Chapter 10
Some Issues of Proof in Insurance Disputes in the Conditions of Digital Transformation of Law in Russia

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Abstract The objective of the research in the article below is to identify the features of methods of proof in insurance disputes in the context of digital transformation of law. The active introduction of online technologies, due to the development of the economy, digitalization, and the pandemic, affected the insurance industry and initiated the implementation of a new model for concluding insurance contracts and exchanging documents in the process of their execution. The adaptation period for creating optimal legal structures of electronic insurance contracts and the sequence of actions has formulated a pool of issues requiring legal analysis at the doctrinal and law enforcement levels. The analysis of judicial practice in 2020–2021 shows that the subject of proof in insurance disputes has expanded and included the conditions for the conclusion of contracts. Also, the number of disputes on the invalidity of insurance contracts as a way to protect against forms of abuse of rights by insured people has increased greatly. The development of a standard of proof for this category contributes to the unification of judicial practice and improves the current legal regulation mechanism.

10.1 Introduction

The procedural legislation of the Russian Federation does not contain standards of proof, in contrast to English and American law, which provide for the criterion according to which the judge makes a decision based on the balance of simple probability. The absence of such regulation created some legal uncertainty and raised the subjective assessment over the search for objective truth. Insurance disputes arising from aleatory obligation always touch upon issues of honesty and abuse of law, predetermining the uniqueness of the methods of proof due to the fact that these institutions have an evaluative legal nature. The introduction of online technologies,

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which have changed the process of concluding a contract and identifying customers, on the one hand, increased the availability of insurance, and on the other hand, created the preconditions for the use of digital innovations by dishonest insures [1].

The framework legal regulation of the information obligations of the insuree, enshrined in Article 944 of the Civil Code of the Russian Federation, does not contain a classified system of consequences. The Russian legislator considered it optimal when establishing the fact that the insurer was provided with deliberately false information about significant circumstances, to recognize the insurance contract as invalid and apply the consequences provided for in paragraph 2 of Article 179 of the Civil Code of the Russian Federation. At the same time, the method of proving the fact of presenting deliberately false information is not fixed in any regulatory legal act but can be formulated on the basis of judicial acts. It can be presented in the form of a mathematical formula in which the fact will be the sum of the insuree's unfair actions aimed at misleading the insurer with the obligatory establishment of advance knowledge.

10.2 Methodology

Based on the method of comparative analysis, it was possible to conduct a comparative analysis of the best models of proof, to identify common features of such definitions in insurance disputes as deliberately false information, abuse of law. As a result, the research allows to formulate an assessment of the current model of proof for insurance disputes on the conclusion of an insurance contract and invalidity, the impact of digitalization on the process of proof.

10.3 Results

10.3.1 The Procedure for Providing Insurance in Electronic Form: Issues of Proving the Conclusion of the Contract

In 2019, amendments were made to Article 940 of the Civil Code of the Russian Federation, according to which the legislator allowed the conclusion of an "electronic insurance contract". The legalization of electronic document exchange required the expansion of boxed insurance products, modeled on the presumption of the insuree's honesty, since the risk assessment at the pre-contractual stage is minimally realizable.

Of fundamental importance for the conclusion of a property insurance contract is the fact that the parties to the contract agree on its essential terms, which is provided for in Articles 432, 942 of the Civil Code of the Russian Federation. The requirement to comply with the written form of the transaction also remains a prerequisite for

the emergence of insurance legal relations. In the era of digital transformation of law, the proof of the conclusion of an insurance contract by the courts is considered when presenting evidence that allows the content of the transaction to be reproduced unchanged on a tangible medium with the signature of the contract by parties and the possibility of reliable identification of the person who expressed the will [2].

The change in the form of contract conclusion has expanded the range of legally significant circumstances to be proved in insurance disputes about the conclusion of contracts. Pre-digital realities required the submission of the original insurance contract and confirmation of the fact of payment of the insurance premium, the introduction of the electronic form of contracts determined the relevance of means of proof of the conclusion of contracts in the form of correspondence between the parties. The courts have formed as one of the requirements the certification of such correspondence of the parties by a notary. However, such an approach to the relevance of this evidence is possible if the other party disputes the evidence in form or content, claims its forgery (Article 186 of the Civil Procedure Code of the Russian Federation) or falsification (Article 161 of the Arbitration Procedure Code of the Russian Federation). Otherwise, the party representing the correspondence has the right to substantiate the position with reference to Article 102 of the Fundamentals of the Legislation of the Russian Federation on Notaries, designed to provide evidence and containing a condition on the possibility of certification, if there are grounds to believe that the presentation of evidence will subsequently become impossible or difficult.

In the judicial practice of the Supreme Court of the Russian Federation, a standard of proof is formed in cases of the conclusion of insurance contracts, which includes checking the consistency of the essential terms of the insurance contract. Thus, one of the interesting precedents in this category is the civil case of LLC «IC Soglasie» vs Ogannesyan M. on the recognition of the insurance contract as not concluded, invalid. The judicial instances (first and appeal) disagreed on the legal qualification of facts: non-conclusion or invalidity. The plot of the case is based on the conclusion of an electronic insurance contract with online filling in of a questionnaire and the choice of an insurance product, in which, it is impossible to insure an object under construction. When filling in the questionnaire, Ogannesyan M. indicated that he intended to insure the object of completed construction, specifying its characteristics. The court of the First instance concluded that the parties did not agree on the essential terms of the contract, the list of which included the object of insurance (Article 942 of the Civil Code of the Russian Federation), and the court of Appeal pointed to the invalidity of the contract since the potential insuree had deliberately provided the insurer with deliberately false information on the essential conditions. Such a difference in the positions of the law enforcement officer is due to the specifics of the case and the prioritization of established facts.

It is also worth highlighting the approach of the law enforcement officer, which contains a literal interpretation of the provisions of the law on signing a contract concluded using online technologies. In one of the cases, the court refused to recognize the insurance contract as concluded, since the parties exchanged electronic images of documents that did not have originals, and in violation of the norms

of the current legislation, were not signed either by a simple or enhanced electronic signature of the insurer, indicating during the assessment of the evidence that silence, according to Art. 438 of the Civil Code of the Russian Federation, is not an acceptance.

One of the features of proof in cases of this category is the imposition of the burden of proof on the plaintiff, who claims the conclusion or the non-conclusion of the insurance contract. Such a procedural ideology allows one to follow the principles of legality, competitiveness, and equality of parties in insurance disputes, since one of the parties is such a scientific category as a "weak side" or a consumer. However, in cases of contract conclusion, a professional dishonest insuree often hides under the guise of a weak side [3].

Each component of the mechanism of proof in insurance disputes constitutes a social and legal phenomenon and is placed in the framework of a procedural form.

10.3.2 Features of the Legal Regulation of the Procedure for Proving the Invalidity of Insurance Contracts

The adoption of the Concept for the development of the provisions of Part 2 of the Civil Code of the Russian Federation on the insurance contract dated September 25, 2020, led to a new stage in understanding the need to finalize the mechanism of legal regulation of the institution of invalidity of the insurance contract. The analysis of foreign experience in legal regulation has raised the question of the expediency of using the experience of diversified consequences of violation of informational pre-contractual obligations for the Russian legislator. The existing definition of the invalidity of insurance contracts in Part 3 of Article 944 of the Civil Code of the Russian Federation in conjunction with the provisions of Article 179 of the Civil Code of the Russian Federation has become in demand in recent years as a tool for countering insurance fraud. For a long time, the courts have been forming a uniform approach to assessing the evidence presented by insurers to mislead them at the stage of pre-contractual legal relations, indicating that the insurer is a professional market participant and is obliged to assess the risk at the stage of concluding a contract. This concept has influenced the expansion of forms of abuse of rights by dishonest insurers.

However, in 2019–2021, insurers changed the procedure of proof and filled the gaps in legal regulation in this area. Thus, in judicial practice, precedents have appeared on the invalidity of insurance contracts, the analysis of which allows us to conclude about using the presentation of evidence based on the chronology of the emergence and development of legal relations in the method of proving, while insurers were able to refract the approach of law enforcement officers to the interpretation of "deliberately false information" as a criminal legal definition with the requirement to provide relevant evidence—a court verdict that has entered legal force, and deliberately delimited and filled the gap in the legal regulation of this category.

The most interesting is the approach of the courts on recognizing insurance contracts as invalid using the institution of abuse of rights on the part of the insured. The legal symbiosis of Articles 10, 179, and 944 of the Civil Code of the Russian Federation has created a stable form of counteraction against dishonesty on the part of insurers and exposed pseudo-interest in insurance [4].

One of the interesting court cases is the civil case on the claim of Ustyuzhanin A.Yu. to LLC "IC Soglasie" on the recovery of insurance compensation and on the counterclaim of LLC "IC Soglasie" to Ustyuzhanin A.Yu. on the recognition of the insurance contract as invalid. Only in the second round of consideration of the case, the courts recognized the insurance contract as invalid with the application of the provisions of Article 10 of the Civil Code of the Russian Federation, establishing the entire chain of actions of the parties to the legal relationship. The fact was taken into account that the history of insurance acquires a fantastic aspect associated with deliberately misleading the insurer by submitting a contract for the construction of a house worth 36 million rubles, transferred in cash by the insuree to unknown builders. At the same time, the millionaire-insurer has numerous enforcement proceedings for debts for utilities, artificial jurisdiction, etc.

The largest number of court disputes on the invalidity of insurance contracts in 2019–2021 is connected to the insurance of residential buildings and personal insurance. The regulation of issues of the beginning of the limitation period when claiming the invalidity of insurance contracts still remains an acute problem.

The specific nature of disputes on the invalidity of contracts is based on the unique evaluative nature of the legal definitions themselves, which act as the basis for regulating the invalidity of an insurance contract. The experience of legal regulation in England is interesting, where the consequences depend on the intention to violate (deliberate or reckless) the information obligation by the insured. It is the time of digital decisions that contribute to making decisions on the classification of requirements for the information obligations of the insured, the subject composition, and the implementation of positive foreign experience.

10.3.3 Impact of Digitalization on the Proof Process

The new realities of the digital economy, Big Data, blockchain have created the prerequisites for changing the structure of the evidence, the emergence of a new legal category "electronic proof". In some disputes, the list of evidence of data enrichment at the stage of execution of legal relations between the parties was reduced. For example, the use of biometric data in legal relations between a client and a bank directly affects the list of evidence, optimizing the process of proof [5].

Since 2020, the possibility of obtaining financial services, including insurance, is realized in insurance in Russia using a financial platform (the Marketplace system), which will provide round-the-clock access to financial services regardless of your location (p. 1 of art. 1, par. 7 p. 1 of art. 2 of the Law of 20.07.2020 N 211-Federal Law). The creation of Internet platforms for the emergence of a legal relationship

changes the mechanics of the process, making it more secure, provided that competent legal structures are used, embedded in the software with a prerequisite for the correct sequence of actions [6].

A similar procedural platform is the module "Electronic justice" (formerly State Automated System "Justice"), which allows using a browser to implement electronic exchange of documents within the framework of legal proceedings.

The change in the proof process is also associated with the improvement of the procedural codes of the Russian Federation in terms of the introduction of video conferencing and online meetings. One of the new problems of proof is the verification of written evidence during an online meeting; a legislative solution has not yet been found [7].

In the structure of evidence of the digital age, the correspondence of the parties in messengers and e-mail takes an important place. If earlier the courts refused to accept correspondence as evidence, then in recent years they have formed a uniform approach to the inclusion of such evidence in compliance with the conditions of assurance.

10.4 Conclusion

The improvement of proof models in insurance disputes and the creation of standards for cases of non-conclusion and invalidity of insurance contracts was a natural consequence of the introduction of digitalization into the life of society and the court. Legal regulation gaps are filled by law enforcement officers in specific cases, and individual precedents also have the effect of filling the legal gap.

The specific legal nature of insurance legal relations requires the process of proving to have the same uniqueness in the "chronological evidence base".

The change in the format of the emergence of legal relations and the transition to the digital plane makes the need for the development of new digital standards of proof and their legalization in procedural legislation inevitable. Discussions about the development of artificial intelligence and its applicability in the process of proving in Russian courts appear to be an indicator of the time of changes in legal theories of procedural legislation and the transformation of legal norms.

The information society and big data environment, increasing the availability of information, form the complexity of the architecture of the evidence base, changing the process of collecting, presenting, and examining evidence.

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