



Insurance Contract Law: The Business Insured's Duty of Disclosure and the Law of Warranties (Joint Consultation Papers)

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This joint discussion paper covers the following issues: the business insured's duty of disclosure, and the law of warranties. Under current law, a business policyholder has a duty to disclose every material circumstance it knows about the risk it wants to insure. Failure to do so entitles the insurer to avoid the contract, which means the insurer may treat it as if it did not exist and refuse all claims. The duty is unclear and sometimes poorly understood, while the consequence of breach is too harsh. The proposals aim to clarify how policyholders are expected to comply with the duty when presenting a risk to insurers and to encourage insurers to assist them in that task. Fairer remedies for breach where the policyholder has not been dishonest, are proposed. An insurance warranty is an important term which, unless exactly complied with by the policyholder, results in the automatic discharge of the insurer's liability for loss. It makes no difference if the breach is trivial, not material to the risk or if the policyholder remedies the breach prior to loss being incurred. The Commissions propose that breach of a warranty should suspend the insurer's liability for the duration of the breach; remedy of the breach restores liability. Where a term is designed to reduce a particular type of risk, liability should only be suspended in relation to that risk. This would be mandatory for consumer insurance but subject to freedom to contract for business insurance.

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Jason Villalobos:

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