2\44368

**FAILURE TO COMPLY WITH MEASURES TO REDUCE THE RISK**

**WILL INSURERS BE EXEMPT FROM LIABILITY?**

**Sharon Shefer, Adv.**

**Levitan, Sharon & Co., Tel Aviv, Israel**

In a Supreme Court decision handed down on 15th September 2013[[1]](#footnote-1) which serves as a precedent, judges ruled on one of the most repeated disputes which the lower Courts have dealt with in the past few years, i.e. whether the Insurer can avoid liability in the event the Insured overlooks a condition to apply security measures set in the policy.

The circumstances of the insured event were simple – Mr. Slutzky purchased a comprehensive household insurance policy which included cover for his jewellery, worth approximately $80,000. As a condition to Insurer’s liability, the policy stipulated that the jewellery must be kept in the safe while at home. On the date of the burglary, the said jewellery was actually held in a drawer, but not in the safe, and it was taken by the burglars. The burglars did not attempt to force open the safe at all.

There was no dispute that the Insured failed to comply with the security measures demanded by his Insurers in respect of jewellery (i.e. that it be kept in a safe while at home) and that the Insured's failure to comply with these measures can be considered as a direct causal connection for the loss.

The Supreme Court referred to Section 21 of the Israel Insurance Contract Law and to Section 18 of the Law, which deals with increase in risk.

Section 21 states:

*“If it was conditioned that the Insured should take measures to substantially reduce the risk of the Insurer and such measures were not taken during the requested period, Clauses 18 and 19 will apply subject to the relevant changes.”*

Clause 18 (c) stipulates that:

*Where the insured event occurred before the contract is cancelled by virtue of this clause, the Insurer is only liable for the proportional insurance benefits, in a rate that is based on the premium which a reasonable insurer would have charged for cover without the specific measure to reduce the risk vis a vis the premium charged.*

The clause further provides that the Insurer will be exempt from liability only when no reasonable Insurer would have agreed to cover the risk even for a higher premium.

In order to explain the logic of the law which only agrees to void a policy in case of fraud, or in the case of an extreme situation that no Insurer would agree to cover, the Supreme Court cited from German and French laws, and emphasized that all these legal systems try to avoid a solution of "all or nothing". When dealing with insurance contracts in all these legal systems, the Courts will try to find a solution which will allow insurers to make a partial payment of the insurance benefits rather than voiding the contract.

Therefore, the Court ruled that the Insurer will not be automatically exempt from liability, even when the Insured infringes the policy conditions.

It was ruled that the burden to prove the appropriate premium rate lies on the Insurer and can be divided into three stages:

(1) If this specific Insurer had a similar policy which does not require implementation of a measure to reduce the risk, then such Insurer should prove to the court that the premium it would have charged and the difference between that premium and the premium actually charged will serve as a basis for the calculation.

(2) If the specific Insurer does not sell the same policy without a requirement for said protection measures, then it should provide proof as to the behaviour of a "reasonable insurer" and the cost of such policy on the open market.

(3) Only when it can be proven that no reasonable Insurer would agree to cover the said risk without implementation of the relevant security measure, then the Insurer will be exempt from liability.

In this specific case, as the Insurer failed to prove the cost of the alternative policy or to provide evidence that no reasonable Insurer would agree to cover such risk, the Insured will be entitled to full payment of the insurance benefits.

1. P.C.A. 3260/10 Lloyds Underwriters v. Eliha Slutzky [↑](#footnote-ref-1)