

Kolumne

## Keeping policy holders in the dark with provisional cover notes

When a policy holder gives notice of a claim, the insurer should – as soon as all relevant information is available - provide or deny cover. Lately, insurers often issue only provisional cover notes. The provision's legal consequence is that the insurer might reclaim any payments afterwards e.g. by arguing in retrospect that the loss concerned was not insured. Thus, provisional cover notes do not definitely clarify whether the insurer will eventually pay or not. Policy holders are left in the dark about their insurance cover.

However, a provisional cover note is not completely worthless for the policy holder: if an insurer makes a payment under reservation and then claims it back, it bears the burden of proof regarding its release from liability.

A common example: a policy holder gives notice of a claim and discloses all material information it considers relevant. The insurer then poses several questions regarding the facts. Answering these questions can take up several weeks. Once all questions have been answered, the insurer issues a provisional cover note but pays only part of the claim asserted by the policy holder. Eventually, despite long negotiations, the insurer is not willing to pay the rest of the claim. The policy holder files a claim for cover against the insurer. In this legal proceeding, the insurer brings a counterclaim and demands a reimbursement of the payment made. According to the insurer, it had not been clear until after the provisional cover note if the policy holder's claim was justified. The insurer now regards itself as not liable.

The case above demonstrates why, in our view, insurers today more often grant "provisional" cover: they want to use it as leverage to put the policy holder under pressure to accept reduced payments. It is pure bazaar.

Still, most policy holders are glad that they receive the insurer's cover note at all. They are not bothered by the "provisionality" of the cover note and think that everything is going its way. From their point of view, "provisionality" seems more or less an unimportant formality. It is not until a legal proceeding that the policy holder realizes that the formality has a legal importance worsening its position in negotiations.

The "provisional" cover note puts particular pressure on the policy holder when it is combined with another method often used by insurers. After notification of the claim, the insurer poses several questions regarding the facts, the company's organisation, risk management etc. After answering all questions more questions follow and the insurer often instructs an expert. After several months, the policy holder is so "worm out" that it is satisfied with only a partial payment.

Provisional cover notes should remain the exception as originally intended by the legislator. Only if the main facts have not yet been clarified, it is legitimate that the insurer confines itself to a provisional cover in order to safeguard its rights to reclaim payments if admissible.

However, the „provisional“ cover note is increasingly being used by insurers just to maintain a better negotiation position.

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