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Interpretations of the Supreme People's Court on Several Issues Pertaining to Application of the Insurance Law of the People's Republic of China (III)

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The Interpretations of the Supreme People's Court on Several Issues Pertaining to Application of the Insurance Law of the People's Republic of China (III) adopted by the 1661st Session of the Judicial Committee of the Supreme People's Court on 21 September 2015 is hereby promulgated and shall be implemented with effect from 1 December 2015.

Supreme People's Court

25 November 2015

Adopted by the 1661st Session of the Judicial Committee of the Supreme People's Court on 21 September 2015

For the purposes of proper trial of insurance contract dispute cases and protecting the legitimate rights and interests of the parties concerned, pursuant to the provisions of the Insurance Law of the People's Republic of China, the Contract Law of the People's Republic of China, the Civil Procedural Law of the People's Republic of China etc, taking into account actual trial practice, interpretations for the issues of application of laws in the "Insurance Contract" chapter of the Insurance Law in relation to personal insurance are hereby made:

Article 1 In the case of a contract entered into between the parties concerned which stipulates insurance payout on death of the insured, pursuant to the provisions of Article 34 of the Insurance Law, the provision that "the insured agrees and acknowledges the insurance payout amount" may be made in written form, verbal form or any other form; and may be made at the time of conclusion of the contract, or ratified after conclusion of the contract.

Under any of the following circumstances, the insured shall be deemed to agree on conclusion of the insurance contract by the policyholder and agree on the insurance payout amount on his/her behalf:

- (1) the insured is aware that another person has signed on his/her behalf but do not express objection;
- (2) the insured agrees on the beneficiary(ies) named by the policyholder; or
- (3) any other circumstances where there is evidence to ascertain that the insured agrees that the policyholder takes up insurance on his/her behalf.

Article 2 Where the insured has notified the insurer and the policyholder, in writing, of revocation of his/her consent given pursuant to the provisions of the first paragraph of Article 34 of the Insurance Law, it may be deemed as rescission of the insurance contract.

Article 3 In the trial of a personal insurance contract dispute case, the People's Court shall take the initiative to examine whether the policyholder holds insurance benefits thereto at the time of conclusion of the insurance contract, and whether the insured has agreed and acknowledged the insurance payout amount of the contract which stipulates insurance payout on death of the insured.

Article 4 Upon conclusion of an insurance contract, in the event of loss of the insured's insurance benefits by the policyholder and the parties concerned asserting that the insurance contract is void, the People's Court shall not support.

Article 5 At the time of conclusion of an insurance contract, where the insured undergoes a physical examination at a designated medical service institution as required by the insurer and the parties concerned assert that the policyholder be exempted from the obligation of truthful notification, the People's Court shall not support.

Where the insurer is aware of the insured's physical examination results but still demands for rescission of the contract, citing the policyholder's failure to perform the obligation of truthful notification of the relevant information, the People's Court shall not support.

Article 6 Where a guardian, other than the parents of a minor, concludes a contract which stipulates insurance payout on death for the minor, and the parties concerned asserts, with reference to the provisions of the second paragraph of Article 33 or the third paragraph of Article 34 of the Insurance Law, that the contract is valid, the People's Court shall not support, unless the parents of the minor consent.

Article 7 Where the parties concerned assert that the fee payment obligation corresponding to the policyholder has been performed, citing that the insured, the beneficiary or another person has paid the insurance premiums on behalf, the People's Court shall support.

Article 8 Where the validity of an insurance contract is suspended pursuant to the provisions of Article 36 of the Insurance Law, and the policyholder applies for reinstatement and agrees to pay insurance premiums retrospectively, if the insurer refuses to reinstate the contract, the People's Court shall not support, except where the insured's degree of risk has increased significantly during the suspended period.

The insurer shall be deemed to agree to reinstatement if it does not specifically refuse to do so within 30 days from receipt of the application for reinstatement.

The insurance contract shall be reinstated with effect from the date of retrospective payment of insurance premiums by the policyholder. Where the insurer requires the policyholder to make retrospective payment of the corresponding interest, the People's Court shall support.

Article 9 Where the policyholder names the beneficiary(ies) without consent of the insured, the People's Court shall deem that the designation is invalid.

Where the parties concerned dispute over the beneficiary(ies) named in the insurance contract, unless the policyholder and the insured agreed otherwise in the insurance contract, the dispute shall be handled as follows:

(1) where it is agreed that the beneficiary(ies) shall be "statutory" or "statutory successor(s)", the statutory successor(s) stipulated in the Inheritance Law shall be the beneficiary(ies);

(2) where the beneficiary(ies) are named in terms of identity relationship, where the policyholder and the insured are the same entity, the beneficiary(ies) shall be determined in accordance with his/her/their identity relationship with the insured at the time of occurrence of the insured event; where the policyholder and the insured are different entities, the beneficiary(ies) shall be determined in accordance with his/her/their relationship with the insured at the time of conclusion of the insurance contract; and

(3) where the name and identity relationship of the beneficiary(ies) are stated, if there is a change in identity relationship at the time of occurrence of the insured event, it shall be deemed that the beneficiary(ies) is/are not named.

Article 10 Where the policyholder or the insured changes the beneficiary(ies), and the parties concerned assert that the change takes effect at the time of indication of intent for change, the People's Court shall support.

Where the policyholder or the insured changes the beneficiary(ies) without notifying the insurer, and the insurer asserts that the change bears no effect on the insurer, the People's Court shall support.

Where the policyholder changes the beneficiary(ies) without the insured's consent, the People's Court shall deem the change to be invalid.

Article 11 Where the policyholder or the insured changes the beneficiary(ies) after occurrence of an insured event, and the new beneficiary(ies) request(s) that the insurer makes insurance payout, the People's Court shall not support.

Article 12 Where the policyholder or the insured names several persons as the beneficiaries, if some of the beneficiaries passed away before occurrence of the insured event, or forfeit or lost their beneficiary's rights, the beneficiary's shares of the said beneficiaries shall be handled pursuant to the agreement in the insurance contract; where there is no agreement or no clear agreement in the insurance contract, the beneficiary's shares of the said beneficiaries shall be handled as follows:

(1) where there is no agreement on the ranking of beneficiaries and the beneficiary's shares, they shall be shared equally among the other beneficiaries;

(2) where there is no agreement on the ranking of beneficiaries but there is agreement on the beneficiary's shares, they shall be shared among the other beneficiaries in accordance with the corresponding ratio;

(3) where there is agreement on the ranking of beneficiaries but there is no agreement on the beneficiary's shares, they shall be shared equally among the other beneficiaries of the same ranking; where there is no other beneficiary of the same ranking, they shall be shared equally among the beneficiaries of the next ranking; and

(4) where there is agreement on the ranking of beneficiaries and the beneficiary's shares, they shall be shared by the other beneficiaries of the same ranking in accordance with the corresponding ratio; where there is no other beneficiary of the same ranking, they shall be shared equally among the beneficiaries of the next ranking.

Article 13 Upon occurrence of the insured event, where a beneficiary transfers to a third party all or part of his/her insurance payout claim corresponding to the said insured event, if the parties concerned assert that the said transfer is valid, the People's Court shall support, except where the contract, the agreement between the parties concerned or the law stipulates non-transferability.

Article 14 Where the insurance payout is the insured's estate pursuant to the provisions of Article 42 of the Insurance Law, and the insured's successor requests that the insurer makes insurance payout, if the insurer argues that it has made insurance payout to other successor(s) of the insured who hold(s) the insurance policy, the People's Court shall support.

Article 15 Where a beneficiary and the insured are predecessor and successor, and both passed away in the same accident and it is impossible to determine the sequence of demise, the People's Court shall, pursuant to the provisions of the second paragraph of Article 42 of the Insurance Law, assume that the beneficiary's death precedes the insured's death, and determine the ascription of insurance payout pursuant to the relevant provisions of the Insurance Law and these Interpretations.

Article 16 When an insurance contract is rescinded, where the policyholder, the insured and the beneficiary are different entities, if the insured or the beneficiary requests for refund of the cash value of the insurance policy, the People's Court shall not support, unless the insurance contract stipulates otherwise.

Where the policyholder has intentionally caused the death, injury and disability or illness of the insured, and the insurer refunds the cash value of the insurance policy pursuant to the provisions of Article 43 of the Insurance Law, other rights holders shall be determined in accordance with the ranking of the insured and the insured's successor(s).

Article 17 Where the policyholder rescinds the insurance contract, if the parties concerned assert that the rescission is invalid, citing that the insured or the beneficiary has not consented to the rescission of contract, the People's Court shall not support, except where the insured or the beneficiary has paid the policyholder an amount equivalent to the cash value of the insurance policy and notified the insurer.

Article 18 When the insurer makes insurance payout for reimbursement of medical expenses and asserts deduction of the compensation amount obtained by the insured from free health services or social security medical insurance, the insurer shall prove that the free health services or social security medical insurance portion has been deducted correspondingly when the said insurance product determined the insurance premium rate for medical expenses, and the insurer have collected insurance premiums based on the post-deduction standards.

Article 19 Where an insurance contract agrees on assessment of medical expenses based on the basic medical insurance standards, if the insurer refuses to make insurance payout, citing that the insured's medical expenses exceed the scope of basic medical insurance, the People's Court shall not support; where the insurer has evidence to prove that the expenses incurred by the insured exceed the standards of basic medical insurance for the same type of medical expenses, if the insurer requests not to make insurance payout for the excess portion, the People's Court shall support.

Article 20 Where the insurer refuses to make insurance payout, citing that the insured failed to receive treatment at a medical service institution stipulated in the insurance contract, the People's Court shall support, except where the insured requires immediate medical attention in an emergency.

Article 21 Where the insurer refuses to make insurance payout, citing that the insured has committed suicide, the insurer shall bear the burden of proof.

Where the beneficiary or the insured's successor argues that the insured has no capacity for civil conduct at the time of his/her suicide, the beneficiary or the insured's successor shall bear the burden of proof.

Article 22 Determination of "intentional criminal act of the insured" as stipulated in Article 45 of the Insurance Law shall be based on a valid legal document or any other conclusive opinion of the criminal investigation agency, procuratorate and judicial agency.

Article 23 Where the insurer asserts non-liability for insurance payout pursuant to the provisions of Article 45 of the Insurance Law, the insurer shall prove that there is a cause and effect relationship between the demise or injury and disability of the insured and the act of intentional criminal act or refusal of mandatory criminal measures pursuant to the law.

Where the injury and disability or demise of the insured is attributable to an accident or illness during detention or imprisonment, if the insurer asserts pursuant to the provisions of Article 45 of the Insurance Law that it is not liable to make insurance payout, the People's Court shall not support.

Article 24 Where the policyholder concludes, on behalf of the insured, an insurance contract which stipulates insurance payout on death, if the parties concerned, upon declaration of the insured's death, require the insurer to make insurance payout pursuant to the agreement in the insurance contract, the People's Court shall support.

Where the declaration of the insured's death is beyond the insurance liability period, but there is evidence to prove that the insured has gone missing during the insurance liability period, if the parties concerned require the insurer to make insurance payout pursuant to the agreement in the insurance contract, the People's Court shall support.

Article 25 Where it is difficult to determine whether the insured's losses are caused by a covered event, a non-covered event or a disclaimer, if the parties concerned request that the insurer makes insurance payout, the People's Court may support in accordance with the corresponding ratio.

Article 26 These Interpretations shall be implemented with effect from 1 December 2015. These Interpretations shall apply to insurance contract dispute cases for which final judgment is pending at the time of implementation; these Interpretations shall not apply to cases for which final judgment is made before implementation of these Interpretations but the parties concerned apply for re-trial or where re-trial is decided in accordance with the trial supervision procedures.



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