

Taking a look at myths and truths in the life insurance industry

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The business of life insurance today in Thailand is very competitive. Insurance companies advertise heavily via radio, TV, newspapers, websites, billboards and other media channels, attempting to convince consumers that purchasing an insurance policy is a simple and quick thing to do.

For example, consumers may be able to purchase a life insurance policy over the internet or phone without meeting with an insurance broker in person. This convenient way of entering into insurance contracts leads to carelessness, whether intentionally or unintentionally, in disclosing all relevant facts. It also gives insurance companies the opportunity to refuse coverage or payment under a policy in the future.

In practice, the insurance company will ask the applicant to complete a form in which the applicant must declare all health and medical information and other important facts. Providing untrue or half-true information or failing to disclose important facts could release the insurance company from liability under the policy.

The insured person is responsible for disclosing all facts that would affect the insurer's decision regarding coverage and insurance premiums. Section 865 of the Civil and Commercial Code (CCC) stipulates the following:

If at the time of making the contract, the assured, or, in case of insurance on life, the person upon whose life or death the payment of the sum payable depends, knowingly omits to disclose facts that would have induced the insurer to raise the premium or to refuse to enter into the contract or knowingly makes false statements in regard to such facts, the contract is voidable.

If such right of avoidance is not exercised within one month from the time when the insurer has knowledge of the ground of avoidance or within five years from the date of the contract, such right is extinguished.

The law does not define the facts that "would have induced the insurer to raise the premium or to refuse to enter into the contract". However, the Supreme Court has decided that such facts include the following:

- Health and medical information. The insurance company will demand a higher premium or refuse coverage if the insured person has a serious disease such as HIV/Aids, cancer, chronic renal disease, diabetes or cardiac disease.

- Capacity to pay the premium. Capacity to pay the insurance premium is a factor that may affect an insurance company's decision to cover an individual. The Supreme Court made this ruling in the context of a case where the insured person made false statements regarding his career and falsely confirmed he paid the premium himself. In fact, the insured was unemployed, and someone else paid the premium.

Health and medical information is the most important factor. However, there are limits on the instances when an insurance company can deny coverage for reasons of nondisclosure of medical information.

In Dika Decision 2295/2545, the Supreme Court determined the insurance company was still liable under the life insurance policy even though it found after the insured's death that the insured did not reveal he suffered from hypoglycaemia and had been admitted to the hospital several times for that condition. The insurer informed the court that if it had known of the health condition, it would have refused to insure this person.

Nevertheless, the Supreme Court held that revealing such a health problem would not have caused the insurance company to refuse coverage, as the insured's death was due to a motorcycle accident and not derived from his health problem. In addition, the insurer's doctor had completed a checkup of the insured person and made no comment.

An insurance company is also entitled to void or terminate a policy within one month from the date that the said information becomes known to the company, according to the second paragraph of Section 865 of the CCC. This provision was tested in Dika Decision 4379/2530, in which the Supreme Court held that the insurer was still liable under the policy, as it did not terminate or void the contract within one month after discovering the insured person had falsely confirmed he was healthy and did not disclose he had epilepsy.

If the insurer in this case had exercised its right of avoidance within one month from the date of knowing the false information, then it would not have been required to pay compensation under the insurance policy.

In sum, the consumer should take care to reveal all important information regarding his or her health or medical history and capacity to pay premiums before entering into any life insurance contract. This is to prevent the contract from being voidable.

The promptness and ease in obtaining a life insurance policy may not guarantee that the insured or beneficiary will be compensated promptly and easily when filing a claim for compensation under said policy.