

Boundary of the Excluded Moral Hazard and Principle of Utmost Good Faith

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Abstract

One of Insurance law function might be the exclusion of moral hazard, Taiwan Insurance Act 1963 Article 29 Section 2 provided that the insurer could refuse to indemnify for damage caused by the proposer or insured (hereafter policyholder)'s willful act. And the insurer was liable to indemnify for damage caused by the fault of policyholder. From the view of interpreting above statute, there are two approaches in Taiwan judiciary. Major approach is represented by Taiwan Civil Supreme Court Judgment Tai Shan Tsu No. 2141(1997), the judgment rules that the insurance event caused by policyholder gross negligent act, which is equivalent to breach of utmost good faith, and the insurer could refuse to indemnify. As a matter of fact, the approach substantially revises Insurance Act 1963 Article 29 Section 2. There have been many lower courts followed Taiwan Civil Supreme Court Judgment Tai Shan Tsu No. 2141(1997). Minor approach is according to Taiwan Civil Code 1999 Article 217, the insurer could pay less amount of insurance payment, if policyholder gross negligently contributes in causing or aggravating insurance event. But minor approach obviously disobeys Taiwan Insurance Act 1963 Legislator's intention.

From the above Taiwan judiciary development, we could have known that there is a defect in Taiwan Insurance Act 1963 Article 29 Section 2. The defect attributes to the court to achieve case justice by caverning out the statute. In the view of comparative law, Taiwan Insurance Act 1963 Article 29 Section 2 and old

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German Insurance Contract Act 1908 Article 61 take all-or-nothing principle, and old German judiciary has the similar trend with Taiwan. However, when German Insurance Act 2008 Article 81 takes proportionality principle, the development has been disappeared completely. This article analyses the difference between German and Taiwan Insurance Law, and tries to submit an amendment of Taiwan Insurance Act.

Keywords: Moral Hazard, Gross Negligence, Contributory Negligence, Principle of Utmost Good Faith, Exclusion of Coverage