INSURANCE - PORTUGAL

Supreme Court clarifies late payment of insurance compensation

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When an insured event takes place, the insurer is bound to compensate the insured for the corresponding loss. However, the law is not entirely clear as to the moment when this payment should occur. Portuguese judicial decisions on this subject have thus far been inconsistent. However, a recent Supreme Court judgment appears to have shed light on the intended scope and meaning of the relevant legal provisions.

Legal framework

Articles 102 to 104 of the Insurance Contract Law (approved by Decree-Law 72/2008 of April 16 2008) regulate when insurance should be paid. When an insured event occurs, and after a claim has been lodged by the insured, an insurer is bound to compensate the insured for the corresponding loss, up to the insured limit. Before such payment is made, the insurer must confirm the occurrence of the event and verify its causes, circumstances and consequences. The law provides that an insurer's obligation to compensate an insured is due 30 days after the date on which it completes its assessment of the event's occurrence, causes, circumstances and consequences.

It is commonly understood that insurers may take any steps required to complete said assessment and determine the size of the loss. However, the legislature has failed to set a deadline for insurers to complete this assessment. Given that the abovementioned 30 days are counted from a date which is set by the insurer, this often leads to uncertainty and unreasonable delays in the payment of insurance compensation.

Supreme Court decision

This matter was recently addressed by the Supreme Court, which decided the following:(1)

- An insured has an interest which is worthy of protection (ie, the agreed compensation must be paid on the occurrence of any event which is covered by an insurance policy).
- In order to determine the amount of compensation, the law enables insurers to take all the necessary steps to assess the event's causes, circumstances and consequences.
- The fact that the legislature has failed to determine a maximum period within which the aforementioned enquiries should be completed does not provide the insurer with the possibility of delaying the effective payment of the compensatory amounts indefinitely for no apparent reason.
- If the completion of enquiries is delayed because of the insurer, compensation will be payable within 30 days from the date on which the enquiries should have been reasonably concluded (ie, the insurer will be in default of payment regardless of whether the enquiries have been completed).
- The insurer is liable to pay damages for any loss caused to the insured by its unjustified delay in paying the compensation, including loss of use of a damaged vehicle, alongside the payment of interest.

This decision was founded on the interpretation of Articles 102 and 104 of the Insurance Contract Law in light of the principle of good faith set out in Article 762(2) of the Civil Code, according to which an insurer must conduct itself honestly and fairly while executing its rights and obligations under an insurance contract to prevent frustration of the insured party's rights thereunder.

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Endnotes

(1) Supreme Court decision (ECLI:PT:STJ:2017:4076.15.8T8BRG.G1.S2) of November 23 2017, recently published in Portuguese here.

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