

Broker's Responsibility For Violating His Obligations Under The Insurance Contract

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Abstract

This research aims at investigating the legal frameworks for the work of the insurance broker in terms of the contracts he prepares and concludes, and clarification of the importance of his role in concluding the contract for the benefit of the insured, whether he is a broker or an agent, by stating his obligations and duties and the laws governing his work as a mediator in organizing the insurance contract. It includes the mediator in the insurance contract and what is required from him towards the parties to the contract and the consequences of his breach of his duties towards the parties to the contract.

The study used the analytical approach through analyzing the elements of the study, and the descriptive approach to describe the problem of the study through a precise and organized scientific methodology in order to reach interpretations and results expressed in the body of the study. The study reached the following results: the broker always either represents the insurer and seeks to achieve his interest, or he represents the insured

by searching for a company suitable for him in order to achieve his interest. The insurance broker is an agent for the insured client, and he is looking for a company that will accept coverage of his risks in return for a lower premium amount and broader guarantees. The duty of the mediator is to exert care, not to achieve an end, and the required care is the care of the usual man

Terminology

- **Insurance contract:** It is a contract concluded between the insurer and the insured, according to which the insurer is obligated to pay compensation to the insured or the beneficiary represented in the financial amount stipulated in the insurance contract, and the insured in return is obligated to pay the insurance premium all at once or in regular installments in case verification. ⁽¹⁾

- **The insurance interest :** It is the benefit that accrues to the insured from the non-occurrence of the insured damage, and it is what prompted the two parties to sign the contract. ⁽²⁾

- **The mediator:** He is the mediator between the seller and the buyer to sign the sale, or he is the guide to the location of the commodity and its owner. ⁽³⁾

- **Insurance risk:** It is what a person fears from the occurrence of a material loss, so the insurance risk is defined as the potential material loss as a result of a specific accident. ⁽⁴⁾

- **Insurance broker:** He is an insurance broker, he may be a normal person or a legal person, and he is considered a trader subject to the commercial law, and therefore he must register in the commercial register.

Introduction

Insurance is a guarantee and protection for individuals, family, property and money from all possible risks. It is a global method that does not stop with economic life, so it is necessary to keep pace with that life and move forward with it within the framework of international laws.

The entire insurance process is based on the insurance contract, which makes it distinct from other contracts, and characterized by independent characteristics. The large number of insurance companies called for the need for people to perform the task of the mediator in the insurance contract, and the agents may be legal persons practicing the mediation profession with insurance companies, so that these mediators are agents working in the name of the company and for it, or he works as an agent under a brokerage contract so that their work is limited to approximation points of view between the parties to the insurance contract (insurance company/insurance applicant) to conclude the contract. Many insurance companies contact their clients through these intermediaries.

The majority of insurance contracts are concluded through a mediator, where he is the basis for signing the contract, whether the mediator is a broker or an agent. This contract, when signed, entails obligations on its parties to preserve their interests, as their interests are in conflict and each party searches for its own interest. Hence, the responsibility of the broker in the insurance contract is based on the provisions of the rules of the Jordanian civil law in the relationship between the broker and the insurance company on the one hand, and between the broker and customers on the other hand. Whatever the relationship on which the insurance brokerage contract is based, it entails rights and obligations on the parties to the contract and on the insurance company.

Based on the foregoing, we will discuss the legal nature of the mediator's responsibility in the first topic, and we will discuss in the second topic the implications of the mediator's civil liability in the insurance contract.

The First Topic

The Legal Basis For The Broker's Work In The Insurance Contract

Liability arises on the broker when concluding the insurance contract, either on the basis of negligence or contractual liability, based on the defect that afflicted one of the obligations and the damage that resulted from this defect. Accordingly, any debtor who violated a contractual obligation was liable for his contractual liability before the contracting creditor as in the case of the sale contract, where the seller is obligated not to expose him to the thing sold and to transfer his ownership to the buyer.

And if this exposure occurred from a third party of the contract and assaulted the right of the buyer to benefit from the thing to which ownership has been transferred, such an assault constitutes an illegal act that entails the responsibility of the seller to compensate for this exposure and the delivery of the sold is pure and devoid of any exposure, and accordingly we will examine cases of the establishment of the responsibility of the mediator in the first section and then we will discuss the foundations of this responsibility in the second section.

The First Section

Cases Of Mediator Liability

Contractual liability ensues when the contractor breaches his obligations arising from the contract, so what is the responsibility of a person for a

contract to which he is not a party? Accordingly, one direction in jurisprudence has gone that the responsibility of this person is a negligence responsibility, while another has gone that the responsibility of others when violating the contract is considered a contractual responsibility ⁽⁵⁾. The mediator in the insurance contract is not a party to it, but when he is an agent, he is not far from the contractual relationship, and he works to bring the views of the insured and the insurer closer together.

The insurance applicant assigns the broker to search for a customer to contract with, provided that he fulfills special conditions, where the broker performs this task, so he has contractual obligations, and that the breach of these obligations differs according to the nature of the defect that occurred, whether the defect resulted from the direct action of the broker or was caused by the other contractor and resulted in damage to the first contractor ⁽⁶⁾.

First: Non-Tort Liability

Responsibility incurs on a third party when he breaches a contract to which he was not originally a party, and this responsibility is borrowed from the responsibility of the debtor. This tort is based on a set of arguments in which non-tort liability is justified⁽⁷⁾.

The relativity of the effect of the contract precludes the liability of third parties when one of the contracting parties contributes to the breach of the contract, as the obligation is a personal relationship. It cannot be contractually violated by a person other than the debtor, so it is not conceivable that a foreigner would breach this relationship contractually⁽⁸⁾.

Hence, we say that the mediator's role is limited to bringing points of view together, and therefore he is not a party to the contract concluded between the insurer and the insured. Accordingly, if the breach of the contract results from the bad faith of the debtor, which is the insurance company, the mediator does not bear the responsibility in this regard. If the mediator is aware of the bad faith of the insurance company and encourages the insurance applicant to sign the contract and resulting in damage, the mediator is liable for negligence here.

Second: Contractual Liability To Others

An aspect of jurisprudence says that the contractual nature of a person's responsibility when he breaches a contract to which he is not a party, and in their view that the contract imposes an obligation on others, so that he must not impede the implementation of the contract, as the contract creates obligations for the contracting parties, and for others once the third party assists in breaching the contract knowingly with it, it becomes attached to the contract.⁽⁹⁾ Just as the owner allows others to dispose of his property, and the principal allows disposition when the agent exceeds the limits of his agency, so the third party who participates in breaching the contract is obligated to respect its clauses, and his responsibility is like the responsibility of the contractor, and it is of a contractual nature.⁽¹⁰⁾

The responsibility of a third party when he breaches a contractual obligation is tortious, not a contractual responsibility, as the contract results in effects of a change in the legal positions of the rights and obligations that prove to its parties and other rights holders the competition as soon as it fulfills the restrictions for validity before others, or as soon as it is established if there are no restrictions in this regard⁽¹¹⁾.

And because the responsibility according to this perception ends up conferring a tortious nature on the responsibility of others, given that this

responsibility is original, and it is not a responsibility that others borrow from the debtor, but is attributed to him as long as it is based on a fixed error against him personally, regardless of the position of the debtor ⁽¹²⁾.

On the basis of this tortious nature of the responsibility of others, this responsibility will not rise if the third person exercises his freedom in the contract in good faith. Freedom of action must define its natural limits as imposed by the general negative duty to respect the rights and freedoms of others⁽¹³⁾.

The buyer is responsible for his breach of the right promised to him, while the debtor, who is here the general successor, is not responsible for this breach, as long as no evidence of his bad faith is established, his commitment to deliver the thing sold, without ruling out the responsibility of the debtor ⁽¹⁴⁾.

And if the other contractor participated with a third party in breaching the contract that binds him with the creditor, then his responsibility rises with the responsibility of the third party. If a factory owner incites a technician working in another factory to leave this factory before the end of the contract in order to work for him, then the responsibility here is contractual between the technician and the owner of the first factory, and responsibility negligence between the instigator and the second employer, due to the absence of a contract between them ⁽¹⁵⁾.

And since the damage which is the subject of compensation is the same thing, the two responsibilities are based side by side, and this is one of the forms of joint liability that jurisprudence has been called joint liability ⁽¹⁶⁾.

The Second Section

Elements Of Mediator Responsibility

The elements of liability are determined by the error issued by the mediator, because of which real damage was caused to the client. Thus, the elements of the mediator's liability for compensating the damage he caused to the client are completed, and accordingly we will address the issue as follows:

First: The Error

A fault is an act that causes unlawful harm to others, and which entails compensation from those from whom it is issued⁽¹⁷⁾. In order to define the concept of error resulting in responsibility, it is necessary to clarify the definition of error, indicate its degree, and determine its type.

The broker's failure to implement his obligations stipulated in the contract concluded between him and the insurance applicant, as well as his breach of a legal duty imposed by the law, are considered errors committed by the broker⁽¹⁸⁾. And that any negligence in exerting the required care from the mediator is considered a mistake for which the mediator is responsible, unlike the case with the ordinary person who does not know the basics of the profession except its name.

And the errors that may occur from the mediator may range from a simple mistake to a serious mistake and negligence. The simple error is the one that is in line with the actions taken by it without intending it to happen. As for the serious error, it is issued by the mediator, and it is represented in the lack of care required regarding a particular transaction. As for negligence, it is a behavior that is characterized by lack of care and prudence in an act that requires him to exert care that the broker is required to take when executing a certain insurance operation.

The error in this case is described as a tort error if in its content it represents a breach of a general obligation for which the contract was not the cause of its origin. The broker's mistake is considered contractual if the reason for it is a total or partial failure to carry out his obligations

imposed by the contract, as these obligations give the broker's mistake a special character, so that the degree of care required from the broker differs from the degree of care required from the insurance applicant, given that the broker is a technical man, a specialist with sufficient experience in the field of insurance. The tortious error is based on a breach of the implementation of the contract obligation, which is a breach of a general obligation originating in the law and includes every mistake that departs from the concept of a contractual error ⁽¹⁹⁾. Any mistake that is not based on a contractual relationship is considered a tort and represents a breach of a general obligation to be careful that the law imposes on everyone ⁽²⁰⁾.

Second: Damage

Damage is what befalls a person in terms of losing his rights or harming his legitimate interest ⁽²¹⁾, and this damage may be material or moral ⁽²²⁾. Damage is an essential element in establishing liability. As liability does not exist without harm, and the existence of damage is necessary for the compensation condition, so liability is based on damage ⁽²³⁾.

The damage is every harm caused to the client or to one of his legitimate interests, and it results in the establishment of the responsibility of the civil brokerage company. More clearly, the damage constitutes an infringement of one of the human rights to the safety of himself and his property : it diminishes, disables, destroys or prevents its use or investment⁽²⁴⁾. The fact that the insurance applicant obtains compensation for material damage does not negate his right to claim the moral damage that befalls him, such as the one that befalls his dignity, honor, or reputation among brokers and merchants. A person may suffer from moral harm, which is all the psychological effects that the affected person suffers from such as pain, losing a sense of happiness, and not feeling the pleasures of life. This moral harm is not limited to the injured person himself, but may extend to other relatives and siblings.

In order for the damage to occur, a set of conditions must be met for the damage resulting from the broker's error to be compensable:

1- The damage occurs immediately as a result of the harmful act, and this damage may be expected and unexpected, and the expectation of harm or not occurs as a result of an objective criterion that is what the ordinary man would expect if he is placed in the same conditions in which the person responsible for the damage is placed.

Based on the general rules of civil liability, he is not liable for the direct damage if the responsible person does not make a serious mistake, and whatever the type and degree of the damage, the mediator is not liable for it unless he fulfills the conditions imposed by the law for the possibility of considering it as a reason for a judgment for compensation.

2- The damage is directed at the plaintiff who seeks compensation for the harmful act, and where there is a personal interest in it, and in order for the responsibility to be established on the mediator, the plaintiff must be the one who was harmed by the mediator's mistake.

3- The damage has actually occurred, and it is possible to be estimated, as it is immediate damage and therefore can be compensated for. But if the damage is contingent, then it has not occurred yet, and the possibility of its occurrence in the future or its non-occurrence is not valid for compensation⁽²⁵⁾.

And the conditions that must be met in the damage must be included in the issues of law that are subject to the oversight of the Court of Cassation ⁽²⁶⁾. If the damage has been inflicted on a person other than the plaintiff or his successor, the case should be dismissed for lack of litigation⁽²⁷⁾.

Third: The Causal Relationship

In order for the mediator's responsibility to be established, it must be proven that there is damage arising from the debtor's fault, and that there is a causal relationship between the error and the damage because it is one of the pillars of civil liability that the insured must prove in order to be entitled to compensation ⁽²⁸⁾.

There is a side of jurisprudence that believes that this responsibility is an objective responsibility and does not require the existence of a mistake in order to establish it, and based on that, it is not required that there is a link between this error and the damage caused or to include some others . This relationship within the framework of the pillar of harm on the basis that its existence does not appear unless with the damage itself⁽²⁹⁾ . And that most of the jurisprudence, supported by the judiciary, considers the causal relationship as a pillar standing by itself and independent of the last two pillars, and requires its existence in order to achieve responsibility and arrange its effects ⁽³⁰⁾.

Accordingly, the contractual and tort liability is based only on expected direct damages in the contractual and unexpected liability also in the tort liability, and other than that, liability is not based upon ⁽³¹⁾.

Whatever the means upon which the aggrieved party relies to prove his claim that the act or mistake of the mediator caused this damage to him, he can deny this allegation in whole or in part, by proving that the error made by him was not the direct cause of the damage, due to the presence of another foreign reason led to the realization of the damage, or that his fault contributed, along with other actions, to the injury of the aggrieved party, as he claims ⁽³²⁾. The mediator can invoke the existence of a foreign cause⁽³³⁾ that connects the accident to him without having any involvement in it, and the foreign cause is defined as every specific act or accident that is not attributed to the defendant ⁽³⁴⁾.

The foreign cause may be in the form of force majeure, a sudden accident, the act of a third party, or the fault of the victim, and it means the event that cannot be expected, prevented, or avoided, and it is the result of a cause beyond the control of everyone ⁽³⁵⁾, and by which the insured's fault is negated from the causal relationship when this error was the productive and effective cause of causing the damage, and therefore this error denies the existence of the mediator's liability. In the case of a joint error, when responsibility and compensation are distributed according to the contribution of each party according to the discretionary power of the judge, whenever the determination of this error is easy to the judge, through determining the percentage of the error of each of them. But if the judge is unable to obtain conclusive evidence proving the percentage of the damage due to the fault of each of the parties, then the responsibility is distributed among them equally, and the set-off between them takes place within the limits of the share of the damaged insured in the amount of compensation, and the mediator pays the remaining amount, in application of the general rules in the shared error⁽³⁶⁾.

THE SECOND TOPIC

Obligations Of Civil Insurance Brokers

The relationship of the agent with the insurance company is based on the power of attorney between them, which arranges opposite obligations on both parties, and thus the responsibility of one of the parties is if he breaches one of his contractual obligations towards the other party, and the responsibility is also that of the insurance company, as it is responsible for the actions of its agent, as a subordinate to it towards the insured customers.

In general, the status of the agency must be established between the insurance company and its agents, and from it the dependency

relationship is established between the agent and the insurance company, according to which the aggrieved party can refer to the insurance company as a result of the actions of its insured people, and the injured party must prove the personal error on the part of the general agent for insurance ⁽³⁷⁾. By establishing responsibility on the broker, penalties are directed at him, which are represented in warning, reprimand, and the right to terminate the insurance contracts that he mediated in concluding, in addition to depriving him of the commission, canceling the broker's accreditation, and suspending him from practicing the activity for a certain period of time⁽³⁸⁾. We will clarify the right to terminate the insurance contract and claim compensation, and to terminate the mediation agreement according to the following:

First : Termination Of The Mediation Contract

When the broker intentionally exceeds the limits of his powers granted to him under the mediation contract, and causes damage to the insurance company with which he contracted, he must be punished and his license suspended, according to the Article (18 / b / c / d / e) of the broker's licensing instructions in the Jordanian Insurance Law for the year 2005 and its amendments, which express the powers of the general manager to take a set of measures, including suspending the broker's license, canceling it, or correcting his conditions. And if the broker does not take the necessary measures to correct his conditions and the general manager's decision is issued to cancel the broker's license, he may not apply for a new license to practice brokerage business in insurance before the lapse of three years from the date of issuance of the decision to cancel the license, and as a result of the mistakes committed by the broker, the insurance company has the right to annul the contract that binds to it on a legitimate basis⁽³⁹⁾.

Second :Termination Of The Insurance Contract And Claiming Compensation

If the agent performs tasks that do not fall within the scope of the powers granted to him, then the insurance company shall be civilly liable for the actions of the agent, and it shall have the duty to compensate the insured for the damage incurred by him as a result of the act of its general agent, and it shall have the right to recourse against its agent who exceeded the limits of his powers and authorities⁽⁴⁰⁾ .

And the insured cannot, in all cases, verify and investigate the truth of the agency of the company's general agent and know the limits of his powers and authorities. Accordingly, if he claims that the company authorized him to conclude contracts for all branches of insurance without exception and to receive the amounts of premiums from the insured and he does not give them to the company but rather uses them in his personal affairs, the company here does not have the right to terminate the insurance contracts for not receiving the amounts of premiums handed over by the insured customers to the agent.

And the insurance company, by virtue of the law, is responsible for the act of its general agent, the responsibility of the follower for the actions of his subordinate, even if this agent is not licensed or delegated the authority and power to conclude the insurance contract ⁽⁴¹⁾.

The responsibility of the general agent towards the insurance applicant is also realized for the incorrect advertisements that he submits or presents to them if they contain false information about the insurance operations in which he mediates⁽⁴²⁾. In this case, the liability of the insurance company for the act of its agent is established if the good faith of the insured is proven when they contract with its general agent.

And if the general agent concludes a contract by fraudulent methods and ways, or based on false statements or forgery on his part, then in this case the insurance company has the right to terminate this contract, whether this broker is the one who concludes this contract with the insured if he is

an agent, or his role ceases to negotiate the content of this contract if he is a broker.

The right of the insured or the bona fide subscriber to request termination of the insurance contract that he concluded with the fraudulent broker who does not possess legal accreditation in the first place, however, the latter's request for termination is rare, because he is usually ignorant of the fraudulent nature of the mediator when concluding the contract ⁽⁴³⁾.

And if the insurance company has a general right to annul the insurance contract that was subscribed through the broker using fraudulent methods, and based on false statements agreed upon between him and the insured or the contract office for the purpose of embezzling premiums or amounts of compensation or parts thereof, or to launder money of illegal origin, then this entails other subsidiary rights of the insurance company, such as the obligation to refund the premiums and refrain from paying or recovering the amounts of compensation, or depriving the broker of the commission amount and claiming compensation ⁽⁴⁴⁾.

Conclusion

At the end of this study, titled: " **The Broker's Responsibility For Violating His Obligations Under The Insurance Contract**, and we got acquainted with the components and nature of brokers' activity, and from that we have proved that this activity is of great importance and effectiveness in the insurance system, and we have explained the role of the great work that this profession does at the level of insurance transactions in this field. On the one hand, it works greatly to provide the best services in the field of insurance, especially for those who are

looking for a specific insurance coverage. Insurance between individuals with a statement of its objectives and benefits, and all of this is due to the intermediaries communicating directly with the customers who are seeking insurance, as they exert great efforts in persuading them to conclude insurance contracts, and based on the above, the researcher reached a number of results and recommendations, the most important of which can be summarized as follows:

First: The Results

1. The work of insurance brokerage may be carried out by a number of parties such as the general agent for insurance, the insurance broker, banks and financial institutions and the like, and each party has a special legal system that differs from the others.
2. The work of the insurance broker while searching for the insurance company is represented by the role of the agent for the insured and for the insurance company sometimes when he performs some material actions, such as collecting premium amounts, or delivering compensation amounts.
3. The brokerage business in concluding the insurance contract results in mutual obligations between the brokers and the parties to the insurance contract.
4. The tendency to practice insurance brokerage is still weak, despite the importance of this activity.

Second: Recommendations

1. The researcher recommends the Jordanian legislator collecting the legal texts and conditions for the work of the insurance broker in one law, as they are dispersed in several laws.

2. The researcher recommends the Jordanian legislator developing the responsibility of the insurance companies for the work of the brokers accredited to them, and maintaining the company's right to refer to these users or to the brokers approved by it when the conditions required for that are met.

3. The researcher recommends the Jordanian legislator developing supervision over the work of insurance brokers in order to monitor them and confront the methods of fraud committed by brokers, and to find the means to prevent their recurrence.

4. The researcher recommends that the Jordanian legislator establishing principles according to which the value of the compensation payable to the general agent for insurance is determined in the event of his dismissal, cessation of his activity, or in the event of his death.

Footnotes

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