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Insurance Claims

Due to a recent thunderstorm, my iMac was damaged (at a cost around PLN 2000). Despite the fact that I did not have an extension cord with lightning protection, the insurance company paid out instantaneously. This made me very happy about my choice of broker and insurance company, but then I asked myself the question, would they have been as forthcoming had my house burned down and had the damage been around PLN 1,000,000?

The answer, of course, is no, because in the first scenario it is more efficient for the insurer to pay (no waste of time, no cost of defence), but in the second case it pays to look for excuses.

This is where the provisions of the policy and the general conditions come into play. Policy documents often contain mistakes, even where a broker is involved. Marta, a partner in my firm, regularly comes across misspelled names, improper representation of the insured, and incorrect or out-dated descriptions of the insured property. The insured may be convinced that he negotiated an extension of the standard insurance (for which he is obviously paying), but when push comes to shove it turns out that the description of the extension is not quite what he had in mind. In addition, insurers commonly use clauses in general conditions ("GC") to avoid payment.

A standard clause whereby the insured has to apply appropriate efforts to avoid or minimise damage (a protective extension cord in the case of my computer), is often (frivolously) invoked, or ordinary human mistakes are translated into gross negligence. The GC may also contain clauses as to the

use of the object of insurance, e.g. insurance does not apply if the equipment is not in use for 30 days (something that can easily happen if your business is somewhat seasonal). If you lease some of your equipment, it has to be carefully checked whether the GC does not exclude this, e.g. the GC may state that only equipment "owned by the policy holder at the time of the incident" is insured. Often what appears to be a general all risk insurance turns out not to be so general, because the general conditions contain so many exclusions. These exclusions will differ greatly for each type of insurance.

There are several things that can be done to avoid nasty surprises. First of all, both the policy and the GC should be read very carefully, and with each exclusion the question should be asked, can this happen in my business? You may even want to involve an insurance lawyer at this stage, rather than when the damage has already occurred.

After all, a professional party is expected to understand the often very difficult language of policy documents and GC, where a consumer still enjoys a great deal of protection against the "big bad" insurance companies. Secondly, have your broker and lawyer review all policies on an annual basis to make sure that nothing has changed in your company that would suddenly makes an exclusion apply, e.g. the number of employees has gone above a certain maximum in your employer's liability insurance.

Thirdly, when an accident has happened and the insurer refuses to pay, you should hire a specialised lawyer at an early stage. Sometimes the mere fact that you are represented by a lawyer will make the insurance company think twice about not paying. In addition, the applicability of many of the above mentioned exclusions can be successfully disputed.

Often they are invoked simply to make the position of the insurer look better than it really is. Not all mistakes in insurance documents can be blamed on the insured: insurance companies also have a duty to check things before they accept payment of a premium. If provisions are unclear, they are not normally interpreted to the advantage of the insurer. If all else fails, do not forget that it is your broker's duty to make sure that you obtain the right insurance for your business. If they fail to perform, they can also be held liable. ★



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