

Policy Owner's Breach in Duty of Disclosure and Its Consequences

When we look at the legal nature of the insurance contract, the basic obligations attributed to the parties are considered as “premium payment obligation” and “obligation to provide insurance protection”. Although the execution of these obligations actually keeps the contract alive, the functioning of a number of issues, that is to say, entitlement, is conditional upon the fulfillment of a set of duties. The insurance contract provides the parties with a number of duties, which are based on the bona fide rule stipulated under article 2 of the Turkish Civil Code.



Fulfillment of these duties is of high importance for both parties as it will require the parties to revise all elements of the contractual terms. Likewise, if the insurer is convinced that the risk is aggravated in any way or that substantial changes in the interest subject to insurance take place, all agreement terms must be negotiated from the beginning. Although the necessary notifications are not made, the insurer will consider that the protection will continue but will not be able to give any meaning to the insurer's reservations and objections when the damage occurs and the compensation is due. For all these reasons, the subject of our article is the duty of disclosure of the policy owner.

Pursuant to Article 1412 of the TCC, "Where the Code attaches any legal consequence to the policyholder's behavior or knowledge, the same consequence shall attach also to the behavior or knowledge of the insured, of the representative or in cases of personal insurances of the beneficiary, provided that they were aware of the insurance contract." In this case, the obligation of declaration of the representative, whom is worked intensively in marine insurances, recognized by law becomes important in addition to those of the insured and the beneficiary. In order for any information to be "material" provisions of article 1435 of TCC stipulates that "Circumstances that are not so disclosed at all or disclosed insufficiently or wrongly to the insurer shall be deemed of importance if they could lead to the non-conclusion of the contract or to its conclusion with different terms."



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In addition, the same provision stipulates that "Circumstances asked by the insurer orally or in writing shall be deemed as important until proof to the contrary." This part is essentially subjective and in need of proof, but it is of high importance in insurance practice.

The information form used for specifically for marine insurances also functions as enforcement of this provision and is one of the major documents to be immediately recourse in case of any dispute between the insured and the insurer. In practice, different application forms are used for each type of coverage considering potential risks and specific situations. For example, the information required for the compulsory financial liability insurance application form related the sea crafts and the yacht insurance application form are different from each other. Although the questions asked vary, they mainly consist of previous damages to the ship in previous insurance periods, operation ship, physical characteristics, and encumbrances on the vessel and crew issues. The insurer fulfills its duty of disclosure arising from the law through these forms. The information transmitted is taken into consideration by the insurance departments and the risk size and content and accordingly the premiums are determined.

Article 1436 of TCC stipulates that the policyholder shall not be liable for any circumstances remaining outside the scope of the questions contained in that list, but the situations where the policyholder has hidden an important issue in bad faith are excluded.

Remedies to be applied when the policy holder violates its duty or provides unreal information, are regulates under article 1439 of TCC, in which case the insurer may exercise its right to withdraw from the contract or request additional premium within 15 days as stipulated under article 1440. After the risk has occurred, this situation, that is, if the breach of duty of disclosure has affected the occurrence of the risk,

may lead to a decrease in the insured's compensation and even in some cases (where the defect is deliberate) may even lead refraining from paying compensation. For all these reasons, it is very important that the insurer and the policy holder / representatives cooperate at high level and declare any unusual circumstances. Indeed, from the evidence law perspective, the burden of proof on the fact that the circumstances that may have an impact on the conclusion and terms of the contract "are known by the insurer" has also been left on the insured pursuant to article 1438 of TCC and observance to this obligation and provision of material information in written form will be for the benefit of the insured in the future. Accurate, effective and complete communication will eliminate unforeseen situations in advance also in the insurance field as in all other areas of life.

