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Mexico

INSURANCE DISPUTES

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This country-specific Q&A provides an overview of insurance disputes laws and regulations applicable in Mexico.

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MEXICO

INSURANCE DISPUTES



1. What mechanism do insurance policies usually provide for resolution of coverage disputes?

Typically, in addition to the regular pre-judicial claim, Mexican legislation outlines an administrative procedure before the National Commission for the Protection and Defence of Financial Services Users (CONDUSEF). This body is primarily entitled to issue opinions on coverage and other relevant matters in insurance policy claims, although it shows reluctance on this regard. While rarely utilized, CONDUSEF can also act as an arbitrator if the parties agree. However, given the discretionary nature of this alternative dispute resolution system, most unsolved cases end up in court.

CONDUSEF primarily serves for common disputes involving low and medium losses, aiming to halt the running of the statute of limitations period at the insured's peril. This is attributed to its limited experience in managing intricate losses. Consequently, in substantial losses, both in political and economic dimensions, there is typically no inclination from the parties to subject themselves to its rulings.

2. Is there a protocol governing pre-action conduct for insurance disputes?

There is no strict protocol governing pre-action conduct for insurance disputes, considering that the insured is free to determine the arena in which the claim should be handled –whether through pre-judicial exchanges, an administrative procedure, or in court.

3. Are the Courts in your region adept at handling complex insurance disputes?

Mexican courts have proved to still falling short on expertise and technical skills to decide complex or refined (re)insurance disputes. The Supreme Court has issued decisions concerning the handling and resolution of medium and substantial losses. Nonetheless, these

standards are often not regarded as jurisprudence, resulting in a lack of clear guidelines and inexperience prevalent in both federal and state courts.

4. Is alternative dispute resolution mandatory in your jurisdiction?

No, alternative dispute resolution mechanisms are always discretionary in Mexico.

5. Are successful policyholders entitled to recover costs of insurance disputes from insurers?

In Mexico, a policyholder may only recover costs from the insurance company after successfully prevailing in trial, but this is confined to a few specific situations and limited amounts. Otherwise, the insured may have to bear the costs of litigation against the company to bring a claim. Though, insurance legislation not only imposes interests for non-payment but also entails penalties (default interests) and their capitalization due to non-payment. Therefore, the monetary claims against insurers often become substantial after a prolonged process, spanning from the initial claim to the eventual lawsuit.

6. Is there an appeal process for Court decisions and arbitral Awards?

Under Mexican law, insureds have two main recourses in order to challenge court decisions. Depending on case specifics, a party may either file for appeal, or a constitutional petition for review, commonly known as the amparo trial. Regularly, in ordinary commercial proceedings, a party may initially seek an appeal, yet in insurance disputes, the sole recourse available is to file for the relevant amparo trial. Concerning arbitration awards in the Mexican jurisdiction, it is not uncommon to encounter nullity actions, irrespective of the proper procedure for enforcement, which can also be disrupted.

7. How much information are policyholders required to disclose to insurers prior to inception of the policy?

Concerning the underwriting process of the policy, under Mexican law, a policyholder must disclose all relevant facts to the insurance company to allow an accurate risk assessment. This information is often delivered using questionnaires designed by insurers so as to guide insureds on the topics or aspects they consider most relevant for such purpose.

8. What remedies are available for breach of the duty of disclosure, and is the policyholder's state of mind at the time of providing the information relevant?

A policyholder's breach of duty to disclose all relevant information would entitle the insurer to render the insurance policy void. Mexican law provides that such duty extends to every relevant fact that the insured knows or should have known. Thus, the aforementioned questionnaires are key to give guidance on whether certain information should be considered pertinent and disclosable.

9. Does the duty of disclosure end at inception of the policy?

The duty to disclose all relevant information does not end at the inception of the policy. Indeed, insureds remain liable and constrained to inform insurers about any essential aggravation that the risk might experience over the course of the insurance. Nevertheless, it is crucial to comprehend that despite the aggravation of the risk, the insurer cannot escape liability if it could have been aware of this aggravation or remained silent about it, thereby acknowledging it. Hence, insurers are constrained by a specific timeframe to exercise their rights in cases of nondisclosure.

10. Are certain types of provisions prohibited in insurance contracts?

In recent years, Mexican law and jurisprudence have leaned towards affording more protection to insureds regarding unfair provisions contained within insurance policies. In that vein, provisions that would jeopardize the insureds' consumer rights are generally prohibited.

11. To what extent is a duty of utmost

good faith implied in insurance contracts?

Mexican law does not recognize an explicit duty of utmost good faith requiring the insured to disclose all relevant facts related to the risk. The prevailing trend, as per the criteria set by higher courts, indicates that insurers, as experts in insurance matters, are obligated to provide clear and unambiguous questionnaires to the insured for risk assessment. In cases where ambiguity in the questionnaires leads to a peril, the insurer would bear the responsibility for such risk.

12. Do other implied terms arise in consumer insurance contracts?

Various implicit obligations stem in consumer insurance agreements. Specifically, the ambiguity rule dictates that in cases of unclear policy terms, the interpretation should lean in favour of the policyholder. Additionally, insurers, being the experts and possessing the most comprehensive knowledge in the contractual relationship, are consistently held accountable for any shortcomings arising from said relationship or upon any unfair behaviour before the insured or beneficiaries.

13. Are there limitations on insurers' right to rely on defences in certain types of compulsory insurance, where the policy is designed to respond to claims by third parties?

Mexican law imposes restrictions on insurers' ability to invoke defences in specific compulsory insurance categories, basically meant to address claims from third parties. These limitations prevent insurers from rescinding an insurance policy, even if the insured breaches the duty of disclosure. In such instances, insurers retain the right to seek compensation from policyholders. Furthermore, Mexican courts are increasingly prone towards upholding the rights of third parties, even to the extent of invalidating exclusions that might undermine the effectiveness of the insurance policy concerning the compulsory risk it is designed to cover.

14. What is the usual trigger for cover under insurance policies covering first party losses, or liability claims?

On a different aspect, the common triggers for insurance policies that cover first-party's losses or liability claims have a dual nature: i) loss occurrence; and ii) claims made. The first encompasses claims stemming from

events occurred during the policy period, irrespective of when the actual claim is lodged. The second offers coverage for specific liability insurance until claims are made.

15. Which types of loss are typically excluded in insurance contracts?

Insurance policies are far from limitless. Indeed, the most common set of exclusions encountered in the market, which would depend on the type of insurance, will range between intentional acts, war and terrorism, nuclear events, wear and tear, asbestos harm, amongst an immense variety of other risks, causes and consequences.

16. Does a 'but for' or 'proximate' test of causation apply, and how is this interpreted in wide area damage scenarios?

Under Mexican law and precedents, the proximate cause test is employed for assessing causation. According to this test, only damages directly associated with a specific action or event are considered eligible for recovery.

17. What is the legal position if loss results from multiple causes?

If a loss arises from multiple causes, responsibility is allocated or distributed among all the contributing factors.

18. What remedies are available to insurers for breach of policy conditions?

Despite the protectionist stance taken by the courts in recent years, insurers still possess specific remedies when the insured breaches policy conditions. The nature of these remedies, hinges on the technical aspects of the breached covenant. Insurers may retain the right to deny coverage for the loss or declare the insurance fully void.

19. Are insurers prevented from avoiding liability for minor or unintentional breach of policy terms?

Typically, these remedies are available to insurers, even in cases where the insured's breach is minor or

unintentional, provided the contravention determines the occurrence of the loss.

20. Where a policy provides cover for more than one insured party, does a breach of policy terms by one party invalidate cover for all the policyholders?

According to Mexican law, there are specific provisions indicating that a breach of policy terms by one party will not nullify coverage for all policyholders. Instead, it will solely have consequences for the breaching party, leaving the others unaffected.

21. Where insurers decline cover for claims, are policyholders still required to comply with policy conditions?

In case an insurer refuses or declines coverage, the insured is then authorized to take further actions freely regarding such claim.

22. How is quantum usually assessed, once entitlement to recover under the policy is established?

In order to assess quantum once entitlement to recover under the policy has been established, one must first distinguish the type of insurance the claim arises from. For property insurance, the policy wording is crucial. As a general rule, quantum will be assessed upon the actual value of the damaged goods or assets.

23. Where a policy provides for reinstatement of damaged property, are pre-existing plans for a change of use relevant to calculation of the recoverable loss?

Insurers often grant coverage on a reinstatement basis. In cases where the policy allows for damaged property reinstatement, alterations in plans for a change of use are not considered in the calculation of the recoverable loss, as insurance should always seek to meet financial balance upon the direct and real damages, refraining from allowing enrichment beyond them.

24. After paying claims, to what extent are insurers able to pursue subrogated

recoveries against third parties responsible for the loss?

After settling a claim, insurers are entitled to pursue subrogation actions against the third parties accountable for the loss, as if they were the insured. According to Mexican law, the insurance company steps into the shoes of the insured, inheriting all rights to initiate legal actions against the responsible party, effectively taking their place.

25. Can claims be made against insurance policies taken out by companies which have since become insolvent?

In case of bankruptcy, claims can be brought under the insurance policies afforded by the company that has become insolvent, though this is applicable only in certain scenarios. In instances of property insurance covering movable assets, the insurer has the option to annul the policy, whereas for real property, the insurer is not permitted to opt for contract rescission. While Mexican law and precedents don't explicitly address liability insurance in these scenarios, our opinion is that insurance coverage should remain effective until the courts officially declare bankruptcy.

26. What are the significant trends/developments in insurance disputes

within your jurisdiction in recent years?

Mexican courts have established notable trends in insurance disputes, aiming towards an array of different directions. To deliver a flavour of the key breakthroughs, it is fair to underscore the progressive criteria encompassing enhanced protection for insureds and consumer rights, including the extension of statute of limitations' periods for insurance actions, especially in the context of liability insurance. Additionally, such protection has reached the nullification of policy exclusions concerning third-party claims. On another aspect concerning reinsurance disputes, recent decisions show consistency on foreign reinsurers' mandatory compliance and submission to Mexican jurisdiction when performing business and placing risks posed in Mexico.

27. Where in your opinion are the biggest growth areas within the insurance disputes sector?

The most significant areas of growth in the insurance disputes sector perhaps pertain to the arbitration of complex cases and reinsurance claims. This signifies a notable expansion in the use of alternative dispute resolution mechanisms, particularly to address highly technical issues (whether to decide a dispute in full or partially), which has proven to be the case when dealing with specialized reinsurance.

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