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# On the Applicant's Obligation to Inform the Truth

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## Abstract

The obligation to truthfully inform the applicant, that is, when concluding the insurance contract, the applicant should truthfully inform the insurer of the insured subject matter or the relevant situation of the insured. Tell the obligation is based on the maximum good faith principle, in the process of actual contract, the insured and insurance is closely related, and is the most know about the situation, from the perspective of the insurer, the insurer to grasp their rights largely depends on the policy commitment is true and accurate, so it can be seen that between the insurer and the insurer information asymmetry, in life insurance, this kind of information asymmetry is particularly obvious. In this case, in order to ensure the interests of the applicant and the insurer, to ensure that both sides means true, policy-holder in accordance with the law to fulfill the obligations has become a very important link, if the policy-holder violation or failed to do the obligations, the insurer according to the provisions of the relevant laws and regulations to exercise the insurance contract. Through the inspection and analysis of the current insurance disputes, most of the problems arise from the insured's ignorance or omission of the obligation. It can be said that the study of the obligation of the applicant in the insurance law is of great significance to promote the healthy development of the insurance industry and the protection of insurance consumers. With the rapid development of the insurance industry and the enhancement of consumers' demand for insurance products, it is worthwhile to make the truthful notification obligation of the applicant in the insurance law better serve the development of the insurance industry.

## Keywords

Truthful obligation, insurance contract, right of release, subject matter of insurance

## 1. Research background

With the rapid development of the Chinese economy, the insurance industry is also growing faster and faster. And, as the insurance industry has grown, insurance also has an increasingly significant impact on people's lives, and resident-holding policy rates are rising. But in the actual insurance claims, often appear "difficult to settle the claims" problems, that is, "I greet you with a smile when you buy it. When settling a claim, the insurer always has various reasons to refuse claims." Some insurance salesmen even know that a situation is illegal, but they are doing it for performance and profit. And the applicant to avoid the obligation to inform the truth, finally, leading to disputes and even going to court (Wang Jing, 2013). Cases of this situation abound. Therefore, under the social reality of the rapid development of the insurance industry and the new situation and new disputes, it is worth studying to study the obligation of the policyholders to achieve the purpose of improving the relevant laws and regulations of the insurance law to realize the escort of the insurance industry.

## 2. Truthfully form the obligation related legal provisions and basic category analysis

### 2.1 Relevant laws and regulations

Although the policy-holder truthfully inform obligation related laws and regulations have been constantly modified and improve, but in the actual judicial practice, the guidance of the relevant laws and regulations is few, the first introduction is the obligation of the State Council issued the property insurance contract regulations, the regulations of the article 7 inform obligation of the insurer and the policy-holder to decide whether the insurance and determine the insurance premium related main danger situation to inform, if the policy-holder does not inform or wrong to inform the relevant danger, the insurer has the right to terminate the contract does not assume the liability for compensation. Until 1995, the obligation of truthful disclosure was formally established in the form of law, and it was clear that the subjective requirements for violating the obligation of truthful disclosure were "intentional or negligence" (Liang Huixing, 2015). However, because the insurance Law of China and the applicant truthfully inform the obligation are mostly about the consequences of the violation of the obligation, and less directly mention the judgment standard of the policyholder on the degree of the performance of the obligation, so this paper will specifically analyze the relevant legal provisions of the performance of the extent of the violation of the obligation.

### 2.2 Truthfully form the connotation and nature of the obligation

Our country "insurance law" the 16th regulation: "conclude insurance contract, the underwriter puts forward inquiry with respect to the concerned circumstance of insurance mark or insurant, policy-holder ought to inform truthfully." Through the interpretation of the article can be concluded that our country" insurance law "is different from the British maritime insurance law, will not truthfully inform the obligation of "disclosure" and "statement", but set the performance of the performance of the insurer asked, namely the policy-holder truthfully inform obligation without initiative to inform, but when the insurer asked, similar to the "statement" (Zhou Yuhua, 2009).

From the provisions of Article 16 of the Insurance Law of China, we can see that China is currently adopting the principle of inquiry and disclosure. The insurance industry is a highly professional and technical industry. The insurer has greater advantages than the general policyholder or the insured. It is difficult for ordinary policy-holders to make an accurate judgment on the major issues that may affect the conclusion of the insurance contract, and they need to be completed by insurance professionals according to the type of insurance (Fan Qirong, 2015). Therefore, the law stipulates that the policy-holder only has the obligation to truthfully inform the matters that the insurer has asked. The Insurance Law of China only stipulates that the applicant has the obligation to inform, but the law does not clearly stipulate the way of informing, whether oral, written or other. Some scholars believe that, based on the protection function of the minimum content of the insurance contract, it should be considered that the applicant or the insured is allowed to perform the obligation of truthful disclosure orally in addition to performing the obligation of truthful disclosure in writing. However, if the applicant claims to have orally explained or informed the matters asked, he/she shall bear the burden of proof (Peng Hong, 2003), which is the problem of how the applicant can provide evidence after the dispute. The author suggests that the form of the obligation of truthful disclosure should be clear in writing, so that even if there is a dispute, the parties can easily prove whether the obligation of truthful disclosure has been completed and the degree of completion by written evidence.

### 2.3 To truthfully inform the performance time of the obligations

According to the Civil Code of China, offer and commitment are two necessary stages for the establishment of a contract, and the establishment and effectiveness of an insurance contract are stipulated in article 11 and Article 13 of the Insurance Law, so it can be concluded that an insurance contract has a general component element of the contract, which is also a voluntary contract. Accordingly, the conclusion of insurance contract should accord with "civil code" about the general provision that the establishment of the contract namely, the first stage makes an offer to show the policy-holder to the insurer to put forward to the insurance product insurance application, the second stage promises to show the underwriter to make the intention that agrees insurance.

"When the insurance contract is concluded" is not a specific point in time, but a process. Insurance since, there is the problem of information asymmetry between the applicant and the insurer (Sun Hongtao, 2014), truthfully inform the creation of the obligation is to solve this problem, natural also through from the application to the whole process of the contract finally take effect, it is also truthfully told the obligation of the largest city letter principle and the effective embodiment of the principle of balance of consideration.

### 2.4 The scope of the obligation of truthful notification

Our country "insurance law" 16 made clear the scope that informs obligation truthfully, "Supreme People court insurance law judicial interpretation (2)" the 5th to the 7th article undertook explanation to these two provisions. According to our country "insurance law" regulation, the scope that informs obligation should ask with the underwriter, policy-holder knows or should know, important fact is limit to understand (Fan Jian, 2016).

The so-called exclusion period during which the insurer exercises the right of rescission refers to the period during which the law applies to the insurer. The time limit for the cancellation of the insurance contract is also known as the defensible period. This period will enter the period of no defense, even if the applicant fails to perform the truthful notification. The insurer shall not terminate the contract on this basis. In addition to meeting the subjective and objective requirements, if the applicant negligently violates the obligation. In addition, it is also necessary to prove that the situation not truthfully informed has a serious impact on the occurrence of insurance accidents. Article 17 of China's current insurance law only stipulates that the applicant has the right to truthfully inform. There is no dispute that the applicant is the obligor of notification, because the applicant is an insurance company. The same party. However, in the dispute of personal insurance contract, when the applicant and the insured. For different persons, whether the insured has a vital interest in the subject matter of insurance. Should we bear the obligation to tell the truth? The author believes that although China's Insurance Law is not clear. It stipulates the insured's obligation of truthful disclosure, but in practice, relevant information may be difficult to know.

## 3. Legal consequences of violating the obligation of truthful notification

"Insurance law" to policy-holder to violate truthfully inform obligation to give strict legal responsibility. To the policy-holder intentionally fails to fulfill the obligation to inform truthfully, the insurer can terminate the contract, does not assume the insurance liability of the corresponding accident, and does not return the insurance cost, the strict regulation here is beyond reproach. But policy-holder due to gross negligence fails to fulfill the obligations, the insurer can terminate the insurance contract, does not bear the corresponding insurance liability, but should return in insurance cost, seems too harsh (Fan Jian, 2016), so compromise choice, not give the choice of the parties to the insurance contract buffer, which did not allow both sides to adjust the insurance contract content, make the insurance contract continues to be effective. To policy-holder because of light negligence or no negligence violates the circumstance that inform obligation truthfully, do not have any regulation at present, but the interest of the underwriter can be violated because of the obligation of policy-holder and be infringed, ought to give protection. Therefore, it is suggested to refer to the provisions of the German "Insurance Contract Law", and if the applicant violates the obligation of truthful notification, the insurer is given the right to terminate the insurance contract.

## 4. Suggestions on improving the obligation of truthful notification

### 4.1 The perfection of the important facts

Important facts judgment is of great significance in insurance practice and insurance accident. Pay or not pay has no specific provision, easy to appear claims difficult problem, on the one hand, the insurer to profit and reject claims: on the other hand for the policy-holder to pass on risk and sick insurance, investigate its reason, because the current law has defects. Therefore, I have the following perfect suggestions for the relevant important facts in the Insurance Law: First, for different insurance varieties, make clear the judgment criteria of the important facts, including clear legal determination and clear judgment criteria. Is the causal relationship between the important facts and the damage result.

### 4.2 Clarify the relationship between the important facts and the damage result

In the actual insurance work, the most important thing is also the important way to directly affect whether the insurance to pay the compensation is to determine whether there is a causal relationship between the important facts in the insurance notification and the damage result. The principle of proximate cause is adopted in insured accidents." The so-called proximate cause principle does not refer to the temporal or spatial cause closest to the loss, but means that the occurrence of dangerous accidents and the formation of the loss results need a direct consequence of the compensation (Fan Qirong, 2015).

In addition, in addition to the above suggestions, there are insurance contracts should give priority to the application of the right of remove, improve the expression of the important facts, the judgment criteria of general terms,

the addition of statutory exclusion provisions and other methods worthy of further study and analysis, which will not be discussed here.

## 5. Epilogue

Policy-holders truthfully informing obligations, both in theory and practice is the core content of the insurance law, and is also one of the most problems in the dispute in the practice of the insurance law. But because the insurance law about applicant obligations did not do advancing with The Times, make the relevant provisions have certain lag, so we should not only learn from the development of advanced and valuable experience, countries also should follow the era development trend, according to the social actual situation constantly update the relevant content of the insurance law. Through the inspection and analysis of the current insurance disputes, most of the problems arise from the insured's ignorance or omission of the obligation. It can be said that the study of the obligation of the applicant in the insurance law is of great significance to promote the healthy development of the insurance industry and the protection of insurance consumers. With the rapid development of the insurance industry and the enhancement of consumers' demand for insurance products, it is worthwhile to make the truthful notification obligation of the applicant in the insurance law better serve the development of the insurance industry.

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