

Case law

Case Details

National ID: No. of protocol 11305

Member State: Greece

Common Name: link

Decision type: Other

Decision date: 20/12/2012

Court: Ombudsman of the Consumer

Subject:

Plaintiff: Unknown

Defendant: Unknown

Keywords: consumer, insurance contract, insurance policy, plain, intelligible language, standard contract, transparency, unfair terms, vulnerable consumer

Directive Articles

Unfair Contract Terms Directive, [Article 3, 1.](#) Unfair Contract Terms Directive, [Article 3, 2.](#) Unfair Contract Terms Directive, [Article 3, 3.](#) Unfair Contract Terms Directive, [Article 4, 1.](#) Unfair Contract Terms Directive, [Article 5](#)

Headnote

(1) The terms of an agreement shall always be regarded as not individually negotiated where they have been drafted in advance, especially in the context of a pre-formulated standard contract, without any influence by the consumer (in compliance with 93/13/EEC, art.3, par.2).

(2) The pre-formulated standard terms (General Terms of Transaction) must always be drafted in plain, intelligible language (in compliance with 93/13/EEC, art.5), according to the principle of transparency. Therefore, clarity (as far as the rights and obligations of the consumer are concerned) and comprehension (in a way that the consumer can fully understand their true meaning) of the terms is of high importance. Abusiveness of these terms shall be assessed as following: a) whether they cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer and /or b) whether they are considered automatically as "per se" abusive terms pursuant to the indicative list of abusive terms set in article 2 par. 7 of the law 2251 /1994.

(3) In case of pre-formulated standard terms (General Terms of Transaction) that do not have a clear meaning, their true meaning must be sought after and they shall be interpreted in favour of the weakest party, thus the consumer (93/13/EEC, art.5). Therefore, in order to interpret an unclear term, the need to protect the consumers is taken into account and in case of doubt, what prevails is the interpretation that is most favourable to the consumer.

Facts

The plaintiff had signed an insurance policy agreement with the defendant (insurance company). In that agreement the right to receive full remuneration of hospital charges was agreed for every medical treatment that required hospitalization (after exempting from the compensation a pre-agreed amount of money for each treatment that was charged to the insured person). The plaintiff was hospitalized and after a surgery he underwent 12 chemotherapies in order to complete the treatment of the same disease. The dispute arose when the defendant denied to fully pay for the chemotherapies' expenses; he argued that the pre-agreed exemption should be imposed in every chemotherapy as a separate treatment regardless of the fact that all of them took place as a part of a coherent medical care of the same disease. On the other hand the plaintiff was claiming that these chemotherapies were part of a single medical treatment aiming to treat a single disease; so, under the insurance agreement the exemption of the pre-agreed amount of money should apply only once and the rest should be paid by the insurance company.

Legal issue

Under the specific pre-formulated standard terms of the insurance policy agreement it was laid down that the insurance company must reimburse its client – consumer- for the charges of every medical treatment received at the hospital after exempting a pre-agreed amount of money (payable by the consumer) for each treatment. So, to be able to properly enforce this clause, the meaning of what constitutes "a medical treatment at a hospital" should have been clearly defined within the agreement. The court held that since there is a doubt about the meaning of a certain pre-formulated standard term it is unclear what the parties had agreed. Hence, this term must be regarded as abusive, since it can be fairly interpreted by the average consumer. So, given this ambiguity that term should be interpreted in the most favorable way for the consumer. Therefore, all the chemotherapies should be considered as a single medical care-treatment, since the aggregate of the medical operations (surgery, chemotherapies) aim to the treatment of the same disease. The defendant must only deduct only once the pre-agreed amount of money and must fully pay the rest of the plaintiff's chemotherapies' expenses.

Decision

(1) What are the pre-formulated standard contractual terms (General Terms of Transactions)?

(2) How should the pre-formulated standard contractual terms (General Terms of Transactions) be drafted? How shall the abusiveness of such terms be assessed and when are they regarded as abusive?

(3) How should the pre-formulated standard contractual terms be interpreted when there is a doubt about their meaning?

URL: <http://www.synigoroskatanaloti.gr/docs/reports/2012-12-20.%CE%A3%CF%85%CF%83%CF%84%CE%B1%CF%83%CE%B7-%CE%91%CF%83%CF%86%CE%95%CF%84%CE%B1%CE%B9%CF%81%CE%B9%CE%B1.pdf>

Full text: [Full text](#)

Related Cases

No results available

Legal Literature

No results available

Result

The court recommended to the defendant to fulfill its obligations arising from the insurance policy by fully paying for the plaintiff's chemotherapies and called both parties to notify the court in written, whether they accept the present written recommendation (plaintiff's request was granted).