

# PwC Legal successfully represented client interests in dispute with insurer 2/19/24



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A civil lawsuit involving a PwC Legal client's dispute with an insurer over who owns a cash deposit has ended in payment of the full claim, with recovery of cash and interest on arrears and reimbursement of litigation costs, totalling EUR 115,029.32. The claimant's interests were represented by Natalja Puriņa, an attorney-at-law with ZAB PricewaterhouseCoopers Legal SIA.

## Background

A building contractor and an insurer entered into an insurance contract for a warranty during the construction warranty period. To strengthen the performance of their obligations, the parties agreed on special provisions of the insurance contract, so they also entered into an agreement on security for the warranty policy during the warranty period in the form of a cash deposit. The insurer was required to repay the deposit to the builder on expiry of the policy. Over time, the original builder in the legal relationship for construction and insurance matters was replaced by a different builder, which was the subject of a novation agreement. The insurance contract was also novated, with the new builder receiving a novated policy. The new policy said the beneficiary had changed but the other conditions remain unchanged. In the cash deposit agreement, however, the names of the parties were not changed, but a separate letter of consent was prepared under the supervision of the insurer's employee to issue the deposit to the new builder when the policy expires.

The warranty period went without an insurance claim and the policy expired, so the new builder asked the insurer to repay the deposit. Much to his surprise, the insurer refused on the grounds that the deposit agreement had not been properly novated. The insurer believed that in amending the policy, the parties had no intention of amending the deposit agreement. The parties to the agreement remain unchanged – the insurer and the original builder, so the new builder is not entitled to the deposit. It's worth mentioning that the original builder had long since been liquidated. Financial distress with impending liquidation was the reason why one builder had been replaced by another.

The parties were unable to resolve the dispute by negotiation, so they had to go to court.

## The claimant's arguments

The claimant disagreed with the insurer's interpretation of the statement of intentions because it was contrary to the reasons and circumstances in which amendments to the insurance contract were initiated. It was also contrary to the parties' intentions and the insurer's indications of steps the parties were to take in order to ensure the claimant received the deposit when the policy expired.

Section 1404 of the Civil Code stipulates that in each legal contract we must consider the parties, the subject matter, the statement of intentions, the parts, and the form. Section 1427 provides that the essence of a legal contract includes a statement of the party's intention, while a bilateral or multilateral contract requires a coherent statement of intentions of all the parties. Section 1505 states that if there is

any doubt about the meaning of words the parties have said, then we must consider their intentions, whether expressed or implied.

The legal literature finds that in establishing the parties' intentions, the court must not only hear their explanations but also consider any other circumstances from which their true intentions may be concluded. Special attention must be paid to the circumstances when the parties entered into the contract, as well as their actions and negotiations before that. The court must begin interpreting the contract by establishing the parties' joint intention at the time of entering into the contract. The legal doctrine finds that the deciding factor in interpreting a contract is the parties' intentions, and it's important to establish its legal basis (*causa efficiens*) and its objective (*causa finalis*).

The statement of the parties' intentions regarding amendments to the insurance contract and ownership of the deposit was clear and coherent to the claimant. As a result, the claimant was not only to obtain beneficiary status but also the right to receive the deposit when the policy expired. The deposit agreement was recognised as a special provision and an integral part of the insurance contract, so the two documents should be examined and interpreted together, not separately. The novated insurance policy made it clear that only the beneficiary was changed and the other conditions remain unchanged, so amendments to the deposit agreement were not discussed separately.

## Court findings

The court upheld the claim and made the following findings:

- It's crucial to establish the parties' intentions and what they sought to achieve. It clearly follows from the case materials and evidence that the parties intended to replace the previous builder with the claimant in the legal relationship for construction and insurance matters. The intention was properly notified to the insurer because this would not have been possible without his consent.
- The agreement on security in the form of a cash deposit is part of the insurance contract and should be examined separately from the policy and the novation agreement.
- The case contains evidence that the insurer's employee took part in documenting the novation of the insurance policy and, considering the parties' intentions, helped them prepare the necessary documents to meet the insurer's requirements. There is credible email correspondence between the insurer's employee, the insured party and the previous builder about novating the insurance policy and issuing the deposit to the claimant. The fact that the insurer's employee ignored his company's internal guidelines or acted unprofessionally and gave the claimant inappropriate instructions or prepared a document incorrectly, is not a basis for dismissing the claim because the insurer is responsible for actions taken by his staff.
- There is no legal basis for the insurer to keep the money.