
THE STORMY RELATIONSHIP BETWEEN LIFE AND PERSONAL ACCIDENT INSURANCES AND SUICIDE

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Analyzing the concept of insurance and suicide, we can initially notice an inconsistency between the institute and the fact that would result its coverage, since the purpose is usually insure the 'property', which there is no intention of abolishment, especially when such property is characterized by the life itself, or in some cases, a third life.

The Civil Code of 1916 - with the absence of an express clause about the obligation of the suicide coverage in life insurance and personal accident - opened the possibility for a jurisprudential interpretation, which resulted in the creation of "Voluntary suicide" and "involuntary suicide."

With new civil law in 2002, there was a clear intention by the legislator to regulate this stormy question, as shown in the Article 79: "The beneficiary has not the right to the capital when the insured person committed suicide in the first two years of the initial term of the contract, or in case of renewal after suspension, observed in the provisions of paragraph one of previous Article".

Firstly, the understanding seems peaceful and clear when it mentions that the reimbursement in life insurance contracts only has coverage when the suicide actually occurs after two years of contract, or in case of renewal.

This amendment, initially has the purpose in finishing with the distinction between the "involuntary" suicide and the premeditated suicide or "voluntary", since the watershed in the payment obligation by the insurance company would be bound, sole and simply, with the time lapse of two years related to contracting or renewal of insurance, dismissing the jurisprudence institution, caused by the legislation lack of the Civil Code of 1916.

However, a new divergent interpretation has been adopted by the Brazilian courts, with Rio Grande do Sul and Goiás courts decision, and even with a Special Appeal with the determination of Reporting Judge Mrs. Nancy Andrichi, defending that the amendment brought by referred Article 798 of the Civil Code has intention to define "... the period of discussions about the premeditation of the two subsequent years to the contract term, with the aim of banishing any controversy, always motivated by insurance companies, about suicides premeditation committed more than two years after the life assurance contracting, period more than sufficient to invalidate any possible doubt about the desire of the insured person to suicide with intended manner."

This view defends that, instead of limit the coverage in accordance with the time lapse of suicide - before complete two years of the life assurance contract there

would not be an obligation for payment for damages, but after that there would - the Law intends, in fact, define the term for negative coverage in case of suicide, that is, in the first two years of the contract or renewal the insurance company should prove the premeditation of the act, which would authorize the non-payment, and after this time lapse even not the premeditation would allow the negative.

Different position was obtained by the statement 187 of III Civil Law Meeting of the Federal Court Council, as follows: "It is presumed to be, in the contract of insurance life, in a relative way, a premeditated suicide that one which is committed in the first two years of the coverage period, exempting the beneficiary from demonstrating the occurrence of the so-called "involuntary suicide".

Another issue that will also raise discussion is the obligation or non obligation of coverage by insurance companies, in cases of suicide in contracts for personal accident insurance, since Article 798 does not present anything in this sense, opening the possibility of permanent discussions on the indemnity obligation before the conceptual difference mentioned above.

From all these considerations and events that have been presented by our judges, it is necessary to consider - different from what might interpret in a first reading of the new insurance rules of the current civil code, why not say, unlike the genuine purpose of the legislator - the discussion on the premeditation / intention of suicide by the insured person as a determining fact for payment of indemnity in contracts, at least in the first two years of its term, if the understanding expressed by some courts and by the vote of Mrs. Nancy Andrighi receives other followers.

Probably this interpretation, being defended by Jurisprudence, could be extended, dangerously, to contracts of personal accidents in cases of suicide of the insured person, at least until it has a prevailing understanding of such interpretation, as occurred under the aegis of Civil Code of 1916.

What we may say so far is that the intention of the Civil Code of 2002 - which seemed to want to finish with the "voluntary suicide" and "involuntary suicide," bringing objective elements for indemnity in life and personal accident insurances - has not had the expected effect.