Policyholder shall be obliged, in case of non-life insurance, to notify the insurer of every change in circumstances which may be relevant for assessing the risk, and in case of life insurance, only if the risk has increased because the insured person has changed his occupation. He shall be obliged to notify the insurer of the aggravation of risk, without delay, should the risk be increased by an act on his part, and should the increase of risk take place without his participation, he shall be obliged to notify the insurer accordingly within fourteen days after becoming aware of the fact.*

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

*See the first sentence from the answer under 4(a).*

#### **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.)?

*There are no specific provisions on this. There are no fines if the insurer does not provide reasons for rejecting the claim, but the insured has right to object to the insurer and the National Bank of Serbia if he believes he was ill-treated.*

#### **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)?

*The Law of Contracts and Tort (art. 908/2, 3) provides for the insurer's right to rescind the insurance contract within three months from the day of his becoming aware of deliberately incorrect disclosure or facts suppressing. In the case, the insurer shall keep the collected insurance premiums, and be entitled to request payment of the premium for the insurance period within which he has rescinded contract.*

*Should the insured make an incorrect application or omit to supply necessary information unintentionally, the insurer may, at his own choice, within one month after becoming aware of the incorrectness or incompleteness of the application, state that he is repudiating the contract, or propose an increase of the insurance premium, proportionally to the higher risk involved.*

*In such a case the contract shall be terminated on the expiration of fourteen days from the day of the insurer's notifying the negotiator of insurance of cancellation, while in the case of the insurer's proposal for insurance premium increase, the rescission shall take effect on the ground of law, should the negotiator of insurance fail to accept the proposal within the fourteen day period after being notified about it.*

*In case of rescission, the insurer shall be obliged to return the part of insurance premium relating to the remaining insurance period.*

*An insurer who, at the moment of contract formation, was aware, or could not have been unaware, of circumstances relevant for assessing the risk, which were incorrectly notified or suppressed by the policyholder, shall not invoke incorrectness of the application or the fact of suppression.*

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

*If the insurer becomes aware of undisclosed facts during the insurance period, but fails to use his legal rights, he may not invoke on the incorrect disclosure or the fact of suppression (Art. 911 of the Law of Contracts and Tort).*