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FRAUD AND INSURANCE
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What is fraud in insurance?

- No specific legal definition in the Insurance Code

- Occurs usually when an insured commits a voluntary act in order to obtain from the undertaking an illegitimate profit either at the date of the subscription or at the one of the claim.
1- The fraudulent disclosure of the risk

- The dissimulation of certain elements of risk
In order to obtain a guarantee from the insurer, who would not have granted it if the real risk was known.

More common in life and health insurance than in non life insurance
2- The fraudulent claim for damages by the insured

In order to obtain from the insurer an undue compensation.

• Staging a fake sinister
• Realization of a voluntary sinister
• Dissimulation of certain circumstances of the sinister
• Exaggeration of the extent of the damages
3- Misconduct practices

The insurance companies are also concerned by fraud, especially in case of unfair commercial practices.

- The European Directive concerning unfair commercial practices laid down the principle of general prohibition on professionals using such commercial practices when dealing with consumers which is intended to protect consumers against misleading or aggressive commercial practices.
3- Misconduct practices (ctd)

Consumers are protected in case of misselling

- Most of non-life insurance products (Ins. Code L 112-9) :
  Consumers have the opportunity to cancel the contract within fourteen days

- For life-insurance products (Ins. Code L 132-5-1) :
  The law provides a cancellation period of 30 full calendar days from the date on which the policy holder is informed of conclusion of the contract.
The Insurance Mediator recommend that consumers exercise their rights. They may apply to the competent court if they believe that the canvasser has used fraudulent techniques. But I also strongly recommend that no bank details ever be given by telephone or e-mail wether or not there is an intention of signing the contract proposed by the canvasser.

Given the conduct of certain parties, which can damage all stakeholders, it is vital that insurance professionals and insurance intermediaries be particularly vigilant in preventing and possibly correcting such trends.
A) The civil penalties for fraud

1. Fraud at subscription.

- Article L 113-8 of the Insurance Code stipulate the nullity of the insurance contract in case of fraudulent disclosure of the risk.

- Article L 113-9 of the Insurance Code provides a reduce, in proportion of the premium, compensation in case of non fraudulent false disclosure.

2. Fraud when claiming for indemnity.

Article L 113-1 of the Insurance Code: The insurer is not liable for loss and damages due to willful misconduct of the insured. The insurer may then oppose to the fraudulent insured the refusal to support the claim.

Most contracts provide for the forfeiture of the right to guarantee the insured in case of intentional false claim on the cause, circumstances or consequences of the casualty.

And, if the compensation has been paid before the insurance company becomes aware of the fraud, the latter may bring an action for reimbursement of the amounts paid.
4- Consequences (ctd)

B) Criminal penalties in case of fraud

No specific text in the Penal Code for "Insurance Fraud" but this is related to:

✓ **Scam/swindle**

  Article 313-1 of the Penal Code: fraudulent obtaining is the act of deceiving a natural or legal person by the use of a false name or a fictitious capacity, by the abuse of a genuine capacity, or by means of unlawful manoeuvres, thereby to lead such a person, to his prejudice or to the prejudice of a third party, to transfer funds, valuables or any property, to provide a service or to consent to an act incurring or discharging an obligation.

  *is punished by five years' imprisonment and a fine of € 375.000.*
4- Consequences (ctd)

✓ **Falsification in writing**

Article 441-1 of the Penal Code; any fraudulent alteration of the truth liable to cause harm and made by any means in a document or other medium of expression of which the object is, or effect may be, to provide evidence of a right or of a situation carrying legal consequences. **Punished by three years’ imprisonment and a fine of € 45.000.**

✓ **Abuse of weakness**

Consumers Code and Penal Code

When circumstances reveal obtaining a commitment from a person who was not able to appreciate fully what is proposed because of his/her age, level of education, disability, health status... or the urgency or the position in which the person, is either by ruse or tricks deployed by the canvasser.
The position of the Mediator

1- The fraudulent disclose of the risk:
  - If intentional false claim: Art L 113-8 of the Insurance Code = nullity
  But the undertaking **must** bring evidence
  - If unintentional false claim: Art L 113-9 of the Insurance Code

2- The fraudulent claim for compensation:
  - In case of suspicion of fraud the insurer must complaint to Court. But in fact the latter is reluctant to do so.
  - If the insurer does not make a complaint, then he cannot deny the guarantee.

In any circumstances it is a difficult subject for the Mediator which is treated n a case by case basis.
5- Means to fight against insurance fraud

Prevention

✓ A clear contract
✓ A detailed questionnaire

A dissuasive procedure

✓ Bonus malus → insured reluctant to claim the sinister
✓ Bona fide
✓ Court action in case of strong suspicion

Acting

✓ Internal investigation
✓ External investigation
✓ Expertise
6. Actions of the Industry

1989: establishment of ALFA = Agence de Lutte contre la Fraude à l’Assurance (Agency Against Insurance Fraud)

I. To facilitate the exchanges of information between insurance companies;

II. To link insurers and public authorities;

III. To disseminate within the insurers and public services a technical, legal and methodological documentation about fraud and its various manifestations;

IV. To sensibilize the staff of insurance companies and public utilities on the importance to fight against fraud;

V. To participate in the fight against fraud at the international level through cooperation with a number of foreign countries, notably European.

VI. To investigate cases
7- Data related to fraud

Difficult to estimate because one can not calculate what is not detected.

Some figures for the year 2011:

- 5% of contributions
- Estimated cost 2.5 billion euros to insurers
- 35,042 cases revealed in 2011, (55% automotive, Theft 20%, 5% fire...)
- Increase in cross-border frauds
Thank you for your kind attention!

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