

Short notes on:

## **UNDERSTANDING THE COMPLEXITIES OF INSURANCE – THE QUEST FOR BETTER CHOICES**

### ***Introduction***

The principle of the contracting parties to an insurance contract must contract in good faith is an essential building block of an insurance contract. The same applies to non-indemnity insurance ( or “sommeversekering”), an example: life insurance policies which form an integral part of estate planning.

Life policies provide security to those who are dependant or partly dependant on the life of another. This form of insurance is mostly regulated by the Long-Term Insurance Act 52 of 1998 as amended. The policyholder may nominate a beneficiary who will be entitled to claim the benefits under the policy. An insurance contract has two elements that work in tandem; these two elements are the insured risk (insured life in the event of death, for example) and the premium. Everything must be done correctly from the start to avoid problems at a later stage.

### ***Objective – and Subjective risk circumstances***

The assessment of the insured risk equates to the premium to be paid. The assessment of the insured risk entails the consideration of the subjective risk – and objective risk circumstances. Subjective risk circumstances are those circumstances referring to, for example, character and dishonesty (questions about prior rejected claims, for example). Objective risk circumstances refer to those circumstances, for example, such as an insured car being used for delivery purposes or a person having a long history of a cardiac failure applying for life cover. These are all circumstances affecting risk – the higher the risk, the higher the premium.[\[1\]](#) This is why at the inception of a life insurance (the example for this article), it is essential to contract in good faith, as the risk profile of the policyholder is mainly dependent on the facts the person provide to the insurer in good faith.

### ***Inception and claim***

The inception of an insurance contract refers to the stage at which point a person approaches an insurance broker or insurer directly for cover. At this stage, the insured is required to make all disclosures which may affect the risk. A person applying for life cover will, for example, have to disclose his full medical history and if there are any calamities which may affect the risk. In the instance of life policies, disclosures of serious health conditions are material as this may dictate the insurer's decision to accept the risk or decline alternatively, may require the insured to be subjected to further medical tests to assess risk profile. These are all factors that come under the spotlight at the claiming stage. The claiming stage refers to the period at which the policyholder dies, and the benefits under the life policy become claimable.

### ***Misrepresentation and non – disclosure***

In the case of *B v Hollard Life Insurance* ZAGPJHC 460; [2018] 4 All SA 77 (GJ), the policyholder took out a life policy insuring his life against the insured risk of death and nominated his wife as the beneficiary under the life policy. During the claim stage, being after the death of the policyholder, the insurer investigated the cause of death, this being a common practice if a policyholder passes on within a short period from taking out the life policy. It was discovered that certain disclosures were not made by the policyholder. The insurer was of the opinion that the non-disclosures were material and would have affected the terms of the insurance contract, or the insurer would have declined the risk. The basis for the repudiation ("rejecting claim") was that at the inception stage, the insurer failed or neglected to disclose previous rejections from other insurers and revealed the spot on his lung to be benign even though evidence showed that he refused to go for a CT scan recommended by the medical practitioner who attended, to investigate whether the spot was benign. The policyholder died of lung cancer some three years from taking out the policy; the insurer repudiated the surviving spouses' claim on the basis that there were material non-disclosures at the inception stage and consequently the court agreed and dismissed the suit with costs.<sup>[2]</sup>

### ***Conclusion***

When applying for life cover, it must be done with the utmost care, and in good faith, this is mainly because people's livelihoods may depend on it. Insurers share information, and a person must answer the questions on the application forms thoroughly and with honesty to ensure that there is no opportunity for the insurer to escape liability at the claiming stage.

Contact us at SchoemanLaw Inc for more information on all areas of insurance law.

[\[1\]](#) Pg. 240 of South African Insurance Law 2013, Lexis Nexis

[\[2\]](#) B v Hollard Life Insurance ZAGPJHC 460; [2018] 4 All SA 77 (GJ)