CONSUMER PROTECTION IN THE INSURANCE FIELD

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Most legislation in the field of insurance is concerned with the protection of the insured. Supervision of insurance aims primarily at safeguarding the insured against losses through the insolvency of insurers, and to this aim have lately been added others, such as ensuring fair and equitable treatment of all insured. Legislation on insurance contracts is mostly concerned with preventing insurance conditions that are too strict against the insured, because the insurers will protect their own interests to an extent that is not acceptable, at least not under modern conditions.

Some of the insured are enterprises, some are consumers in a more limited sense. Since even enterprises are protected by the special legislation, there has been little legislation that deals particularly with the protection of consumers. Yet, if we want to make the rules more efficient and more suited to modern conditions, we find that there are special interests of consumers that need to be taken care of. Enterprises will have a fairly good knowledge of their legal duties, and they can adjust their actions to them. They will pay their debts, including debts of insurance premium, in time — often as late as possible in order not to lose interest on their money than is necessary. They will have routines for renewing their contracts. If they involuntarily fail in their duties, they can in general expect a generous treatment from the insurers, who are anxious not to lose valuable customers. Consumers will often be more careless, both in observing their duties and in renewing insurance. Although the insurers will in general treat consumers benevolently, even if they have failed in their duties, the risk of losing a single consumer customer does not carry great weight with an insurer, and sanctions for breach of duties may therefore be imposed more strictly.

It is rare that a distinction is made in legislation between different kinds of insurance because of a wish to provide special protection to consumers. Some branches, such as marine insurance, may be subject to rules that are strict towards the insured, on the assumption that those who take out such insurance are businessmen and can be expected to act as such.
has been proposed — notably in the German discussion — that one should make a difference between purely commercial insurance and “everyman insurance”. In the latter should be included not only insurance for consumers but also insurance for farmers, shopkeepers, houseowners, etc. However, it is often difficult to draw the line between commercial insurance and every insurance.

Sweden has, presumably as the first country in the world, passed a special “Consumer Insurance Act” (1980:38), which entered into force on Jan 1, 1981. This Act is applicable to special branches of consumer insurance, which are enumerated in the statute, provided also that the insured is a consumer taking out the insurance for his private purposes. The problem of delimiting the scope of the special legislation has thus been solved by naming specifically the branches of insurance to which the Act is to apply. These are household insurance, homeowner’s insurance, holiday house insurance, travel insurance, motor insurance, and yacht insurance. Of these motor insurance creates some problems regarding scope. In the first place motor third party, insurance is subject to a special statute, the Motor Traffic Damage Act of 1975. The Consumer Insurance Act states that it is not applicable to third party insurance in so far as such insurance is regulated by the Traffic Damage Act (sec 1, para 2). In the second place, motor insurance is taken out, not only by private persons but also by enterprises, especially for trucks, taxicabs, etc., and only part of it is therefore consumer insurance. The Consumer Insurance Act does not deal with this issue but has left it to the insurers when working out the insurance conditions. In fact the Swedish insurers have accepted that the same conditions apply to nonconsumer motor insurance as to consumer insurance, with the exception of a few provisions, which according to the conditions do not apply unless the insured is a consumer.

The Consumer Insurance Act deals mostly with contract law, and it replaces for the types of insurance to which it is applicable the Insurance Contract Act of 1927. However, there are some rules in the new Act which cannot be considered to be contract law but have another character. The strict division between supervision and contract law, which was found in earlier legislation, has thus been discarded in this Act. The Act contains rules regarding the insurer’s duty to inform the insured of the main features of the insurance, and of his various duties and rights (secs 5-8). One of the objects of these rules is to enable the consumer to choose the kind of insurance that suits his needs best. Another is to encourage competition by making the insurers provide information to the consumers which makes it possible for them to choose among different insurers. This rule is enforced by supervision by those authorities that control marketing (not by the authorities that control the solvency, etc. of the consumers). There is also a rule, imposing on the insurer the duty to grant to a consumer on application insurance of a type that the insurer offers to the public (sec 9).
This rule recognizes the importance of "availability" of insurance to the consumers, but is must be admitted that it does not go very far, since it does not apply if, having regard to the risk of the occurrence of the event insured, the probable extent of the loss, or other circumstances, the insurer has special reasons for not providing the insurance.

The Consumer Insurance Act differs from the Insurance Contracts Act of 1927 in its aims. The earlier Act took as its starting point those clauses in insurance contracts that were considered to be inequitable, and it prohibited them or modified their effects by introducing a number of mandatory rules. The Consumer Insurance Act also contains mandatory rules; its provisions prevail against contract clauses unless it is explicitly stated that there is liberty to contract out of them (sec 3). But the starting point is another than that of the earlier statute. It is assumed that there are some needs of consumer insured that are so important that they should be protected, and the task has been to provide rules that ensure such protection.

One such need has appeared indirectly from what has been mentioned here already. This is the need of the insured to be able to choose the kind of insurance that suits him and to choose among the insurers the one that can provide the best insurance for him, considering both the premium and the insurance conditions. But information is not enough; the insured should also have the opportunity at regular intervals to change the insurance or to change the insurer. It is therefore prescribed that the period of insurance may not exceed one year, unless there exist special reasons for a longer period of insurance (sec 10). The underlying idea is that the consumer should have once every year the opportunity to review his insurance protection. The rules regarding renewal of insurance are also calculated to provide sufficient leeway for the insured to make a change at the end of the insurance year. This appears from various details that need not be described here.

A need which has been considered to have special importance for consumers is that of continuous insurance protection. The types of insurance which the statute covers are such as very consumer needs, and the insurance protection should not be interrupted because the insured has failed to notice that the period of insurance has relapsed, or because he has been guilty of a minor delay in the payment of the premium. The rules which implement these aims are technically rather complicated, and it is not necessary to go into all details here. But apparently they work rather smoothly, now that the insurers have adjusted their practices to them. The general principle is that renewal is automatic, but the insured is to be made aware of the fact that the insurance is being renewed, and he should have full opportunity of changing his insurance to another insurer if he considers it favourable to him to do so.
The most important issue in this field concerns the failure to pay the premium in time. Under earlier law, every delay in payment had the effect that the insurance protection was suspended until payment ensued. Such a rule was perhaps admissible at a time when it was uncertain whether consumers generally wanted to continue to have insurance protection. But at present one can assume that most insured want to have their insurance contracts renewed (unless they move their insurance to another insurer), and if there is a delay in payment this is mostly due to oversight or similar reasons.

The Consumer Insurance Act aims in the first place to give the insured ample time for payment. It is for instance assumed that most insured will pay the insurance premium at the end of the month, when they have got their salaries. Notice of payment for renewal should therefore be dispatched one month in advance (sec 22), which will give the insured sufficient time for payment.

In the second place the consumer's interests are safeguarded by a principle that the insured shall never lose his insurance protection unless the insurer has sent two notices to the insured. The first one is the ordinary notice of payment, stating at what time the premium falls due. If payment does not ensue within the time mentioned, there must be a second notice, and the insurer is not allowed to suspend insurance protection until payment. He must give notice that the insurance will be cancelled unless payment follows within a fortnight from the day when the notice of cancellation was sent by the insurer (sec 25). Such a principle is not new from an international point of view, but it was new to Sweden. Apparently the rules function well, with a possible exception for a few types of insurance for which some insured intentionally use the rules which are intended to protect honest insured in order to have insurance without paying. This occurs with motor insurance taken out by the young.

The rules of the Consumer Insurance Act that have caused the greatest controversy are those that relate to the reduction of the indemnity when the insured fails to observe the "secondary duties" imposed on him (the payment of the premium is supposed to be the primary duty). These rules concern inter alia the duty to provide correct information at the time of taking out insurance, and they correspond to rules of non-disclosure and misrepresentation under Anglo-American law. However, this duty is not very important for the types of insurance that the Consumer Insurance Act covers; it should be noted that the Act does not cover life insurance or other insurance of persons. The rules also concern the duty to observe safety prescriptions of various kinds (mostly corresponding to "warranties" in Anglo-American insurance law). These are the ones that have caused problems. Most important are the provisions of the insurance contract that impose on the insured the duty to keep houses locked or otherwise to take care in guarding property against theft.
Although the rules for the various duties differ in details, the principle is the same. In the first place, no detrimental consequences for the insured will ensue unless he is guilty of fault of some kind, as described more closely in the statute. This principle is not new, it is found in earlier German and Swiss law, and it also appears in the Swedish Insurance Contracts Act of 1927. However, the demands on the care of the insured are less strict in the Consumer Insurance Act than in the earlier statute. In the second place, even if there was fault (other than wilful causing of the event insured, sec 32 para 1), the consequence of the breach of duty is to be a reduction of the indemnity according to what is reasonable in the circumstances (secs 30-34). Although exceptionally the reduction can be complete (to “zero”, according to a current expression), in general it should, as appears both from the text of the statute itself and from the travaux préparatoires, only amount to a portion on the indemnity. The underlying policy is that insurance protection of the kind that the Act concerns has great economic importance for the insured, and sanctions should be imposed only in so far as it is necessary to deter from carelessness and to prevent premiums from rising unduly.

In the insurance conditions which were worked out after the Consumer Insurance Act had been passed, the insurers on the one hand provided for fairly universal protection against theft (not only against theft by burglary) but on the other hand prescribed in great detail how houses should be locked, how property should be kept under lock or supervision when the owner travelled, etc. For most cases in which these prescriptions were not observed, the indemnity was to be reduced “to zero”. A discussion broke out concerning the question whether such reductions were compatible with the letter and the spirit of the statute. The problem cannot be said to have been solved yet, but a practice has been established according to which indemnities are reduced to a somewhat smaller extent than appears from the insurance conditions but still considerably.

As appears from what has been said now, the part of the Consumer Insurance Act that has caused trouble is the one dealing with reduction of the indemnity when duties have not been observed. However, there are hopes of an improvement, at least in the certainty of the outcome of such disputes, and anyhow these questions only concern a portion of the new rules.

When the bill for the Consumer Insurance Act was introduced into the Swedish Riksdag, the insurers stated that it was likely that the Act would cause premiums to rise by as much as thirty percent. Recently, premiums have been lowered for the branches of insurance that the Act covers. No one will argue that this is the consequence of the Act. But it seems difficult to maintain at present that the Act has had any noticeable effect on the level of premiums.
The work on reforming insurance law continues in Sweden, at present by preparing legislation on life insurance and other insurance of persons. The issues of consumer protection are not the same for these branches as for the types that the Consumer Insurance Act covers. A main problem concerns information to the insured regarding the probable development of the value of the insurance, having regard *inter alia* to the distribution of dividends.¹

Finally, it should be remarked that the present writer was chairman of the commission which prepared the Consumer Insurance Act, and he does not believe himself to be an unbiased observer.