
The Coverage Position Letter

What must be included in the insurer's coverage position letter?

A review of requirements under Israeli law

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What is a coverage position letter? True to its name, it is any letter in which the insurance company communicates its coverage position to the insured.

Coverage position letters have been the basis of severe limitations on insurers' practical rights and scope of defence in Israeli courts, where the coverage position letter did not meet the regulator's requirements. These requirements have been adopted by Israeli courts as being legally binding in the framework of the insured-insurer relationship, despite the initial administrative character of the regulator's directives.

A recent ruling rendered by the Magistrate Court of Tel Aviv in the case of Dahan vs. The Pheonix Ins. Co. (C.C. 54649-05-11), again brings to light the importance of the wording and forming of coverage position letters issued on behalf of insurers in Israel.

This Dahan case is the culmination of a decade of rulings at all levels of the Israeli courts, that adopted the Israeli Commissioner of Insurance's directives as being legally binding on insurers.

The first directive on the subject was issued on December 9th, 1998 as part of a decision in a specific complaint brought before the Commissioner. The December 1998 directive referred specifically to denial of coverage requiring the insurance company to detail all grounds for denial of coverage.

The directive sanctioned failure to include arguments by precluding the insurer from raising any 'new' argument in the future. The Commissioner cited the insured's right to receive all details in order to be able to seek advice regarding possible legal relief on the basis of the insurer's position as the rationale for this sanction. In other words, it was simply unfair to leave the insured guessing and thus rendering him incapable of considering the viability of legal action against the insurer.

Several years later, the Commissioner of Insurance issued a somewhat diluted version of the original directive, clarifying that arguments based on events subsequent to the coverage position letter or based on grounds could not have reasonably been known to the insurer when issuing the coverage position letter, would be allowed to be introduced at a later stage. The directive left room for consideration of other possible circumstances that could justify deviation from the general rule.

In spite of this softer version, the Israeli courts adopted a strict view, affording the directives the power to limit the scope of insurers' rights to evoke defence arguments beyond those cited in the coverage position letter.

The courts elaborated on the directives, as follows:

1. The insurer is obliged to effectively investigate the circumstances of the loss/claim in order to form its coverage position as soon as possible after receipt of the claim.
2. The coverage position must be provided to the insured in writing.
3. Where coverage is declined, (whether wholly or partially), **all** grounds for this position must be detailed therein.
4. The insurer is precluded from basing any argument on circumstances, conditions or exclusions which were not mentioned in the coverage position letter.
5. The insurer will be able to broaden its defence only in rare cases where the circumstances material to its updated coverage position were not known and could not reasonably have been known. Such cases would certainly include intentional behavior aimed at concealing material facts from the insurer.

Insurers should therefore be careful not to issue a final coverage position letter before being sure that all possible (reasonable) investigations have been completed, pending which it is advisable to issue a *reservation of rights* letter.

In other words, until such time as the insurer is aware of sufficient facts to enable forming a comprehensive coverage position letter, we believe it would further the insurer's interests to first issue a *reservation of rights* letter, stating clearly that the claim is still under investigation and that the extent of facts currently known is still too limited to enable issuing a coverage position letter.
