

Case name (date):
The “TBI” case (16.10.2017)

KEYWORDS:

Competence of the legal clinic; unfair commercial practices (Directive 2005/29/EU); duty to inform (Directive 2011/83/EU); insurance contract

FACTS:

A user signed a contract with an insurance company through the services of an insurance broker. Forty years later (2017), he filed an insurance claim after suffering a loss. The insurance company told him that he had to pay a deductible of 1.500 EUR. The initial contract did not entail any deductible. The user asked the insurance company about the reason why such a deductible was due. The insurance then told him that he had, previously, signed an addendum to the initial contract.

It appeared that the insurance broker had made the user, a senior, sign a document that he presented to him as being a simple formality that would not substantially modify the initial contract.

The user is challenging the validity of the addendum, which forcing him to pay a deductible of 1.500 EUR every time he files an insurance claim.

LEGAL ANALYSIS:

Competence of the Clinic

The Clinic is competent only for cases in which the user can be considered a consumer and the other party can be defined as a trader, in accordance with article L.010-1 of the Luxembourgish Consumer Code.

The subscriber could be considered as a consumer as he was acting out of his profession, and the insurance company and the insurance broker working for them could be considered as traders.

Duty to inform

According to article L. 111-1 of the Luxembourgish Consumer Code, the trader has a duty to inform the consumer about the general information regarding the goods or services provided.

It appeared that the insurance broker, acting on behalf of the company, did not provide the consumer with any information regarding what the addendum.

This may have been considered a breach of duty to inform from the trader.

Unfair commercial practices

According to article L. 122-5 of the Luxembourgish Consumer Code, a commercial practice may be considered aggressive if it leads or may lead the consumer into taking a decision that he would not have taken otherwise, through harassment or coercion, including the use of physical force or undue influence.

If the consumer knew that the addendum he was signing would add a deductible to pay for every insurance claim, he would not have signed the contract.

It seemed that the insurance broker from the insurance company took advantage of the consumer's old age and inability to speak French in order to make him sign the contract, while presenting the addendum as a simple formality. Such a situation may be considered as undue influence according to the said article.

LEGAL SOLUTION:

According to the previous articles, the consumer could have asked for the nullity of the addendum, thus bringing him back into the legal situation where no deductible was due.

In case of aggressive commercial practices, article L. 122-8 of the Luxembourgish Consumer Code states that the trader may be fined for an amount between 251 and 120.000 EUR and the contract resulting from such practice could be annulled.

SOLUTION SUGGESTED BY THE CLINIC:

In Luxembourg, the Commissariat aux Assurances is an entity whose goal is to settle disputes regarding insurance contracts. This specific entity is in charge of delivery mandatory accreditation to insurance company. Another of its missions is to help in settling disputes between policyholders and insurance companies. Their service is free of charge.

In order to limit the fees that the consumer would have to pay, the Clinic suggested that he tried to reach out to the Commissariat aux Assurance before he envisioned further action.

If the Commissariat's opinion is unfavourable, he could revert to a specialised lawyer that may represent him in front of a Court.