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A review of the Russian court practice on insurance in 2015-16

This article addresses the Russian courts' interpretation of the civil law rules on insurance contracts in the past two years. While the Russian legal doctrine does not recognise case law, legally binding court decisions often serve as reference points or examples for other courts and sometimes as sources of quotes.

We have grouped the court decisions according to the Articles of the Civil Code that regulate the rights and obligations of the parties to an insurance contract.

Articles 944 and 945 of the Civil Code

It is worth noting that Sub-Articles 1 and 3 of Article 944 of the Civil Code are dedicated to one of the most important legal concepts that distinguishes the insurance contract from other contracts, namely, an obligation of the insured to provide the insurer with the information that is necessary for concluding a contract and evaluating the insured risk, as well as the consequences of breaching such obligation:

> "1. Upon entering into an insurance contract, the insured (or policyholder) must inform the insurer about the circumstances known to him that have material significance for determining the probability of occurrence of the insurable event and the amount of possible damage (insurance risk) if the insurer is not or should have not been aware of such circumstances.
>
> Material circumstances are, in any case, those circumstances that are expressly defined by the insurer in his standard insurance contract form (insurance policy) or in his written request."
>
> "3. If it is established after the conclusion of an insurance contract that the insured has reported knowingly false information about the circumstances mentioned in Sub-Article 1 of this Article to the insurer, the insurer has the right to demand that the contract be invalidated and the consequences outlined by Sub-Article 2 of Article 179 of the Civil Code be applied.
>
> The insurer cannot demand the invalidation of the contract if the circumstances that were not reported to the insurer have ceased to exist."

The importance of this provision cannot be overestimated. First of all, the obligation to provide information about the risk secures the mere possibility to conclude an insurance contract and to define a premium (a price of the contract) that corresponds to the insured risk. Furthermore, the law protects the interests of the insurer in case he is misled by a dishonest insured and provides the insurer with a right to challenge the contract in court. As can be seen from Sub-Article 3 of Article 944 of the Civil Code, the law does not limit the insured party's disclosure

obligation to information expressly requested by the insurer in the application form or expressly mentioned in the contract. A similar provision can be found in Article 250 of the Code of Maritime Shipping[1], but it is even more onerous for the insured. The expression, "in any case", which is used in Article 944 of the Civil Code, means that the insured must also disclose any other information that is material (or important) for the purposes of evaluating the insurance risk. While the insurer is a professional in the risk assessment business, it is the policyholder, who possesses full information about the real risk and the specific subject matter of insurance.

As shown by court practice, the courts apply this provision in a narrow way. First, the courts interpret the policyholder's disclosure obligation as applying only to the information expressly requested by the insurer. Second, in the absence of any provisions to this effect in the law, the courts oblige the insurer to verify the information provided by the insured. Third, the courts extend the rule of Article 948 of the Civil Code that limits the insurer's right to challenge the insurance value of the insured property in case he did not check it at the inception and apply this estoppel to any disputes regarding the breaches of the disclosure obligations. Finally, the courts take a very strict approach and set a very high bar for an insurer that wants to demonstrate the insured party's intent to mislead him.

Let's consider a few examples of how this rule is interpreted by the courts. We start with quotes from the Resolution of the 13th Appeal Court (case No. A56-2313/2014) rendered in favour of the insurer:

"At the inception the insurer has a right to clarify with the insured the facts that are necessary for evaluating the insurance risk. With this in mind, the insured at the inception is offered to answer certain questions (to fill in the application form)."

"The insurer assumes that the parties act in good faith and, therefore, the information provided by the insured is correct."

"The insurer has exercised his right and obligation to evaluate the risk because he has sent a proposal form to the insured in which the insured filled in the respective paragraphs with the information that is necessary for taking a decision to enter into an insurance contract."

"It was only after the report of the occurrence of the insurable event that the insurer became aware that at the inception the insured had knowingly provided false information."

"The insurer could not or could have not found out about it before he was presented with the documents regarding the subject matter of insurance."

We believe this Resolution is a model of the correct interpretation of Article 944 of the Civil Code and the correct balance of the rights and obligations of the parties to the insurance contract in case of providing misleading information regarding the subject matter of insurance at the inception. The court has confirmed that, based on the presumption of good faith behaviour, the insurer is not required to verify the information provided by the insured and cannot bear the negative consequences of his lawful behaviour. However, this Resolution was later cancelled by the North-Western District Court, which was also supported by the Supreme Court of the Russian Federation (Resolution of the Supreme Court dated 6 April 2016 No. 307-ES15-1748). These higher instances reversed the conclusions as follows:

"The insurer relied on the good faith of the insured (*evidently, he should not have done so!*) and did not check the provided information."

"The insurer **could check and should have checked** (*emphasis added*) the information provided by the liquidator before entering into the contract or within reasonable time forthwith."

[1] Article 250. Information about the risk

1. When entering into a contract of marine insurance, the insured must disclose to the insurer the information about the circumstances that have material significance for evaluating the risk and that are known or should be known to the insured as well as information requested by the insurer.

The insured does not have to disclose publicly available information as well as information that is known or should be known to the insurer.

2. If the insured fails to disclose the information about the circumstances that have material significance for evaluating the risk or if the insured provides wrong information, the insurer has the right not to perform the contract. In this case, the premium is due to the insurer, unless the insured is able to demonstrate that his non-disclosure or misrepresentation occurred without his fault.

> "Obtaining information is not a burdensome process. The information about the claims and lawsuits against the insured can be found on the official website of the Supreme Commercial Court of the Russian Federation on the Internet, the information on the disciplinary sanctions imposed on the liquidator can be found on the website of the self-regulatory body."

Therefore, the highest courts establish a rule, "trust but verify", and discourage the insurer from relying on good faith of the insured and require him to check all the facts provided by the insured under the risk of losing his defence under Article 944 of the Civil Code.

As mentioned above, the courts strictly interpret Sub-Article 3 of Article 944 of the Civil Code, "linking" this interpretation to Article 945 of the Civil Code. For example, the Court of Moscow, in case No. A40-150484/15-151-1191, stated as follows:

> "Events are not insurable events if they occurred as a result of treatment of illness or consequences of accidents that took place prior to, or after, the policy period, while the insurer is unaware of them."
>
> "Within the policy period the insured was recognised as disabled and diagnosed with 2nd grade diabetes."
>
> "The insurer has to prove that the insured had a direct intent to provide knowingly false information."
>
> "The insurer did not use his right to check the health condition of the insured, to check the validity of the information and to evaluate the insurance risk, taking into account the factors that are relevant to the probability of the occurrence of the insurable event. Therefore, the insurer accepted the information contained in the insurance application form as sufficient and admissible."
>
> "The insurer did not clarify the circumstances relevant to the degree of the risk and the insured did not provide any knowingly false information about the **insured property** (*emphasis added*; *this is an example of thoughtless copy pasting by the courts of their own or other courts' decisions*)."

The Resolution of the West-Siberian District Court on case No. A70-806/2015 is an example of the clear understanding of the boundaries set out by the law for the insurer:

> "The courts were correct in applying Sub-Article 2 of Article 945 of the Civil Code as the insurer has a right to examine the state of health of the insured person. The courts correctly noted that the insurer could have used his right to exclude unjustified risks, but he did not do so."
>
> "In this regard, the courts were right to decline the arguments of the insurer regarding entering into the insurance contract under the influence of deceit by the insured person."

The next court decision is an example of the unusual interpretation of the provisions regarding the misrepresentation of facts and circumstances in insurance contracts. The Resolution of the Supreme Court on case No. 305-ES15-16003 makes the following conclusion:

> "A transaction concluded under the influence of deceit can be voided by a court only if it is established that the deceiving party had planned to deceive the other party and that the misrepresented circumstances formed the basis for the decision to conclude the transaction."
>
> "The state of health of the insured, when entering into the insurance contract, was determined by a disease that had been existing for over 20 years. Therefore, the causal link between the disease and the decision of the insured (*sic!*) to conclude the insurance contract was not established by the courts, which led to the correct refusal to void the contract."

We do hope there was a typo in the Resolution and that the court really meant "the causal link between the facts about the state of health of the insured and the decision of the insurer" *(not the insured*) to conclude the contract.

The Decision of the Court of the Ivanovo Region on case No. A17-3464/2014 reads:

> "The insurance contract can be declared void subject to the evidence of a **direct intent of the insured** (*emphasis added*) aimed at misleading the insurer, including in relation to the information about the insured property, as well as to the evidence that knowingly false information relates to the circumstances

that have material significance for determining the probability of the occurrence of the insurable event and the amount of possible damage."

"Taking into account the literal meaning of the word "knowingly", i.e. "consciously, unconditionally, unquestionably, as known (to the acting person)", it is necessary to establish the circumstances of the policyholder's deliberate (conscious, unconditional, unquestionable) provision of the incorrect information about the insured risk."

This Decision is one of the few examples where the courts interpret certain words or expressions used in the law by reference to Russian glossaries which seems to be perfectly sensible. However, in cases where the insured is a legal entity, such literal interpretation may cause certain difficulties.

This is why other courts have taken a more reasonable approach to interpreting the intent of the insured through his good or bad faith behaviour. For example, in the Resolution of the North-Caucasian District Court on case No. A53-4787/2013, the court cited Sub-Article 2 of Article 179 of the Civil Code:

» "A fraud is also committed when a person intentionally fails to mention the circumstances that he should have disclosed acting in good faith according to the trade custom requirements (Sub-Article 2 of Article 179 of the Civil Code)."

The Resolution of the Central District Court on case No. A36-5095/2014 resonates:

» "The right of the insurer to verify the facts does not release the insured from his obligation to disclose the true information about the subject matter of insurance and related risks. A breach of such obligation by providing knowingly false information makes the transaction voidable pursuant to Article 179 of the Civil Code."

"A fraud is also committed when a person intentionally fails to mention the circumstances that he should have disclosed acting in good faith according to the trade custom requirements."

"The fraud, which was in the form of providing untrue (or incorrect) information about the existence of an automatic fire extinguishing system (dry powder extinguishers) when entering into the contract, was the ground for invalidating the transaction."

"The provision of this information, which directly influenced the probability of the occurrence of the insurable event (in the form of a fire outbreak) and the decision to enter into the insurance contract is an objective requirement. The insured was aware of it."

"As the information about the existence of the automatic fire extinguishing system (dry powder extinguishers) is knowingly false, the insurance contract is invalid."

As mentioned above, the courts increasingly expect the insurer to be more active when concluding insurance contracts. The courts have converted the insurer's right to verify the insured risk into his obligation. Consider Article 945 of the Civil Code:

» "1. When concluding a property insurance contract, the insurer has a right to examine the insured property, and, if necessary, to appoint an expert examination (appraisal) to establish its insurance value.

2. When concluding a personal insurance contract (i.e. life, accident, health and medical insurance), the insurer is entitled to conduct a medical examination of the insured to establish the actual state of his health."

Now, let's have a look at how "creative" the courts are in interpreting this short Article. Both the Resolutions of the Ural District Court on case No. A71-5514/2013 and the Supreme Court on case No. 309-ES15-76 state as follows:

» "Pursuant to Article 945 of the Civil Code **the insurer bears the burden of claiming and collecting the information about the insured risk, as well as the risk of entering into a contract without carrying out a proper inspection of the subject matter of insurance** (*emphasis added*). The insurer is also entitled to examine the insured property when entering into a contract of insurance."

The Moscow District Court in the Resolution in case No. A40-127385/2015 declined the insurer's arguments regarding the misrepresentation of facts by the insured and ordered the insurer to pay the insurance indemnity:

> "The insurer, as the professional on the insurance services market, defined and accepted the information in dispute, did not request for, or collect, additional facts, did not find out the circumstances that were relevant to determining the level of risk and did not exercise his right to check the information provided by the defendant (*insured*). The information about the losses that had taken place and were mentioned by the plaintiff (*insurer*) in the lawsuit had been published in mass media before the disputed insurance contract was concluded. The information about court disputes is also in the public domain on the Internet."
>
> "Therefore, the plaintiff (*insurer*) did not exercise his right to verify the insured risk."

The Court of the Far-Eastern District in Resolution No. F03-6210/2015 determined that:

> "The insurer, as the professional on the insurance services market and, consequently, being more experienced in defining the subject matter of insurance, as well as the laws (*sic!*) and other legislative acts regulating insurance in general, should have, pursuant to Article 945 of the Civil Code, resolved these issues prior to entering into the insurance contract. However, the insurer, having signed the contract and received the premium from the plaintiff (*insured*), has accepted the insurance risk."

The Resolution of the Court of the Central District on case No. A36-5095/2014, which we have already mentioned above, has not let us down again:

> "The circumstances of providing knowingly false information were determined after the fire on the basis of the surveyor's report that confirms the absence of an automatic fire extinguishing system on the insured party's territory."
>
> "As **the legislation does not impose on the insurer the obligation to verify the provided information** (*emphasis added*), the fact of providing knowingly false information cannot cause negative consequences for the insurer in the form of the statute of limitation (*for filing a claim for invalidation due to misrepresentation*) starting from the date of the application for property insurance."
>
> "The insured party's argument that the insurer bears the burden of proof that there was no fire extinguishing system was declined as one cannot prove a negative fact and each party should provide proper evidence of performing his obligations under the contract. Based on the above, the court believes that it is the plaintiff (*insured*) who, having stated in the application form that the premises where the insured property was located had autonomous fire extinguishers, must prove that the extinguishers were, indeed, really present on the premises."

So, we could summarise that the courts, while rightly considering the insurer to be better equipped professionally in evaluating the risks, have rather consistently delivered the message that a professional (the insurer) should not pin his hopes on the information provided by an amateur, the insured. Although, the courts conceptually support the position that the insurer should not be misled by the insured, the insurers often lose their cases because the courts are rather strict in applying the consequences of the insurer's failure to use his right to collect additional information about the insured risk. The courts are increasingly turning the insurer's right to evaluate a risk into his obligation to check the information provided by the insured, and generally apply the estoppel of Article 948 of the Civil Code applicable in the case of contesting the insurance value as an addition to Article 944 of the Civil Code.

Articles 947 and 949 of the Civil Code

Disputes regarding the amount of insurance indemnity based on Articles 947 and 949 of the Civil Code are quite common. Contrary to the Code of Maritime Shipping[2], the Civil Code allows conclusion of insurance contracts for a

[2] Article 259. Sum insured

1. When entering into the contract of marine insurance, the insured must declare the amount for which he insures the respective interest (the sum insured).

2. In marine hull, cargo or other property insurance, the sum insured cannot exceed its actual value as of the date of entering into the contract (the insurance value).The parties cannot challenge the insurance value of the property established by the marine insurance contract, unless the insurer can prove that he was deliberately misled by the insured.

3. If the sum insured stated in the marine insurance contract exceeds the insurance value of the property, the marine insurance contract is void to the extent the sum insured exceeds the insurance value.

sum insured that is different from the insurance value and gives the parties a right to contract out of the average (*pro rata* indemnity) principle when the sum insured is less than the insurance value.

As mentioned above, Article 948 of the Civil Code provides that the insurer who has not used his right to verify the insured risk cannot contest the insurance value specified in the contract, unless he was intentionally misled by the insured in relation to the insurance value. Similarly, in the cases described above, the burden of proof of the insured's intent lies on the insurer.

One of the issues the courts still face is whether the insurance value must be stated in the insurance contract. Consider Sub-Article 2 of Article 947 of the Civil Code:

> "2. Unless the contract of property or entrepreneurial risk insurance provides otherwise, the sum insured cannot exceed the actual insurance value (the insurance value). In case of property, the insurance value is equal to the actual value of the property in the place of the property's location on the date of entering into the contract."

The Resolution of the North-Western District Court on case No. A52-1342/2015 reads:

> "The sum insured is established by the parties based on the insurance value of the property. Applying the rule of Article 431 of the Civil Code on the contract terms interpretation, the absence of the explicit mentioning of the insurance value of the insured property in the Contract cannot lead to a conclusion that the insurance value was not agreed to by the parties, provided that the parties agreed on the sum insured."

The Resolution of the Volga-Vyatsky District Court on case No. A17-5526/2013 adds:

> "Having concluded the insurance contract, the insurer did not use his right to examine the insured property in order to establish its insurance value, but agreed with the value of the property stated by the insured in the application form and received the insurance premium corresponding to this amount. The insurer started to doubt the credibility of the information provided by the insured only after the occurrence of the insurable event. There is no evidence that the insurer was misled about the price for which the property was acquired by the insured."

In other words, the courts, when determining the relation between the insurance value and the sum insured, applied the approach that was used previously and assumed that the sum insured is equal to the insurance value by default. The formula for calculating the amount of the insurance premium is also important for establishing the relation between the sum insured and the insurance value.

As follows from the above quotation from the Resolution of the Volga-Vyatsky District Court, the courts refuse to consider the insurer's doubts about the insurance value that arise after the occurrence of the insurable event. This is further confirmed by the Resolution of the West-Siberian District Court on case No. A75-1451/2015:

> "When entering into the insurance contract in question, the insurer did not use his right to examine the insured property in order to establish its insurance value, but agreed with the value of the property stated by the insured. The insurer began to doubt the credibility of the information provided by the insured only after the occurrence of the insurable event."

The courts are consistent in putting on the insurer the burden of proof of intent of the insured to mislead him about the insurance value (see, for example, the Resolution of the North-Western District Court on case No. A56-48316/2014). However, as mentioned above, proving the intent of a legal entity could be quite cumbersome. In this regard, the Resolution of the North-Caucasian District Court on case No. A53-4787/2013 is of a particular interest. In this case, when applying for insurance, the insured provided an appraiser's report on the market value of the property. The insurer did not verify the insurance value. The property was lost and the insured demanded full indemnity. The insurer was, however, able to prove that the appraiser's report was prepared for the purposes of capital contribution and not for the purposes of insurance and that it was based on the information about the

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4. If the sum insured declared to be lower than the insurance value of the property, the insurance indemnity is decreased *pro rata* to the relation of the sum insured to the insurance value.

property's market value that was taken by the appraiser from the Internet advertisements placed by the insured himself. The court quite rightly pointed out that:

> "The courts have arrived at the reasonable conclusion that the property's market value is obviously much lower than the sum insured that was indicated in the insurance contract. Therefore, when applying for insurance, the insured knowingly provided an incorrect appraiser's report about the value of the property, i.e. there was an intentional misrepresentation of the property's market value to the insurer."

In practice, the relation between the sum insured and the insurance value is particularly important for establishing the amount of the insurance indemnity when the sum insured is less than the insurance value. Article 949 of the Civil Code provides for the *pro rata* principle of indemnity in this case:

> "If in the contract of property or entrepreneurial risk insurance the sum insured is established lower than the insurance value, the insurer upon occurrence of the insurable event, is obliged to compensate to the insured (the beneficiary) a part of the losses *pro rata,* based on the sum insured as a proportion of the insurance value."
>
> "The contract can provide for a higher amount of insurance indemnity, but not higher than the insurance value."

The courts have adopted an approach that requires an express declaration of the parties' intention to have the sum insured lower than the insurance value and to agree to a different formula for calculating the insurance indemnity. For instance, the Resolution of the North-Caucasian District Court on case No. A32-8183/2015 provides:

> "The said conditions of insurance (below the insurance value) are expressly mentioned in the application form by the insured, i.e. the intent to insure the risk for a sum below the insurance value was clearly articulated. At the same time, the insurer's agreement to pay a higher amount of insurance indemnity (as required by the second paragraph of Article 949 of the Civil Code) must be clearly stated in the contract and should not require an additional clarification."
>
> "In the opinion of the appeal court, the interpretation of the contract in favour of the plaintiff (*insured*) as requesting for a higher insurance indemnity amount does not correspond to the actual intent of the parties. If it was their intent, they should have expressly stated such possibility in accordance with Article 949 of the Civil Code, but the contract is silent on this issue."

One further example of such approach is the Resolution of the 9th Appeal Court No. 09AP-6040/2015. It follows from the Resolution that the sum insured was established at RUB 11,027,778. The insurance value was not mentioned in the contract, but it was proved that it amounted to RUB 17,894,739.77. The amount of damage was RUB 9,138,573.69. The court ruled that in case of a complete loss of an insured property, the insurance indemnity is, "in accordance with Article 15.3.1 of the general terms and conditions of insurance, unless otherwise provided for by the contract of insurance, paid in the amount of the actual value as of the date of the loss of the property less the residual value, but not more than the sum insured". In this case, the court supported the insured, did not apply the average (*pro rata* compensation principle) and awarded the payment of the insurance indemnity calculated in accordance with the general terms and conditions.

Article 959 of the Civil Code

The courts do not have any difficulty in interpreting Article 959 of the Civil Code that puts one more disclosure obligation on the insured. The courts confirm that this legal norm is mandatory and consistently reject claims by the insurers that a failure to report material changes in the circumstances disclosed when applying for the contract constitutes a ground for refusal to pay the insurance indemnity[3]. The Resolution of the Supreme Court No. 305-ES16-12947 confirms that:

[3] It is worth noting that the mandatory rule of Article 271 of the Code of Maritime Shipping releases the insurer from liability: "A failure of the insured or the beneficiary to perform the obligation established by Sub-Article 1 of this Article (*i.e. notification of the increase in the risk insured*) releases the insurer from the performance of the marine insurance contract as at the moment when a material change in the subject matter of insurance occurs."

» "As at the moment of theft the insured property was with the insured, the courts did not have any reason to exclude the event from the list of insurable events."

"A failure of the insured to report the material changes in the circumstances that result in the increase of the insured risk where, as in the case in question, such circumstances ceased to exist prior to the occurrence of the insurable event […] leads to consequences other than the refusal to pay the indemnity or invalidation of the contract."

Grounds for refusing to pay indemnity

We would like to continue our review by looking at court decisions that have interpreted the Civil Code rules providing legal grounds for releasing insurers from their obligation to pay an indemnity and allowing them to refuse to pay an indemnity. The most common phrase used by the courts gives an insight into the direction the court practice has been developing: "The grounds for releasing the insurers from the obligation to pay indemnity are set forth by Articles 961, 963, 964 of the Civil Code."

In this regard, we would like to note the rather questionable interpretation of Article 961 of the Civil Code that sets out the consequences of late notification of the insurer about the occurrence of the insurable event. Specifically, Article 961 of the Civil Code reads:

» "1. The insured under the non-life insurance contract must notify the insurer or his representative as soon as the insured becomes aware of the occurrence of the insurable event. If the insurance contract provides for a deadline or a method of notification, such notification must be made within the agreed period of time and by the agreed method.

The beneficiary has the same obligation if he becomes aware of the occurrence of the insurable event and intends to receive the insurance indemnity.

2. A failure to perform the duty set forth by Sub-Article 1 of this Article entitles the insurer to refuse the payment of indemnity, unless it is proved that he had been aware of the occurrence of the insurable event in good time or that the absence of such information **could not have affected** (*emphasis added*) his obligation to pay the insurance indemnity."

As follows from the emphasised words, it is the insured that must prove that the absence of the information about the occurrence of the insurable event did not affect the obligation of the insurer to pay the indemnity. However, the courts take the opposite approach. For instance, the North-Western District Court is very consistent in this regard (see Resolutions on cases No. A56-79127/2014, No. A56-28189/2014 and No. A56-28260/2014):

» "As implied in this rule, the failure of the insured to notify the insurer about the occurrence of the insurable event in a timely manner is not an unconditional ground for refusing to pay the insurance indemnity."

"If the insurer refuses to pay the insurance indemnity, **he must demonstrate how the late notification of the occurrence of the insurable event affected his obligation to pay the indemnity** (*emphasis added*)."

Article 964 of the Civil Code

We now turn to Article 964 of the Civil Code that probably causes most disputes. It provides that:

» "1. Unless the law or the contract provides otherwise, the insurer is released from the liability to pay the insurance indemnity if the insurable event occurs as a result of:

- nuclear explosion, radiation or radioactive contamination;
- military operations, as well as manoeuvres or other military activities;
- civil war, civil unrest of any kind or strikes.

2. Unless the law or the contract provides otherwise, the insurer is released from the payment of the insurance indemnity for the losses incurred as a result of withdrawal, confiscation, requisition, seizure or destruction of the insured property following the orders of the state bodies."

Over the years, the courts have developed diametrically opposite approaches to interpreting Article 964 of the Civil Code. One approach suggests that the list of the grounds for releasing the insurer from the liability to pay the insurance indemnity is exhaustive and cannot be extended by the insurance contract. According to the reverse approach, the parties to an insurance contract can provide for other grounds in addition to those mentioned in this Article.

Despite the fact that the more liberal approach has been confirmed by (i) the supreme courts, including the Constitutional Court (see, for example, the Resolution of the Constitutional Court No. 1006-O-O), and by (ii) the law (Sub-Article 3 of Article 10 of the Law On Organisation of Insurance Business in the Russian Federation), the recent judicial acts have shown that the courts lean towards a restrictive interpretation of Article 964 of the Civil Code.

For instance, the Central District Court in its Resolution on case No. A62-4960/14 states that:

> "Article 964 of the Civil Code […] provides for an exhaustive list of circumstances that release the insurer from the payment of the insurance indemnity. As implied in Article 964 of the Civil Code, the parties to an insurance contract can provide for the liability of the insurer to pay indemnity in the circumstances listed in Article 964 of the Civil Code, but cannot extend the list."

The same court, in its Resolution on case No. A35-1259/2014, confirmed that the list of grounds for a refusal to pay the insurance indemnity cannot be wider than the one established by the Civil Code by repeating word for word the above quotation and adding:

> "A breach of the operating rules *per se* cannot be regarded as an unconditional ground for a refusal to pay the insurance indemnity."

This position is also supported by the Supreme Court of the Russian Federation (see, for example, Resolution No. 4-KG16-18):

> "The insurer, having agreed with the insured in the policy a condition that the insured risks are damage and theft according to the rules of insurance unilaterally adopted by the insurance firm, has significantly limited his obligations under the policy by establishing the grounds for the release from the obligation to pay the insurance indemnity that are not established by the law."

The courts critically review the attempts of the insurers to "window-dress" the additional grounds for a refusal to pay the indemnity as exclusions. For example, the Resolution of the East-Siberian District Court on case No. A78-8664/2015 provides that:

> "The insurer's use of a construction (a legal method) of exclusions from the cover that says certain events are not insurable events, while the Civil Code provides for the release from the indemnity payment obligation upon the occurrence of the insurable event, cannot be used as a reason for extending the situations where the insurer has a right to refuse paying the insurance indemnity beyond those provided for by the mandatory legal norms."

In these circumstances, the insurers have tried to use some unconventional methods to avoid insurance indemnity payments. One of the rare examples can be found in the Resolution of the North-Western District Court on case No. A66-12516/2014:

> "According to the insurance contract, the insurer, when paying the insurance indemnity, has a right to apply penalties of up to 95% of the amount of the loss, if during the policy period the insured has breached the safety rules and/or regulations and operation manuals or the terms of the contract."
>
> "As the parties had agreed the possibility of penalties in the general terms and conditions of insurance and the insured had contributed to the occurrence of the insurable event by leaving the specialised transport vehicle unguarded, the court of the first instance was correct in rejecting the beneficiary's claim to a full payment of the insurance indemnity."

Of course, one can still find examples of the liberal approach to the interpretation of Article 964 of the Civil Code, but they are scarce. The Resolution of the Court of the Moscow Region on case No. A40-136703/201 can be seen as an example of such liberal interpretation:

> "The facultative nature of Article 964 of the Civil Code that is directly dedicated to the grounds for releasing the insurer from the liability to pay the insurance indemnity enables one to conclude that such grounds can be provided for by the parties to the insurance contract. Based on the freedom of the contract principle, this means that the parties have the right to state, in the contract, the grounds for the release of the insurer from the liability to pay the insurance indemnity other than those established by the law."

The Resolution of the Supreme Court No. 307-ES16-13224 is another rare example of the highest court instance taking such a liberal approach:

> "The facultative nature of Article 964 of the Civil Code that is directly dedicated to the grounds for releasing the insurer from the liability to pay the insurance indemnity enables one to conclude that such grounds can be provided for by the parties to the insurance contract. Based on the freedom of contract principle, this means that the parties have the right to state, in the contract, the grounds for the release of the insurer from the liability to pay the insurance indemnity other than those established by the law, including such ground as the damage caused by the theft of the vehicle with disabled mechanical and electronic anti-theft systems."

Conclusion

In our view, the recent judgments cited above demonstrate a number of trends in the modern court practice on disputes arising from insurance contracts. The courts continue to take a rather active approach to interpreting insurance contracts, for example, in relation to stating the insurance value.

Furthermore, the courts have developed provisions of the law and created new rules, such as imposing on the insurer an onus, which is not established by the law, to verify the insured party's information about the risk.

Finally, the trend of applying a restrictive approach to the interpretation of the rules regarding the grounds for the insurer's refusal to pay insurance indemnity has been continued despite the directives of the higher courts and the law.

The higher courts, including even the Supreme Court of the Russian Federation, have sometimes adopted contradictory judgments in relation to the freedom of the parties to an insurance contract to provide for additional grounds as premises for a refusal to pay the insurance indemnity.

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