

Insurance companies ordered to pay in excess of sum insured

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In Argentina, the sum insured for voluntary automobile liability insurance is established by the Argentine Insurance Regulator (“SSN”). However, this update usually does not compensate for the high levels of inflation experienced in the country, where claims in court can take several years.

Thus, in August 2021, the National Civil Court of Appeals ruled in a case that “(...) by providing for such a meager maximum sum insured (...), the contractual clause (...) distorts the purposes of the law in which it was inserted, in such a way that its application would render illusory the rights enshrined therein”^[1], so that “(...) the victims may fully execute the judgment (...) without limitation as to its amount”^[2]. It should be noted that, in this case, eight years had elapsed between the occurrence of the loss and the rendering of the judgment.

In the case of educational establishments, the Chamber also ordered an insurer to pay compensation in excess of the sum insured, based on the liability of the owner of the establishment and considering the limit provided for in the policy to be unreasonable. However, this decision was later overturned by the National Supreme Court of Justice, stating that the social function of insurance is limited by the contractual obligation, and that condemning the insurer above the limit cannot be based on the best interests of the child, which would distort predictability, the core of the contract^[3].

It should be noted that most claims in Argentina are not resolved in the way the Chamber did in these cases, but it is advisable that the insurance market takes note of these rulings and avoids their generalization, either by voluntarily increasing the limits of coverage in line with real inflation or by avoiding issuing coverage for which the sums insured are not related *vis-a-vis* the risk to be insured.

[1] *Carames, Claudia Mariela y otro c. Orellana Montaña, Ever y otros s/ daños y perjuicios (acc. tran. c/les. o muerte)*, National Civil Court of Appeals, Chamber L - 08/02/2021, La Ley Online: TR LALEY AR/JUR/113374/2021.

[2] *Ibidem*.

[3] *Gómez Rocca, Javier Hernán y otros c/ Creatore, Víctor Juan y otros s/ daños y perjuicios (acc. trán. c/ les o muerte)*, National Supreme Court of Justice - 08/12/2021, eDial.com, AAC692.

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