

Insurance in Switzerland

Key Points to Note

1. Clarity of questions in the proposal form

- (a) There is no duty of the proposer to disclose any risk factors voluntarily.
- (b) Only incorrect or incomplete answers to clear and unambiguous questions can be used to establish precontractual misrepresentation.
- (c) Ambiguity will be resolved in favour of the insured.
- (d) Any reasonable interpretation by the insured may be sufficient to exclude a misrepresentation case.
- (e) In practice, the questions need to be clear not just to underwriters and to brokers, but to a court.

2. Misrepresentation

- (a) The remedy is not avoidance ab *initio*, it is termination from the date of receipt of the notice of termination by the insured.
- (b) Termination must be declared by underwriters and received by the insured within 28 days of underwriters having knowledge of the misrepresentation.
- (c) Accrued covered claims prior to termination will remain valid unless they relate to the subject matter of the misrepresentation, i.e. the misrepresented risk factor has influenced the occurrence or extent of damage.
- (d) Where several persons are insured under one policy, a misrepresentation by one individual cannot be relied upon to terminate the policy vis-avis all other insureds, only with respect to those to whom the misrepresentation applies.
- (e) In case of termination, the premium is due until the termination only.

3. Underwriters' Knowledge

- (a) Underwriters may be deemed to be aware of all facts referred to in documents which accompany a proposal form and/or which were provided in earlier years.

4. The Lloyd's Broker

- (a) Do not assume that the court or the insureds will understand who the Lloyd's broker acts for (and, in some cases, the local broker may not understand this either).
- (b) Do not assume that agreements reached with the Lloyd's broker (eg as to the meaning of a particular clause of the Policy) will necessarily represent agreements by the local broker on behalf of the insured – ensure that these are put in writing.

5. Endorsements and NMA 2242A

- (a) The court of first instance did not appear to understand that the purpose of endorsements is to override the terms of the policy.
- (b) Similarly, even though NMA 2242A expressly states that it overrides all other provisions of the policy which state differently unless individual of the conditions in NMA2242A are explicitly amended, the court still struggled with this idea.

6. Crime Cover in an IMI Policy

- (a) A Swiss court may struggle with a definition of fraudulent acts which covers only a small subset of fraudulent acts (i.e. forgery, counterfeiting or fraudulent alteration of specific types of document). Particularly where the definition of “wrongful acts” includes “fraudulent acts” as an undefined term.
- (b) Similarly, a Swiss court may struggle with a definition of “any other person” which does not mean *any* other person.
- (c) The term “malicious acts” has a different meaning under Swiss Law. Notwithstanding the fact that the English meaning of the words is expressly stated to be the applicable meaning, the Swiss court may struggle to see malicious acts as anything other than fraudulent acts.

Caution: Some of these points are drawn from our experiences with the Genevalor case and include decisions made by the judge at first instance. This judgment was overruled, but these points were not dealt with in the higher courts. Moreover, they do indicate the attitude of the Geneva courts and represent issues which underwriters could come across in the future.



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