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The Principles for Assessing and Calculating of Damages In Loss of Profit Insurances

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Abstract

1. Introduction:

Loss of profit is one of the common damages that is claimed in many contractual, non-contractual (civil responsibility), commercial, intellectual property and insurance disputes. Also in insurance industry, this loss is the subject of a type of insurance contract, which in recent decades is also known as “production security insurance” due to it’s important in creating the economic stability for enterprises and businesses. This kind of insurance also called as “business interruption insurance”, “loss of profit insurance”, “Time element coverage” or “use and occupancy insurance policies”. This insurance was apparently written in the United Sates in the late 1870’s but for many years was not in common use. The popularity of the policy has risen steadily with the increase in number of profitable business in the United States and litigation on the coverage appears to be increasing. After that, Statistical studies in many countries have also proven the importance and applicability of this type of insurance in modern societies.

Despite of the importance of this type of insurance, Iranian legal and insurance system, only points out its name without using it commonly while in some other countries, especially in America, these insurances have been provided for a long time and valuable experiences have been gained in this field. Therefore, it is necessary to use the experiences obtained from developed countries in this field in reviewing the regulations. On the other hand, compensation for loss of profit is still faces doubts and uncertainties in Iranian's legal system. Hence, accepting and using of this type of insurance has double importance in Iranian legal system and can be one of the solutions to compensate this type of damage in the current situation.

2. Literature Review:

In the Iranian legal literature, as far as, has been investigated by the authors, this type of insurance has been introduced only in some limited and old researches by focusing on description of different types of the insurance and the fundamental conditions for concluding the Insurance contracts.

3. Methodology:

Based on the above-mentioned necessity, and due to the valuable experiences gained in some legal systems, with a comparative and analytical manner, has been tried to introduce this type of insurance, the reasons for its legal and economic importance, the variety of this type of insurance, and the most important principles and criteria for evaluating and calculating loss of profit damage in order to filling the gaps exist in Iranian legal system

4. Research Questions:

The most important questions are raised about this type of insurance are whether these types of insurances are subject to the generality of the civil liability system in any countries regarding the ability to compensate Lost-profit damage and whether these types of insurance compensate all economic losses imposed to the businesses owner/loss bearer, and moreover, regarding the difficulty of calculation of the loss of profit, what principles and criteria should be considered in the phase of quantum of loss.

5. Findings and Conclusion:

The findings of this research show that due to the fact that this type of insurance is actually a kind of agreement and contract between the insurer and the insured to compensate for special damages, it is one of the appropriate and efficient tools to compensate for loss of profit even in the countries that have not accepted this damage explicitly or completely.

Although this type of insurance compensates some parts of the economic losses imposed to the loss bearer, but since it is considered as a secondary insurance that covers loss of profit subject to material and physical damage to the property itself, therefore, they do not cover all economic losses and the scope of its compensation is more limited than ones cover all economic losses.

In response to the third question, for a more accurate assessment of the income and profitability of a business, insurance companies mainly pay attention to two categories of internal and external factors: including production capacity, labor availability, maximum production volume, cost of raw materials, wages, company's capital and sales ability as internal factors and capacity of industry, the level of competition in the market, economic and political factors, and price changes and fluctuation, the supply and demand and so on as external factors.

As this policies illustrates, there are certain fundamental principles of business interruption coverage: (1) there must be physical damage caused by a peril insured against to covered property; (2) there must be an actual and necessary interruption of the insured's business caused by the physical damage to the covered property; (3) the insured must suffer an actual loss resulting directly from the covered interruption of business; and (4) the insured is only entitled to recover its actual loss sustained during a certain period of time, often referred to as the due diligence and dispatch period, period of indemnity, or period of restoration.

Keywords: Insurance, Loss of Profit, Business Interruption, The Principles of Evaluating Damages.

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