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FIJI

ACT NO. 9 OF 1996



I assent

[L.S.]

K. K. T. MARA
 President
 [28 August 1996]

AN ACT

TO REGULATE CONTRACTS OF INSURANCE AND THE PRACTICES OF INSURERS, BROKERS, AGENTS AND OTHER INSURANCE INTERMEDIARIES IN RELATION TO SUCH CONTRACTS AND RELATED MATTERS

ENACTED by the Parliament of Fiji—

PART I—PRELIMINARY

Short title and commencement

1.— This Act may be cited as the Insurance Law Reform Act, 1996 and shall come into force on a date to be notified by the Minister in the Fiji Republic Gazette.

Interpretation

2.— In this Act, unless the context otherwise requires—

“insured” and “insurer” include a proposed insured and proposed insurer, respectively;

“policy document”, in relation to a contract of insurance, means:

- (a) a document prepared by the insurer as evidence of the contract; or
- (b) a broker’s placing slip that constitutes evidence of the contract; and includes, in relation to an interim contract of insurance, a document of the kind usually known as a cover note prepared by the insurer or by an insurance intermediary with the authority of the insurer;

“proposal form” includes:

- (a) a document containing questions to which a person is asked to give answers (whether in the document or not), where the answers are intended (whether by the person who answered them, by the insurer or by some other person) to be used in connection with a proposed contract of insurance; and
- (b) a form relating to the proposed membership of a person of a superannuation or retirement scheme.

Previous contracts

3.—This Act does not apply to or in relation to a contract of insurance that was entered into before the date of commencement of this Act.

Application of Act

4.—(1) Subject to Section 5, the application of this Act extends to contracts of insurance and proposed contracts of insurance the proper law of which is or would be the law of Fiji.

(2) For the purposes of subsection (1), where the proper law of a contract or proposed contract would, but for an express provision to the contrary included or to be included in the contract or in some other contract, be the law of Fiji then, notwithstanding that provision, the proper law of the contract is the law of Fiji.

Exceptions to application of Act

5. Except as otherwise provided by this Act, this Act does not apply to or in relation to contracts and proposed contracts:

- (a) of reinsurance;
- (b) to or in relation to which the Marine Insurance Act, Cap. 218, applies;
- (c) to or in relation to which the Workmen’s Compensation Act, Cap. 94, applies; and
- (d) to or in relation to which the Motor Vehicles (Third Party Insurance) Act, Cap. 177, applies.

PART II—INSURABLE INTEREST

Insurable interest

6.—(1) A contract of general insurance is not void by reason only that the insured did not have, at the time when the contract was entered into, an interest in the subject-matter of the contract.

(2) Sub-section (1) does not apply to a contract that provides for the payment of money on the death of a person by accident or sickness but not otherwise.

(3) Where the insured under a contract of general insurance has suffered a pecuniary or economic loss by reason that property the subject-matter of the contract has been damaged or destroyed, the insurer is not relieved of liability under the contract by reason only that, at the time of the loss, the insured did not have an interest at law or in equity in the property.

(4) Where the insured under—

- (a) a contract of life insurance; or
- (b) a contract that provides for the payment of money on the death of a person by sickness or accident, did not, at the time when the contract was entered into, have an insurable interest in the life of the life insured or of each life insured, the contract is void.

Insurable interest on lives

7.—(1) A person has an insurable interest in his or her own life and in the life of his or her spouse.

(2) A parent of a person who has not attained the age of 18 years, and a guardian of such a person, has an insurable interest in the life of that person.

(3) A person who is likely to suffer a pecuniary or economic loss as a result of the death of some other person has an insurable interest in the life of that other person.

(4) Without limiting the generality of sub-section (3) —

- (a) a body corporate has an insurable interest in the life of an officer or employee of the body corporate;
- (b) an employer has an insurable interest in the life of his or her employee and an employee has an insurable interest in the life of his or her employer; and
- (c) a person has an insurable interest in the life of a person on whom he or she depends either wholly or partly, for maintenance and support.

(5) Where a person has an insurable interest in the life of some other person, the amount of that interest is unlimited.

Entitlement of named persons to claim

8.—(1) Where a person who is not a party to a contract of general insurance is specified or referred to in the contract, whether by name or otherwise, as a person to whom the insurance cover provided by the contract extends, that person has a right to recover the amount of his or her loss from the insurer in accordance with the contract notwithstanding that he or she is not a party to the contract.

(2) Subject to the contract, a person who has such a right—

- (a) has, in relation to his or her claim, the same obligations to the insurer as he or she would have if he or she were the insured; and
- (b) may discharge the insured's obligations in relation to the loss.

(3) The insurer has the same defences to an action under this Section as he or she would have in an action by the insured.

(4) Where a contract of life insurance effected by a person upon his or her own life is expressed to be for the benefit of a person specified or referred to in the contract, whether by name or otherwise, that second-mentioned person has a right to recover the moneys payable under the contract from the insurer in accordance with the contract notwithstanding that the second-mentioned person is not a party to the contract, and the moneys payable under the contract do not form part of the estate of the person whose life is insured and are not subject to his or her debts.

Where sum insured exceeds value of insured's interest

9.—(1) This Section applies where—

- (a) a loss occurs in respect of property that is the subject-matter of a contract of general insurance; and
- (b) the insured and some other person each have an interest in the property, but does not apply where —
- (c) the contract of insurance does not provide insurance cover in respect of an interest in the property that is not the insured's interest; and
- (d) before the contract was entered into, the insurer clearly informed the insured in writing that the insurance cover provided by the contract would not extend to such an interest.

(2) A reference in this Section to the amount of the insurer's notional liability is a reference to the amount for which the insurer would have been liable to the insured in respect of the particular claim if the insured had been the only person who had an interest in the property.

(3) Where —

- (a) the amount of the insurer's notional liability exceeds the amount of his or her liability to the insured in respect of the loss; and
- (b) within 3 months after the day on which the loss occurred, a person who is not the insured but has an interest in the property gives to the insurer a notice in writing informing the insurer of his or her interest,

the insurer is liable, at the expiration of that period, to pay to that person an amount equal to the amount by which the insurer's notional liability exceeds the amount of the insured's loss.

(4) Where 2 or more persons have served notices under this Section, the amount ascertained under sub-section (3) shall be divided between them in proportion to the values of their interests in the property.

(5) Nothing in sub-section (3) renders the insurer liable to pay to a person an amount exceeding the amount of the loss suffered by that person.

(6) Where —

- (a) the amount of the insurer's notional liability exceeds the amount of the liability to the insured in respect of the loss;
- (b) the insurer has paid to the insured the amount of the notional liability; and
- (c) the insurer did not know and could not reasonably be expected to have known, that a person other than the insured had an interest in the property,

sub-section (3) does not apply, but a person who is not the insured may recover from the insured an amount that bears to the amount of the notional liability the same proportion as the value of that person's interests in the property bears to the total value of all persons' interests in the property.

PART III—THIRD PARTY INTERESTS

Rights of third party to recover against insurer

10.—(1) Where —

- (a) the insured under a contract of liability insurance is liable in damages to a person (in this Section called the "third party");
- (b) the insured has died or cannot, after reasonable enquiry, be found; and
- (c) the contract provides insurance cover in respect of the liability,

the third party may recover from the insurer an amount equal to the insurer's liability under the contract in respect of the insured's liability in damages.

(2) A payment under sub-section (1) is a discharge, to the extent of the payment in respect of —

- (a) the insurer's liability under the contract; and
- (b) the liability of the insured or of his or her legal personal representative to the third party.

(3) This Section does not affect any right that the third party has in respect of the insured's liability, being a right under some other law of Fiji.

(4) This Section applies to or in relation to contracts and proposed contracts to or in relation to which the Workmen's Compensation Act, Cap 94, applies and to or in relation to which the Motor Vehicles (Third Party Insurance) Act, Cap. 177 applies.

*Insurance Law Reform — 9 of 1996*PART IV—UTMOST GOOD FAITH, NON-DISCLOSURE
AND MISREPRESENTATION

DIVISION I—DUTY OF UTMOST GOOD FAITH

Duty of the utmost good faith

11. A contract of insurance is a contract based on the utmost good faith and there is implied in such a contract a provision requiring each party to it to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith.

Parties not to rely on provisions except in the utmost good faith

12.—(1) If reliance by a party to a contract of insurance on a provision of the contract would be to fail to act with the utmost good faith, the party may not rely on the provision.

(2) Sub-section (1) does not limit the operation of Section 10.

(3) In deciding whether reliance by an insurer on a provision of the contract of insurance would be to fail to act with the utmost good faith, the court shall have regard to any notification of the provision that was given to the insured.

DIVISION II—DUTY OF DISCLOSURE

Duty of disclosure

13.—(1) Subject to this Act, an insured has a duty to disclose to the insurer, before the relevant contract of insurance is entered into, every matter that is known to the insured, being a matter that—

- (a) the insured knows to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or
- (b) a reasonable person in the circumstances could be expected to know to be a matter so relevant.

(2) The duty of disclosure does not require the disclosure of a matter—

- (a) that diminishes the risk;
- (b) that is of common knowledge;
- (c) that the insurer knows or in the ordinary course of his or her business as an insurer ought to know; or
- (d) as to which compliance with the duty of disclosure is waived by the insurer.

(3) Where a person—

- (a) failed to answer; or
- (b) gave an obviously incomplete or irrelevant answer to,

a question included in a proposal form about a matter, the insurer shall be deemed to have waived compliance with the duty of disclosure in relation to the matter.

Insurer to inform of duty of disclosure

14.—(1) The insurer shall, before a contract of insurance is entered into, clearly inform the insured in writing of the general nature and effect of the duty of disclosure.

(2) An insurer who has not complied with sub-section (1) may not exercise a right in respect of a failure to comply with the duty of disclosure unless that failure was fraudulent.

Ambiguous questions

15.—Where —

- (a) a statement is made in answer to a question asked in relation to a proposed contract of insurance or the provision of insurance cover in respect of a person who is seeking to become a member of a superannuation or retirement scheme; and
- (b) a reasonable person in the circumstances could have understood the question to have the meaning that the person answering the question apparently understood it to have,

that meaning shall, in relation to the person who made the statement, be deemed to be the meaning of the question.

Warranties of existing facts to be representation

16. A statement made in or in connection with a contract of insurance, being a statement made by or attributable to the insured, with respect to the existence of a state of affairs does not have effect as a warranty but has effect as though it were a statement made to the insurer by the insured during the negotiations for the contract but before it was entered into.

DIVISION III—MISREPRESENTATION

Misrepresentation by life insured

17. Where, during the negotiations for a contract of life insurance but before it was entered into, a misrepresentation was made to the insurer by a person who, under the contract, became the life insured or one of the life insureds, this Act has effect as though the misrepresentation had been so made by the insured.

Certain statements not misrepresentation

18.—(1) Where a statement that was made by a person in connection with a proposed contract of insurance was in fact untrue but was made on the basis of a belief that he or she held, being a belief that a reasonable person in the circumstances would have held, the statement shall not be taken to be a misrepresentation.

(2) A statement that was made by a person in connection with a proposed contract of insurance shall not be taken to be a misrepresentation unless the person who made the statement knew, or a reasonable person in the circumstances could be expected to have known, that the statement would have been relevant to the decision of the insurer whether to accept the risk and, if so, on what terms.

(3) This Section extends to the provision of insurance cover in respect of a person who is seeking to become a member of a superannuation or retirement scheme.

Failure to answer questions

19. A person shall not be taken to have made a misrepresentation by reason only that he or she failed to answer a question included in a proposal form or gave an obviously incomplete or irrelevant answer to such a question.

DIVISION IV—REMEDIES FOR NON-DISCLOSURE, ETC.

General insurance: Remedies for non-disclosure and misrepresentation

20.—(1) This Section applies where the person who became the insured under a contract of general insurance upon the contract being entered into -

- (a) failed to comply with the duty of disclosure; or
- (b) made a misrepresentation to the insurer before the contract was entered into,

but does not apply where the insurer would have entered into the contract for the same premium and on the same terms and conditions even if the insured had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into.

(2) If the failure to comply with the duty of disclosure was fraudulent or the misrepresentation was made fraudulently, the insurer may avoid the contract.

(3) If the insurer is not entitled to avoid the contract or, being entitled to avoid the contract (whether under sub-section (2) or otherwise) has not done so, the liability of the insurer in respect of a claim is reduced to the amount that would place him or her in a position in which he or she would have been if the failure had not occurred or the misrepresentation had not been made.

Life insurance: Remedies for non-disclosure and misrepresentation

21.—(1) This Section applies where the person who became the insured under a contract of life insurance upon the contract being entered into—

- (a) failed to comply with the duty of disclosure; or
- (b) made a misrepresentation to the insurer before the contract was entered into, but does not apply where—
- (c) the insurer would have entered into the contract even if the insured had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into; or
- (d) the failure or misrepresentation was in respect of the date of birth of one or more of the life insureds.

(2) If the failure to comply with the duty of disclosure was fraudulent or the misrepresentation was made fraudulently, the insurer may avoid the contract.

(3) If the insurer would not have been prepared to enter into a contract of life insurance with the insured on any terms if the duty of disclosure had been complied with or the misrepresentation had not been made, the insurer may, within 3 years after the contract was entered into, avoid the contract.

(4) If the insurer has not avoided the contract, whether under sub-section (2) or (3) or otherwise, he or she may, by notice in writing given to the insured before the expiration of 3 years after the contract was entered into, vary the contract by substituting for the sum insured (including any bonuses) a sum that is not less than the sum ascertained in accordance with the formula $\frac{SP}{Q}$

$\frac{SP}{Q}$

where—

S is the number of dollars that is equal to the sum insured (including any bonuses);

P is the number of dollars that is equal to the premium that has, or to the sum of the premiums that have, become payable under the contract; and

Q is the number of dollars that is equal to the premium, or to the sum of the premiums, that the insurer would have been likely to have charged if the duty of disclosure had been complied with or the misrepresentation had not been made.

(5) In the application of sub-section (4) in relation to a contract that provides for periodic payments, "the sum insured" means each such payment (including any bonuses).

(6) A variation of a contract under sub-section (4) has effect from the time when the contract was entered into.

Misstatements of age

22.—(1) In this Section, "the standard formula", in relation a contract of life insurance,

means the formula $\frac{SP}{Q}$, where—

Q

S is the number of dollars that is equal to the sum insured (including any bonuses);

P is the number of dollars that is equal to the premium that has, or to the sum of the premiums that have, become payable under the contract: and

Q is the number of dollars that is equal to the premium, or to the sum of the premiums, that would have become payable under the contract if it or they had been ascertained on the basis of the correct date of birth or dates of birth.

(2) If the date of birth of one or more of the life insureds under a contract of life insurance was not correctly stated to the insurer at the time when the contract was entered into —

- (a) where the sum insured (including any bonuses) exceeds the amount in dollars ascertained in accordance with the standard formula, the insurer may at any time vary the contract by substituting for the sum insured (including any bonuses) an amount that is not less than the amount in dollars so ascertained; and
- (b) where the sum insured (including any bonuses) is less than the amount so ascertained, the insurer shall either —
 - (i) reduce, as from the date on which the contract was entered into, the premium payable to the amount that would have been payable if the contract had been based on the correct date of birth or correct dates of birth and repay the amount of over-payments of premium (less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the contract had been based on the correct date of birth or correct dates of birth) together with interest on that amount at the prescribed rate computed from the date on which the contract was entered into; or
 - (ii) vary the contract by substituting for the sum insured (including any bonuses) the amount in dollars so ascertained.

(3) In the application of sub-section (2) in relation to a contract that provides for periodic payments, "the sum insured" means each such payment (including any bonuses).

(4) A variation of a contract under sub-section (2) has effect from the time when the contract was entered into.

Court may disregard avoidance in certain circumstances

23.—(1) In any proceedings by the insured in respect of a contract of insurance that has been avoided on the ground of fraudulent failure to comply with the duty of disclosure or fraudulent misrepresentation, the court may, if it would be harsh and unfair not to do so, but subject to this Section, disregard the avoidance, and if it does so, shall allow the insured to recover the whole, or such part as the court thinks just and equitable in the circumstances, of the amount that would have been payable if the contract had not been avoided.

(2) The power conferred by sub-section (1) may be exercised only where the court is of the opinion that, in respect of the loss that is the subject of the proceedings before the court, the insurer has not been prejudiced by the failure or misrepresentation or, if the insurer has been so prejudiced, the prejudice is minimal or insignificant.

(3) In exercising the power conferred by sub-section (1), the court—

- (a) shall have regard to the need to deter fraudulent conduct in relation to insurance; and
- (b) shall weigh the extent of the culpability of the insured in the fraudulent conduct against the magnitude of the loss that would be suffered by the insured if the avoidance were not disregarded, but may also have regard to any other relevant matter.

(4) The power conferred by sub-section (1) applies only in relation to the loss that is the subject of the proceedings before the court, and any disregard by the court of the avoidance does not otherwise operate to reinstate the contract.

No other remedies

24. The remedies in Sections 20, 21, 22, and 23 above are exclusive of any right that the insurer has otherwise than under this Act in respect of a failure by the insured to disclose a matter to the insurer before the contract was entered into and in respect of a misrepresentation or incorrect statement.

Certain exclusions forbidden

25. Where—

- (a) the provisions of a contract of insurance the circumstances in which the insurer is bound to indemnify the insured against loss are so defined as to exclude or limit the liability of the insurer to indemnify the insured on the happening of certain events or on the existence of certain circumstances; and

- (b) in the view of the court or arbitrator determining the claim of the insured the liability of the insurer has been so defined because of the happening of such events or the existence of such circumstances was in the view of the insurer likely to increase the risk of such loss occurring—

the insured shall not be disentitled to be indemnified by the insurer by reason only of such provisions of the contract of insurance if the insured proves on the balance of probability that the loss in respect of which the insured seeks to be indemnified was not caused or contributed to by the happening of such events or the existence of such circumstances.

Time limits on claims under contracts of insurance

26.—(1) A provision of a contract of insurance prescribing any manner in which or any limit of time within which notice of any claim by the insured under such contract must be given or prescribing any limit of time within which any suit or action by the insured must be brought shall—

- (a) if that contract is embodied in a life policy and the claim, suit, or action relates to the death of the insured, not bind the insured; and
- (b) in any other case, bind the insured only if in the opinion of the arbitrator or court determining the claim the insurer has in the particular circumstances been so prejudiced by the failure of the insured to comply with such provision that it would be inequitable if such provision were not to bind the insured.

(2) Where—

- (a) the insured under any contract of insurance to which subsection (1)(b) of this Section applies fails to give notice of any claim in any manner or within any limit of time prescribed by the contract; and
- (b) the cost of repairing, replacing, or reinstating any property when it falls to be met is greater than that which would have applied if the notice had been given in the manner or within the time so prescribed, —

that greater cost shall not constitute prejudice to the insurer for the purposes of subsection (1)(b) of this Section, but the insurer shall not be obliged to apply or pay in repairing, replacing, or reinstating the property a greater sum than that for which he or she would have been liable if the notice of claim had been given in the manner or within the time so prescribed.

Average clauses

27.—(1) An insurer may not rely on an average provision included in a contract of general insurance unless, before the contract was entered into, the insurer clearly informed the insured in writing of the nature and effect of the provision.

(2) Where the sum insured in respect of property that is the subject-matter of a contract of general insurance that provides insurance cover in respect of loss of or damage to a building used primarily and principally as a residence for the insured, for persons with whom the insured has a family or personal relationship, or for both the insured and such persons, or loss of or damage to the contents of such a building, or both, is not less than 80% of the value of the property, the liability of the insurer in respect of loss of or damage to the property is not reduced by reason only of the operation of an average provision included in the contract.

(3) Where—

- (a) the sum insured in respect of property that is the subject-matter of such a contract is less than 80% of the value of the property; and
- (b) but for this subsection, an average provision included in the contract would have the effect of reducing the liability of the insurer in respect of loss of or damage to the property to an amount that is less than the amount ascertained in accordance with the formula $\frac{AS}{P}$, where

P

A is the number of dollars equal to the amount of the loss or damage;

S is the amount of the sum insured under the contract in respect of the property; and

P is 80% of the number of dollars equal to the value of the property,

the average provision has the effect of reducing the liability of the insurer to the amount so ascertained.

(4) A reference in this Section to the value of property is a reference to the value of that property at the time when the relevant contract was entered into.

Other insurance

28.—(1) Where a provision included in a contract of general insurance has the effect of limiting or excluding the liability of the insurer under the contract by reason that the insured has entered into some other contract of insurance, not being a contract required to be effected by or under a law the provision is void.

(2) Sub-section (1) does not apply in relation to a contract that provides insurance cover in respect of some or all of so much of a loss as is not covered by a contract of insurance that is specified in the first-mentioned contract.

(3) When 2 or more insurers are liable under separate contracts of general insurance to the same insured in respect of the same loss, the insured is, subject to subsection (4), entitled immediately to recover from any one or more of those insurers such amount as will, or such amounts as will in the aggregate, indemnify him or her fully in respect of the loss.

(4) Nothing in subsection (3) entitles an insured:

- (a) to recover from an insurer an amount that exceeds the sum insured under the contract between the insured and that insurer; or
- (b) to recover an amount that exceeds, or amounts that in the aggregate exceed, the amount of the loss.

(5) Nothing in this Section prejudices the rights of an insurer or insurers from whom the insured recovers an amount or amounts in accordance with this Section to contribution from any other insurer liable in respect of the same loss.

PART V — CONSTRUCTION OF POLICIES, PROPOSALS, ETC.

Construction of policies, proposals, etc

29. Notwithstanding any law or agreement to the contrary, the following rules of construction shall be observed in the interpretation of any proposal for insurance or any policy of insurance or endorsement on a policy of insurance:

- (a) the intention of the parties, ascertained from the face of the documents, documents incorporated therewith and surrounding circumstances, shall prevail;
- (b) the whole of a document shall be looked at and not a particular clause;
- (c) written words shall ordinarily be given more effect than printed words;
- (d) wherever possible, the grammatical construction shall be adopted, but the intention of the parties shall be of paramount consideration;
- (e) words shall be construed in their plain, ordinary, popular, commonsense and natural meaning except that terms of art or technical words shall be understood in their strict, technical and proper sense unless the context controls or alters the meaning;
- (f) the meaning of a word is to be ascertained with reference to its context and may be restricted or modified thereby, and where, from the context, it appears that the parties intended to use the word in a special and peculiar sense, and not in a meaning which it might otherwise bear, the word shall be construed in accordance with their intention;

- (g) subject to the precise terms, subject matter and context of a clause, where specifications of particular things belonging to the same genus precede a word of general signification, the latter word of general signification, shall be confined in its meaning to things belonging to the same genus and shall not include things belonging to a different genus;
- (h) where a word of general signification is followed by words of limitation or definition, which introduce words of narrower signification, the first word shall not be taken in its full sense but shall be construed as limited by and applying only to the particulars specified;
- (i) words shall be construed to mean what they say, unless there is some strong ground for placing a different construction on the words from what they naturally import;
- (j) words shall be construed liberally so as to give effect to the real intention of the parties and the document shall not be so construed as to defeat the object of the transaction or as to render it illusory;
- (k) in any case of ambiguity, where words are capable of more than one construction, the reasonable construction shall be taken to represent the intention of the parties;
- (l) the language of a document shall not be strained in favour of or against any party but if there is any ambiguity, the ambiguity shall be resolved in favour of the person insured;
- (m) every effort shall be made to reconcile inconsistencies, but where there is an inconsistency between the wording of a policy and that in the proposal or any earlier document, the policy shall be regarded as expressing the true intention of the parties in the absence of sufficient evidence to the contrary;
- (n) an express term shall override any implied term inconsistent with it.

PART VI—SUBROGATION

Subrogation to rights against third party

30.—(1) Subject to subsection (2), this Section applies where:

- (a) an insurer is liable under a contract of general insurance in respect of a loss;
- (b) but for this Section, the insurer would be entitled to be subrogated to the rights of the insured against some other person (in this Section called the “third party”); and
- (c) the insured has not exercised those rights and might reasonably be expected not to exercise those rights by reason of:

- (i) a family or other personal relationship between the insured and the third party; or
- (ii) the insured having expressly or impliedly consented to the use, by the third party, of a motor vehicle that is the subject-matter of the contract.

(2) This Section does not apply where the conduct of the third party that gave rise to the loss:

- (a) occurred in the course of or arose out of his or her employment by the insured; or
- (b) was serious or wilful misconduct.

(3) Where the third party is not insured in respect of his or her liability to the insured, the insurer does not have the right to be subrogated to the rights of the insured against the third party in respect of the loss.

(4) Where the third party is so insured, the insurer may not, in the exercise of his or her rights of subrogation, recover from the third party an amount that exceeds the amount that the third party may recover under his or her contract of insurance in respect of the loss.

(5) An insured need not comply with a condition requiring him or her to assign those rights to the insurer in order to be entitled to payment in respect of the loss and an insurer shall not purport to impose such a condition on the making of such a payment or, before making such a payment, invite the insured so to assign those rights, or suggest that he or she so assign them.

(6) An assignment made in compliance with such a condition or in pursuance of such an invitation or suggestion is void.

Subrogation to rights against employees

31. Where—

- (a) the rights of an insured under a contract of general insurance in respect of a loss are exercisable against a person who is his or her employee; and
- (b) the conduct of the employee that gave rise to the loss occurred in the course of or arose out of the employment and was not serious or wilful misconduct,

the insurer does not have the right to be subrogated to the rights of the insured against the employee.

Rights with respect to moneys recovered under subrogation

32.—(1) Where an insurer, in exercising a right of subrogation in respect of a loss, recovers an amount, the insured may recover that amount from the insurer.

(2) Unless the contract expressly provides otherwise the insured may not recover under subsection (1):

- (a) an amount greater than the amount (if any) by which the amount recovered by the insurer exceeds the amount paid to the insured by the insurer in relation to the loss; or
- (b) an amount that, together with the amount paid to the insured under the contract, is greater than the amount of the insured's loss.

(3) The rights of an insured and insurer under the preceding provisions of this Section are subject to any agreement made between them after the loss occurred.

(4) A reference in this Section to an amount recovered by an insurer shall be construed as a reference to the amount so recovered less the administrative and legal costs incurred in connection with the recovery of the amount.

Contracts affecting rights of subrogation

33.—(1) Where a contract of general insurance includes a provision that has the effect of excluding or limiting the insurer's liability in respect of a loss by reason that the insured is a party to an agreement that excludes or limits a right of the insured to recover damages from a person other than the insurer in respect of the loss, the insurer may not rely on the provision unless he or she clearly informed the insured in writing, before the contract of insurance was entered into, of the effect of the provision.

(2) The duty of disclosure does not require the insured to disclose the existence of a contract that so limits the insured's rights.

PART VII—INTERESTS AND REGULATIONS

Interest on claims

34.—(1) Where an insurer is liable to pay to a person an amount under a contract of insurance or under this Act in relation to a contract of insurance, the insurer is also liable to pay interest on the amount to that person in accordance with this Section.

(2) The period in respect of which interest is payable is the period commencing on the day as from which it was unreasonable for the insurer to have withheld payment of the amount and ending on whichever is earlier of the following days:

- (a) the day on which the payment is made;
- (b) the day on which the payment is sent by post to the person to whom it is payable.

(3) The rate at which interest is payable in respect of a day included in the period referred to in sub-section (2) is the rate that is prescribed by regulation.

*Insurance Law Reform — 9 of 1996**Regulations*

35. The Minister may make regulations for prescribing anything which may be prescribed under the provisions of this Act and generally for the purpose of carrying out the provisions of the Act.

Passed by the House of Representatives this Seventeenth day of July, in the year of our Lord, One Thousand Nine Hundred and Ninety-Six.

Passed by the Senate this Eighth day of August, in the year of our Lord One Thousand, Nine Hundred and Ninety-Six.