



The Legal 500 Country Comparative Guides

Norway

INSURANCE DISPUTES

Contributor

Advokatfirma Kogstad Lunde & Co



Terje Marthinsen

Attorney at Law/Partner | tm@klco.no

Jan Aubert

Attorney at law/Partner | ja@klco.no

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

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NORWAY

INSURANCE DISPUTES



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

Usually, the terms decide that coverage disputes should be handled by the regular courts in Norway. If both parties have been represented by attorneys, the case will normally start in the City Court.

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

No, but the claimant may choose to ask The Finance Complaints Board ("FinKN") to handle the dispute before it is referred to the court. FinKN handles a lot of coverage disputes, and the decisions from FinKN are normally accepted by the insurers. FinKN will only handle disputes that can be resolved without oral hearing and without assessing much evidence.

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

Yes, Norwegian Courts handle a lot of complex insurance disputes, and disputes regarding tort law and insurance law represents a big part of the few cases that the Norwegian Supreme Court handles every year.

4. Is alternative dispute resolution mandatory in your jurisdiction?

No, but mediation is always offered by the court.

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

Yes, in Norway the main rule is that the succeeding party in a court case will be entitled to have its reasonable and necessary costs covered by the losing party. That means that both the successful policyholder and the successful

insurer may be awarded compensation for the costs from the other party.

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

Decisions from the City Court may, as a main rule, be appealed to the Court of Appeal. Exemptions are made in cases that solely concern economical questions and has a monetary value of less than NOK 250.000. Further, an appeal against a judgment may be denied when the Court of Appeal finds that there is a clear preponderance of probability that the appeal will not succeed. A decision from the Court of Appeal may be appealed to the Supreme Court, but such an appeal cannot be submitted without consent. Consent shall only be granted when the appeal pertains to questions that have significance beyond the specific case, or when there are other reasons that make it particularly important to have the case decided by the Supreme Court.

As a main rule, arbitral Awards may not be appealed.

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

In connection with the conclusion or renewal of an insurance agreement, the insurance company may request information about matters that may be relevant to its risk assessment. The policyholder must provide accurate and complete answers to the company's questions. Additionally, the policyholder must voluntarily disclose information about specific circumstances that they understand are of significant importance for the company's risk assessment.

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?

If the policyholder has fraudulently neglected to provide information according to their duty, and an insurance event has occurred, the insurance company is not liable to pay anything to the policyholder.

If the policyholder has otherwise neglected their duty to provide information, and it is not merely a minor omission, the insurance company's liability towards the policyholder may be reduced or waived.

In the assessment, factors such as the significance of the error for the insurance company's risk assessment, the degree of fault, the course of the damage, and other relevant circumstances are taken into account.

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

No. If the policyholder at a later stage becomes aware that they have provided incorrect or incomplete information regarding the risk, they must promptly notify the insurance company without undue delay.

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

In general, it is up to the parties in an insurance contract to decide the provisions of the contract. There are however some restrictions in The Norwegian Insurance Act.

If the insurer wants to be able to reduce the compensation due to negligence that is not gross, it must apply specific safety codes. An insurer cannot apply regulations to limit the responsibility through objective clauses.

In consumer insurance the insurer has a very narrow room for clauses that identifies the insured with the negligence of another person.

Further, in the personal lines, insurer cannot make exemptions for negligent behaviour of the insured by using objective clauses.

In life insurance, the insurer cannot exempt all illness that was present at the beginning of the contract. The insurer must ask questions related to the insureds health and can only except illness discovered through the answers.

In consumer insurance the Norwegian Insurance Act is mandatory.

11. To what extent is a duty of utmost good faith implied in insurance contracts?

A duty of utmost good faith is implied in all contract law in Norway.

In Norwegian contract law there is tradition for less text and clauses than what we see in the Anglo-American tradition. If an insurer wants to make exemptions it must nevertheless be clearly specified in the contract. The Contra proferentem doctrine will imply that the contract is interpreted against the party that made the contract.

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

According to The Norwegian Insurance Act the insurer is, to some extent, obliged to identify the insured's need for insurance. The Act specifies some duties that the insurer must provide the consumer with information prior to the sale.

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?

In Norwegian compulsory insurance the insurer may, as a main rule, rely on all the defences that the responsible himself could assert.

In liability insurance the insurer is, towards the claimant, also responsible for gross negligence shown by the insured. However, the insured may be obliged to pay recourse for such payments made by the insurer.

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

The usual trigger for cover under liability claims is negligence from the insured. When the liability is strict, for instance related to pollution, the trigger would be the accident, the injury or the damage.

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

Typically, the losses are excluded or limited by level of compensation, type of loss or the closeness to the cause of the loss. In different contracts it will vary how the loss

is limited and different combinations may apply. Regulations in general Norwegian contract law/Norwegian Standards (NS) will exclude some types of losses in business insurance.

In private motor insurance, depreciation (decrease in value) will not be compensated. Nor will loss of income due to the breakdown of the car be compensated. Damage caused when the vehicle is requested by public authority can be excepted. In building insurance typical exceptions might be damage to greenhouse, plantation, outdoor waterpool and wooden jetty. In personal insurances different illnesses can be excepted. For instance may scars and damage to teeth be excepted in child insurance.

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

The main test of causation in Norwegian practice is a "but for" test. If the factor is necessary and neither unessential nor unforeseen, the factor will be held responsible and considered the cause. If the proximate test still applies in some parts of the insurance business is discussed. Historic background being that the primary factor was considered the cause. In wide area damage scenarios, the responsibility could be limited by either one of the theories of causation.

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

If loss results from multiple causes, all the causes may be considered liable for the total loss. The Norwegian Compensation Act would then provide rules for distribution of the loss amongst the tortfeasors, considering the basis of liability and other factors. From this main rule there are several modifications regarding different branches of the insurance business.

Practice from the Norwegian Supreme Court suggests that personal injury caused by multifactorial causes should not be compensated. If anxiety and social conditions are cooperative causes to the persisting health problems of the claimant, the accident is considered insignificant and compensation is denied.

In Norwegian social security law the doctrine of main course is sustained.

Under the Norwegian Insurance Act there might be argued that a main cause doctrine still is the legal basis. Norwegian Natural Perils Pool states that when to causes

is necessary for the natural damage, only the main cause is considered responsible. Only if the cause is a covered risk insurerer is responsible.

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

Several remedies are available to insurers for breach of policy conditions depending on the type of breach and, in some cases, the type of insurance. If insurance fraud is proved by the insurer, the policy would typically be terminated and compensation denied. Specific rules in The Norwegian Insurance Act will apply if the insured fail to pay the insurance premium.

If the insured under a casualty insurance in the claim settlement deliberately provides wrongful or incomplete information that he/she must understand may lead to a settlement he/she is not entitled to, he/she will lose all rights to compensation. The insured will as the main rule lose not only the compensation for the items involved in the fraudulent act, but any claims against the insurerer for any insurance agreement connected to the same incident. The regulations is found in The Norwegian Insurance Act paragraph 8-1, section four.

If the premium is not paid before the time limit for payment has come, and the insureds responsibility is ongoing, the insurer must send a new notice of premium with no less than 14 days for payment to be free of responsibility. The notice must clearly state that the insurance will be determined if premium is not paid in time.

Reduction of the claim is possible where the insured fails to fulfil conditions of care for the insured item. Under a casualty insurance the claim may be reduced or lost if the insured has acted with gross negligence. If the insured in personal insurance contributes to the accident by gross negligence, the liability of the insurers may be reduced or dropped. This may also be the result if the insured has caused the incident through the breach of a safety regulation.

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

The main rule in Norway is that the insureds minor or unintentional breach of policy terms, will not reduce their right to payment. This is especially the rule for consumer insurances, both related to casualty and personal insurance.

In the policies for trade insurances, insurers cannot

except minor or unintentional breach of policy terms from coverage. Even when it comes to the safety regulations, the insureds breach of policy needs to be significant. In a ruling from The Norwegian Supreme Court (HR-2004-1719) the court decided that the right to compensation was lost. In this case there was a breach of the safety regulations regarding staffing of a value transport, and both parties agreed that the insured had acted with gross negligence.

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?

The Norwegian Insurance Act regulates when a breach from one person affects the rights of another person under the insurance cover. As a main rule the regulation implies that insurer cannot assert a breach from one of the policyholders to refuse a claim from another. Identification is for consumers allowed in some detailed exceptions for motor- and house insurances, cfr, Section § 4-11.

For trade insurances according to The Norwegian Insurance Act paragraph 11, third section, the insurer may in the insurance terms, with some limitations, decide that the insured partly or in full will lose his claim as a consequence of actions or omissions from specified persons or groups of persons. These persons will normally be leading individuals in the insured company.

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

Where insurers decline cover for claims, the policyholders would still be required to comply with policy conditions.

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

The assessment of the quantum differs in tort law and insurance law.

The main rule in tort law is that the claimant should be compensated in full for his individual loss. In a personal injury case the claimant should be fully compensated for occurred and future loss of income, expenses and for permanent medical disability. The range of controversial

points are substantial as Norwegian tort law is mainly based on case law. Any payment that the injured party has received from the public Social Security will be deducted from the claim. The Social Security is not entitled to claim recourse from the tortfeasor for its payments to the injured party.

Under the insurance law the controversial points are more limited as most policies within the personal lines operate with fixed sums for compensation. When it comes to health insurances the parties might disagree if the disease occurred before the policy was set in force. In accident insurances it for example can be argued how significant the injury is according to the disablement table.

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?

Normally, the compensation will be based on the reinstatement costs. Pre-existing plans for change might be relevant to the calculation of recoverable loss under property insurance. Conditions about denial of compensation for property about to be replaced could be considered legal. Given the strict regulations for protection of consumers, the plan for change must be quite definite before such terms are upheld. For buildings or part of buildings the compensation will be limited to the parts of the building that was useful prior to the insurance incident. Expenses for demolition that the insured would have had even if the incident did not occur, are excluded from compensation.

Conditions limiting insurers liability for old parts of the building is common in Norwegian practice. By example; if an insurance event occur as a consequence of the wear and tear of old pipes for leading water in and out of the house, the compensation for these pipes will be reduced according to their reduced value.

Other pre-existing plans are not relevant to the calculation of the recoverable loss. If the policy holder rebuilds a building with a different purpose than what the damaged building had, the compensation will normally be based on the market value of the damaged building and not on the reinstatement costs.

24. After paying claims, to what extent are insurers able to pursue subrogated recoveries against third parties

responsible for the loss?

Insurers may, in accordance with the main rule in Norwegian law, pursue subrogated recoveries against a third party that is responsible for the loss. Denial of recourse requires a proper legal basis.

In liability insurance the insurer may be responsible towards claimant even if his not responsible towards the insured. In such cases, according to The Norwegian Insurance Act Section 7-7, insurer could claim for recourse from the insured he/she is to blame. An example of this is the situation where the insured has failed to comply with his/her duty to notify the insurers of the incident (Section 8-5).

In insurance for workers compensation insurer may claim for recourse against any third party responsible for the loss. According to The Workes Compensation Act Section 8 first paragraph, the employer is however not responsible towards the employee (or the insurer) for claims made according to the Act.

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

There are no specific rules in Norway that the insured company must be solvent as a condition for raising a claim under the policy. The policies are not set out of force because the insured becomes insolvent.

26. What are the significant trends/developments in insurance disputes within your jurisdiction in recent years?

One significant trend in Norwegian insurance disputes is the significant increase in cases before the courts regarding negligence or other liability for Norwegian municipals. Child welfare authorities and Schools are in increasingly numbers taken to court for alleged

psychological injuries. The claimants are both persons that has og has not been under public care, former pupils and their parents.

In tort law the claims are becoming more complex. The claims are also becoming larger. Historically, claims have been quite modest in Norway, but we see a clear development in bringing Norwegian law closer to what we see abroad.

The insurance industry is consinuing its focus on recourse.

New legislation and practice under The European Union open for disputes in different themes. A common question is if Norwegian Law is in accordance with the compulsory legislation from the EU.

Qustions regarding regulatory issues are common in the Norwegian practice.

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

The biggest growth areas within the insurance dispute sector in Norway is probably the rapidly increasing number of claims made against public administration. There is a wide range of possibilities for errors in public administration that may give cause for insurance dispute within the liability lines. Most local municipals are insured. The government is in most cases self insured.

As the weather is more unpredictable and more extreme weather is expected, the expectations towards public authorities is elevated. Local plans for development and housing is under siege. Local plans becomes quickly outdated as a consequence of the climate changes. In the Norwegian practice local municipals has been held responsible for the lack of updated risk information when opening for building homes in areas that later shows a greater risk than estimated.

Contributors

Terje Marthinsen
Attorney at Law/Partner

tm@klco.no



Jan Aubert
Attorney at law/Partner

ja@klco.no

