

Investigation of the Influence of Goodwill Principle in People Insurances

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ABSTRACT

Observation of goodwill as a principle in contracts has always been of great importance. a contract is concluded when both sides provide information honestly. The main contract in which goodwill is necessary is people insurance contracts. Goodwill means the insured must provide the insurer with honest information and should not conceal any fact so that the insurer can recognize the importance of danger it can cover. This principle is so important that its non-observation may result in its nullification or termination. Although the insured must be honest, the insurer itself should also observe this principle. The insurer must mention its obligations and leave no ambiguity. In the present text, we tried to identify the boundaries of this principle in the regulations and analyze the role of goodwill as an important principle in conclusion of people insurances and sanctions for its non-observation.

KEYWORDS: goodwill, people insurances, information, insurer, the insured

INTRODUCTION

Observation of goodwill in contracts is very essential. This principle is of great importance in people insurance contracts. Observation of this principle in in people insurance contracts necessitates that both sides provide each other with honest and clear information. Goodwill is one of the main elements of validity in insurance contracts. A judge can use goodwill as an instrument to establish justice. When it is proved that one of the sides had not observed goodwill can cause nullification or result in termination of the contract. This heavy sanction exists because goodwill is the base of validity of people insurance contracts. In the present paper, we first review the concept of goodwill and its place in Iranian Law and then we investigate its role in people insurances and the present sanctions and how a judge can benefit from this simple instrument?

1. Goodwill concept

First, we define goodwill literally and then we go to its meaning in law. Goodwill is made up of two words "good" and "will". Literally, good means being nice, acceptable and beautiful (Amib, 2000, vol. 1, p 792) and will mean "intention and determination" (Amid, 2001, p 1930). Goodwill is the translation of the term "Bonne foi" in French law and translation of the word "Good Faith" in English law (Ansari, 2009, p 21). Bon is a Latin word which is both adjective and noun. As a noun, it means product, ownership and domination. As an adjective, it means good (Mohseni, 2006, p 210). This term can be translated as having a good intention. This meaning is accepted in law and everyone is asked to have goodwill. In spite of the fact that this term has been accepted in the law of different countries and even there are some regulations and rules on goodwill in the laws of some countries, there is no clear and exact definition for it. In Black Law Dictionary, goodwill is defined as: "it is a mental state based upon honesty in belief or goal, adherence to obligations with respect to others, observation of normal commercial standards, just behavior in a business or trade or absence of intention for cheating and deception or acquisition of advantages in a way which is considered as against conscience." (GARNER, 2004, p 713). JerarCorno defines goodwill as: "goodwill in general meaning refers to a behavior which allows a beneficiary to evade legal violence". (Mohseni, 2006, p 210). Some others defined it as "absence of spite or presence of honesty" (Ansari, 2009, p 22). In Iranian Law, no legal text has defined goodwill clearly up to now. Some legal writers have defined this term as: "a person who concludes a contract an believes in his or her accuracy and honesty of his or her action is a person who has goodwill. (Langroudi, 1978, p 200).

2. place of goodwill in Iranian Law

Most legal rules have moral essence. The origin of adherence and commitment to contracts also comes from ethics, because whatever is unacceptable in ethics is also unacceptable in the law. The reverse is also true i.e.

whatever is appropriate and strict can be considered as a legal rule. Goodwill is also one of these moral subjects. We review samples of goodwill in Iranian law in the following sentences.

Some laws have accepted goodwill rules implicitly or explicitly. Article 8 of Civil Liability Law (passed in 1961) deals with goodwill explicitly. This article states: "a person who harms others' reputation or position via unreal documents is responsible for compensating it. A person whose customers' number is reduced or disappeared as a result of instruments which are against goodwill can ask for stopping the harm and ask for compensation if he or she proves it." The term goodwill was first introduced in this article.

The 40th principle of Iranian Constitution refers to harming others as: "no one can use his or her right fulfillment as a way of harming others or violating public benefits." This principle and other similar legal articles show that even ownership right cannot justify harming others. In fact, the law makes people avoid harming others' rights and asks for honest behavior and this indicates goodwill because goodwill necessitates absence of deception and cheating and distrust.

Article 35 of E-commerce Law (passed in 2003) states: "the information provided for consumers must be mediated clearly and explicitly and at an acceptable time and via an acceptable instrument and based on goodwill in transactions and must also observe the disabled and children considerations." Although this article does not refer to necessity for observation of goodwill in conclusion stage and in pre-conclusion stage, this seems to be inferable from the article (Khazaei, 2011, p 61).

In the Commerce Law, articles 249, 231 and 230 refer to goodwill. Having goodwill is one of the conditions of the owner of commercial document. In fact, this law supports an owner who has goodwill.

Insurance contract is a contract in which observation of goodwill is necessary. The insured has to provide the insurer with some information. This information must be honest and real so that the insurer can evaluate the risk of the contract. In the following sentences, we will discuss that insurance is one of the differentiation aspects between this contract and other contracts and non-observation of insurance will have a heavy sanction.

3. Goodwill and its place in conclusion of people insurance contracts

As it was mentioned in the previous sentences, insurance contract is a contract in which goodwill is present. This principle has a special place in insurance industry due to its importance because this principle is one of the main factors in setting relationship between both sides commitments. Therefore, people insurance contracts are among important contracts. Observation of this principle is very important in insurance contracts. The reason is that people insurance contracts deal with human physical integrity. In this kind of insurance, we talk about life and body. Human body and life is always prone to danger. (Ibrahimi, 2009) Goodwill concept has been discussed in articles 12 and 13 of Iranian Insurance Law and some sanctions have been imposed on non-observation of goodwill. Insurance is a kind of contract which is mainly based upon goodwill and goodwill not only should be present in validity of insurance but also it must be present in conclusion of contract. This contract involves the insurer trusting in the insured honesty and the insured must also avoid cheating. Therefore, goodwill must be considered in conclusion stage. Although it has not been mentioned clearly in laws, but it is a socially necessary concept and it can be found implicitly in different laws (Ansari, 2009, p 202). Insurance contract is based on honesty of both sides. Therefore, it seems necessary for both sides to trust in each other and provide appropriate information for each other. The insured and insurer have to disclose important events. This information provision is based upon goodwill which must be observed by both sides. Therefore, insurance contract is a kind of contract with maximum goodwill.

1-4) criteria for identification of the insured goodwill:

Determination of a special criterion for involving goodwill in contracts is a little bit difficult. Commitment to providing information is a commitment which is important in insurance contracts more than that of other contracts. Insurance contract is a type of contract for which the Law-maker has imposed the highest level of goodwill. Therefore, both sides have to disclose information and avoid concealing realities. In people insurance contracts, information provision has some limitations. Some contents are clear and there is no need for stating them and there are some contents which are unknown for the insured itself. In the following sentences, we will discuss criteria needed for recognizing violation or observation of goodwill principle by the insured. Criteria for recognition of goodwill and its violation will be discussed in the following sentences.

a) Real comments

In the previous sentences, it was said that the main duty of the insured is to provide the main information and realities. The insured must fulfill this duty considering goodwill principle. It is necessary for the insured to disclose information which will be effective in insurance. This subject is of great importance. Article 12 of Insurance Law states: "when the insured avoids disclosing a content or makes false comments or when the unmentioned contents or false comments are so that they change risk subject or reduce its importance the insurance contract will be nullified

even if the aforementioned does not affect incident occurrence...”. The insured has to provide the insurer with information which is related to insurance subject. Some information is so clear that they do not need to be clarified. If the insured did not mention such information, he/she/it does not deserve punishment because the insurer is supposed to be aware of it. Some information is specialized and the insured itself/himself/herself does not know about it. In this case, the insurer must obtain basic information exactly and consider it in the policy. Further, if the insured is not aware of some information, he/she/it will not be punished. Therefore, the comments of the insured must be effective both in estimation of risk and determination of insurance subject and the insured must be aware of his/her/its comments (Vafaeepour, 2010, p 48). Since the insured is completely aware of the risk and its quality, he/she/it must provide the insurer with all necessary information. However, the insured must not think that he/she/it is free to give the information but the insurer must prepare an appropriate questionnaire and policy and guide the insured through giving the real information.

b) The insured goodwill in questionnaire

Goodwill must be observed in all stages of conclusion of a contract. When preparing a policy, insurers propound questions in policy forms so that they can obtain some information. The insured has to answer the questions with goodwill and make the insurer aware of all basic issues. The way of answering the questions is very important. The insurer tries to identify risk and evaluate it on a timely manner so that it can compensate damage. Therefore, the insured is not allowed to provide false and contradictory information for the insurer. This may be due to spitefulness or may take place accidentally. Anyway, the insurer must pay attention to filling out the questionnaire in an exact manner. If the insurer does not pay attention to contradictions in the questionnaire, this means he/she/it has ignored the issues and cannot seek prosecution in future.

2-4) criteria for recognizing the insurer's goodwill

Information disclosure is not only a duty of the insured but it is a mutual duty. The insurer must also observe goodwill. The insurer must mention its obligations in policy and also mention items which may be effective in compensation when accident occurs so that the insurer's commitments are clear for the insured (Avansian, 1988, p 129). The insurer must avoid using ambiguous comments and prepare the text of the contract clearly and simply so that the insured can understand it easily. This is therefore a mutual duty and its violation is not acceptable both for the insurer and the insured. In this section, we deal with criteria for identification of goodwill.

a) goodwill in provision of information

Since the insured is not completely aware of insurance affairs, the insurer has to simplify the insurance articles and make the insured aware of details (Karimi, 2008, p 80). The insurer can make the insured free from ambiguity by providing proper information. In spite of different types of insurance and different types of services, the insured may not be able to select an appropriate insurance policy. Therefore, the insured must be provided with necessary specialized information. This information must be provided with maximum honesty and truthfulness so that both sides are at the same level in terms of information. Financial information must be provided for the insurer. The insured must be aware of insurance price and side costs. This information gives the insured the right for selecting the appropriate policy.

b) Goodwill in preparation and completion of policy:

In the past sentences, we discussed the fact that the insured must answer the questions of policy exactly and do not answer ambiguously and incompletely. The insured can answer the questions appropriately when the insurer proposes appropriate questions. The insurer can prove its goodwill by asking simple and adequate questions. The insurer must propound exact questions. The contract must not be incomplete. Of course, the insurer may not have enough information on every subject. If the insurer does not mention a question in policy, the insured has the right to claim that it was the insured that did not want to know about that question. If the insurer asks a few questions, it is argued that it wanted to know about only a few aspects. In this case, the insured is not to blame and the insurer has made clear the domain of its activity. The insurer's questions must be exact so that the meaning is obvious for the insured. In case of presence of ambiguity in questions, incorrect answers of the insured must not be considered as his/her/its fault (Babayee, 2011, p 56). If the insurer knows that the insured is concealing some facts intentionally and concludes a contract with the insured, then the insurer itself has collaborated with the insured. In this case, if the insurer receives a loss, it is responsible for the loss because it has taken action against itself and cannot ask the insured for compensation. However, if the insurer is not aware of the spitefulness of the insured, it has the right to refer to the insured for compensation of loss and costs incurred because the insurer has been deceived and the insured must compensate the loss (Vafayepour, 2010, p 59). Of course, nullification of the contract is a sanction provided by the Lawmaker in this case. This will be discussed in sanction section.

5. Goodwill sanction

5-1) sanction for violation of goodwill on behalf of the insured

The insured comments are very important in determination of costs therefore it is necessary for the insured to provide proper information. In some cases, the insured might avoid providing right information mistakenly or intentionally. The Lawmaker has imposed some rules and provided some sanctions for violation of this important duty. These rules are prepared for preventing individuals from abusing insurance contract. These strong sanctions are used for observation of goodwill. Absence of violation of goodwill in people insurance contracts may be intentional or unintentional. Presence of appropriate sanctions has the advantage of making the insured to provide information on risk and if he or she commits this fault the insurer's rights will be maintained. In the following sentences, we discuss the items which cause nullification and termination of insurance policy.

a) nullification of insurance contract:

1-1-5) intentional violation

When a contract is not concluded with goodwill and is accompanied by cheating and its target is against contract, the contract is nullified and does not have any effects. This is also true for insurance contract. If the insured is spiteful and violate its obligations so that risk subject is changed and its importance is reduced for the insurer, the insurance contract is nullified. Article 12 of insurance law has stated this clearly. Because goodwill is not observed by the insured, the contract is null and void and there is a strong sanction for it. Insurance contract is nullified when the following states happen:

2-1-5) intentional unreal comments:

If the insured makes some unreal comments intentionally and his/her/its action is accompanied by spite, the contract is nullified according to article 12. The fact that the insured action is intentional is necessary. By intentional, this article means spitefulness and proving the insured spitefulness is a duty of the insurer because the insured is supposed to have goodwill unless the opposite is proved. The insurer can prove the spitefulness of the insured in many ways. One of these is through responses which are provided in policy.

3-1-5) intentional silence in comments

The insured offence has two aspects. Sometimes, the insured makes unreal comments and makes the insurer go wrong. Sometimes, the insured stays silent intentionally and avoids telling them. In fact, the insured uses silence as a means for deceiving the insurer. In this case, the contract is nullified. The insured has prepared a completely wrong image of its status and the insurer is not able to evaluate risk carefully.

4-1-5) effectiveness of the insured offence:

If the comments of the insured or his/her/its silence to disclose realities changes risk subject or reduces its importance for the insurer, the insured offence is ruled by this article. Insurance subject is the very risk and the insured comments can reduce its importance. If concealing reality reduces the importance of risk, then article 12 applies even if it is not completely related to the event. In all these cases, it must be noted that the unreal comments or silence of the insured must be intentional.

b) Termination of insurance contract:

5-1-6) unintentional violation:

In "non-observation of goodwill" section, it was mentioned that goodwill is either intentional or unintentional. Different states were discussed in detail in the previous section. However, actions or comments of the insured are unintentional in some cases. In insurance law, unintentional unreal comments and unintentional concealing of reality will not lead to nullification of contract. In this case, article 13 of insurance law states that: "if unreal comments and avoiding from saying real things are unintentional, the insurance contract is not null and void. In this case, when unmentioned contents or unreal comments are obvious before an event occurs, the insurer has the right to receive the surplus of premium from the insured or terminate the insurance contract..." As it was mentioned, when the unreal comments are discovered before an accident takes place is different from when it is discovered after an accident takes place. This article clarifies that if the insured is not spiteful in conclusion of the contract, a weaker sanction is imposed and the contract does not deserve nullification. In this case, the lawmaker gives the right to the insurer to either terminate the contract or continue the contract with the insured satisfaction. The result of imposition of the law is different before and after an accident takes place. In fact, the sanction of committing offences is different depending on the stage of the offence. This will be discussed in more detail in the subsequent sentences.

1-5-1-6) discovering the insured offence before an event takes place

If it is discovered that the insured has committed an offence on the quality of the risk or has avoided provision of realities without spitefulness and before an event takes place, he/she/it has violated the commitment unintentionally but the contract is not nullified. In this case, if the offence is discovered before accident takes place,

the insurer may take one of these actions: the insurer may continue the contract by adding to the premium, or the insurer may terminate the contract. The insurer, according to article 13 of Insurance Law, the insurer must notice the insured that the contract is terminated by sending two declaration to the insured so that no ignorance remains for the insured. The insurer may also continue the contract as before. The last part of the article 16 of insurance law deals with this subject: "if the insurer can not refer to the aforementioned if it becomes satisfied with continuing the contract after being informed of intensification of risk, for example by compensation of damage after an accident occurs. Receiving premium installments after being informed of intensification of risk or compensation of damage after an accident occurs means the insurer is satisfied with continuing the contract". Therefore, such behaviors show the satisfaction of the insurer and the fact that it is ignoring its right.

2-5-1-6) discovery of the insured offence after an accident happens

When it is discovered (after an accident happens) that the insured is faulty in provision of realities and has not observed goodwill but this has been unintentionally and there has been no spitefulness, the insurer does not have the right to receive a surplus amount of money or the right for termination. In this case, the damage compensation will be concerned with premium determined according to the insured comments and the premium which would have paid if the insurer was aware of realities of risk. This is inferred from the latter part of the article 13 of Insurance Law and is known as relative rule of premium. This is because the insured who did not have any spitefulness would remain under insurance coverage and the insurer must compensate for damage and on the other hand, the insurer's rights are considered and due to inappropriate information, insurance capital is decreased according to the premium paid and the amount of money which would have been paid in case of complete risk disclosure. Therefore, the lawmaker does not allow for termination of the contract after an event takes place. Otherwise, no insurer would be satisfied with continuing insurance contract (Moezzi, 2009, p 89).

2-1-6) sanction for violation of goodwill on insurer's behalf

In this section, we will discuss that if the insurer does not observe its obligations by goodwill, what kind of sanction will be considered for violation of its action? There is no clear and explicit text in law on this matter. However, this cannot be ignored and the rights of the insured which has behaved non-spitefully must not be violated. In most cases, judges decide to termination the contract and ask for compensation of damage. If the insurer does not observe goodwill, the right for termination of the contract is acceptable for the insured and if the insured wants to leave the contract and terminates it, the paid premium can be returned because insurance contract is based upon goodwill and if one of the sides lacks goodwill, the other side holds the right to terminate the contract (Khoroushi, 2011, p 176). For the case of compensation of damage by the insurer, the insurer must compensate for any kind of damage it gives to the insured. If the insured wants to claim against the insurer for violation of obligations and goodwill, he/she/it must prove that the insurer has not propounded basic and important issues and has not provided necessary information. If the insured knew about this information, he/she/it would never buy the policy. In this case, the insured has been damaged due to absence of disclosure of information by the insurer. Therefore, the insurer must compensate for damage. Proving this matter will strengthen the insured position in court of law because he/she/it can use it as a condition and make the insurer pay for damages.

Conclusion

1. in addition to the fact that goodwill is used in insurance law, it is used in other laws as an important instrument. However, there is no clear definition of goodwill. It has many definitions but honesty and truthfulness are the main meanings.

2. in insurance law, in addition to general rules of contracts, special principles of insurance contract also hold. The main principle in this contract is goodwill. In fact, the contract will not be valid enough without this principle.

3. insurance contract is a gratuitous contract and is based upon goodwill. Both sides have some obligations towards each other. Disclosure of effective information and realities on risk are among these commitments. This is very important in compensation of damage and determination of premium. Therefore, it is necessary for the insured to disclose real information.

4. observation of goodwill in contract gives the permission to judge to make both sides fulfill their obligations and give information. Goodwill is an instrument for judge to get involved in insurance contract and this involvement is possible by means of interpretation of both sides intention. This rule helps judge to establish justice. Judge involvement must be limited so that it does not harm the base of the contract and does not lead to insecurity in contractual relations of the principle of sovereignty of determination.

5. observation of goodwill is very effective in responsibility of individuals. Violation of goodwill increases responsibility and its observation reduces responsibilities of the committed side. Violation of goodwill results in

nullification of premium and in some cases, it results in termination of contract. Articles 12 and 13 of Insurance Law clarify this matter.

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