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Ukraine

Insurance Disputes

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

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Ukraine: Insurance Disputes

1. What mechanism do insurance policies usually provide for resolution of disputes between the insurer and policyholder?

In Ukraine insurance policies usually provide for negotiations and a judicial mechanism for resolving coverage disputes. Insurance contracts typically include detailed terms and conditions for insurance settlement, including a detailed list of documents to be provided to the insurer by the policyholder, the right of the insurer to request additional documents, to order expert examinations, the timeframe for the insurer to review these documents, etc.

The insurance settlement is completed either by the insurer's decision to pay the insurance indemnity or by the insurer's decision to refuse to pay the insurance indemnity, with justification of the reasons for the refusal. Insurance contracts also include dispute resolution clauses. These terms contain a general rule that the parties will negotiate to resolve a dispute over insurance coverage, and if they fail to reach an agreement, their dispute will be resolved by a competent court.

In practice, the parties usually do not conduct negotiations after the insurer denies the indemnity, as the parties' position on coverage is disclosed at the stage of insurance settlement and negotiations on the payment of insurance indemnity may be conducted at the same time. If the insurer makes a written decision to refuse to pay the insurance indemnity, this decision is usually final and not subject to revision during negotiations. The policyholder thereupon refers the dispute to the court.

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

No. There is no protocol governing pre-action conduct for insurance disputes in Ukraine. Ukrainian legislation does not oblige the parties to conduct pretrial settlement of a dispute. Pre-trial settlement for insurance disputes is not mandatory. A policyholder, insurer, or beneficiary has the right to file a lawsuit if one believes that one's right or interest has been violated.

The legislation of Ukraine contains a general procedure for submitting pretrial demands, requirements for their content and terms of consideration, for the purposes of pre-trial settlement of disputes. In particular, a person whose rights or interests have been violated may file a written demand to the counterparty in order to directly settle the dispute with them.

The demand shall contain the following: full name and postal details of the claimant and the person(s) to whom the claim is made; date of filing and claim number; circumstances underlying the claim; evidence supporting these circumstances; claimant's demands with reference to regulations; claim amount and its calculation if the claim is subject to monetary evaluation; payment details of the claimant; list of documents attached to the demand. Documents supporting the claimant's demands shall be attached in originals or duly certified copies. Documents held by the other party may not be attached to the claim. The demand shall be signed by an authorized person of the claimant or their representative and sent to the addressee by registered or valuable mail or handed over to the addressee against receipt.

The demand shall be considered within one month from the date of its receipt, unless another term is established by other legislative acts. The recipient of the demand is obliged to satisfy the claimant's reasonable claims. However, in practice, the parties do not use this procedure, but are guided by the provisions of the insurance contract.

3. Are local courts adept at handling complex insurance disputes?

Ukrainian courts are capable of handling complex insurance disputes, but in the vast majority of cases, such disputes typically arise out of legal relations governed by Ukrainian law. Unfortunately, Ukrainian courts do not have extensive experience and practice in resolving insurance disputes involving foreign companies (reinsurers, syndicates, managing agents) yet, as well as in applying the terms and concepts of the Lloyds insurance market, insurance law derived from English law, in particular, the Cut Through Clause, Claim Control Clause, Trend Clause, Cutting Clause, etc., standard terms and conditions of aviation and marine insurance, political risk insurance.

On the top of that, Ukrainian courts do not have much experience in cases where a court decision may affect the

rights or obligations of reinsurers in relation to Ukrainian insurers (reinsureds) and there is a need to involve foreign reinsurers as third parties. In view of this, when Ukrainian courts resolve insurance disputes arising out of the conclusion (amendment, termination), contestation (invalidation), or performance of insurance or reinsurance contracts governed by English law, it may be necessary to clarify the actual content of the contracts or foreign law, in particular, by obtaining opinions of English law experts on the content of English law and the practice of its application by English courts. Such opinions may be provided by legal practitioners or scholars who have a scientific degree and are recognized experts in the field of law.

4. Is alternative dispute resolution mandatory?

No, alternative dispute resolution is not mandatory in Ukraine. However, the parties to an insurance dispute may, by mutual agreement, apply to a mediator or enter into an agreement to refer the dispute to an arbitral tribunal or arbitration court.

In this regard, Ukrainian procedural law provides that a court shall dismiss a lawsuit if the parties have entered into an agreement to refer the dispute to an arbitral tribunal or international commercial arbitration given that the defendant has filed objections to the resolution of the dispute in court no later than the commencement of the merits of the case but before the filing of the first statement of the merits of the dispute, unless the court finds that such an agreement is invalid, expired or cannot be enforced.

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

Under Ukrainian procedural law, a party that wins a dispute in a state court is entitled to reimbursement of court costs incurred in connection with the proceedings, including legal fees, court fee, expenses related to the engagement of translators, experts, expert examinations, etc., at the expense of the other party. Court costs shall be supported by appropriate primary documents, including contracts, invoices, acts of services rendered, documents confirming the scope of services rendered, the amount of time spent, etc.

The losing party has the right to file a motion to reduce the amount of costs if it does not agree with the amount claimed. The issue of awarding court costs is decided by the court based on evidence submitted by the party, the reality of the costs (establishing their validity and necessity), the reasonableness of their amount, considering the specific circumstances of the case and the financial condition of both parties.

The Ukrainian court is not obliged to award the party in whose favour the judgment was rendered all of claimed expenses if, based on the principles of fairness and the rule of law, it finds that the amount of the fee agreed by the party and its lawyer is excessive in relation to the other party to the dispute, taking into account the complexity of the case and the time spent by the lawyer.

Furthermore, Ukrainian law and court practice provide for the possibility of agreement between the party and the lawyer to pay the latter an additional remuneration for winning the case ('success fee').

During the handling of insurance disputes in arbitration and arbitral tribunals in Ukraine, policyholders in whose favour a decision is made may also be reimbursed for expenses incurred in connection with the dispute on the basis of previously submitted supporting documents.

6. Is there an appeal process for court decisions and arbitral awards?

Yes, the proceedings in Ukrainian courts provide for the right to an appeal review of the case, as well as the right to a cassation appeal in cases specified by law.

A party to a lawsuit that disagrees with a court decision of the first instance court has the right to file an appeal. Depending on the type of proceedings (civil or commercial), the time limit for filing an appeal against a court decision on the merits is 30 or 20 days, respectively; the time limit for cassation appeal is also 30 or 20 days, respectively.

In respect of arbitral awards, there are two court procedures in Ukraine: 1) recognition and enforcement of international commercial arbitration awards, and 2) appeal against an international commercial arbitration award if Ukraine is the place of arbitration.

Under the first procedure, the Ukrainian court decides on recognizing and enforcing an international commercial arbitration award in Ukraine, verifying the legal grounds for the binding nature of such an award, as well as whether the arbitration court complied with the formal requirements for consideration of the case.

In the second procedure, the Ukrainian court considers whether the international arbitration has complied with the formal requirements for consideration of the dispute

and decides to set aside the award in full or in part or to refuse to do so. Both procedures involve filing relevant applications/complaints with the general court of appeal as a court of first instance. Appeals in these procedures are filed with the cassation court – the Supreme Court as the court of second instance. Ukrainian law does not provide for cassation appeal in the following procedures.

7. How much information is the policyholder required to disclose to the insurer? Does the duty of disclosure end at inception of the policy?

Policyholders are required to disclose to insurers all the known information that is material to the insurer's decision to enter into an insurance contract. The amount of information that the policyholder must provide to the insurer depends on the type of insurance and its terms and conditions.

Before entering into an insurance contract, the policyholders must fill out a written application for insurance, in which they inform the insurer of the circumstances known to them that are essential for assessing the insurance risk (determining the probability and likelihood of an insured event and the amount of possible losses), and/or provide with other information that is essential for the insurer to make a decision on entering into an insurance contract, including the existence of an insurable interest, and/or the amount of the insurance premium under the insurance contract, the object of insurance, and other insurance contracts covering the insured object.

The duty of disclosure does not cease at inception of the policy. The policyholder is obliged to notify the insurer during the term of the insurance contract of any change in circumstances that are material to the assessment of the insurance risk (determining the probability and likelihood of an insured event and the amount of possible losses) and/or other circumstances that affect the amount of the insurance premium under the insurance contract.

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?

The insurer may refuse to enter into an insurance contract if the policyholder fails to provide sufficient information. If, after the conclusion of the insurance contract, it is established that the policyholder has provided false information about the object of insurance, circumstances that are essential for assessing the insurance risk, or the fact of the insured event, this may be grounds for refusing to pay the insurance indemnity or to invalidate the insurance contract under a court decision. There is also the right of the insurer to claim damages. If the insured's failure to disclose information has caused financial losses to the insurer (e.g., reduced premiums), the insurer may seek damages in court.

The policyholder's state of mind at the time of entering into the insurance contract may be relevant if it is proved (established) that the policyholder did not understand the consequences of their actions and/or could not control them at the time of entering into the contract. This may be grounds for invalidating the insurance contract in court.

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

At the same time, the civil law of Ukraine, which regulates all types of contracts, including insurance contracts, establishes general prohibitions on some contracts. For instance, it stipulates that the content of a contract may not contradict the Civil Code of Ukraine, other acts of civil law, as well as the interests of the state and society, and its moral principles. A contract may not violate a public order (be aimed at violating the constitutional rights and freedoms of a person and a citizen, destroying or damaging property of an individual or legal entity, the state, a territorial community, or unlawfully taking possession of it). Contracts may not contain provisions that exclude or limit liability for intentional breach of an obligation, or provisions that waive the right to apply to court. A waiver of the right to apply to court is invalid.

An insurance contract may not contain a provision introducing the limitation period for the policyholder's claim against the insurer for an insurance indemnity (Ukrainian law provides that the limitation period does not apply to a claim by the policyholder (insured person) against the insurer for an insurance indemnity).

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

Ukrainian legislation does not provide for the concept of 'utmost good faith'. Instead, Ukrainian civil law is based on the principle of good faith, which is realized in the policyholder's obligation to provide all necessary information about themselves, the subject, object of insurance and insured interest, circumstances that are essential for assessing the insurance risk, and the

insurer's obligation to provide full information about themselves, the insurance product, insurance terms and conditions.

The absence of a contractual relationship between the parties prior to the conclusion of the contract does not mean that the parties have no obligations to each other at the pre-contractual stage. Even though the parties are not already bind by a contract, they are required to act lawfully, namely, to behave in good faith, reasonably consider counterparty's interests, and refrain from unfair acts or omissions.

Good faith is a certain standard of behaviour characterized by honesty, openness and respect for the interests of the other party to the contract or the relevant legal relationship. The principle of fairness, good faith and reasonableness includes, i.a. the obligation of a person to consider the needs of other persons in civil turnover, exercise reasonable care, negotiate in good faith, act in accordance with their previous statements and the rules of fair business practice (prohibition of contradictory behaviour). The principle of good faith is a general legal principle, and Ukrainian courts are increasingly applying it in practice.

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

Ukrainian law and common practice in the insurance market do not make a significant distinction between consumer and non-consumer insurance contracts, so implied terms are common to both types of contracts.

Other implied terms that apply to insurance contracts include, in particular, terms and conditions that provide for 1) the insurer's obligation to provide the policyholder with information about the insurer, licenses and ways to check their relevance, the list of services, the procedure, terms and conditions of insurance, payments to be made by the policyholder, and mechanisms and ways to protect the rights of financial services consumers before entering into an insurance contract; 2) the policyholder's obligation to inform the insurer of the circumstances known to the policyholder that are essential for assessing the insurance risk and the insurer's decision to enter into an insurance contract, to provide information about the object of insurance, the existence of other insurance contracts covering the same object against the same risks ('openness principle', 'reasonable notice of risk'); 3) the existence of a direct causal relationship between the insured event and the loss incurred by the policyholder; 4) the policyholder's obligation to take all possible measures to prevent the occurrence of an insured event and mitigate the consequences of an insured event, if provided for by the terms of the contract ("the principle of prevention and minimization of losses"); 5) the insurance indemnity may not exceed the amount of direct damage caused to the policyholder and/or other person provided for in the insurance contract.

12. 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?

Ukrainian law does not limit the insurer's right to defence depending on the type (class) of insurance and/or the actual beneficiary under the insurance contract. As a rule, insurers exercise their right to defence by rejecting the insurance claim on the grounds that an incident is not covered by an insurance policy, or it falls within the exclusions of the coverage.

13. What is the usual trigger for cover under insurance policies covering first party losses, or liability claims? Are there limitation periods for the commencement of an action against the insurer?

As a rule, a fact of damage to the insured property, health or life of the policyholder, beneficiary or insured person is a legal ground for 'activation' of insurance coverage under an insurance contract. No limitation period is applicable to a claim of the insured (the insured person) against the insurer for an insurance payment (insurance indemnity).

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

Standard terms and conditions of voluntary property insurance usually do not cover the following types of losses: 1) losses caused by military and political risks (Political Violence Insurance); 2) losses caused by nationalization, confiscation, expropriation of property (CEND Insurance); 3) losses caused by cybercrimes or illegal interference with computer equipment (Cyber Insurance/Cyber Crime Insurance); 4) losses caused by radiation and radiation contamination (Nuclear Exclusion).

In addition, indirect losses (lost profits, non-pecuniary damage, fines, penalties and other sanctions) are generally not covered by the insurance contract

(insurance company), unless otherwise provided for in the insurance contract.

15. Do the courts typically construe ambiguity in policy wordings in favour of the insured?

The courts are obliged to construe ambiguity in policy wordings in favour of the insured in one case only: if there is any ambiguity in the terms of an insurance contract regarding the insured's obligations.

In all other instances, the courts are guided by the general principles of contract interpretation: ambiguous wording in contract is to be interpreted in accordance with its meaning, the true will of the parties, and the customs of business. If this rule proves impossible to implement in determining the true meaning of the relevant term, the court may apply the principle of 'contra proferentem', i.e. interpret the ambiguity against the party that drafted the contract (the insurer).

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

The 'but for' or 'proximate' test of causation is not used in Ukrainian law or in court practice to determine the causal relationship.

Insurance laws and insurance contract terms usually require a direct causal link between the losses (consequences of an insured event) and insurance perils as a prerequisite for insurance indemnity.

In some cases, depending on the circumstances, a causal link can be verified by expert examination. An expert opinion may be provided at the request of a party to the case or upon a court ruling on call for examination. An expert examination may be appointed by the court either at the request of a party to the case or by its own initiative if technical knowledge is required to estimate the cause(s) of damage and any party has provided an expert opinion on the same.

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

The law stipulates that an insurance contract applies only to those losses that are covered by the insurance coverage (have a causal link with the insured perils).

If the loss is stemmed from multiple causes, the insurer must determine a definite part of the loss directly stemming from the insured peril(s) and, consequently, covered by the policy.

In view of that, the insurance indemnity shall be paid only in respect of the part of the losses covered by the policy. Sometimes insurance contracts stipulate that if it is not possible to determine to what extent losses are caused by insured risks and to what extent by other causes that are not insured risks, this may be grounds for refusing to pay insurance indemnity.

18. What remedies are available to insurers for breach of policy terms, including minor or unintentional breaches?

Depending on the nature of the policyholder's breach of the insurance contract, the insurer has the right to: 1) refuse to pay the insurance indemnity; 2) reduce the amount of insurance indemnity; 3) file a claim for invalidation of the insurance contract; 4) consider the insurance contract terminated (in accordance with the law or the terms of the policy); 5) recover damages or loss caused by the insured's actions (or lack thereof).

19. 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?

Insurance law is silent on this issue, so this specific case may be regulated by the terms of the insurance contract. However, if the contract is entered into by the policyholder in favour of the insured person or a third-party beneficiary, the policyholder's failure to fulfil its obligations to pay the insurance premium may result in termination of the insurance contract, i.e. termination of insurance coverage for all.

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

No. Policyholders are no longer required to comply with policy terms and conditions. The law does not impose an unconditional obligation on the insured to comply with the provisions of the insurance contract.

In this case, everything depends on the will of the policyholder. If the policyholder intends to continue the legal relationship with the insurer and/or there is still a need/sense to continue the contract, the policyholder may, but is not obliged to, continue to comply with the

terms of the insurance contract even after the insurer refuses to pay the insurance coverage.

At the same time, the policyholder has the right to cease paying insurance premiums, which results in termination of the contract. The insurer is not entitled to any legal mechanisms aiming to oblige the policyholder to continue the performance of the insurance contract, i.a. paying the insurance premiums.

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

The insurer pays the insurance indemnity in accordance with the terms of the contract, in particular, considering the real value of the property (amount of loss), deductible, depreciation of the property, and insurance limits.

A loss adjuster or an insurance company's expert assesses the damage. Depending on the insured property, the assessment of the value of the loss may involve an external expert(s) in the relevant field.

The parties may agree on the amount of damage and compensation at their own discretion, without any expert assessments, by signing an agreement to this effect.

If the sum insured is a certain proportion of the real value of the insured property, the insurance indemnity shall be paid in the same proportion of the real value of the insured property, unless otherwise provided for in the terms of the insurance contract.

22. 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?

This issue is not regulated by insurance law but may be regulated by the terms of the insurance contract at the parties' discretion.

23. After paying claims, are insurers able to pursue subrogated recoveries against third parties responsible for the loss? How would any such recoveries be distributed as between the insurer and insured?

An insurer that has paid an insurance indemnity under a property insurance contract acquires the right to claim against the person responsible for the damage to the extent of the amount of payment. Since the insurer is entitled to recover from a third party only up to the amount of the insurance indemnity paid, such recoveries will pass solely to the insurer. Furthermore, the insured party reserves the right to demand the reimbursement of losses not covered by the insurance indemnity from the third party.

24. Is there a right to claim damages in the event of late payment by an insurer?

In accordance with the applicable legislation pertaining to the repercussions of a breach of obligation, the insured is entitled to claim for damages caused by a delay in the payment of insurance indemnity. In such instances, the insured party is obligated to provide substantiated evidence that validates the occurrence of the loss and the existence of a demonstrable causal link between the delay and the loss. It is rare for Ukrainian insurance market participants to use this remedy to restore their rights.

The liability of insurers for late payment is typically confined to the imposition of a penalty (fine) in the amount established by the insurance policy or law, inflationary costs, and three percent per annum of the overdue amount, unless another interest rate is established by contract or law.

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

Yes. Claims can be made against insurance policies taken out by companies that have since become insolvent.

If an insurer entered into an insurance contract has become insolvent and subject to bankruptcy proceedings, the policyholder has a right to lodge the monetary claims against such an insurer in bankruptcy proceedings.

If the policyholders' monetary claims against the insurer under the insurance contract arose after the commencement of bankruptcy proceedings, the policyholder a the right to file a claim against the insurer within the bankruptcy proceedings.

Also, insureds under insurance contracts that are terminated due to the court declaring the insurer bankrupt and opening a liquidation procedure have the right to demand a refund of the insurance premium paid to the insurer. This refund is proportionate to the difference between the term for which the insurance

contract was concluded and the term during which the insurance contract was actually in force.

On the top of that, a specific mechanism for protecting the rights of policyholders has been established in the field of civil liability insurance for vehicle owners. Insurers that intend to carry out activities in the field of civil liability insurance for vehicle owners are required to participate in the Motor (Transport) Insurance Bureau of Ukraine (MTIBU) and pay premiums that form a special fund. In the event of bankruptcy of an insurance company participating in the MTIBU, losses are reimbursed from the fund.

26. To what extent are class action or group litigation options available to facilitate bulk insurance claims in the local courts?

Currently, Ukrainian legislation does not explicitly provide for the possibility (mechanisms) for filing class actions, including in the insurance sector. However, participation of several claimants and (or) defendants (procedural complicity) is allowed if: 1) the subject matter of the dispute is the common rights or obligations of several claimants or defendants; 2) the rights or obligations of several claimants or defendants arose from the same ground; 3) the subject matter of the dispute is homogeneous rights and obligations.

27. What are the biggest challenges facing the insurance disputes sector currently in your region?

The most significant current challenges in the field of insurance litigation are arising from martial law, leading to disputes over payment of insurance indemnity under the War and Political Risk Insurance Policies. These policies are commonly reinsured by foreign insurers and governed by foreign law. Responses to questions 3 and 30 make it clear that Ukrainian courts sometimes lack the expertise to effectively resolve complex insurance disputes involving foreign reinsurers and legal concepts that are not inherent in the Ukrainian legal system. Consequently, the timely resolution of such disputes poses a significant challenge to Ukrainian courts.

Wartime circumstances lead to an increase in the number of insurance events (damage (or loss) to property, health or life). This, as a result, increase the number of insurance disputes, which can place a notable burden on the respective courts.

28. How do you envisage technology affecting insurance disputes in your jurisdiction in the next 5 years?

Technology has already had a significant impact on dispute resolution in Ukraine and is increasing its influence every year. For example, the Ukrainian justice sector has an electronic court system that allows for the filing of documents with the court, the receipt of procedural documents and participation in court hearings online.

Ukraine is taking steps towards implementation of artificial intelligence (AI) in the judiciary. The use of AI in judicial proceedings was the subject of discussion in the Supreme Court, dedicated to the Opinion of the Consultative Council of European Judges (CCJE) No. 26 (2023) of 1 December 2023 'Moving forward: the use of assistive technologies in the judiciary'. However, there are currently no specific provisions in the current legislation on the use of AI for analysing case materials, resolving disputes, or drafting judgments, and only general provisions on digitalisation and automation of justice exist, which do not define specific mechanisms or restrictions for AI. In other words, there are currently no clear legislative acts in Ukrainian legislation that would define the legal status, scope and responsibility for the use of AI in the judicial system.

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

Since 2014 (after the occupation of Donetsk and Luhansk Regions by Russia and the annexation of the Crimean Peninsula) and in recent years, Ukraine has seen a significant increase in disputes related to losses caused by political (military) risks (Political Violence Insurance). These disputes relate to losses incurred, in the vast majority, to large property objects (commercial and industrial complexes, wind and solar power plants, ships and aircrafts, terminals, elevators, equipment, inventories) located in the insured territories affected by military operations. There has also been an increase in the number of disputes over losses caused by business interruption caused by the destruction or damage to the insured property or restriction of business activities as a result of military actions.

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

In our opinion, as of now, the main growth areas in the insurance disputes sector in Ukraine are court disputes over Political Violence Insurance, under insurance (reinsurance) contracts with the participation of foreign insurance companies of the Lloyds insurance market, which contain elements, concepts, doctrines of English insurance law that are not well-known for Ukrainian legislation, court practice and doctrine.

Currently, there are very few examples of court practice in the named cases. However, we expect that the Supreme Court upon reviewing of the insurance disputes as a cassation instance will guide the lower courts by forming the court practice that addresses complicated legal concepts of the foreign insurance law.

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