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Filling of Supervenient Gaps in Premium Adjustment Clauses

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Background of coverage and premium adjustment clause

- A Greek insurance company issued in the 1990s life policies
- Life policies contained an addendum additionally covering hospitalisation costs
- One category of these policies provided for unlimited coverage, which compensates for all covered hospitalisation costs irrespective of their value during the period of the policy that lasted for life
- Addendum contained a premium adjustment clause linked with the fluctuation of the exchange rate between the Greek drachma and ECU

Events leading to supervenient gap

- Both the Greek drachma and ECU were abolished and replaced by euro in 2002
- As a result, the premium adjustment mechanism was made redundant
- At the same time the cost of the insurer's consideration kept increasing for life (as a result of the unlimited coverage)

How insurer acted

- Greek law does not provide for a specific procedure in a case of supervenient gap in premium adjustment clauses which would avoid litigation and be binding for the parties involved
- The insurer proceeded to adjust the premium after informing the insured in 2005
- The insurer used as a basis the supplementary interpretation of the contract provided in Articles 200 and 288 of the Greek Civil Code

How consumers reacted

- In 2008 a consumers' association filed a class action against the insurer
- The consumers' association requested the court
  - to declare illegal the premium adjustments already made by the insurer and
  - to prohibit the insurer from making any other adjustment in the future, claiming that the premium became fixed for life

First instance and appellate judgments

- The first instance court in 2010
  - upheld the first motion and declared illegal the premium adjustments already made by the insurer
  - dismissed the second motion by holding that the unlimited coverage for life by its nature cannot justify a fixed premium, which should be adjusted by agreement of the parties
- The court of appeal in 2011
  - upheld the first instance judgment

Insurer's business approach

- The insurer started negotiations with each insured individually since 2010 (insured totaled apprx. 14,000)
- Agreement was reached with 13,700 (98% of total).
- The rest 300 (2% of total) refused to accept any premium adjustment mechanism, claiming that the premium had to remain fixed for life.

Insurer's legal approach

- The insurer filed proceedings in 2011 against the 300 insured refusing to agree to any premium adjustment mechanism
- The insurer requested the first instance court to fill the gap by selecting one of the two alternative premium adjustment clauses proposed by the insurer or alternatively devise a different one
- The case is still pending

Lessons to learn

- Recourse to litigation appears unavoidable
- Costly, time consuming, uncertain outcome: unsatisfactory solution
- Need to create a specific procedure leading to binding results for all parties without resorting to litigation

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Thank you!