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Disputes Related to the Insurance Contract in Algerian Law

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Abstract

The insurance contract, like any other contract, gives rise to disputes between the parties when executed. These disputes are often resolved amicably between the insurer (the insurance company) and the insured, either through compensation provided by the insurer to the insured in the event that the value is simply estimated, or if this is not possible, the insurance company may call upon experts to carry out this process. Alternatively, the parties may resort to the judiciary if amicable solutions fail, and in such cases, local and specialized jurisdictional rules must be respected, otherwise, the lawsuit will be rejected.

Keywords: *Insurance, Disputes, Lawsuits, Jurisdiction.*

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Introduction

The insurance contract, as a type of private contract, is characterized by a set of features that distinguish it from other contracts. It is a contract of adhesion, where one of the parties, the stronger party, imposes its terms on the other. In such contracts, the insured has no freedom to negotiate or amend the terms of the contract, in addition to the unique nature of the risks arising from disasters covered by major insurance operations[1]. These issues can lead to conflicts and disputes between the parties to the contract.

Disputes arising from insurance contracts are typically resolved by mutual consent, with the parties agreeing on one of the solutions commonly followed in this field.[2]

At times, the parties may resort to litigation to resolve their disputes through the judicial process.[3]

To what extent has our Algerian legislator succeeded in defining the legal means and mechanisms for resolving disputes related to insurance contracts?

Objectives of the Study

This research aims to:

Attempt to distinguish between methods of settling disputes arising from insurance contracts, both amicably and through the judiciary, and how to address them.

Study the types of lawsuits arising from insurance contracts to help distinguish them from lawsuits not related to the insurance contract.

Shed light on judicial jurisdiction when resorting to the judiciary to settle disputes, by studying both local and specialized jurisdiction to prevent the rejection of lawsuits before the courts.

In order to analyze and study our topic, we decided to divide it into two main axes. The first axis is dedicated to studying methods of settling disputes arising from the insurance contract, which is further divided into two sections: one that covers amicable settlements of disputes arising from insurance contracts, and another

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that addresses resolving such disputes through the judiciary. The second axis is dedicated to studying judicial jurisdiction (both specialized and local).

Insurance Disputes: Amicable Settlement vs. Judicial Settlement

Contracts in general, and insurance contracts in particular, often give rise to disputes over their implementation or interpretation. The parties seek to resolve these issues through various methods.

Disputes arising from insurance contracts are often resolved by mutual consent, where the parties agree on a solution by means of amicable settlement.

At times, the parties may resort to litigation, following the procedures for filing a lawsuit before the competent judicial authorities.

Amicable Settlement Methods

In most cases, disputes arising from insurance contracts are settled amicably. An amicable settlement involves covering the damages caused by the risk, by mutual consent between the two parties. When the insured event occurs, the insurer provides the insured with a sum of money to cover the damage to the insured object, after the insured has notified the insurer about the occurrence of the risk. This process ends with both parties signing the agreement they reached[4], and this typically applies only in simple disputes.

In other cases, the parties resort to experts to estimate the damage and the reasons for its occurrence, each according to their specialization. Given the nature of the risk covered by the insurance, it requires a qualified and accredited person to assess the damage caused by the event, regardless of its type (e.g., car accidents, fires, etc.).

In this regard, the Algerian legislator has set several standards and conditions for those qualified to practice this profession. The 1995 Insurance Law provides the general rules for managing the profession of experts in Articles 296, 270, 271, and 273. Article 269 outlines the purpose of expertise, which is to investigate the causes, nature, and extent of the damage, as well as to guide the parties and assess the damage while ensuring the insurance coverage.[5]

To practice this profession, the legislator requires experts to have the necessary expertise and competence to perform their tasks. Additionally, they must obtain accreditation from the relevant authorities before practicing their activities, according to the conditions defined by Executive Decree No. 96-46. Whether the expert is a natural or a legal person, the conditions apply equally.

As for insurance adjusters, the legislator has defined their tasks in Article 270 of the 1995 Insurance Law and specified the conditions for practicing this profession in the aforementioned Executive Decree.

Experts and insurance adjusters, in performing their duties, must adhere to neutrality, objectivity, and independence from both the insurer and the insured. They are also required to maintain professional confidentiality regarding any matters they have reviewed, whether related to customers or insurance companies. In doing so, they must perform their duties in accordance with the law, established customs, and traditions in this field.

The 2006 amendment to the Insurance Law introduced the role of actuaries in Article 270 bis. Actuaries are individuals qualified to conduct studies in the financial, economic, and statistical domains for creating or modifying insurance contracts. They assess the damages and costs for the insured, determine premium amounts based on the company's profitability, monitor operational results, and oversee the company's financial reserves (Article 270 of the Insurance Law). Finally, experts and insurance adjusters are required to issue reports on their activities and provide copies to both the insurer and the insured within the period specified in the insurance contract (Article 10 of Executive Decree 07-220 mentioned earlier).

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The amicable dispute resolution method often involves compromises by insurance companies, which may sometimes forgo part of their rights to gain customer trust and maintain relationships. However, this goal can conflict with their objective of pooling capital through major insurance risk coverage, and significant payouts for catastrophic damages often make amicable resolutions ineffective in such situations.

Additionally, the heavy burden of responsibility placed on insurance companies, due to the high-risk nature of their daily operations, necessitates a fair judicial mechanism to resolve insurance disputes. Such a mechanism could foster stability in the insurance market, safeguard the rights and interests of policyholders, and balance the high risk and extensive coverage obligations borne by insurance companies. This would ultimately reassure all parties involved in the insurance transaction in the event of a dispute.

I also believe it is necessary to establish a quasi-judicial mechanism to resolve insurance disputes, which would rely on arbitration and have a special nature that accounts for the interests of both parties. This mechanism would need procedures and arrangements tailored to the technical complexity of insurance operations.

It is worth noting that some Arab countries have established special bodies[6] to settle insurance disputes, as exemplified by Syria's law, which introduced a mediation system for insurance disputes. Article 14 of the decision establishing this body stipulates that it should take all necessary measures to bring parties closer together with the aim of resolving insurance disputes. In cases where the nature of the dispute requires technical knowledge of insurance operations, experts may be appointed to provide insights. Their tasks and the timeframe for completing them are specified, all under the supervision of the mediation committee.

Other Arab countries, such as Saudi Arabia, have adopted arbitration as the preferred method for resolving insurance-related disputes instead of resorting directly to the judiciary, thereby preserving trust between insurance companies and their clients.

Additionally, countries like Jordan utilize mediation and arbitration and have established a special committee called the "Insurance Dispute Resolution Committee." This committee, formed by the Director General of the Insurance Authority, comprises experienced and specialized members who address insurance disputes after the complainant has exhausted amicable resolution methods with the insurance company. The committee's decisions are binding for the insurance company but not for the complainant, who may still turn to the judiciary if dissatisfied.[7]

The Algerian legislator has referred to the arbitration system within the framework of the Algerian Civil Law, stipulating that if the parties agree to arbitration, an arbitration clause must be included in the insurance policy and cannot be incorporated within its general terms.

In practice, arbitration is considered one of the best mechanisms for resolving insurance disputes.

Regardless of the method, experts conclude their tasks by issuing reports containing recommendations, suggestions, and solutions, which are often accepted by the parties. However, in some instances, one party may reject the expert's findings, necessitating a resolution through judicial means.

Judicial Settlement of Disputes

Here, we must distinguish between lawsuits arising from the contract itself and those arising from non-contractual matters, as this distinction affects the lawsuit in terms of jurisdiction and statute of limitations.

Lawsuits Arising from the Insurance Contract

At this juncture, we can only highlight a few types of lawsuits stemming from the contract, the most notable being:

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Contract termination lawsuits[8]

These follow the general rules outlined in the Civil Code and the Code of Civil Procedure, except in cases where termination occurs through mutual agreement or an explicit condition set by the insurance company as a penalty for non-payment of premiums or for the insured's breach of contractual obligations.

Action for Contract Nullification[8]

This is initiated by a party with a vested interest, such as the insured or insurer, seeking to nullify the contract if a fundamental element or key condition is flawed. An insurance company, for instance, may request contract annulment if it discovers that the insured engaged in fraud or provided false declarations hat misrepresent the real circumstances of the insured risk. The insured may also request the annulment of unfair conditions imposed by the insurance company in the policy, as stated in Article 622 of the Civil Code. Such conditions include clauses that deny compensation due to the insured violating laws or regulations, or delays in reporting an incident, even if the delay was due to a legitimate excuse. Other oppressive clauses in the contract's general terms, which harm the insured, can also be subject to annulment.

Action to Demand Payment of Unpaid Premiums: Filed by the insurer to collect due premiums the insured has not paid.[9]

Action to Recover Undue Compensation Received by the Insured: Filed to recover any compensation improperly obtained by the insured.

Action for Refund of Excess Premiums Paid by the Insured

Action to Claim Additional Premiums Due to Aggravation of the Insured Risk: Various claims that may arise from the insurance contract can be initiated by either the insured or insurer.

Non-Contractual Claims

Among the most significant are

Claim by an Injured Party against the Responsible Party Insured for Civil Liability

Claim by a Mortgagee or Lien Holder against the Insurer to Claim Insurance Amounts

Claim by an Intermediary Against the Insured for Recovery of Premiums Paid or Against the Insurer for Commission on Services Rendered, Particularly in Concluding Contracts or Collecting Premiums from Customers

Subrogation Claim by the Insurer against the Party Responsible for the Incident that Damaged the Insured: Due to the complexities in practical application, a review of its main aspects is appropriate.

Returning to the general rules of the Civil Code, subrogation is organized in both its legal and contractual forms, from Articles 261 to 275. Despite this structure, there is often confusion between legal and contractual subrogation, and between the subrogation contract itself and the release of debt that confirms the insurance company's compensation paid to the insured for damages caused by the liable party.

Judicial precedents have recognized subrogation claims as essential for establishing status, although they seem not to imply the subrogation contract itself. Rather, they may refer to the release of debt, which is necessary to pursue such claims as stipulated by Article 38 of the Insurance Law.[10]

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Subrogation claims require several elements[11]

The Insured Must Prove Ownership of the Insurance Right: This is done through the insurance policy.

Proof of Damage to the Insured Property: Provided the damage arises from a marine insurance contract and not other types of insurance.

Notification to the Inspection Authority: According to the terms set by the company in the insurance policy. This inspection is typically handled by a control office or a port inspection office.

Providing Evidence of the Cause of the Disaster: If possible.

Judicial Jurisdiction

The courts, at different levels, have jurisdiction over insurance-related disputes, whether contractual or non-contractual. It is necessary to distinguish between jurisdictional types and local jurisdiction as outlined by the Civil Procedure Code and the Insurance Law.

Local Jurisdiction

Previously, local jurisdiction for insurance disputes was governed by the general provisions in Articles 8 to 11 of the Civil Procedure Code, which did not specifically address insurance claims. According to Article 8/1, if there is no specific provision, jurisdiction lies with the court of the debtor's domicile. Alternatively, Article 8/5 grants jurisdiction to the court where the company's headquarters is located, applicable when the dispute involves a company, as insurance was exclusively managed by state-owned companies until the 1995 Insurance Law was enacted.

Given the ambiguity in this matter, the legislator clarified local jurisdiction under the new insurance law as follows:

*Claims regarding the determination and payment of compensation fall under the jurisdiction of the court where the insured's domicile or residence is located, regardless of whether the claimant is the insured or insurer. However, there are exceptions to this general rule:

*Claims relating to real estate insurance fall under the jurisdiction of the court located at the property's site.

*Claims concerning movable property insurance are subject to the court within the jurisdiction of the insured items' location.

*Claims regarding accident insurance of any kind fall under the jurisdiction of the court where the harmful act occurred.

Subject-Matter Jurisdiction

The Insurance Law does not contain specific rules on subject-matter jurisdiction; instead, it follows the rules established in the Civil Procedures Law, as outlined in Articles 1 to 7.[12]

Jurisdiction for insurance claims is determined either by the legal nature of the contract itself or the nature of the act causing damage. Contracts are subject to the ordinary courts, either the civil branch at the courts and the civil chamber at the judicial councils if the contract is civil in nature, or the commercial branch at the courts and commercial chambers at the councils if the contract is commercial in nature. This classification depends on the contract's elements, such as its form, subject matter, and parties' status.[13]

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For an insurance company, the nature of the contract may vary: it can be commercial or civil depending on the type of company, whether it is a shareholding company, mutual society, or cooperative. In the first case, the insurance contract is commercial, while in the second and third cases, it is civil.[14]

It is worth noting that according to the recent amendment to the Civil Procedures Law, the legislator has introduced specialized courts at certain levels to exclusively handle specific disputes, including insurance disputes, maritime disputes, and air transport disputes (Article 32, CPC).

The same principle applies to the insured party: if they are a trader, the act is considered commercial, while for a civilian, it remains a non-commercial act. Consequently, jurisdiction aligns with the nature of the claim, whether civil or commercial.[15]

If one of the contracting parties is a foreigner, there must be an explicit and specific provision in the insurance policy determining the competent judicial authority. If the parties agree on arbitration, this clause must be stipulated within a separate agreement and cannot appear in the general terms of the insurance policy, as explicitly stated by Algerian law in the Civil Code's special rules regarding insurance contracts (Article 622/5 of the Civil Code).

An insurance contract may be mixed in terms of the parties' status: it may be civil for the insured and commercial for the insurer. In such a case, claims are raised based on the defendant's status, and the case is referred to the appropriate judicial body (either civil or commercial court).[16]

Insurance claims arising from acts punishable under the Penal Code are handled by criminal courts, including the misdemeanors branch in courts and the criminal chambers in councils, or criminal courts if the facts constitute a felony. These claims often arise in practice, particularly in traffic-related cases, including accidents caused by state officials, which are an exception to Article 7 of the Civil Procedures Law.

The state and its affiliated bodies are self-insured and represented in such claims by the Public Treasury Agent.

Conclusion

In the event of a dispute between the parties to a contract, the legislator has established solutions and mechanisms to resolve these disputes. This includes amicable solutions, where insurance companies offer indemnified policyholders' compensation equal to their losses, culminating in a signed release by both parties. Judicial recourse remains available if amicable solutions prove ineffective, requiring adherence to the local and subject-matter jurisdiction rules outlined by law to protect the weaker party in this relationship.

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