

IMPLICATIONS OF THE RIGHT OF INSURERS TO REQUEST INFORMATION FROM POLICYHOLDERS REGARDING A CLAIM

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Executive Summary:

- The right of insurers to request information from policyholders about a claim, provided for in the Insurance Contract Law (LCS), allows them to investigate the circumstances of claims without clear limits as to timing or frequency, which may generate legal uncertainty for policyholders.
- Although the courts have indicated that this power must be exercised in a reasonable and proportionate manner, the lack of precision in the LCS regarding the time limit for resolving claims or requesting information leaves room for possible abuses and affects the legal certainty of users.

In recent times, the need to have means of protection for our persons and assets has become more and more evident. As an example, we remember the unfortunate catastrophe that occurred in Acapulco, Guerrero, which devastated the tourist center, leaving its citizens, businessmen and even the government in an uncertain legal status, since most of them did not have a plan to respond to such contingency.

Therefore, it is important to create a culture to safeguard personal and material integrity by taking out insurance. For this reason, the insurance sector offers multiple services with the purpose of insuring life, health, assets, patrimony, among other matters. However, the regulations related to this sector still present several gaps and inconsistencies that have not been solved.

In particular, the Law of the Insurance Contract ("LIC") regulates the procedure to be followed in the event of a claim. First, before the insurer determines whether

or not the payment of the insured sum to the user is admissible or inadmissible, the LIC establishes a power in favor of the insurers to demand from the insured or his beneficiaries any kind of information on facts related to the loss through which the circumstances in which the loss occurred can be determined; however, up to what limit does this power extend?

The truth is that the referred law does not establish any type of limit or time limit for demanding information from the insured, it leaves the way open for the insurer to request information relating to the claim as many times as necessary, without any type of sanction or limit established in the LIC.

This could generate legal uncertainty for the users of the insurance companies, especially due to the time they have to exercise their action against them. In the case of damages insurance, they have a time limit of two years to claim the insured amount and in the case

of death coverage in life insurance it is five years.

In addition to the foregoing, a complete reading of the LIC reveals several grounds that enable the insurer to cancel the insurance contract and void its obligations with respect to the insured in the event of noticing any omission or inaccurate statement of information at the time of contracting the insurance. The latter, due to the fact that the insurance companies calculate the risks based on the declarations of the insured and thus offer a specific coverage for each user and the amount of the premium.

At the time of the occurrence of a loss, it is the responsibility of the insurance company to investigate through its employees the specific circumstances that led to the loss. However, this does not mean an absolute right on the part of the insurers to ask the insured for any kind of information without limitation.

Through diverse judicial criteria that has been issued recently, the Collegiate Courts have interpreted this faculty, determining that the investigation of information is carried out by insurance company professionals to determine the circumstances relating to the loss, but from a rational, adequate and appropriate requirement in accordance with the specific case, it does not mean that the burden of proof is shifted to the insured to obtain an effective proceeding of the claim against the insurer and much less that it corresponds to the insured to provide information that allows the insurance company to disassociate itself from its obligations.[1]

On the other hand, the Supreme Court of Justice of the Nation interpreted that this power in favor of the insurers does not violate the right to equality because by establishing that the insurance company may release itself from its obligations in the event that a false declaration is proven, it places the burden of proving the bad faith of the insured on the insurance company and thus rebut the presumption of good faith.[2]

However, it is considered that this faculty is closely related to the inaccuracy of the LIC with respect to the time limit that an insurance company has to make a decision on whether or not a claim is admissible. This omission in the LIC could generate uncertainty for the insured, since the faculty to request information related to the claim does not have a limit either and the insurance company may request such information as many times as it deems necessary to relate the circumstances of the claim.

[1] See the thesis entitled "**CONTRACT OF INSURANCE. THE INSURER'S POWER TO REQUEST INFORMATION ON THE CIRCUMSTANCES RELATING TO THE ACCIDENT DOES NOT ALLOW TO TRANSFER THE BURDEN OF PROOF TO THE BENEFICIARY**" and digital record number 2028776.

[1] See the thesis titled: "**CONTRACT OF INSURANCE. ARTICLE 70 OF THE RELATIVE LAW DOES NOT VIOLATE THE RIGHT OF EQUALITY**" and digital record number 2017154.

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