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Pre-existing Conditions in Health Insurance, Retrospective Insurance and Good Faith — Comments on Relevant Court Rulings

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Abstract

According to Article 127 of Insurance Act, the provider of health insurance is not liable for any illness that existed before the contract is formed (pre-existing conditions). Hence, in a majority of cases, the insurers would deny the insured benefit payments based on Article 127 or similar terms in the insurance contracts. However, a number of courts have ruled that, if the insured is unaware of such pre-existing conditions because the illness has no symptoms that can be observed based on appearances, then the insurer is still liable. The basis of this judgment seemingly rests on the retrospective insurance provision in Article 51(a) of Insurance Act. Nevertheless, illness itself is an insured risk under health insurance, so without the insurers' prior and explicit consent to extend coverage period retrospectively, it seems to be unfounded to hold the insurer liable for pre-existing conditions based on the retrospective insurance doctrine. To restrict the application of Article 127 with the retrospective insurance doctrine contradicts the intention of the legislature and the principle of equivalence.

Keywords: Health Insurance, Pre-Existing Condition, Good Faith, Congenital Disorder, Retrospective Insurance, Principle of Equivalence, Pre-Existing Exclusion Period