

Declarations of Death in Personal Insurance Contract Cases

Zhan Hao, Kang Xin

Introduction

A declaration of death is a civil declaration that may be granted when a natural person is missing from his or her usual residence and his or her whereabouts have been unknown for the requisite period set by law, and for which an interested person may apply to the people's court. Article 23 of the General Principles of the Civil Law of the People's Republic of China provides that:

"Under any of the following circumstances, an interested person may apply to the people's court for the declaration of a citizen's death: (1) if the citizen's whereabouts have been unknown for four years; or (2) if the citizen's whereabouts have been unknown for two years after the date of an accident in which he was involved."

When a declaration of death is sought for an insured person, two issues arise:

- whether the declaration of death relates to accidental death; and
- whether the declaration of death was made after the expiration of the insurance.

Accidental Death

In *Xu Chi Wei v Ping An Life Insurance Company of China*, the two parties contested whether the court's declaration of death following the unknown whereabouts of the insured constituted an insured event under the personal insurance contract. The insurer argued that death as an insured event under the contract should result from an accident; whereas in this case the court declared the insured's death as a result of his

being missing. The insurer therefore claimed that the insured's death was not an insured event under the insurance contract.

The trial court upheld the insurer's claim, holding that "accidental death means that a person's body suffers an outside, unexpected, unintentional, uncontrollable, factual accident, and the accident leads to the death of the insured". Only this type of incident was covered by the insurance contract. In addition, an insured incident must be a clear, actually occurring and objective fact. In this case, the insured left his hometown to earn a living elsewhere, after which his unknown whereabouts led to a declaration of death by the people's court. This means of death is set by law and does not qualify as an insured event due to accidental death.

The intermediate court overruled the trial court judgment. It reasoned that where a dispute concerns an insurance contract provision with two or more possible interpretations, the provision should be interpreted in favour of the insured and beneficiary. In addition, an interpretation based on common sense would hold that any death of a man aged between 22 and 25, other than from illness, should be regarded as accidental. On this basis, a declaration of death following the unknown whereabouts of a person for a specified period should be considered a type of accidental death. Further, the contract did not classify a declaration of death as an exempt event. Based on these reasons, the insured's death was held to be an insured event under the contract.

In practice, the people's courts are inclined to protect the insured's rights and benefits. The popular viewpoint is that a declaration of death is regarded as resulting from an accident, in which case the insurer must provide compensation.

Expiry of Insurance Cover

Article 184 of the Civil Procedure Law provides that:

"Where the whereabouts of a citizen has been unknown for four years, has been unknown for two years following involvement in an accident, or has been unknown following involvement in an accident in which the citizen cannot survive according to a certificate issued by a relevant authority...an interested party can apply for declaration of the citizen as dead."

Further, under Article 185 of the law, the people's court must issue a public announcement to search for the missing person. The period of public announcement for the declaration of death is one year. If a person's whereabouts are unknown following his or her involvement in an accident which he or she could not survive, according to a certificate issued by the relevant authority, the period of public announcement for the declaration of death is three months.

A minimum of five years, or three years if a person's whereabouts is unknown following an accident, must have passed for a natural person to be declared dead. In the case of an accident which the person could not survive, according to a certificate issued by the relevant authority, three months must have passed for the person to be declared dead.

According to Article 36 of the Opinions on Several Issues concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China (For Trial Implementation), when a person is declared dead, the date of adjudication of the judgment will be the date of death. In practice, this date is always outside the period of insurance cover, especially for short-term personal insurance contracts. Thus, insurers may try to defend a claim on the grounds of expiration.

In *Chen v China Life Insurance Corporation Limited* (Chengdu Intermediate Court), the plaintiff claimed that his father had bought Xianghe fixed-term insurance from the defendant on July 26 2002. The amount insured was Rmb100,000. The insurance covered a period of five years from August 1 2002 to July 31 2007. No beneficiary was appointed.

On September 9 2002 the plaintiff's father went missing. In April 2007 the plaintiff consulted the defendant about compensation and was informed by the defendant to apply to court for a declaration that his father was missing. The plaintiff filed such application with the Jintang Trial Court and later submitted the declaration to the defendant. However, the defendant informed the plaintiff that a declaration of death was needed. The plaintiff further applied to the court to obtain a declaration of death for his father.

On December 25 2008 the Jintang Trial Court declared the plaintiff's father as legally dead. The defendant received this declaration from the plaintiff and sent a refusal letter to the plaintiff on May 5 2009. In this letter, the defendant refused to recognise the plaintiff's indemnity claim due to the date of judgment falling after the validity period of the insurance contract.

The people's court held that the contract had not – as is usual in practice – expressly listed a declaration of death as an event exempting the defendant from liability. In addition, the time taken to obtain the declaration of death meant that it would have been impossible for the plaintiff to claim compensation within the validity period of the insurance contract. The court therefore held that the defendant should accept responsibility and awarded a judgment in favour of the plaintiff.

Comment

From these two cases, it is evident that the welfare of the insured and his or her beneficiaries enjoys the protection of the courts. Such is the case where a declaration of death is held as resulting from an accident and is therefore an insured event for the purpose of making a claim. While the declaration of death of a natural person may be dated after the period of cover under the insurance contract, this does not absolve the insurer of responsibility to compensate the claimant.