WILHELM

RECHTSANWÄLTE

Christian Becker, Lawyer, Specialist Solicitor for Insurance Law, Wilhelm Rechtsanwälte, Düsseldorf, www.wilhelm-rae.de

Characteristics of the insurance for the account of a third party

1. INTRODUCTION

In addition to the policy holder and the insurer, an insurance contract for the account of a third person includes at least one further person or company, the insured.

The legal implications of the insurance for the account of a third party are often neither known in detail to the policy holder nor to the insured. Especially the insured party does often wrongly assume to be usufructuary of the insurance benefit.

2. THE TERM INSURANCE FOR THE ACCOUNT OF A THIRD PARTY

The insurance for the account of a third party implies that a policy holder insures the concern of a third party (the insured) in his own name. It is not required to name the insured (see sec. 44 para. 1 Insurance Contract Act VVG) in order to conclude an insurance for the account of a third party.

The insurance for the account of a third party grants insurance cover for persons who incur the financial risk of the damage or loss based risk taking rules or the possession situation. Those persons are often obliged to conclude an insurance for the account of a third party.

There are numerous examples for the conclusion of an insurance for the account of a third party:

The owner of a vehicle is obliged to conclude an insurance for the account of a third party for all drivers authorized to drive the vehicle. Every authorized driver is liability insured without being the policy holder.

The tenant of a building concludes as a policy holder a building insurance contract for the owner and lessor, thus for the account of a third party.

The vehicle comprehensive insurance contract which the lessee of a vehicle concludes as policy holder, insures the lessor’s interest to preserve the property as policy holder.

With the contractors' all risks insurance, the building owner concludes an insurance in favor of the assigned construction companies as insured third parties.

The insurance for the account of a third party must be differentiated from the self-insurance. A self-insurance is at hand if the policy holder insures his own interest for his own account (see Muschner in Rüffer, Halbach, Schimikowski, Versicherungsvertragsgesetz, Handkommentar 2. edition 2011 about sec. 43 VVG No. 4).

3. IMPLICATIONS OF THE INSURANCE FOR ACCOUNT OF A THIRD PARTY

Concerning the legal implications of an insurance contract for account of a third party, it is distinguished between the external relationship (of the policy holder and the insured to the insurer) and the internal relationship (between the policy holder and the insured).

3.1 External relationship to the insurer

The insurance contract for account of a third party is a modification of the contract for the benefit of a third party according to sections 328 et seqs. German Civil Code (“BGB”). The insurer’s contract party is the policy holder and not the insured. This leads to the following consequences.

3.1.1 Debtor of the premium

The policy holder is the sole debtor of the premium. The insurer must address reminder for unpaid insurance premiums to the policy holder. The insured is not liable for the payment.

The insured may though avoid the insurer’s termination of the insurance contract following the policy holder’s payment delay without being the debtor of the premium. According to sec. 34 VVG, the insured can make the outstanding premium payment to the insurer. This payment fulfills the premium requirement. If the insurer refused to accept the insured’s payment, the payment claim against the policy holder remained. The insurer could though not declare a justified termination due to a delay of the premium payment because the insured had offered to pay.

3.1.2 Addressee of declarations

The policy holder is the addressee of the insurer’s declarations of intent. If the insurer wished to terminate the insurance contract, declare a rescission or withdrawal, this declaration must be received by the policy holder. Otherwise, the insurer’s declaration remaines without legal effect for formal reasons.

The same applies for declarations towards the insurer which concern the continuance of the insurance contract. Terminations, rescissions, withdrawals etc. may only be declared by the policy holder. The insured's declarations have no legal effect.

3.1.3 Obligations

According to sec. 47 VVG, both the policy holder's and the insured's conduct may have an impact on the insurance claim. Their conduct may for example lead to the insurer's release from payment due to a breach of an obligation.

According to sec. 28 para. 2 VVG, insurance contracts may determine that insurers might be entitled to a complete or partly release from the indemnification payment in case of a breach of contractual obligations, depending on the level of the default.

In case of the insurance for account of a third party, according to sec. 47 VVG, not only the policy holder's conduct, but also the insured's conduct may damage the insurance claim and lead to the insurer's release from payment due to a breach of an obligation.

3.1.4 Right to claim for insurance benefit

The policy holder has the right of disposal concerning the insurance claim.

This means that the policy holder as the contract partner of the insurer is entitled to claim for insurance benefit.

Furthermore, the policy holder is entitled to enforce the claim towards the insurer at court. A payment claim of the insured against the insurer would remain without success for lack of entitlement of claim – except for the following exemptions.

Only in exceptional cases the insured has the direct entitlement to claim against the insurer instead of the policy holder. The entitlement for claim of the insured against the insurer exists if the insured is in possession of the insurance policy (see sec. 44 para. 2 VVG). In this case, the insured may dispose of the claims from the insurance contract without the policy holder's approval and assert these claims also judicially (see Terbille in Münchner Anwaltshandbuch Versicherungsrecht, 2. edition about para. 2 No. 259).

On the other hand the insured may dispose of the claim directly towards the insurer if the policy holder agrees. If the policy holder agrees that the insured has a right to dispose of the claim, he usually transfers this right to the insured by cession of the insurance claim.

Usually, the policy holders do not agree to the insured collecting the insurance benefit.

One reason for this is, among others, that the below (3.2.1) indicated possibility of the preferable satisfaction of the policy holder's claims is omitted in case the insured is allowed to make the claim.

Furthermore, the insured might have a separate right to claim against the insurer, if the policy holder refuses to assert the insurance benefit. The policy holder's refuse might result from the fact that the insurers refusal to provide the insurance benefit is wrongfully regarded as correct. In case of the policy holder's failure to act, the forfeiture or limitation of the claim for insurance benefit are imminent. This exceptional case approves the insurer's direct right to claim.

3.2 Internal relationship between policy holder and insured

The above described external relationship to the insurer must be separated from the internal relationship between the policy holder and the insured.

3.2.1 Rights and obligations from the contract between the policy holder and the insured

The reciprocal rights and obligations of the policy holder and the insured concerning the insurance contract arise from the internal relationship.

Usually this internal relationship is based on a contractual obligation between the policy holder and the insured. This might for example be a service contract, leasing contract, order, etc.

This contractual obligation determines who has the entitlement to insurance benefits in the internal relationship after the formal collection of the insurance benefit. If this is the insured, the policy holder – irrespective of exceptions (compare 3.2.3) – transfers the insurance benefit to the insured.

For example, leasing contracts regulate the internal relationship between the lessee and the lessor. The lessee as policy holder must collect the insurance benefit from the comprehensive insurer provider in case of a damage of the insured car. The lessee is, according to the internal relationship, entitled and obliged to claim for the insurance benefit from the insurer and assert the claim at court if necessary.

According to the leasing contract, the lessee must usually claim for payment to the lessor as the insured.

The rental agreement which obliges the tenant of commercial space to conclude a building insurance, often regulates that the tenant as policy holder must pass the insurance benefits received for damages at the building to the owner of the building as the insured. The rental agreement might contain the additional regulation that the insured must use the insurance benefit to repair the damaged building.

Those and similar contract clauses often regulate who is entitled to the insurance benefit in the internal relationship and how it has to be used.

3.2.2 Rights and obligations from the unwritten legal obligation

If no contractual obligation between the policy holder and the insured exists or the contract does not include information concerning the insurance benefit, jurisdiction assumes an unwritten legal contractual obligation between the policy holder and the insured (see Federal Court of Justice "BGH", NJW 1973, 1368). This obligation shall determine typical rights and obligations concerning the insurance benefit.

According to this contractual obligation, the policy holder shall have the right in trust concerning the disposal of the insurance benefit. The policy holder shall be obliged to demand the insurance benefit from the insurer and hand out the benefits received to the insured (see Dageförde in "Münchner Kommentar zum VVG", 1. edition 2010 about § 46 VVG no. 7).

Further, the policy holder is obliged to inform the insured about the content of the insurance contract and the amount of the insurance benefit received (see Dageförde, l.c., no. 9).

In addition, the policy holder shall be obliged to consider the insured's interests in negotiations with the insurer. The policy holder may for example not waive the right to an insurance benefit without the insured's agreement.

3.2.3 Limitations of the policy holder's obligation to surrender

The policy holder's obligations resulting from the unwritten obligation construed by jurisdiction does not exist for all constellations. The policy holder is not always obliged to transfer the insurance benefit received to the insured. The policy holder does not need to transfer the insurance benefit to the insured per se and irrespective of his own interest to the insured (see Prölss/Klimke in Prölls/Martin, Versicherungsvertragsgesetz, 28. Edition 2010 about § 46 VVG no. 6).

If the insured's conduct is deemed bad faith, this might conflict the claim for surrender.

The policy holder might among others offset the insured's claim with claims for indemnification which he is entitled to from the event which caused the insurance case (see Federal Court of Justice VersR 73, 634). If the policy holder claimed for indemnification against the insured e.g. because the insured culpably caused damages affecting the policy holder, the policy holder can declare an off-setting against the insured's claim for surrender. In this case, the policy holder may, in default of the insured's need of protection, keep the insurance benefit.

Furthermore, the policy holder may make an objection to the claim for insurance benefit by the argument of preferential satisfaction according to sec. 46 VVG. According to sec. 46 VVG, the policy holder may satisfy his own claims against the insured concerning the insured object preferentially. If the policy holder had on his part claims against the insured resulting from this damage, the policy holder may at first object the preferential satisfaction and reject the transfer of the insurance benefit to the insured with this argument.

4. CONCLUSION

The insurance for the account of a third party corresponds to economic reality whereby, resulting from contractual obligations, often those must conclude an insurance contract who will not be the damaged party in the insured event.

The separation of the formal entitlement to the claim (policy holder) and the substantive ownership of the insurance claim (usually the insured) simplifies the regulation of the damage for the insurer. The insurer has the policy holder as contract partner with whom to discuss the damage and to whom to pay the insurance benefit with the effect of satisfying an obligation.

The separation of the formal and the substantial entitlement allows the policy holder to check whether he has claims which should be satisfied preferentially, before transferring the insurance benefit to the insured. The policy holder would not have this possibility if the insured had his own formal right to claim against the insurer.

Opposite to the insurance for one's own account, it is disadvantageous for the policy holder that the insured's breaches of obligations can be attributed to the policy holder. In case of an insurance for one's own account the attribution of third persons‘ conduct is only possible in exceptional cases (representation liability).

Christian Becker
Lawyer
Specialist Solicitor for Insurance Law

Wilhelm Rechtsanwälte
Partnerschaft von Rechtsanwälten
Fürstenwall 63
40219 Düsseldorf

Telephone: + 49 (0)211 687746 - 14
Telefax: + 49 (0)211 687746 - 20

www.wilhelm-rae.de
christian.becker@wilhelm-rae.de

AG Essen PR 1597