

Understanding the Effect of Deductibles in Insurance Policies

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This is particularly true of insurance policies taken out for business purposes. While there has been some progress towards making many consumer policies like motor vehicle and home and contents insurance clearer and more user-friendly, we are still a long way away from finding plain language used in common forms of commercial insurance policies like professional indemnity insurance and public and products liability insurance.

In addition, it is not always clear even to experienced business people what the legal consequences can be of common features of insurance policies.

Take the deductible. The deductible is the amount that a policyholder must bear of the value of any claim that the policyholder makes under the policy. In a way, it is the cost that the policyholder must pay for making a claim.

For instance, if you have insurance that insures your home and contents for AED 1 million and your home suffers, say, AED 950,000 worth of fire damage, the policy may contain a deductible of AED 10,000. Once the damage has been professionally quantified, the insurer will be liable to repair your damaged home up to AED 940,000 or to pay you out that sum in lieu of repair. The AED 10,000 difference represents the cost of the deductible that the policy requires you to bear yourself.

The amount of the deductible will vary depending on the perceived riskiness of the policyholder or of the thing insured. Sometimes the amount of the deductible can be very large when considered in relation to the total amount insured under a policy.

If the deductible is very large, it can have the effect of making a policyholder think twice about whether it is worth making a claim under the policy. This is particularly the case where to make a claim is likely to result in an increase to the policyholder's insurance premium when it comes time to renew the policy.

Somewhat rarer is the case where the value of the claim is less than the amount of the deductible. This was the subject of a Dubai Cassation Court judgment in 2009 .

In that case, the claimant underwent surgery to remove a polyp in the claimant's nose which resulted in damage to the claimant's olfactory nerve. The claimant sued the surgeon and the hospital and sought AED 4 Million in damages. The surgeon and the hospital sought to join their professional indemnity insurer to the proceedings.

On appeal, the court rejected the doctor's and the hospital's joinder application on the ground that their professional indemnity policy contained a USD 50,000 deductible. As damages awarded to the claimant at first instance were only AED 100,000 or around USD 27,250, that meant that the damages fell within the deductible which the doctor and the hospital had to bear themselves.

On further appeal to the Dubai Court of Cassation, the court increased the claimant's damages award to AED 150,000 which equated to USD 40,850. As that award still fell within the deductible, the net result was

that the insurer still had no liability to the doctor or the hospital under the policy. That left both of them having to pay the damages awarded to the claimant out of their own pockets as well as their own and the claimant's court fees.

This outcome was due to the fact that the amount of a policy's deductible gives an insurer a defence to any claim by a policyholder up to the amount of the deductible. That is, the insurer does not become liable under the policy unless and until the loss or damage suffered by the policyholder exceeds the amount of the deductible.

In most cases, it will be clear whether the loss or damage to the policyholder is likely to exceed the amount of the deductible. But in other cases it won't be. That is what occurred in the case above of the doctor and the hospital, resulting in them having to pay not only the damages awarded to the claimant but also the court costs of the claimant and the insurer in the failed to attempt to defend the claimant's claim and to join the insurer to the proceedings.

The doctor and the hospital could possibly have avoided this situation had they obtained legal advice on the likely value of the claimant's claim against them. Armed with that advice, it might then have been possible for the doctor and the hospital to have tried to negotiate an amount under the policy with the insurer before any court judgment had been handed down.

Even if the amount that the insurer was prepared to pay was low or was unlikely to cover the amount of damages awarded to the claimant, the result would have been better than the one that the doctor and the hospital ultimately obtained.