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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 (IV)

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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 (IV) adopted by the 1738th Session of the Judicial Committee of the Supreme People's Court on 14 May 2018 is hereby promulgated, and shall be implemented with effect from 1 September 2018.

31 July 2018

Adopted by the 1738th Session of the Judicial Committee of the Supreme People's Court on 14 May 2018, and implemented with effect from 1 September 2018.

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 relation to property insurance contracts are hereby made:

Article 1 Where the subject matter of insurance is delivered to the transferee but the ownership change registration formalities are not completed pursuant to the law, if the transferee who bears the risks of damage or loss of the subject matter of insurance asserts to exercise the rights of the insured pursuant to the provisions of Article 48 or Article 49 of the Insurance Law, the People's Court shall support the assertion.

Article 2 Where the insurer has performed the obligations of highlighting and explanation stipulated in the Insurance Law to the policyholder, if the transferee of the subject matter of insurance asserts that the clause exempting the insurer's liability is not valid on the grounds that the insurer has not, following the transfer of the subject matter of insurance, highlighted or explained to the transferee

, the People's Court shall not support the assertion.

Article 3 In the event of the insured's demise, if the party which succeeds the subject matter of insurance asserts succession of the insured's rights and obligations, the People's Court shall support the assertion.

Article 4 When a People's Court determines if the subject matter of insurance constitutes "significant increase in the extent of danger" stipulated in Article 49 or Article 52 of the Insurance Law, the following factors shall be taken into consideration:

(1) change in the use of the subject matter of insurance;

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- (2) change in the scope of use of the subject matter of insurance;
 - (3) change in the environment of the subject matter of insurance;
 - (4) change in the subject matter of insurance due to refitting etc;
 - (5) change in the user or manager of the subject matter of insurance;
 - (6) the duration for which the extent of danger continues to increase; and
 - (7) any other factors which may cause significant increase in the extent of danger.

Where the extent of danger of the subject matter of insurance increases but the increase in danger falls within the scope of underwriting for the insurance contract which is or should be foreseeable by the insurer at the time of conclusion of the insurance contract, the increase shall not be deemed as a significant increase in the extent of danger.

Article 5 Upon prompt issuance of notice of transfer of the subject matter of insurance by the insured or the transferee to the insurer pursuant to the law, if an insured event occurs prior to the insurer's reply, and the insured or the transferee asserts that the insurer bears the liability for making insurance payout in accordance with the insurance contract, the People's Court shall support the assertion.

Article 6 Upon occurrence of an insured event, where the insured requests the insurer to bear the requisite reasonable expenses for prevention or reduction of losses of the subject matter of insurance pursuant to the provisions of Article 57 of the Insurance Law, and the insurer counterpleas on the grounds that the measures adopted by the insured do not yield actual effect, the People's Court shall not support the assertion.

Article 7 Where the insurer makes a subrogated claim, pursuant to the provisions of Article 60 of the Insurance Law, with respect to the insured's right to request for compensation due to infringement or default by a third party, the People's Court shall support the assertion.

Article 8 Where the policyholder and the insured are different entities, if the policyholder causes an insured event as a result of damages to the subject matter of insurance, if the insurer makes a subrogated claim against the policyholder with respect to the insured's right to request for compensation, the People's Court shall support the assertion, unless otherwise stipulated by laws or agreed in the insurance contract.

Article 9 In a subrogation claim lawsuit filed by the insurer against a third party, where the third party counterpleas on the grounds that the insured has, prior to conclusion of the insurance contract, forfeited its right to request for compensation from the third party, and the People's Court has ruled that the aforesaid forfeiture is legitimate and valid, if the insurer makes a subrogated claim with respect to the corresponding portion, the People's Court shall not support the assertion.

At the time of conclusion of the insurance contract, where the insurer queries whether the aforesaid forfeiture exists, but the policyholder does not inform truthfully, thus rendering the insurer unable to make a subrogated claim, if the insurer requests for refund of the corresponding insurance payout, the People's Court shall support the assertion, except where the insurer is or should be aware of the aforesaid scenario and yet agrees to undertake insurance.

Article 10 Where an insured event is caused by damages to the subject matter of insurance by a third party, and the insurer has obtained the right to make a subrogated claim but does not inform the third party, or before the notification reaches the third party, the third party has made compensation to the insured after the insured has obtained the same compensation payout from the insurer, if the insurer makes a subrogated claim against the third party with respect to the insured's right to request for compensation

from the third party, the People's Court shall not support the assertion. Where the insurer asserts that the insured refunds the corresponding insurance payout, the People's Court shall support the assertion.

Where the insurer has informed the third party that it has obtained the right to make a subrogated claim, and yet the third party still compensates the insured, if the insurer makes a subrogated claim, and the third party counterpleas on the grounds that it has compensated the insured, the People's Court shall not support the assertion.

Article 11 Where the insured does not perform the obligations stipulated in Article 63 of the Insurance Law intentionally or due to gross negligence, rendering the insurer unable to make a subrogated claim fully or partially, if the insurer asserts offset or refund of the corresponding insurance payout within the scope of losses, the People's Court shall support the assertion.

Article 12 Where the insurer files a subrogation claim lawsuit against a third party who causes an insured event, the court with jurisdiction shall be determined in accordance with the legal relationship between the insured and the third party.

Article 13 When the insurer files a subrogation claim lawsuit, if the insured has filed a lawsuit against the third party, the People's Court may conduct a joint trial of the lawsuits pursuant to the law.

When the insurer makes a subrogated claim, the insured has filed a lawsuit against the third party, if the insurer applies to the People's Court which accepts the lawsuit for change of parties concerned so as to make a subrogated claim against the third party and the insured agrees, the People's Court shall approve; where the insured does not agree, the insurer may join the lawsuit as a co-plaintiff.

Article 14 Under any of the following circumstances, the insured may, pursuant to the provisions of the second paragraph of Article 65 of the Insurance Law, request that the insurer should make insurance payout to the third party directly:

(1) the insured's compensation liability towards the third party is confirmed by a People's Court ruling or an arbitration award which has taken effect;

(2) the insured and the third party have negotiated and reached a consensus on the insured's compensation liability towards the third party; or

(3) any other circumstances under which the insured's compensation liability toward the third party is ascertainable.

Under the circumstances stipulated in the preceding paragraph, where the insurer asserts that the insurance compensation liability be determined in accordance with the insurance contract, the People's Court shall support the assertion.

Article 15 Upon determination that compensation liability shall be borne by the insured towards the third party, where the insured does not perform compensation liability, and the third party files a lawsuit against the insurer or files a lawsuit against the insurer and the insured, if the insured has not requested the insurer to make insurance payout directly to the third party, this may be deemed as the scenario of "the insured does not make a request" stipulated in the provisions of the second paragraph of Article 65 of the Insurance Law.

Article 16 Where the insured under a liability insurance policy bears joint and several liability pursuant to the law for joint infringement, if the insurer refuses to make insurance payout on the grounds that the joint and several liability exceeds the liability share to be borne by the insured, the People's Court shall not support the assertion. After fulfilling the insurance liabilities, if the insurer assert for recourse of the portion which exceeds the insured's liability share from other parties who bear joint and several liability, the People's Court shall support the assertion.

Article 17 Where the compensation liability borne by the insured under a liability insurance policy towards a third party is confirmed by a ruling which has taken effect and the enforcement procedures are activated but the third party has yet to receive compensation fully or partially, if the third party requests pursuant to the law that the insurer should make insurance payout, and the insurer counterpleas on the grounds that the aforesaid ruling has taken effect and the enforcement procedures are activated, the People's Court shall not support the counterplea.

Article 18 The limitation of actions for the insured under a commercial liability insurance policy to seek insurance payout from the insurer shall commence from the date on which the insured's compensation liability towards a third party is determined.

Article 19 Where the insured under a liability insurance policy and a third party have reached a settlement with respect to the insured's compensation liability, and have obtained the consent of the insurer, if the insured asserts that the insurer should bear insurance liabilities within the scope of the insurance contract in accordance with the settlement agreement, the People's Court shall support the assertion.

Where the insured and a third party have reached a settlement with respect to the insured's compensation liability, but fail to obtain the consent of the insurer, if the insurer asserts for re-assessment of the scope of insurance liabilities and the compensation amount, the People's Court shall support the assertion.

Article 20 Where the insurer undertaking a liability insurance policy makes insurance payout to the insured before the insured compensates a third party, when the third party makes a subrogated claim insurance payout pursuant to the provisions of the second paragraph of Article 65 of the Insurance Law, if the insurer refuses to make insurance payout on the grounds that it has compensated the insured, the People's Court shall not support the assertion. After the insurer compensates a third party, if it asserts that the insured should refund the corresponding insurance payout, the People's Court shall support the assertion.

Article 21 These Interpretations shall be implemented with effect from 1 September 2018.

These Interpretations shall apply to cases undergoing trial of first instance or trial of second instance following the implementation of these Interpretations; 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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