Analysis on the phenomenon of the insurer 's abuse of the right to terminate and coping strategies

Luqi Ou *, Jihua Liu, Shenghui Guo

Finance of Tianjin Foreign Studies University, Tianjin, China, 300450

* Corresponding Author Email: olq13803440619@163.com

Abstract. As an important prerequisite for the formulation and entry into force of insurance contracts, the principle of utmost good faith is a compulsory principle that both parties should abide by. Among them, the obligation to inform is the basic obligation of the insurer to evaluate whether the subject matter of insurance is insurable and whether the policyholder chooses to sign the contract. However, in recent years, legal litigation cases caused by the insured 's obligation to inform against the principle of utmost good faith have been common. Even if the moral hazard cases of the insured 's deliberate fraud are excluded, the number of legal disputes caused by negligence should not be underestimated. Based on the analysis of the typical cases, it is undeniable that there is a " double victim "[1] phenomenon that the insurer exercises the right of rescission due to the unclear provisions of the relevant documents. Therefore, this paper hopes to summarize some incomplete explanatory loopholes in legal documents from many cases, and put forward some suggestions for improving the above loopholes and judgment methods in combination with most cases [2], so as to provide reference opinions for reducing relevant litigation cases.

Keywords: The Principle of Utmost Good Faith; Insurance Contract; Insurance Law.

1. Introduction

First of all, according to the case statistics of Luo Can, Doctor of Law, Southwest University of Political Science and Law, as of November 2014, the data of the legal case statistics system of Peking University shows that there are 46 legal lawsuits involving the insured 's violation of the principle of utmost good faith. The insurer is the defendant in the lawsuit, and the failure rate is as high as 70 %. Excluding the case of malicious insurance fraud by the insured, the defendant 's failure rate in the remaining cases is higher [3]. Then, through the same way, the data of similar cases from 2015 to the completion of this paper are counted. The winning rate of the plaintiff in the relevant cases is almost the same as before, but the number of cases is growing slowly with the growth rate in the same period.

In addition, according to the analysis of similar cases and the analysis of the judgment results, in the case of ending the dispute by legal judgment, most of the plaintiff and the defendant consider themselves to be the party whose rights and interests are lost. Based on the perspective of the insured, due to the fact that many of the descriptions of the disclosure obligation in the current ' Insurance Law ' provisions in China are not clear or still open to discussion, they have unintentionally violated the relevant principles without knowing it, and finally the insurer has to choose to terminate the insurance contract [4]. From the insurer 's side, the current increase in the loss rate has also made many insurance companies dare not easily use the ' right to terminate ' insurance contracts [5]. Even if the policyholder defaults first, in order to reduce the damage to the rights and interests, as long as the policyholder is willing to settle the withdrawal of the complaint, now more cases will fall back and choose legal mediation to resolve privately [6][7]. Finally, the above cases are sorted out, and the root of the dispute is mostly related to the basic elements of the obligation to inform.

2. Induction of explanatory loopholes in ' Insurance Law '

2.1. The coverage of the subject of truthful notification obligation is incomplete

First of all, according to Article 16 of the current ' Insurance Law ' of our country, ' If an insurance contract is concluded and the insurer asks questions about the subject matter of the insurance or the

relevant situation of the insured, the applicant shall truthfully inform[8]. Obviously, the object of the obligation to inform is defined between the policyholder and the insurer. Through sorting out the cases, in most life insurance litigation cases, the insured and the insured are not the same person, and it is precisely because of the specific situation of the insured that the insured has not been fully informed when the insured is insured. It is judged to be contrary to the principle of utmost good faith, and finally the insurer exercises the ' right to terminate the contract '. In the statistics of effective cases in related cases, the court often determines that the insurer loses. It seems that the insurer 's side bears part of the government 's functions, and the payment obligation is gradually ' public welfare '.

In addition, in the analysis of such cases, it may be that the policyholder does not deliberately conceal the situation of the insured, but ultimately the insurer 's rights and interests are damaged due to information asymmetry. From the perspective of humanitarian judgment, because the insured party has suffered losses after the insurance accident, it is only desirable to reduce the burden with the help of insurance funds rather than profitable, and it is also justified to determine the success of the lawsuit. However, whether the insurer should be comprehensively determined to lose the lawsuit and ordered to pay as much as possible should still be further discussed.

2.2. The scope and method of the insurer 's inquiry is unknown

Firstly, China 's notification of the subject matter of insurance or the insured is limited, that is, the policyholder only needs to inform the insurer of the scope of inquiry, and the specific form of notification includes oral or written. The problems exposed in this regard include two points : First, China 's " Insurance Law " allows oral notification, and there is no provision for information retention during the notification process[9]. For example, in the process of important information notification, whether it is recorded using audio and video recording equipment, or inviting a third party to record relevant information to facilitate subsequent archiving and notarization, or just like a friend 's conversation, there is no relevant legal provision. In addition, it is worth noting that in the notification stage, there is a clear information asymmetry between the policyholder and the insurer. If the notification method is not clearly defined in the early stage, it will also greatly increase the actual probability that the policyholder will blur the key information and cause moral hazard, which in turn breeds many cases where the content of the notification is impossible to verify and leads to the failure of the insurer.

In addition, China 's ' Insurance Law ' has not made clear provisions on the scope of inquiry. In addition to the basic information of the insured, such as name, age, occupation, working and living environment, which should also be included in the scope of the need to be questioned, whether different standards should be made according to different insurance projects, if the law requires the insurer to show the details of the inquiry before the inquiry and keep it faithfully in the process of inquiry, whether it can avoid the controversy caused by the lack of some evidence, and finally should cause our thinking.

2.3. Unclear definition of the circumstances

First of all, similar to the unclear definition of the scope of the insurer 's inquiry into the subject matter of insurance or the insured, Article 16 of the current ' Insurance Law ' requires the insured to truthfully inform the subject matter of insurance or the insured. The penalty for breach of the obligation to inform is also based on whether to conceal the relevant situation as a standard, but it does not define the relevant situation. Therefore, the problem is that the right to define the relevant situation is ultimately in the hands of the insurer. In order to reduce the definition dispute, when the insured party has a violation of the disclosure obligation, in most cases, the insurer will directly incorporate the uninformed facts into the important facts or important relevant circumstances and directly choose to terminate the contract, which has led to many litigation cases. It can be considered that the qualitative link of the plot is the result of the exchange of rights in the obligation to inform[10]. The party suffering from information asymmetry at this node will be switched to the policyholder.

First, they are unknown to the qualitative standard. In addition, they have no participation in the formulation of qualitative standards, which also puts them in the position of free disposal.

It should be recognized that this situation is not without room for mitigation and maneuver. Understanding the relevant qualitative principles and proposing changes to the unfair principles should be the basic rights of the policyholders. Finally, it is assumed that if the relevant content is more clearly defined, the penalty is based on the importance of the facts being ignored, rather than the one-size-fits-all choice of contract termination, many disputes and troubles may be avoided.

3. Suggestions for improvement of relevant regulations

3.1. Incorporate the insured into the scope of the obligation to inform

Based on the analysis of the first point of the above problems, first of all, if the actual conditions of the insured meet the requirements of the insured to ask, the insured should be further asked after the insured is asked. Even if the insured person is unable to inform himself or herself orally because of the objective situation, he or she should consider whether he or she can use written or authorized others to inform the situation. After the notification, the insured person will sign or confirm in other forms to ensure that the information is true[11].

In addition, the policyholder 's violation of the obligation to inform and the insured 's violation of the obligation to inform should not be generalized. If the insured or the insured unilaterally conceals the truth of the insured rather than colludes to conceal it, other measures to reduce the penalty, such as reducing the amount of compensation, can be considered in addition to ending the contract. In addition, when the insured and the insured are not the same person, there is some connection between the two parties, but they should fulfill their obligations and assume their responsibilities respectively. In the case of unilateral information hiding, targeted penalties should be considered. For example, if the insured unilaterally conceals the facts, it can consider reducing the amount of compensation or terminating the contract. If the policyholder unilaterally conceals the facts, it can consider imposing fines on the policyholder.

3.2. Inquiring method and record detailed provisions

Based on the analysis of the second point of the above problems, the oral inquiry method can be retained first, but the inquiry process should clearly stipulate that the certificate should be retained by means of recording and other means. The types of professional equipment used in the certificate, such as the type of camera or recording pen, the actual parameter range that the evidence can be adopted, such as the clarity of audio and video, the completeness of willingness expression, the identity and quantity of notaries should be specified in detail, and the inquiry content that does not meet the above requirements should not be recognized[12].

In addition, the content of the inquiry can be stated separately. Whether the content of the inquiry is an important fact or not, it should not be ignored because of the default compliance. The content of the inquiry is confirmed by both parties before the inquiry, and the scope of the inquiry is appropriate and complete. Finally, the two sides respectively retained the records to provide evidence for the later disputes.

3.3. Definition of important relevant circumstances and diversified punishment for violations

First of all, about the definition of important relevant circumstances, we can learn from the relevant provisions of Article 645 of Japan 's " Commercial Code " : as long as the insurer of insurance disclosure obligation can prove that the insurance accident did not occur due to the fact that he did not inform or incorrectly inform, it should be considered that the fact that the insurer of insurance disclosure obligation did not inform or incorrectly inform due to negligence has no serious impact on the occurrence of insurance accidents.

In addition, based on this, the importance of the situation can be divided, and the violation penalty method can be determined according to the classification of untruthfully informed facts[13]. In this

regard, we can learn from the latest versions of foreign insurance laws such as ' British Consumer (Disclosure and Statement) Law ', ' German Insurance Contract Law ', ' Italian Civil Code ', and ' Swiss Insurance Contract Law ', and try to diversify the penalties for violations. For example, it can be divided into termination of the contract, termination of the contract, increase of premiums, and proportional penalties according to the importance of the uninformed situation. Avoiding violations, that is, the one-size-fits-all method of ' rescission ' of contracts, may make the ' right to rescind ' better serve as a self-protection weapon rather than a murder weapon, and better avoid similar legal disputes.

Finally, after the division of the situation and the classification of the penalty, the publicity should be issued in the form of legal policy, so as to avoid the situation that the effectiveness of the new policy and new method is greatly reduced due to the lack of publicity or poor popularization.

4. Conclusions

First of all, this paper uses Peking University 's legal data network, national laws and regulations database, China Knowledge Network and other website platforms to collect typical cases and organize literature, and uses the knowledge of ' insurance ' course to establish a connection to draw the current ' insurance law ' in China. The problems reflected by the insured 's violation of the disclosure obligation of the principle of utmost good faith and provide the above analysis and suggestions. The analysis process may have errors and problems caused by shallow learning and improper analysis. If there is improper analysis, please criticize and correct. In addition, the relevant data processing lacks detailed investigation records, and the reference to overseas legal literature does not deeply analyze the influence of national conditions, which should be improved in future research. Finally, hope that with the help of this article, the existing related problems will be paid more attention to by more people. In addition, it will provide suggestions and references for the solution of related problems. also believe that such problems can be solved as soon as possible under the background of the continuous maturity of China 's insurance industry and the continuous improvement of relevant laws !

References

[1] Zeng Zhanbin. The realistic dilemma and relief strategy of the obligation of truthful disclosure of ' Insurance Law '. [J] Journal of Hanshan Normal University, 2022,43 (02): 89-96.

[2] Zhang Jing. The value, connotation and application of the principle of integrity in personal information processing [J]. Qin Zhi, 2022 (01): 80-83.

[3] Luo Can. Diversified improvement of the consequences of breach of the insurance disclosure obligation [J]. Financial Law Court, 2015 (01): 215-228.

[4] Pang Yanhong. The significance and improvement of the principle of good faith in insurance law [J]. Accounting of township enterprises in China, 2021 (10): 195-196.

[5] Chen Yuyan, Liang Risheng. The policyholder does not inform whether the ' multiple insurance ' of course violates the obligation to inform truthfully-taking the life insurance contract dispute of Ai and A insurance company as an example [J]. Shanghai Insurance, 2021 (06): 20-26.

[6] Huang Hui. On the principle of utmost good faith in China 's insurance law [J]. Hebei Enterprises, 2021 (06): 158-160.

[7] Cheng Ming. [J]. Legal Expo, 2021 (16): 163-164.

[8] Wang Rui.Basic theory and monographic study of commercial law [M]. China University of Political Science and Law Press: Boutique Library of Legal Advantage Construction Discipline of North China University of Technology, 201703.410.

[9] Liang Peng. The effect of insurer 's waiver of disclosure obligation [J]. People 's Justice, 2022 (01): 73-76.

[10] Fang Yin. Rationality of the principle of good faith in China 's new insurance law [J]. Jinan Journal (Philosophy and Social Sciences), 2014,36 (02): 95-102.

[11] Sheng Geyu. On the perfection of the principle of utmost good faith in China 's insurance law [J]. Legal system and society, 2013 (17): 293-294.

[12] Li Hongrun. On the form and legal consequences of breach of the obligation to inform insurance-and on the improvement of Article 17 of China 's ' Insurance Law ' [J]. Journal of Henan Institute of Education (Philosophy and Social Sciences Edition), 2009,28 (02): 82-85.

[13] Zhuang Chaorong. Analysis of the Constitutive Elements of Violation of Disclosure Obligation in Insurance Contract [J]. Journal of Sichuan Polytechnic. 2003 (02): 17-19.