

# Diagnosis of the Korean Insurance Industry and Its Suggestions (IV) – Insurance disputes and legal system

KIRI presents the CEO Brief series, “Diagnosis of the Korean Insurance Industry and Its Suggestions”

## ABSTRACT

Insurance contracts inevitably involve disputes due to their basic characteristics and benefits. Insurance disputes can be beneficial as they may prevent insurance claim leakage and establish interpretation standards for insurance policies. In this aspect, it is essential to set guidelines defining functions and procedures that help bring about reasonable dispute resolution rather than focusing on the reduction of the number of dispute cases. In addition, it is necessary to clarify the legal basis for direct·indirect supervisory intervention in civil disputes, and insurance frauds require a system that monitors their post-detection status comprehensively.

## 1. Diagnosis of the Insurance Industry

Various types of disputes over interpretation of insurance policy and insurance frauds continue to arise. For example, disputes over the interpretation of accidental death benefit rider or the mis-selling of cancer insurance would trigger ❶ civil disputes(disputes related to claims and payments) and ❷ administrative disputes (sanctions against insurance company or insurance solicitor). Insurance fraud, a typical criminal dispute would bring ❶ criminal disputes(criminal punishment to perpetrators of insurance frauds), ❷ civil disputes (restitution of benefit) and ❸ administrative disputes(registration cancellation or fines against insurance solicitor and others who were involved in insurance fraud) together.

The civil lawsuit and the FSS (Financial Supervisory Service) mediation generally occur to resolve disputes over insurance policy contracts. First, the number of cases in civil lawsuits is about 0.8 per 10,000 claims for insurance benefits, and winning rate (including partial wins) of insurance companies is about 90%, which is higher than that of plaintiffs in general civil lawsuits. Overall, litigation seems to be managed properly. Second, the FSS mediation gains more importance as the number of applications for mediation has been increasing. Recently 'unilateral binding' that only consumers can raise an objection to the mediation decision has been discussed.

With regards to insurance fraud, the supervision authority continues making efforts to actively detect them. However, it is difficult to comprehensively follow the status of investigation, prosecution and criminal trial in post-detection stages. In case of hard fraud, a conviction made in a criminal trial makes a direct impact on recovering the insurance benefits. Therefore, follow-up of the progress and results of the investigation and criminal trial is important.

The insurance supervision authority exercises administrative sanctions throughout the insurance industry, and imposes penalties even on the claim rejection subject to civil disputes on the basis of violation of the basic document compliance. The claim rejection itself is not subject to sanctions. However, if insurance companies do not pay the benefits in violation of the insurance policy, it is considered a violation of compliance to the basic documents, and then penalties such as fines are imposed.

## 2. Suggestions for the Insurance Industry

Disputes are inevitable in insurance contracts, as (i) insurance contracts are long-term based and complex, and (ii) benefits entitlement and/or the amount thereof are uncertain at the time of signing a contract. Insurance disputes also have positive effects of preventing insurance claim leakage as well as establishing interpretation standards for insurance policies. Therefore, it is essential to set guidelines defining functions and procedures that help bring about reasonable dispute resolution rather than focusing on the reduction of the number of dispute cases.

As for the functional standards for the dispute resolution, it is necessary to set the interpretation standards of insurance policies. For the interpretation standards of the insurance policies, (i) interest of all policyholders in general and (ii) principle of calculating insurance premiums should be considered, as it helps reduce the overapplication of the 'Rule of Contra Proferentem'<sup>1)</sup>.

Careful review is required to make the decision of the FSS legally binding to the financial company when the consumer accepts the decision(unilateral binding). Although it could improve the efficiency of dispute resolution process, it may impede the formation of judicial cases and development of jurisprudence on the interpretation of insurance policies.

In dealing with insurance frauds, comprehensive·systematic management is required as they are related to civil disputes as well as criminal disputes and administrative disputes. Furthermore, a measure must be established to enable comprehensive follow-up on the results of their prosecution and criminal trial.

Statutory basis should be made clearer for sanctions against claim rejections. 'Obligations to Comply to the Basic Documents(Insurance Business Act Article 127-3)' is too broad and unclear. Also, current assessment method of penalty needs to be reviewed and differentiated so that penalty amount can be reasonably assessed not for the basis of the sales volume but for the basis of illegality.

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1) A legal doctrine in contract law which states that any clause considered to be ambiguous should be interpreted against the interests of the party that created, introduced, or requested that a clause be included.