Short notes on:

LIVING AND CONDUCTING YOUR BUSINESS WITH MINIMAL RISK

Introduction

The principle of insurance has been with us for ages and has developed into a complex problem that sometimes trips up even the smartest people. Nonetheless insuring us against all the uncertain perils that life or business can throw at us is of cardinal importance. Insurers indemnify ("covers") the insured's interest in assets or business against uncertain perils which may cause damage.

One of the fundamental requirements of an insurance contract is insurable interest (what you are insuring) or the object of risk, which is basically the same as your interest in a specific asset or business. Insurable interest is a concept that goes hand in hand with damage, although more limited; it can either be tangible or intangible. Indemnity insurance entails cover which covers the insured against an uncertain peril which can cause damage to tangible or intangible property.

Variety in cover

Insurance has progressed over the years from only being a homeowner's entitlement to modern day where it covers a vast array of insurable interests; to demonstrate this, see below:

1. Interest of a buyer in purchased property;
2. Interest of the seller in property sold;
3. Interest of mortgagor in property of morgagee;
4. Interest of lessee in leased property;
5. Interest of mortgagee and pledgee in encumbered property;
6. Interest of owner of insured motor vehicle in liability of authorised driver;
7. Interest of partner in partnership property;
8. Interest of possessor in property possessed.

The above list is not exhaustive at all; we have not even looked at non-indemnity insurance and insurance brought to life by legislation. As it is apparent from the above heading: "LIVING AND CONDUCTING YOUR BUSINESS WITH MINIMAL RISK". Holds true to some extent, that is if you claim adequately and without delay. The reality is many claims are being repudiated, this is due to fine print and when an insured does not comply with time barring clauses.

All too familiar

When a dispute arises between the insured and the insurer, which frequently happens as you might have heard certain unpleasant stories; your sister in law driving her classy BMW M-Class for months without fixing her badly bashed up door, only to learn that her insurer rejected her claim – the all too familiar phrase: “WE HAVE REPUDIATED YOUR CLAIM”.

Interesting Statistics

In the recent report of the Ombudsman for Short-Term Insurance (“OSTI”) annual report of 2018 interestingly; 48% of complaints are in connection with motor vehicle insurance, the highest percentage of complaints finalised, homeowners at 21%, commercial at 9% and household insurance at 5%. With an increase in motor vehicles on roads, more congestion and higher risk profile, result in more complaints. Interestingly though according to the report, most of the complaints in respect of motor vehicle insurance related to amounts offered for settlement, non-disclosure and misrepresentation at sales stage. A staggering 15% decrease in rejections based on insured driving under the influence of alcohol. These statistics must be viewed against the backdrop of jurisdictional limitations of OSTI with personal line businesses at R3.5 million and homeowners at R6.5 million. You can draw your own conclusions!

How can you ensure that you live and conduct your business with minimal risk?

1. Read your insurance policy and accustom yourself with all the exclusionary clauses. Exclusionary clauses provide circumstances in which insurers will not entertain your claim.
2. To start off it is imperative that you keep in mind that you are insuring your interest. For example; your car against an uncertain event or risk which may or may not materialise and not an event which is caused by you intentionally, this will be a ground of exclusion or if you are found to mispresent this cause you will have bigger problems.
3. Time barring clauses are there for a reason and believe me, insurers will rely on them to escape liability. They are there to afford the insurer an opportunity to properly investigate your claim as they are entitled to while the information is still fresh. Clauses such as: “you have 30(thirty) days in which to lodge your claim.”

4. Pay your premium.

Dispute resolution

In terms of the Policyholder Protection Rules promulgated under section 55 of the Insurance Act provides that the insurer must allow the insured to attempt to resolve the dispute through the internal procedures of the insurer within 90 days. After this period the insured may escalate the complaint to OSTI, and in addition to the 90 days, the insured has 180 days in which to take other action to recover the loss. Should these periods lapse but before the 3 year period has prescribed from the date on which the loss incurred as prescribed by the Prescription Act, the insured will be required to bring a condonation application through court process.

Conclusion

In order to limit the risk of repudiation, it is of paramount that you know what you covered for, read your policy, comply with time barring clauses and don't wait to lodge your claim.

Contact Schoemanlaw Inc for all your insurance disputes and risk assessments.

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