

## Possible Reforms to Insurance Contract Law :

### (5) Provisional Findings of BILA Sub-Group Addressing Claims

#### Introduction

- Previous speakers have dealt with issues of fair play by both sides to the insurance contract.
- The only test is in the claims process
- We perceive serious imbalance (perceived by both parties as against them) and believe certainty and predictability to be necessary
- No distinction to be made between consumer and business policyholders

#### Main issues

- ***Good faith in the claims process***

*Problem* : policyholders not fully informed of rights, duties of information exchange more burdensome to policyholder by reason of policy terms.

*Remedy* : bilateral duty of openness, full recital of rights, early statement of duties, elimination of drip-feed procedural obstacles.

- ***Reservation of rights***

*Problem* : often used as delaying and obstructive devices by (often lazy) insurers, and policyholders given no reason for reservations.

*Remedy* : reservation to be specific and definitive as to time and reason, subject to test of reasonableness, reservation to lapse on expiry.

- ***Payment***

*Problem* : cash starvation used as unfair negotiating tool.

*Remedies* : duty to quantify and pay minimum likely liability at once; interest at significant levels on overdue payments to be a statutory entitlement for the policyholder.

- ***Breach of obligations generally***

*Problem* : breach of insurers attracts little sanction (*Sprung*)

*Remedy* : policyholder entitled to recover any foreseeable financial loss as consequence of insurer's breach, *e.g.* insolvency or failure of business.

### ***Regulation***

Problem : codes not enforceable, no legal framework currently in existence, UTCC Regulations difficult to apply, enforceability of rights diverse, scattered and unknown, no evidence that GISC or any other self-regulation can work (omission of insurance from UCTA has led to current situation).

Remedy : statutory standards with ready enforcement according to clear, comprehensible rules, through the courts and various ADR methods.

- ***Intermediaries***

*Problem* : Conflict of interest and lack of disclosure as currently required by industry standards.

*Remedy* : positive duty by intermediary to disclose.

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