

AIDA - RIO CONGRESS 2018

DISCLOSURE DUTIES IN INSURANCE

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?

ANSWER

YES, THE CURRENT INSURANCE LAW 1883, MANDATORILY REQUESTS INSURANCE COMPANIES AND INSURANCE BROKERS TO RESPOND ANY QUERIES FROM THE INSURANCE BENEFICIARIES RELATED TO SUCH INSURANCES.

- 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?

ANSWER THE INSURED MAY OR MAY NOT ASK; HOWEVER, THE INSURANCE COMPANY AND INSURANCE BROKERS HAVE THE OBLIGATION TO SUBMIT ANY INFORMATION REQUESTED.

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?

ALL LIABILITIES MENTIONED UNDER THE NORM FOR INSURANCE COMPANIES AND MAINLY INSURANCE BROKERS COMPRISE OF DUTIES TO INFORM THE INSURED. THEY COMPRISE FOR EXAMPLE, THE DUTY TO INFORM THE USERS, QUOTE AND INTERPRET THE MEANING THEREOF.

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?

LATELY, AND IN ORDER TO AVOID MONEY LAUNDERING THROUGH THE RETAINER OF INSURANCE POLICIES AND/OR CLAIM AND COLLECTION OF INSURANCE COVERAGE POLICY KNOWN AS “BE FAMILIAR WITH YOUR CLIENT”; UNDER THIS CRITERION AND THE FILLING OF FORMS HOLD INSURANCE COMPANIES AS LIABLE AND INTERMEDIARIES, THEREFORE, THEY MUST DIRECTLY INFORM THE “INVESTIGATION UNIT” OF ANY AND ALL INFORMATION PROVIDED BY THE INSURED.

INSOFAR AS THE ALLEGED RISKS OR DISASTERS TO BE INSURED, THE CURRENT BOLIVIAN COMMERCE, LAW 14379 MENTIONS THAT THE INSURED SUBJECT HAS THE MANDATORY OBLIGATION TO STATE THE REAL SCOPE OF THE RISK AND ALSO INFORM OF THE EFFECTS OF ANY COUNTERCLAIM OF THE INSURED PARTY.

- 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 INSURANCE LAW AND ALL LATER ADMINISTRATIVE RESOLUTIONS ESTABLISH THAT IT IS THE DUTIES OF INSURANCE COMPANIES AND BROKERS TO PERFORM A DETAILED INFORMATION ON THE MATTERS AT HAND REGARDING TO INSURANCE

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, THIS A DUTY THAT HAS BEEN ESTABLISHED BY THE BOLIVIAN COMMERCE CODE AND IT HAS AN IMMEDIATE EFFECT UPON ANY CHANGE OF RISKS.

IN THE CASE OF A DISASTER, THIS MAY BE REJECTED

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

ANY ACTIVITY THAT RELATES TO A DIFFERENT RISK OF THE INSURED, WHICH HAS BEN CLEARLY DEFINED, AND /OR TH COMMERCIAL NAME CHANGE, DIFFERENT ACTIVITIES, RELOCATION OF THE VENUE THAT ARE COMPLIED BY THE NEIGHBORS' ACTIVITIES DE (SERVICE STATIONS, PRINT SHOP, RESTAURANTS, FACTORIES, INDUSTRIAL VENUES, ELECTRICAL SERVICES, ETC.) OR THAT MAY HOLD MANY PEOPLE SUCH SCHOOLS, HOTELS, ENTERTAINMENT VENUES, ETC., WHICH WOULD IMPLY THE PROXIMITY OF THE VENUES AND INCREASE IN RISKS

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 CURRENT BOLIVIAN COMMERCE CODE ESTABLISHES THE FOLLOWING DUTIES AND OBLIGATIONS OF THE PARTIES:

IN REGARD TO THE INSURED:

- ✓ IT HAS THE DUTY TO REPORT THE DISASTER WITHIN THREE (3) DAYS THEREOF.
- ✓ THE DUTY IS TO SUBMIT REPORTS IN ORDER TO DETERMINE THE CAUSE AND LOSS CLAIMED BY THE INSURED – INTER ALIA- LOSS OR DAMAGE THAT “WERE PREEXISTENT TO THE TRAGEDY”.
- ✓ THE DUTY TO ALLOW ACCESS FOR THE CSI INVESTIGATION AND THE VENUES WHERE SUCH HAVE OCCURRED.
- ✓ THE DUTY TO SUBMIT ANY INFORMATION REGARDING THE BACKGROUND OF THE TRAGEDY UNDER WARNING TWO YEARS OF THE DATE THEREOF, SUBJECT TO STATUTORY TERMS TOWARDS THE INSURER
- ✓ TO RECEIVE ANY CLAIMS AND PERFORM THE MANDATORY INSPECTION
- ✓ TO TIMELY REQUESTS AND WITH NO MORE THAN TWO DIFFERENT CLAIMS. ALL THE ADJUSTMENT NECESSARY TO ASSESS THE CLAIM.
- ✓ TO SUBMIT THE LEGAL ADJUSTMENT LEGALLY ACCEPTED OR THE REFUSAL THEREOF, WHICH MUST BE DULY SUBSTANTIATED

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)?

IN CASE OF RETICENCE OF THE INSURED IN RELATION TO THE INFORMATION OF THE RISKS AT THE TIME THE POLICY IS BEING

ACQUIRED IT, MAY BE LATER REJECTED FOR LACK OF PROPER INFORMATION

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

IN THE CASE OF MISINFORMATION OR THE LACK THEREOF, THE CLAIM FOR ANY CLAIM WILL BE PROMPTLY CANCELLED

IN SUCH A CASE, THERE MUST BE A DISCREPANCY WITH THE REFUSAL TO PROMPT A CONCILIATORY OR ARBITRATION PROCEDURE.

NOTE: IF AND WHEN THE PETITION OF THE INSURER HAS THE BURDEN OF PROOF FOR A WRONGFUL CLAIM, WHICH COMPRISE OF UNTRUTHFUL OR MISLEADING CIRCUMSTANCES A CRIMINAL ACTION MAY BE FILLED, PURSUANT TO OUR LEGISLATION THAT TYPIFIES SUCH A FELONY AS "INSURANCE FRAUD", PURSUANT TO CRIMINAL LAW 1768, ARTICLE 338.