

Insurance - Switzerland

Strict rules for disclosure of risk factors confirmed

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Introduction

In a recent decision⁽¹⁾ the Federal Supreme Court dismissed the appeal of an insured individual who challenged the rescission of a private insurance contract for misrepresentation. The court confirmed the strict rules for the disclosure of conclusive risk factors when concluding private insurance agreements. This judgment also sheds light on the procedure that the insurer should observe when terminating an insurance agreement in the event that decisive risk factors have been concealed or omitted.

Facts

The appellant, born on September 1 1976, concluded a mixed life-insurance contract in July 1996, which also covered the loss of income in case of sickness. The application was signed by the minor claimant and his father as legal representative. The application contained a number of questions aimed at assessing the current and past health of the applicant and any medical treatment that he had undergone during the past five years. The appellant's answers indicated that he had not suffered from any medical condition during this period.

In 2008 the insured successfully applied for state invalidity insurance benefits due to long-lasting schizophrenia and social anxiety disorder, severe depression and persecution mania. He also applied for benefits from the defendant private insurer to cover his loss of income. The insured mentioned a sickness which had persisted since July 2000 as grounds for his insurance claim and asserted that before July 2000 he had never been ill due to the same cause. On consulting the files of the state invalidity insurance, the defendant private insurer learned that the insured had received medical treatment for psychological problems between 1994 and 1996, and had made a suicide attempt. The insurer therefore wrote to the insured and rescinded the policy for misrepresentation, based on Article 6 of the Insurance Contract Act. In the termination letter, the insurer cited the application form questions which the insured had answered falsely in the negative.

The insured prevailed in his appeal for a declaratory judgment (ie, nullity of the avoidance of the insurance contract), whereas the defendant insurance company prevailed on cantonal level in its appeal against the first appellate court. The insured finally appealed to the Supreme Court.

Decision

Pursuant to the binding factual findings of the lower instance court, the Supreme Court found that the appellant had consulted his general practitioner several times between 1994 to 1996 for psychological problems. In February 1996, shortly before the application for the insurance in question, the appellant had made a suicide attempt and required hospitalisation. In fact, the health problems which caused the insured's incapacity to work, and for which he was seeking insurance cover, had their origin in the appellant's childhood. The court argued that the insured likely recognised the pathological significance of his health problems. In any case, his father must have been aware of it and of its nature as a decisive risk factor for the insurer. The court ruled that the knowledge of the appellant's father, who had not only approved the insurance application of his minor son but had also confirmed the accuracy of the answers, was attributable to the insured. The insurance was entitled to conclude that the insured had (tacitly) granted proxy to his father in this regard. Insofar as this risk factor was not disclosed when asked about present health disorders and long-term consequences of past illness, the appellant made a false statement which is to be qualified as misrepresentation. Since the connectivity or causal nexus between the false statement and the materialised risk was evident, the insurer rightfully terminated the insurance agreement for misrepresentation.

Regarding the argument of the appellant that the cancellation letter of the insurance was invalid in terms of its content, the court held that it was detailed and concise enough to fulfil the prerequisites in

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the present case (ie, mentioning, in a detailed manner, the false or concealed risk factor and the questions which were answered incorrectly). The insurer's statement made it possible for the insured to identify the concealed information on which the insurer based its rescission of the contract.

Comment

In this case, the Federal Supreme Court outlined the reasons which entitle an insurer to terminate a policy for misrepresentation. Under the Insurance Contract Act (Articles 4 and following), if serious risk factors are concealed or omitted when concluding an insurance contract, termination of the contract is permissible to the extent that these omitted serious risk factors are decisive for the loss (causal nexus). The decision provides guidance to insurers for the content and form of termination in case of misrepresentation.

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Endnotes

(1) 4A_19/2013, April 30 2013.

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