

RESOLVING DISPUTES

— in the Insurance & Reinsurance Industry

Insurance and reinsurance is one of the most contentious industries out there and the total number of insurance disputes continues to rise year on year.

● From pre-contractual disclosure and policy drafting, coverage claims, reinsurance disputes, M&A related commercial disputes, political risk, warranty/indemnity/liquidated damages insurance to the mis-selling of policies and claims; there is simply a midfield of potential clashes.

Acquisition International speaks to dr. Károly Bárd retired partner and dr. Erika Bérdi attorney at Cseri & Partners Law Offices and Dr. Károly Bárd is hon.ass.professor, Ho. President of the International Association of Insurance Law (AIDA), President of the Hungarian AIDA Chapter, for decades chief legal advisor of the Hungarian State Insurance Company, for years Insurance Commissioner of Hungary.

Dr. Erika Bérdi is an associate to the law office, she advised insurance companies performing cross board activity in Hungary via FOS (freedom to provide services). She is vice-secretary of the Insurance intermediary working group at the Hungarian AIDA Chapter.

Further, English and German speaking staff is specialized to insurance, compensation - litigious and out of court - matters, providing services, mainly to foreign institutional clients, legal aid insurers. So these types of cases, i.e. insurance, resolving disputes have priority in the activity of the law firm.

“Our clientele comprises mainly Hungarian and foreign institutional clients (insurance and insurance intermediary companies, car dealer and service networks regarding the extended warranty), and the legal aid insurances, automobile clubs are forwarding the private individual clients.

WHY IS INSURANCE AND REINSURANCE ONE OF THE MOST CONTENTIOUS INDUSTRIES OUT THERE?

There is different interpretation, partly as worldwide tendency, partly connected with the special Hungarian development. Generally, i.e. worldwide the situation is influenced by the superiority in power of the insurer, the unequal position of the parties, the weaker position of the insured and/or damaged party, the bigger financial source of the insurers to start legal disputes, the material interest of the insurer to delay the payment, the dominant role of the re-insurers.

E.g. the insurers (re-insurers) prefer enter in dispute in claims of big amount, often waiting the final result of the official investigation, however the responsibility and payment obligation of the insurer (reinsurer) is clear.

A specific Hungarian explanation (as well in other former socialist countries) is that during decades state monopoly insurance company acted, and although the legal expenses (court costs too) were low but also the legal culture, so the claimants preferred the so called plaint procedure, regulated by the law. But now the tendencies become slowly the same as in the Western countries.

OVER THE COURSE OF THE LAST 10 YEARS, WHAT FACTORS HAVE BEEN A CATALYST INCREASING THE NUMBER AND COMPLEXITY OF INSURANCE DISPUTES?

The complexity of insurance products (bank-insurances, unit-linked life insurances), the bigger financial-sensitivity as well the increasing “legal culture” of the insured, the increasing activity of the legal aid insurer, and the different regulations for consumer protection incl. different techniques of resolving disputes. The financial crises increased the number of disputes in connection with the risky insurance products, due to enormous losses.

INSURANCE AND REINSURANCE CLAIMS TRANSCEND BORDERS, HOW DO YOU AND YOUR TEAM KEEP UP TO DATE WITH INTERNATIONAL REGULATION?

Language knowledge of the staff is important, such as regular connection with co-operating law firms abroad, PEOPIL (Pan-European Organization of Personal Injury Lawyers) membership, regular attendance at AIDA congresses, conferences, and fluent attention to the changes of the foreign and inland practice, state supervision recommendations.

The EU Directive – the possibility to enforce the rights of abroad suffered damage in their own country, facilitated and increased the claims started against the insurer, but on the other hand decreased the number of the mandates got from foreign clients.

WHAT ARE THE KEY CHALLENGES IN HANDLING COMPLEX AND SENSITIVE DISPUTES FROM AROUND THE WORLD AND HOW DO YOU OVERCOME THESE HURDLES?

The knowledge of the law and socio-economic circumstances (prices, incomes etc.) is governing the case, with the assistance of connection abroad (see point above.) The law usually allows the parties the free choice of law, however some imperative regulation as per the local law of the customer shall be complied with – this can make the interpretation of the single cases complex and difficult.

HOW DIFFERENT IS THE APPROACH TOWARDS DISPUTE RESOLUTION WITHIN THE INDUSTRY NOW COMPARED TO THE EARLY NINETIES?

The need of professional assistance in dispute resolution connected with the complexity of the insurance products, increasing activity of the different legal aid (assistance) companies, the increasing legislation concerning consumer protection incl. disputes resolving methods and organs avoiding the general court procedures.

IN YOUR OPINION WHICH METHOD OF ADR IS MOST THE COST-EFFECTIVE AND SUITABLE TO THE INSURANCE INDUSTRY? AND HOW DOES THIS CHOICE VARY ACROSS INDUSTRIES AND DIFFERENT TYPES OF DISPUTE?

The mediation as weapon of free choice of the parties and/or the increasing recourse of the different official dispute resolution organs, where the decisions, recommendations are accepted and adopted by experts of the insurance industry. Key

is, in our opinion, the unilateral acceptance of the decisions of these organs by the insurers, at least until a certain amount and in disputes started by the consumers.

WHAT ARE YOUR PREDICTIONS REGARDING UP AND COMING ARBITRATION SEATS IN 2012?

One of the most important aims is the further development, expansion in the harmonization of the different regional rules (EU, USA, Asia, Australia, and South-America). Further the closer contact (harmonization) between insurers and their re-insurers also concerning the provisions on dispute resolution. From a sector perspective, we expect the commodities sector to continue to be busy.

The activity here may not simply be plain vanilla M&A but is likely to be, for example, an equity investment coupled with a supply agreement, which is intended to secure supply. Any sectors that are fuelled by the growing middle class and aging populations in the emerging markets will also be hot spots. Insurance and healthcare are likely to be the most likely beneficiaries of this macro-trend.



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