

The insurer can only assert his demand for information against the insured successfully, if the insured is obliged to provide information and if the insured must expect penalties from the insurer resulting from a breach of obligations.

2.1 Existence of an obligation to provide information

The insured's obligation to provide information results either from a contractual agreement or from sec. 31 para. 1 VVG ("Versicherungsvertragsgesetz" - German Insurance Contract Act).

Sec. 31 para. 1 VVG constitutes the insured's legal obligation to provide information. According to this section, the insurer may request, after the occurrence of an insured event, that the insured provides all information necessary to assert the insured event and the scope of the insurer's obligation to perform.

If the insurer includes the insured's obligation to provide information into the insurance contract, the obligation to provide information does not only exist on the basis of sec. 31 para. 1 VVG, but also according to the contract.³

2.2 Necessity of the requested information

The insured can only breach his obligation to provide information, if he does not give information which is necessary to the insurer.

According to sec. 31 para. 1 VVG each information is necessary which the insurer needs to determine the existence of an insured event and the scope of the obligation to perform.

Therefore, it is questionable which measure shall be the basis to evaluate the necessity.

The evaluation of the necessity should be based on the subjective view of the insurer requesting the information⁴. He should basically be free to decide which facts appear relevant in the individual case.

In order to protect the insured, the information request of the insurer is also based on an objective-normative evaluation and is limited with respect to reasonability.⁵

³ Vgl. bspw. Ziffer 25.2 AHB (2008) Satz 4

⁴ Vgl. BGH VersR 2006, 258.

⁵ Vgl. *Wandt* in: MüKo zum VVG, § 31 Rn 31.

2.2.1 Objective evaluation of the necessity

The objective-normative evaluation is a weighting of the insurer's interest to receive comprehensive information and the insured's interest in providing only information which is relevant to the case. If the insurer's interests prevail, the insured must withdraw from his interests.

The insurer's interests to receive comprehensive information, consists in the provision of all necessary information which are relevant for the existence and scope of the obligation to perform⁶.

Relevant information for the existence of the obligation to perform is e.g. information about time, place, causes and course of events and about the conduct of the involved persons.⁷ Relevant for the determination of the scope of the insurer's obligation to perform are also information about the kind and scope of the damage⁸.

An insurer's interest in information provided by the insured can only become an interest worthy of protection, if the insurer utters an information request⁹.

Otherwise the insured cannot know, whether the insurer performs an examination of the insurance case and whether and which information he needs. If the insurer does not ask, an information is consequently not necessary.

2.2.1.1 The insurer's need to clarify facts

The provision of information is only necessary in case the insurer has a need to clarify facts.

The insurer has a need to clarify facts if the insurer wishes to be capable to take appropriate decisions on the basis of the information received about the settlement of the insured event.¹⁰ The need to receive full information does therefore not exist, if the information requested is not relevant for the clarification of the insured event.

⁶ Vgl. *Prölss* in *Prölss/Martin*, VVG, 28. Aufl., § 31 Rn 34.

⁷ Vgl. BGH VersR 1978, 74; VersR 1976, 849.

⁸ Vgl. BGH VersR 1979, 343; OLG Hamm VersR 1973, 733.

⁹ Vgl. *Wandt* in: *MüKo zum VVG*, § 31 Rn 17.

¹⁰ Vgl. *Wandt* in *MüKo zum VVG*, § 31 Rn 4

The insurer is missing this need for clarification in case he received knowledge about significant circumstances.¹¹ Hereby, the insurer must take care that also within its own organization, all information any clerk receives concerning the respective insurance contract and concerning former insured events, are available also for the settlement of later insured events.¹²

In case the insurer is in the possession of the information, there is no need to impose any kind of obligation on the insured in the first place.

Defaulted or deficient information provided by the insured do, in case the insurer is aware of this fact, not breach the interests worthy of protection in a comprehensive clarification of facts.

2.2.1.2 Place of disclosure

The insurer might also have an interest in the insured providing the information at a specific place.

The insured must only respond to the insurer's demand to provide the information at a specific place, if this kind of disclosure is necessary to determine the insured event or the scope of the insurer's obligation to perform.¹³

Due to the broad scope of the obligation to provide information ("any information"¹⁴ resp. "all circumstances necessary to determine the damage"¹⁵) and its purpose, the insurer might basically demand, that the insured comes to the place of the damage since the insured might be able to provide useful information concerning the emergence of the insured event at this¹⁶.

2.2.1.3 Personal provision of information in a conversation

¹¹ BGH VersR 2005, 493.

¹² BGH VersR 2007, 1267.

¹³ Vgl. *Wandt* in MüKo zum VVG, § 31 Rn 91

¹⁴ Vgl. Wortlaut des § 31 Absatz 1 VVG

¹⁵ Vgl. bspw. Wortlaut der Ziffer 25.2 AHB (2008) Satz 4

¹⁶ Vgl. OLG Karlsruhe VersR 1998, 975 (Schadenort).

Occasionally, the insurer demands that the insured provides information in a personal conversation.

The necessity of the personal provision of information is usually not identifiable. The insurer might receive necessary information by the means of a written questionnaire, and eventually follow-up requests. It is not obvious which questions should possibly be asked by the insurer personally to the insured, which could not be asked in written form.

2.2.2 Reasonability of the provision of information

The insured may refuse the provision of information if the requested information is unreasonable.

The information requested is unreasonable, if the provision of this information causes efforts and costs which are not in a reasonable portion compared to the indemnification.

Thus, it might be unreasonable for a company in case of a fire accident to list and source all liabilities naming creditors, date, due date and amount of the receivables for two different effective dates.¹⁷ The provision of information might further be unreasonable if the requested documents are in the possession of a third person who is not willing to provide the documents or if the procurement of the documents is unreasonable with regard to time and cost expenditure.¹⁸

It must though be considered, that the provision of information concerning existing knowledge is usually reasonable. The insured's interest to keep information confidential does not constitute a matter of unreasonableness, since the insurer is obliged to confidentiality.¹⁹

2.3 Possible penalties through the insurer

If the insured does not fulfill the insurer's information demands, he might both breach his obligation to provide information according to sec. 31 para. 1 VVG and a contractual obligation.

It is questionable which legal consequences the insured must fear following a breach of obligations.

¹⁷ Vgl. OLG Hamm VersR 2003, 239.

¹⁸ Vgl. LG Kiel VersR 1972, 871.

¹⁹ Vgl. § 203 Nr. 6 und § 4 StGB

If the insurer includes the provision of information in the insurance contract, he will also include legal consequences following a breach of such obligations.²⁰ There are individual insurance contracts in practice which regulate an obligation to provide information without any legal consequences in case of a breach against this obligation. There might as well be contracts which do not contain any obligation to provide information and thus the legal regulation is valid.

In case the obligation to provide information according to sec. 31 para. 1 VVG is not fulfilled, the law does not provide for legal consequences. The legislator included this obligation into the VVG due to its importance for the insurer, and left the regulation about consequences with the insurer²¹. The obligation to provide information as in sec. 31 para. 1 VVG therefore constitutes an obligation without penalty. A breach against this obligation has therefore no consequences for the insured.

Thus, the insurer can only assert its request for information against the insured, if the insurance contract includes a penalty into the contract which applies in case of a breach against the obligation to provide information. If such regulations are missing in the insurance contract, the insured must not fulfill the insurer's request for information.

For a third person who is entitled to the insurance indemnification, the obligation to provide information in sec. 31 para. 2 VVG is a legal obligation as intended by the legislator²². A third person according to this regulation is for example the insured person in the D&O-insurance contract.

The breach against the legal obligation to provide information committed by the insured person, may constitute the basis for the insurer's claim for damages. A damage for the insurer might arise, if he must perform research in order to find out the scope of his obligation to perform in case the insured person does not provide sufficient information. The insurer might have to pay for an expert which would not have been necessary in case the obligation to provide information had been fulfilled.

3. SUMMARY

²⁰ Vgl. bspw. Ziffer 26 AHB (2008): „Wird eine Obliegenheit aus diesem Vertrag vorsätzlich verletzt, verliert der Versicherungsnehmer seinen Versicherungsschutz. Bei grob fahrlässiger Verletzung einer Obliegenheit ist der Versicherer berechtigt, seine Leistung in einem der Schwere des Verschuldens des Versicherungsnehmers entsprechenden Verhältnis zu kürzen“.

²¹ Vgl. Begr. RegE BT-Drucks. 16/3945, S. 70.

²² Vgl. Begr. RegE BT-Drucks. 16/3945, S. 70; Wandt in: MüKo zum VVG, 1. Aufl. 2010, § 30 Rn. 10 und 55

The insured is only obliged to provide necessary information. If the insurer had already received the requested information or if the information does not support the clarification of the insured event, the provision of information is not necessary. According to the opinion followed within this article, it is usually not necessary to provide the information to the insurer personally.

The insured may in certain cases object to provide information if those is unreasonable. This is the case if the provision of information causes efforts and costs which are disproportionate.

The insured is only then obliged to provide information if the insurance contract contains an obligation to provide information and includes legal consequences following a breach against such obligations. If those regulations are missing in the insurance contract, the insured must not fulfill the insurer's information request. The legal obligation to provide information is though a statutory duty which might account for claims for damages by the insurer for a third person who is the beneficiary of the insurance contract.