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M. Guyon

CIVIL AND COMMERCIAL CODE

TITLE XIX

I N S U R A N C E

(redrafted under directions of the
Revising Committee)

February

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CHAPTER I
GENERAL PROVISIONS

1

(old sections 925
and 929 amalgamated)

A contract of insurance is a contract whereby a person agrees to make compensation or to pay a sum of money in case of loss or any other event specified in the contract, and another person agrees to pay therefor a sum of money called premium.

2

(old section 926)

In the present Title:

"insurer" means the party who agrees to make compensation or to pay a sum of money;

"assured" means the party who agrees to pay the premium;

"beneficiary" means the person who is to receive compensation or to be paid a sum of money;

The assured and the beneficiary may be one and the same person.

3

(new section)

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tanaka หมายเลข 1653
If there is no insurable interest in the event insured against, the contract is void.

4

(old section 247 slightly altered)

When the parties to a contract of insurance, in fixing the amount of the premium, took into consideration a particular risk, and such risk ceases to exist, the assured is entitled to have the premium reduced proportionately for the future.

5

(old section 244 slightly altered)

If, at the time of making the contract, the assured, or, in case of insurance on life, the person upon whose life or death the payment of the sum payable depends, knowingly omits to disclose facts which would have induced the insurer to raise the premium or to refuse to enter into the contract, or knowingly makes false statements in regard to such facts, the contract is voidable.

6

(old section 245)

If the insurer know of the facts mentioned in Section 5 or know the statements to be false, or would have known of them or of their falsity if he had exercised such care as may be expected from a person of ordinary prudence, the contract shall be valid.

7

(old section 927)

A contract of insurance is void unless made in writing.

8

(new section)

Any policy of insurance shall be made in two copies at least, one of them having to be delivered to the assured.

The policy must be signed by the insurer and contain:

- 1) the subject of the insurance;
- 2) the risk taken by the insurer ;
- 3) the value of the insurable interest, if it has been fixed;
- 4) the sum insured;
- 5) the amount of the premium and manner of its payment;
- 6) the time of the commencement and of the end of the insurance;
- 7) the name or trade name of the insurer;
- 8) the name or trade name of the assured;
- 9) the name of the beneficiary if any;
- 10) the date of the contract of insurance;
- 11) the place where and the date when the policy was made.

9

(new section)

Contracts of Maritime insurance remain under the provisions of the maritime law.

CHAPTER II

INSURANCE AGAINST LOSS

PART I. - GENERAL PROVISIONS

10

(new section)

"Loss", within the meaning of this Chapter, includes any injury which may be estimated in money.

11

(old section 928)

If two or more contracts of insurance are made simultaneously for the same loss and the total amount of the sums insured exceeds the actual amount of the loss, the beneficiary is entitled to receive compensation up to such amount only.

Each insurer must pay a part of the actual loss in proportion to the sum insured by him.

Contracts of insurance are deemed to have been made simultaneously if their dates are the same.

12

(old section 928)

If two or more contracts of insurance are made successively, the first insurer is

first liable for the loss. If the amount paid by him is not sufficient to cover the loss, the next insurer is liable for the difference and so on, till the loss is covered.

13

(new section)

Before the risk begins, the assured may determine the contract, but the insurer is entitled to one half of the premium.

14

(new section)

If during the period of insurance, the insurable interest is substantially reduced, the assured is entitled to a reduction of the sum insured and of the premium.

The reduction of the premium shall take effect only for the future.

15

(new section)

The insurer cannot claim a reduction of the amount of the compensation to be paid by him unless he proves that the insurable interest as agreed by the parties was substantially too high.

16

(new section substituting old 930)

If the assured transfers the subject of insurance for which a premium has been paid, the right to receive compensation is transferred with it.

If, by such transfer, the risk is substantially altered or increased, the contract of insurance becomes void.

17

(new section)

If the insurer has been adjudged bankrupt, the assured may require proper security to be given to him, failing which he may determine the contract.

If the assured is adjudged bankrupt, the same rules shall apply correspondingly; however when a premium has been already paid, under which insurance is running for a certain period of time, the insurer cannot determine the contract before such period expires.

18

(old sections 931 and 932 amalgamated)

The insurer is bound to pay compensation for:

- 1) the actual amount of the loss;
- 2) the damage caused to the insured property by reasonable measures taken for

preventing the loss;

2) all reasonable expenses incurred for preserving the insured property from the loss.

The actual amount of the loss shall be valued at the place where, and at the time when, the loss occurred. The sum insured is presumed to be a correct basis for such valuation.

The compensation cannot exceed the sum insured.

19

(old section 934)

The expenses of valuation of the loss must be borne by the insurer.

20

(new section)

The insurer is not liable if the loss or other event specified in the contract is caused by the bad faith or the gross negligence of the assured or the beneficiary.

21

(new section)

Unless otherwise agreed between the parties, an insurer is not liable when the loss has been caused by the nature or the defects of the subject of insurance, or by its natural waste.

22

(old section 925 slightly modified)

If the loss is caused by the fault of a third person, the insurer who pays compensation is subrogated, up to the amount paid by him, to the rights of the assured and of the beneficiary against such third person.

If the insurer has paid part only of the compensation, he cannot exercise his right to the prejudice of the right of the assured or of the beneficiary to claim from the third person for the remainder of the loss.

23

(old section 927)

If the contract of insurance provides that, on the happening of the loss, the assured or the beneficiary are bound to inform the insurer within a certain period of time, no such notice is necessary if the insurer knew otherwise within that period of the happening of the loss.

24

(old section 932)

The liability for payment of compensation is extinguished by prescription two years after date of loss.

The liability for payment of a premium is extinguished by prescription two years after the date when the premium became due.

PART II. - SPECIAL RULES FOR INSURANCE ON CARRIAGE

25

(old section 232)

A contract of insurance on carriage covers every loss which the goods carried may sustain from the time when they are received by the carrier until they are delivered to the consignee, and the amount of compensation must be fixed according to the value which the goods carried would have had on arrival at the place of destination.

26

(new section)

If the goods carried are insured in course of their transportation the insurable interest of such goods includes their value at the place ^{where} and time ^{when} they have been received by the carrier, increased by the freight to the place of delivery to the consignee and other expenses connected with transportation.

Profits to be made at the time when the goods were to be delivered, are included in the insurable interest only if there is an express agreement to that effect.

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PART III. - GUARANTEE INSURANCE

22

Guarantee-insurance is a contract of insurance where the insurer agrees to make compensation, on behalf of the assured, for a loss caused to another person ^{and} for which the assured is responsible.

The injured person is entitled to receive the compensation actually due to him from the insurer directly, but such compensation cannot exceed the sum due by the insurer under the contract. In an action between the injured person and the insurer, the injured person shall summon the assured to appear in the action.

The insurer is not discharged from his liability to the injured person by delivering the compensation to the assured, unless he proves that the compensation has been paid by the assured to the injured person.

20

If the compensation paid by the insurer under judgment does not cover the whole amount of the loss, the assured remains liable for the difference unless the injured person has failed to summon the assured to appear in the action as provided by the foregoing section.

CHAPTER III

INSURANCE ON LIFE

31

(new section)

In a contract of insurance on life, the payment of the sum of money is dependant upon the life or death of a person.

32

(old section 941 slightly modified)

The sum payable may be a lump sum or an annuity, as may be agreed between the parties.

33

(old section 942 modified)

9/ If the assured is not the beneficiary, he has the right to transfer the benefit of the contract to any other person unless he has delivered the policy to the beneficiary and the beneficiary has notified in writing the insurer his intention to take the benefit of the contract.

34

(old section 944 modified)

In case on cancellation of the contract under section 5, the insurer has to return to the assured or to his heirs the redemption *value of the policy.*

35

(old section 946 modified)

If the age of the person upon whose life or death the payment of the sum depends has been incorrectly stated, in consequence of which a lower premium has been fixed, the sum to be paid by the insurer shall be reduced in the same proportion.

However the contract is voidable if it is proved by the insurer that the real age at the time when the contract was made, was out of the age-limit according to his business-practice.

36

(old section 948)

^{assured}
The ~~insured~~ is entitled at any time to determine the contract of insurance by discontinuing to pay the premium. If the premium had been paid for at least three years he is entitled to receive from the ~~insurer~~ ~~the~~ the surrender value of the policy or a paid up policy.

37

(old section 949)

Whenever the sum is to be paid on the death of a person, the insurer is bound to pay it on such death unless:

1) Such person voluntarily committed suicide within one year after the date of the contract, or

2) Such person was intentionally killed by the beneficiary.

In case number 2, the ~~insurer~~ ^{insurer} is bound to pay the assured or to his heirs the redemption value of the policy.

38

(old section 250)

If the death is caused by the fault of a ~~third~~ ^{third} person, the insurer cannot claim compensation from that person, but the heirs of the deceased do not lose their right to compensation from the third person, even if the sum payable under the contract of insurance on life reverts to them.

39

(old section 251)

If the assured has made an insurance payable on his death in favour of his heirs, the sum payable shall be part of the assets of his estate available for his creditors.

If the insurance has been made in favour of a particular person, only the amount of the premiums paid by the assured shall be part of the assets of his estate available for his creditors.