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INSURANCE - SWEDEN

Supreme Court rules on insurers' liability for damages

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Introduction

Liability for damages is generally regarded as an essential penalty for a breach of contract. However, in the insurance law field, the question of liability for damages due to a breach of contract has drawn little attention. The matter is not regulated in the Insurance Contracts Act (ICA), except with respect to a few special situations,(1) and has been rarely discussed in legal literature and case law.

In preparatory works preceding the ICA, it was considered to include a liability for damages with respect to insurers' obligations to provide information, but such a penalty was not deemed appropriate.(2) Nevertheless, it was noted that in certain situations it should be possible to rely on general principles of liability for damages in contractual relationships.(3) The possibility to base a claim for damages in insurance contractual relationships on such general principles has also been recognised in legal literature.

Against this backdrop, the Supreme Court's judgment in Case T 481-19 (NJA 2020 s 115) is of particular interest. In the case, the question arose as to whether an insurer can be liable for damages caused by an unjustified, premature termination of the insurance contract. This article provides an overview of the ruling. The case concerned a non-life insurance policy covering, among other things, the policyholder's business and the Supreme Court considered it a corporate insurance policy, not a consumer insurance policy. The distinction is notable as non-life corporate insurance and non-life consumer insurance are regulated differently in the ICA and the same considerations may not apply to both types of insurance.

Supreme Court's judgment

In the case at hand, the policyholder petitioned a claim for a declaratory judgment, demanding that the court should declare the insurer liable for damages caused by the insurer's unfounded, premature termination of the insurance contract. The insurer contested the claim and asserted that the circumstances on which the insurer had based its decision were such that the policyholder must be considered to have substantially disregarded its obligations towards the insurer (which could justify an early termination of the insurance contract pursuant to the ICA). The case was subsequently appealed to the Supreme Court, which delivered its judgment in early 2020.

First, the Supreme Court concluded that the insurer had lacked grounds for the early termination of the insurance contract. Thereafter, the court considered the question of liability for damages in the event of a premature termination.

The Supreme Court stated that the ICA contains no provisions on liability for damages with respect to an unjustified, premature termination and that the provisions in the Tort Liability Act are to be applied, unless otherwise stipulated in the agreement or follows from general principles of contract law. According to the general principles of contract law, a party in breach of contract is liable for any damages resulting from that breach. Liability for damages generally requires negligence, unless there is a warranty or other particular commitments or there is legislation that prescribes otherwise. However, in certain contractual situations, the liability for damages is more far reaching and corresponds to strict liability (ie, liability without fault or negligence).

The Supreme Court remarked that it is not certain that the general principles of contract law with respect to liability for damages fully apply to insurance contracts and pointed out that the opinions raised in the

preparatory works and legal literature are not unanimous in this respect. Nevertheless, the Supreme Court went on to state that, although corporate insurance policies have distinctive features as compared with other commercial agreements, those distinctive features are not such that there is reason to deviate from the main rule that a breach of contract may result in liability for damages.

The court thereafter turned to the question of whether liability for damages caused by an unfounded, early termination of the insurance contract presupposes negligence or whether strict liability applies. The Supreme Court listed certain reasons for strict liability, including that unwarranted terminations of durable contracts, in certain situations, have been previously considered to entail liability for damages, regardless of whether negligence is present. On the other hand, the insurer's obligation to maintain insurance coverage on an equal basis in relation to the collective of policyholders is dependent on the insurer's right to early termination of the insurance contract. Further, the insurer's right to termination requires assessments that can be difficult to make in individual cases and that often must take place in situations where the outcome cannot be predicted with certainty. Taking the above into consideration, the Supreme Court concluded that a strict liability was too severe and that there was no reason to deviate from the main rule that liability for damages presupposes negligence. Consequently, the Supreme Court concluded that an insurer can be liable to pay damages caused by an unjustified, premature termination of a corporate insurance contract, should the insurer be deemed to have acted negligently.

As regards the question of negligence, the court reasoned that the early termination of the insurance contract must be based on stable background information, enabling a well-founded decision, in order for the termination not to be considered negligent. In practice, it must have been considered as fairly certain from an objective point of view, at the time of the termination, that the insurer was entitled to terminate the insurance contract prematurely. In the case at hand, the Supreme Court concluded that the insurer should have requested additional information from, among others, the policyholder before giving notice of the termination. It was also noted that the insurer would not have lost its right to terminate the insurance contract or otherwise suffered any notable disadvantages by waiting to terminate the contract. Considering the aforementioned, the Supreme Court deemed that the insurer had not had such stable background information to enable a well-founded decision. Thus, the insurer had been negligent in terminating the insurance contract and as a result thereof was liable for damages.

Comment

Insurance contracts are characterised by distinctive features, distinguishing insurance contracts from other types of contract. The recent Supreme Court judgment clarified that the general principle of contract law, prescribing liability for damages in case of a breach of contract, can apply to corporate insurance contracts despite their unique features. Although the Supreme Court's judgment is limited to corporate insurance, it is difficult to see any reason against applying the same principles with respect to insurers' breach of insurance contracts taken out by consumers.

Thus, even if the judgment provides explicit guidance merely as to the question of liability for damages in cases of unjustified, premature termination of a corporate insurance contract, the Supreme Court's reasonings will likely serve as guidance with respect to other questions relating to liability for damages for breaches of an insurance contract. However, one interesting question that remains to be clarified is whether liability for damages in case of insurers' breach of an insurance contract will generally require negligence or whether certain breaches of contract even may warrant a strict liability.

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Endnotes

(1) For example, the ICA prescribes liability for damages if the insurance contract is terminated due to the insurer being declared bankrupt.

(2) SOU 1989:88 p 159, 161.

(3) SOU 1989:88 p 161. Prop 2003/04:150 p 153, 154.