ACT 471 Assignment 3

Part 1: Historical Development of Insurance Legislation and Regulation

1. (1 point) Briefly discuss whether a life insurance policy would be considered an indemnity policy.

**Ans:**

No. Life insurance is not an indemnity policy but a contract of guarantee between an insurance policyholder and an insurance company where the insurer pays the promised amount of money in exchange for a premium when an insured dies or the policy matures. Unlike an indemnity policy, the amount is not measured by the insured’s loss but depends on a specific amount of the policy, which is the premiums paid by the policyholder during their lifetime. Moreover, after a covered loss, the insured cannot return to their former financial position because life insurance does not cover any loss on maturity or death of the insured. So a life insurance policy would not be considered an indemnity policy.

1. (1 point) Identify 2 conditions that an insured must establish in order to be entitled to recover under an indemnity insurance contract.

**Ans:**

* 1. Prove the happening of the event that resulted in insurer liability. For example, if the fire damaged the house, a report from the fire department or police officers is required in a home insurance policy.
  2. Prove the amount of loss that occurred from the event. For example, providing proof of purchasing items damaged in the event.

1. (2 points) An insurance company incorporated in Alberta is seeking to expand operations into Nova Scotia. Discuss the impact of the decision reached in the case known as “The Insurance Reference Case” on this proposed expansion.

**Ans:**

An insurance company incorporated in one province could carry on business in another province without being regulated by the Federal Government. If the insurance company wishes to expand operations into Nova Scotia, it has two options regarding licensing:

* Obtain a federal license. In this case, the insurance company is able to incorporate it in any province in Canada.
* Obtain provincial licenses for each province. The insurance company should obtain the licenses for both Alberta and Nova Scotia.

Additionally, a company incorporated by a province with provincial objects was not restricted to carrying on business in only one province but could operate in other provinces with permission from those provinces. The insurance company’s capacity to operate in Alberta does not mean it is exempt from Nova Scotia’s provincial regulation. Provincial concerns as well as property and civil rights within the province need to be considered. The insurance company should follow the legislation and regulation of Nova Scotia when operating in this province.

1. (4 points) An insured has the following policies and outstanding claims with an insolvent insurance company.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Coverage | Effective  Date | Expiration  Date | Full-Term  Premium | Deductible | Date of  Loss | Amount  of Loss |
| Personal  Property | January 1,  2022 | December  31, 2022 | $3,000 | $1,000 | February  1, 2022 | $250,000 |
| Mortgage | January 1,  2022 | December  31, 2022 | $600 | 0 | February  1, 2022 | $1,400 |
| Personal  Auto | March 1,  2022 | February  28, 2023 | $5,000 | $2,000 | March 15,  2022 | $400,000 |

A winding-up order is made in respect of the insurance company for March 31, 2022.

* 1. (3 points) Calculate the insured’s total recovery from PACICC

**Ans:**

Total recovery from PACICC = Payment for unearned premiums + Payment of claims, where:

Payment for unearned premiums = 70% \* min(% of term remaining after the winding-up order is issued \* Full-term premium, 2,500)

Payment of claims = min(Entitlement, Limit)

1. Total recovery from PACICC for Personal Property = 70% \* min(9/12\*3,000, 2,500) + min(250,000 – 1,000, 500,000) = 1,575 + 249,000 = 250,575
2. Total recovery from PACICC for Mortgage = 70% \* min(9/12\*600, 2,500) + min(1,400 – 0, 400,000) = 315 + 1,400 = 1,715
3. Total recovery from PACICC for Personal Auto = 70% \* min(11/12\*5,000, 2,500) + min(400,000 – 2,000, 400,000) = 1,750 + 398,000 = 399,750
   1. (1 point) Assuming a distribution of $50,000 is made by the liquidator of the insolvent insurance company, provide an explanation as to the amount of additional recovery the insured will receive.

**Ans:**

Total recovery PACICC paid out to the insured = 250,575 + 1,715 + 399,750 = 652,040 > 50,000

A key principle of the plan is that any amounts paid by PACICC are recovered by PACICC (through these funding mechanisms) before additional payments are received by the policyholder as to that claim. Since the distribution of $50,000 is not enough to cover the amount that PACICC paid out to the insured, the insured will receive nothing from this amount of additional recovery. Instead, the additional recovery will be paid to PACICC.

1. (2.5 points) The following information is available for two P&C insurance companies operating in Canada as of December 31, 2021. All amounts in the table are in $000’s.

|  |  |  |  |
| --- | --- | --- | --- |
| Direct Written Premium for  PACICC protected policies | Alberta | Other jurisdictions | Total |
| Company A | 200,000 | 100,000 | 300,000 |
| Company B | 100,000 | 0 | 100,000 |
| Total Participating Insurers | 10,000,000 | 20,000,000 | 30,000,000 |

* Amount advanced by PACICC to and on behalf of insureds of Company B: $300,000
* Amount recovered by Company B from third parties after liquidation: $50,000
  1. (1.5 points) Identify 3 main causes of P&C insurer insolvency in Canada

**Ans**:

* Inadequate pricing and deficit loss reserves.
* Poor governance or lack of internal controls.
* Failure of a foreign parent company
  1. (1 point) Calculate the annual PACICC assessment to be borne by Company A

**Ans:**

Total amount being assessed against all participating insurers = Amount advanced by PACICC to and on behalf of insureds of Company B - Amount recovered by Company B from third parties after liquidation = 300,000 – 50,000 = 250,000

Assessment borne by Company A = Total amount being assessed against all participating insurers \* Total direct written premiums of a particular insurer / Total direct written premium of all participating insurers

= 250,000 \* 300,000,000 / 30,000,000,000 = 2,500

1. (4.5 points) In each of the following scenarios, an insurance company is defending its position in court. Explain a likely outcome for the insurance company(s) and cite any relevant precedents used to support the conclusion drawn.
   1. (1.5 points) In Ontario, an insured A suffers serious injuries in a motor vehicle collision and brings an action against the driver of the other vehicle B, an underinsured motorist. Insured A subsequently enters into a limits agreement with B, without notice to A’s insurer. The agreement provides that B will admit liability and A will not sue them in excess of their liability insurance coverage. A seeks to recover the remainder of the damages from their insurer. A’s insurer argues that a limits agreement precludes A from advancing a claim against the insurer.

**Ans**:

The insured A is entitled to further recoveries of the remainder of the damages from their insurer if SEF 44 endorsement is in effect. SEF 44 protects the insured and the insured’s family from being injured in a motor vehicle accident where the insured is not at fault or only partially at fault. The limits agreement did not preclude coverage.  It’s true that insured A did not breach their contractual obligation to cooperate by signing the Limits Agreement. However, even though the insurance contract required the insured to cooperate with the insurer, this obligation did not clearly and unambiguously prevent the insured from entering into settlement arrangements with the person who caused the accident. Accordingly, the insurer could not use the Limits Agreement as a reason not to pay the insured under the SEF 44 insurance contract. So the insurer should be responsible for the recovery of the remainder of the damages.

* 1. (1.5 points) A claimant injures themselves by putting windshield fluid in the oil tank and claims no-fault benefits for their burns. Their insurer sues the automobile manufacturer for subrogation, claiming they were negligent and failed to label the tanks properly to prevent any harm. The claimant later admits he was aware of the difference between the 2 tanks as he has been a mechanic for 10 years.

**Ans**:

Due to the “but for” rule, the automobile manufacturer is not liable for the accident. Not only the claimant’s carelessness was responsible for his injuries, but also the alleged design defects were not responsible for these injuries. The "but for" test recognizes that compensation for negligent conduct should only be made where a substantial connection between the injury and the automobile manufacturer's conduct" is present. It ensures that the automobile manufacturer will not be held liable for the claimant's injuries which may very well be due to factors unconnected to the automobile manufacturer and not the fault of anyone. The “material contribution” test only applies in exceptional cases where factors outside of the claimant’s control make it impossible for the claimant to prove that the automobile manufacturer’s negligence caused the claimant’s injury using the “but for” test, and the claimant’s injury falls within the ambit of the risk created by the automobile manufacturer’s breach of his duty of care owed to the claimant.

* 1. (1.5 points) Nova Scotia declares that they will be the sole providers of home insurance going forward, and forms a corporation called “Nova Scotia Home Insurance Corporation”. A federally-licensed insurer sues NSHIC claiming they are infringing on their rights to operate in any jurisdiction within Canada, and lack the authority to do so.

**Ans**:

NSHIC is not infringing on the federally-licensed insurer’s rights. Legislation is intra-vires for a province. The aim and purpose of the legislation pertain to auto insurance within Nova Scotia. Even though its effect is on companies whose operations are interprovincial does not change the scope of the legislation. It’s a matter of Provincial concern and property and civil rights within the province. A federally-incorporated company having attained the capacity to operate in a province does not mean it is exempt from provincial regulation.