

## CASE LAW DRAFT NO. 22/2024

### **On Breach of Duty to Disclose Medical History in Insurance Applications**

*Approved by the Judges' Council of the Supreme People's Court on [date] [month] 2024 and published under Decision No. [number]/QĐ-CA on [date] [month] 2024 by the Chief Justice of the Supreme People's Court.*

#### **Source of the Case Law:**

The Cassation Decision No. 37/2023/DS-GDT dated August 24<sup>th</sup>, 2023, by the Judges' Council of the Supreme People's Court on "Insurance Contract Dispute" between the plaintiffs, namely, Mrs. Đặng Ngọc M, Mrs. Trần Thị T, Ms. Đặng Ngọc Anh T1, and the defendant, V Corporation; with the interested parties including 5 people.

#### **Location of the Case Law's Content:**

Paragraphs 1, 2, 6, 7, 8 and 14 of the "Court's Opinion" section.

#### **Summary of the Case Law:**

##### ***- Factual Background:***

The insurance applicant did not disclose a pre-existing critical illness on the application form, despite having knowledge of the condition and undergoing treatment. After the applicant passed away from the same critical illness during the policy period, a dispute emerged concerning the insurance company's liability.

##### ***- Legal Resolution:***

In this case, the Court must determine that the applicant's failure to disclose their critical illness constituted a breach of their duty to provide complete and accurate medical information during the insurance application process. As a result, the insurance company is not obligated to provide the full

insurance coverage.

**Relevant Legal Provisions:**

Point b, Clause 2, Article 18 and Clause 2, Article 19 of the Insurance Business Law 2000 (corresponding to Point a, Clause 2, Article 21 and Clause 2, Article 22 of the Insurance Business Law 2022).

**Keywords:**

"Breach of Duty to Disclose Medical History"; "Pre-existing Medical Condition"; "Life Insurance Application"; "Insurance liability"

**CASE DETAILS**

In the complaint dated October 8<sup>th</sup>, 2016, and during the case proceedings, the plaintiffs—Mrs. Đặng Ngọc M, Mrs. Trần Thị T, and Ms. Đặng Ngọc Anh T1—asserted the following:

On June 17<sup>th</sup>, 2014, and July 24<sup>th</sup>, 2014, Mr. Đặng Lâm Quốc B (son of Mrs. Đặng Ngọc M, husband of Mrs. Trần Thị T, father of Ms. Đặng Ngọc Anh T1) submitted three insurance applications with V Corporation. The details of these applications are as follows:

1. Insurance Application for An Phát Trọn Đời dated June 17<sup>th</sup>, 2014:

The insurance value was VND 1,500,000,000, with a lifetime insurance term. The insured was Mr. Đặng Lâm Quốc B, and the beneficiary was Mrs. Trần Thị T.

Mr. B paid an annual premium of VND 30,843,000 (main insurance contract: VND 30,000,000; additional product BV-NR17 - benefits for exemption from premium payment for critical illnesses: VND 843,000).

On June 21<sup>st</sup>, 2014, a representative from V Corporation arranged for Mr. B to undergo a health examination at Bình Dương Private General Hospital.

On June 25<sup>th</sup>, 2014, V Corporation issued a conditional insurance acceptance notice, requesting Mr. B to pay an additional VND 590,100 due to his health condition.

On June 27<sup>th</sup>, 2014, V Corporation issued a notice confirming acceptance of the insurance for Mr. B.

## 2. Insurance Application for An Phát Hưng Gia dated July 24<sup>th</sup>, 2014:

The insurance value was VND 1,500,000,000, with a 20-year term. The insured was Mr. Đặng Lâm Quốc B, and the beneficiary was Mrs. Đặng Ngọc M.

Mr. B paid an annual premium of VND 53,480,000 (main insurance contract: VND 50,000,000; additional product BV-NR15 - insurance for critical illnesses: VND 420,000; additional product BV-NR16 - insurance for surgery and outpatient treatment: VND 1,215,000; additional product BV-NR17 - insurance for critical illnesses: VND 1,845,000).

On July 29<sup>th</sup>, 2014, V Corporation issued a conditional insurance acceptance notice and requested Mr. B to pay an additional VND 2,436,000 due to his health condition.

On August 6<sup>th</sup>, 2014, V Corporation issued a notice confirming acceptance of the insurance for Mr. B.

## 3. Insurance Application for An Phát Trọn Đồi dated July 24<sup>th</sup>, 2014:

The insurance value was VND 2,500,000,000, with a lifetime insurance term. The insured was Mr. Đặng Lâm Quốc B, and the beneficiary was Ms. Đặng Ngọc Anh T1.

Mr. B paid an annual premium of VND 50,983,800 (main insurance contract: VND 48,000,000; additional product BV-NR15 - insurance for critical illnesses: VND 420,000; additional product BV-NR16 - insurance for surgery

and outpatient treatment: VND 1,215,000; additional product BV-NR17 - insurance for critical illnesses: VND 1,348,800).

On July 29<sup>th</sup>, 2014, V Corporation issued a conditional insurance acceptance notice (premium increase due to health condition) and requested Mr. B to pay an additional VND 2,088,660.

On August 6<sup>th</sup>, 2014, V Corporation issued a notice confirming acceptance of the insurance and delivered the entire contract to Mr. B.

On March 12<sup>th</sup>, 2015, Mr. B passed away, but V Corporation refused to disburse the insurance benefits to the beneficiaries. As a result, the plaintiffs sought a court order to compel V Corporation to pay the insurance money to the beneficiaries: Mrs. Đặng Ngọc M and Mrs. Trần Thị T each receiving VND 1,500,000,000, and Ms. Đặng Ngọc Anh T1 receiving VND 2,500,000,000.

In response, V Corporation acknowledged the insurance contracts signed with Mr. Đặng Lâm Quốc B but contested the plaintiffs' claims on the grounds that Mr. B had been diagnosed with poorly differentiated metastatic carcinoma and neuroendocrine carcinoma prior to his insurance applications. V Corporation asserted that Mr. B had misrepresented his health status, thereby breaching his duty to disclose accurate medical information. Consequently, V Corporation argued that this breach invalidates any obligation to provide insurance compensation and, therefore, rejected the plaintiffs' claim.

In First-instance Civil Judgment No. 134/2017/DS-ST dated September 25<sup>th</sup>, 2017, the People's Court of Thủ Dầu Một City, Bình Dương Province rendered the following decision:

The Court upheld the claims of Mrs. Đặng Ngọc M, Mrs. Trần Thị T, and Ms. Đặng Ngọc Anh T1 against V Corporation concerning the insurance contract dispute. Consequently, V Corporation was ordered to pay insurance proceeds in the amount of VND 1,500,000,000 to Mrs. Đặng Ngọc M, VND 1,500,000,000 to Mrs. Trần Thị T, and VND 2,500,000,000 to Ms. Đặng Ngọc

Anh T1.

On October 9<sup>th</sup>, 2017, V Corporation filed an appeal.

In Appellate Appeal Decision No. 30/QĐKNPT-VKS-DS dated October 9<sup>th</sup>, 2017, the Chief Procurator of the People's Procuracy of Thủ Dầu Một City, Bình Dương Province challenged the aforementioned first-instance civil judgment.

At Appellate Civil Judgment No. 47/2018/DS-PT dated March 6<sup>th</sup>, 2018, the People's Court of Bình Dương Province made the following ruling:

The Court dismissed the Appellate Appeal Decision No. 30/QĐKNPT-VKS-DS dated October 9<sup>th</sup>, 2017, of the Chief Procurator of the People's Procuracy of Thủ Dầu Một City, Bình Dương Province. It accepted V Corporation's appeal, overturned the first-instance civil judgment, and rejected the claims of Mrs. Đặng Ngọc M, Mrs. Trần Thị T, and Ms. Đặng Ngọc Anh T1 against V Corporation regarding the insurance contract dispute.

On August 9<sup>th</sup>, 2018, Mrs. Đặng Ngọc M, Mrs. Trần Thị T, and Ms. Đặng Ngọc Anh T1 submitted a petition for cassation review of the aforementioned Appellate Civil Judgment.

In Cassation Appeal Decision No. 201/2021/KN-DS dated December 7<sup>th</sup>, 2021, the Chief Justice of the High People's Court in Hồ Chí Minh City appealed the Appellate Civil Judgment and requested that the Judges' Committee of the High People's Court in Hồ Chí Minh City conduct a cassation review. The Chief Justice sought to vacate both the Appellate Civil Judgment and the First-instance Civil Judgment No. 134/2017/DS-ST dated September 25<sup>th</sup>, 2017, of the People's Court of Thủ Dầu Một City, Bình Dương Province. Additionally, the Chief Justice requested that the case file be remanded to the People's Court of Thủ Dầu Một City, Bình Dương Province for re-adjudication under first-instance procedures in accordance with the law.

In Cassation Decision No. 99/2022/DS-GĐT dated April 6<sup>th</sup>, 2022, the Judges' Committee of the High People's Court in Hồ Chí Minh City rendered the following decision:

The Committee accepted Cassation Appeal Decision No. 201/2021/KN-DS dated December 7<sup>th</sup>, 2021, issued by the Chief Justice of the High People's Court in Hồ Chí Minh City. As a result, the Judges' Committee vacated both Appellate Civil Judgment No. 47/2018/DS-PT dated March 6<sup>th</sup>, 2018, from the People's Court of Bình Dương Province, and First-instance Civil Judgment No. 134/2017/DS-ST dated September 25<sup>th</sup>, 2017, from the People's Court of Thủ Dầu Một City, Bình Dương Province. The case file was remanded to the People's Court of Thủ Dầu Một City, Bình Dương Province for re-trial under first-instance procedures.

On June 17<sup>th</sup>, 2022, V Corporation submitted a petition for a cassation review of Cassation Decision No. 99/2022/DS-GĐT dated April 6<sup>th</sup>, 2022, from the Judges' Committee of the High People's Court in Hồ Chí Minh City.

In Appeal Decision No. 06/QĐ-VKS-DS dated April 25<sup>th</sup>, 2023, the Chief Procurator of the Supreme People's Procuracy appealed against the aforementioned Cassation Decision. The Chief Procurator requested that the Judges' Council of the Supreme People's Court conduct a cassation trial, vacate Cassation Decision No. 99/2022/DS-GĐT dated April 6<sup>th</sup>, 2022, and uphold Appellate Civil Judgment No. 47/2018/DS-PT dated March 6<sup>th</sup>, 2018, from the People's Court of Bình Dương Province.

During the cassation trial, the representative of the Supreme People's Procuracy urged the Judges' Council of the Supreme People's Court to accept the appeal from the Chief Procurator of the Supreme People's Procuracy.

#### **COURT'S OPINION:**

[1] On June 17<sup>th</sup>, 2014, and July 24<sup>th</sup>, 2014, Mr. Đặng Lâm Quốc B participated in the An Phát Trộn Đồi and An Phát Hưng Gia insurance

packages. The insured person was Mr. B, with insurance values for each policy being VND 1,500,000,000 (premium of VND 30,000,000/year for 15 years, beneficiary Mrs. Trần Thị T), VND 2,500,000,000 (premium of VND 48,000,000/year for 15 years, beneficiary Ms. Đặng Ngọc Anh T), and VND 1,500,000,000 (premium of VND 50,000,000/year for 20 years, beneficiary Mrs. Đặng Ngọc M).

[2] According to the insurance application forms dated June 17<sup>th</sup> and July 24<sup>th</sup>, 2014, Mr. B answered "no" to all questions regarding his personal health status. These included specific questions about:

- Tumors (benign or malignant), cancer (question 17/A/II);
- Medical examinations, tests, or extended medical leave in the past year (question 27/C/II);
- Current or ongoing medical conditions (question 30/C/II).

Following the application submissions, V Corporation arranged for a health check for Mr. B at Binh Duong Private General Hospital on June 21<sup>st</sup>, 2014. During this health check, Mr. B was asked: "Have you ever been hospitalized? When? Why? What was the longest hospital stay? Was it for medical or surgical treatment?" Here too, Mr. B reportedly answered "no" and confirmed that the information provided was complete and truthful. This information at the hospital was considered supplementary to the related insurance application and signed by Mr. B.

[3] The court records include documented evidence of Mr. Đặng Lâm Quốc B's prior medical examinations, health checks, and treatment received at various hospitals. These documents are as follows:

[4] Medical Summary No. 670/KHTH-TTBA dated July 12<sup>th</sup>, 2016, from Oncology Hospital of Hồ Chí Minh City: This document indicates Mr. B's admission on May 13<sup>th</sup>, 2014, with a reported medical history. The summary

details a five-month recovery period following abdominal pain, a diagnosis of abdominal lymph nodes at 115 People's Hospital, pathology results indicating poorly differentiated carcinoma with lymph node metastasis, and subsequent treatment in Singapore for six cycles with a diagnosis of systemic lymph node metastasis of unknown primary origin.

[5] Dispatch No. 1135/BVUB-KHHTH dated May 30<sup>th</sup>, 2017, from T Oncology Hospital: This dispatch provides Mr. B's complete medical record, revealing prior examinations and tests at various hospitals including:

- International Neurosurgery Hospital with an MRI abdominal scan on September 11, 2013, concluding with a possibility of malignant lymph node metastasis.

- 115 People's Hospital with pathology test results on September 27<sup>th</sup>, 2013, confirming poorly differentiated carcinoma with lymph node metastasis.

- Chợ Rẫy Hospital with PET-CT scan results on June 2<sup>nd</sup>, 2014, indicating a treated neuroendocrine cell carcinoma. The scan further revealed malignant lesions with increased metabolic activity in specific areas compared to a previous PET-CT scan performed in Singapore on November 25<sup>th</sup>, 2013. These comparisons showed enlarged pancreatic lymph nodes with increased activity, increased activity in liver lesions, and new lymph nodes in the common iliac vessels. Other lesions remained relatively unchanged.

[6] On March 11<sup>th</sup>, 2015, Mr. B was admitted to Binh Duong General Hospital suffering from respiratory infection, pneumonia, and end-stage metastatic pancreatic cancer affecting the liver and kidneys. His condition was critical upon admission, and he passed away the following day. The official cause of death listed on the death certificate is "Death due to illness."

[7] Dispatch No. 2624/BVUB-KHHTH dated December 28<sup>th</sup>, 2016, issued by the Oncology Hospital of Hồ Chí Minh City, confirms Mr. B's diagnosis of metastatic carcinoma in multiple locations with an unclear primary origin. This



form of cancer is highly malignant, and Mr. B's condition was already in its terminal stages at the time of detection.

[8] This documented medical history clearly demonstrates that Mr. B was fully aware of his serious medical condition prior to applying for insurance with V Corporation on June 17<sup>th</sup> and July 24<sup>th</sup>, 2014. He received treatment for cancer at various hospitals in Vietnam and abroad. However, Mr. B chose not to disclose this crucial information during the application process or when signing the final insurance contracts. It's important to note that V Corporation based their increased premium on the results of Mr. B's health examination arranged by the company. These results identified conditions like fatty liver, hepatitis B, and dyslipidemia, all unrelated to his underlying cancer diagnosis.

[9] According to Article 4 of the An Phát Trọn Đời Terms and Article 4 of the An Phát Hưng Gia Terms, "The policyholder is responsible for providing complete and accurate information about the insured and the insurance contract. This information must comply with all requirements set forth by V Corporation. V Corporation may offer a health examination for the insured. However, this examination does not relieve the policyholder of their obligation to disclose all relevant information."

[10] "An intentional violation of the disclosure obligation occurs when the policyholder knowingly provides inaccurate, misleading, or incomplete information, or conceals material facts about the insured or the insurance contract. If V Corporation had been aware of this information, they would have either:

- Declined to offer insurance coverage.
- Offered coverage with different terms and conditions, including potentially higher premiums."

[11] The 2000 Law on Insurance Business clearly outlines the policyholder's duty to disclose accurate and complete information. Article 18,

clause 2(b) requires the policyholder to "fully and truthfully declare all details related to the insurance contract as required by the insurance enterprise." Furthermore, Article 19, clause 1 emphasizes the obligation to provide full information regarding the insured subject to the insurance company.

In this case, Mr. Đặng Lâm Quốc B's actions constitute a violation of the information disclosure requirements established by both the Law and the An Phát insurance terms (Articles 4 of An Phát Trọn Đời and An Phát Hưng Gia Terms). The trial court's conclusion that Mr. B did not violate these obligations is in error.

The appellate court's finding that Mr. B breached his disclosure duty is legally sound and supported by the relevant articles of the Law and the An Phát insurance terms (specifically Clause 4.1, Article 4 of both An Phát Trọn Đời and An Phát Hưng Gia Terms).

[12] According to clause 2, Article 19 of the 2000 Law on Insurance Business, "The insurance company reserves the right to unilaterally terminate the insurance contract and retain premiums paid up to the date of termination in the event of the policyholder's following actions:

(a) Material Misrepresentation: Intentionally providing false information during the application process to obtain insurance coverage or benefits.

(b) Failure to Disclose Information: Neglecting to fulfill the disclosure obligations outlined in point (c) of clause 2, Article 18 of this Law."

[13] Articles 4.2 of both the An Phát Hưng Gia Terms and the An Phát Trọn Đời Terms address the consequences of a policyholder's intentional failure to disclose information. These articles stipulate that, in such cases, the insurance contract will be terminated, and V Corporation will not be obligated to refund the standard insurance premiums or any additional product premiums that have already been paid.

However, V Corporation may refund the contract account value associated with the additional premiums (if any), minus any insurance benefits already paid, partial withdrawals from the account, and outstanding debts. Furthermore, V Corporation is absolved of any liability for insurance risks that materialize for the insured person.

[14] Given Mr. B's proven violation of the information disclosure obligation regarding his health, V Corporation has the legal right to terminate the insurance contracts. As a result, they are not liable for the insurance risks that ultimately led to Mr. B's passing.

V Corporation's financial obligation is limited to potentially refunding the contract account value associated with any additional premiums paid by Mr. B. However, this amount would be offset by any insurance benefits previously paid out, withdrawals from the account, and any remaining debts.

It's important to consider the specific contract illustrations regarding premium allocation and insurance benefits for the main contracts. According to these illustrations, the refundable value for the first year of a terminated contract is zero.

Therefore, the first-instance court's decision that V Corporation is obligated to pay out insurance benefits to the beneficiaries (Mrs. M, Mrs. T, and Ms. T1) is unsubstantiated. The appellate court's rejection of the plaintiff's claim for V Corporation to bear insurance liability is legally sound.

The cassation review's decision requiring V Corporation to pay insurance money to the plaintiffs while considering the fault of the applicant in disclosing health information is incorrect. This contradicts the provisions outlined in Article 4.4.2 of both the An Phát Trọn Đời and An Phát Hưng Gia Terms, which clearly define the limitations of V Corporation's liability in such situations.

In light of the foregoing,

## **IT IS HEREBY DECIDED:**

Pursuant to Point a, Clause 2, Article 337; Clause 2, Article 343; and Article 344 of the 2015 Civil Procedure Code:

The Cassation Protest Decision No. 06/QĐ-VKS-DS dated April 25<sup>th</sup>, 2023, of the Chief Procurator of the Supreme People's Procuracy is hereby accepted.

The Cassation Decision No. 99/2022/DS-GĐT dated April 6<sup>th</sup>, 2022, of the Judges' Council of the High People's Court in Hồ Chí Minh City regarding the "Insurance Contract Dispute" case between the plaintiffs, Mrs. Đặng Ngọc M, Mrs. Trần Thị T, and Ms. Đặng Ngọc Anh T1, and the defendant, V Corporation, along with other interested parties, is hereby vacated.

The Appellate Civil Judgment No. 47/2018/DS-PT dated March 6<sup>th</sup>, 2018, of the People's Court of Bình Dương Province is hereby upheld.

## **CONTENT OF THE CASE LAW:**

*“[1] On June 17<sup>th</sup>, 2014, and July 24<sup>th</sup>, 2014, Mr. Đặng Lâm Quốc B participated in the An Phát Trọn Đời and An Phát Hưng Gia insurance packages. The insured person was Mr. B, with insurance values for each policy being VND 1,500,000,000 (premium of VND 30,000,000/year for 15 years, beneficiary Mrs. Trần Thị T), VND 2,500,000,000 (premium of VND 48,000,000/year for 15 years, beneficiary Ms. Đặng Ngọc Anh T), and VND 1,500,000,000 (premium of VND 50,000,000/year for 20 years, beneficiary Mrs. Đặng Ngọc M).*

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Following the application submissions, V Corporation arranged for a health check for Mr. B at Bình Dương Private General Hospital on June 21<sup>st</sup>, 2014. During this health check, Mr. B was asked: "Have you ever been hospitalized? When? Why? What was the longest hospital stay? Was it for medical or surgical treatment?" Here too, Mr. B reportedly answered "no" and confirmed that the information provided was complete and truthful. This information at the hospital was considered supplementary to the related insurance application and signed by Mr. B.

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*based their increased premium on the results of Mr. B's health examination arranged by the company. These results identified conditions like fatty liver, hepatitis B, and dyslipidemia, all unrelated to his underlying cancer diagnosis.*

...

*[14] Given Mr. B's proven violation of the information disclosure obligation regarding his health, V Corporation has the legal right to terminate the insurance contracts. As a result, they are not liable for the insurance risks that ultimately led to Mr. B's passing.*

*V Corporation's financial obligation is limited to potentially refunding the contract account value associated with any additional premiums paid by Mr. B. However, this amount would be offset by any insurance benefits previously paid out, withdrawals from the account, and any remaining debts.*

*It's important to consider the specific contract illustrations regarding premium allocation and insurance benefits for the main contracts. According to these illustrations, the refundable value for the first year of a terminated contract is zero.*

*Therefore, the first-instance court's decision that V Corporation is obligated to pay out insurance benefits to the beneficiaries (Mrs. M, Mrs. T, and Ms. T1) is unsubstantiated. The appellate court's rejection of the plaintiff's claim for V Corporation to bear insurance liability is legally sound.*

*The cassation review's decision requiring V Corporation to pay insurance money to the plaintiffs while considering the fault of the applicant in disclosing health information is incorrect. This contradicts the provisions outlined in Article 4.4.2 of both the An Phát Trọn Đồi and An Phát Hưng Gia Terms, which clearly define the limitations of V Corporation's liability in such situations.”*

## **THE RATIONALE FOR THE CASE LAW DRAFT'S PROPOSAL**

Within the domain of life insurance contracts, disputes frequently center on the principle of utmost good faith (*uberrimae fidei*) at the inception of the contract. These breaches of good faith typically originate from the policyholder's failure to make full and truthful disclosures regarding pre-existing medical conditions during the application process. However, a concerning lack of uniformity currently exists within the court system when resolving insurance contract disputes arising from this issue.

In the present case, the policyholder, demonstrably aware of and having received treatment for a serious medical condition, neglected to disclose this information when entering into the insurance contract. Despite the insurance company arranging a health check, the pre-existing illness remained undetected. Based on the information provided by the policyholder (which deliberately omitted the serious illness), the insurance company accepted the application and collected premiums. During the subsequent legal proceedings, the court of first instance erroneously concluded that the insurance company's acceptance of the application and receipt of premiums obligated them to pay out the insurance benefits. Conversely, the appellate court correctly rejected the plaintiff's claim, recognizing the policyholder's violation of the information disclosure obligation. The cassation court, however, incorrectly held that the insurance company must disburse the insurance benefits to the plaintiff while considering the policyholder's fault in disclosing health information, thereby impacting the level of payout.

This case underscores the concerning disparity in court approaches when resolving the legal consequences of information disclosure violations. The cassation decision issued by the Judges' Council of the Supreme People's Court correctly determined that the policyholder's failure to disclose their medical condition constituted a breach of the information disclosure obligation, consequently relieving the insurance company of any liability for insurance coverage. The subsequent annulment of the cassation decision from the Judges' Committee of the High People's Court in Ho Chi Minh City, with the upholding

of the appellate judgment, aligns with a sound legal interpretation. Therefore, establishing a precedent for this specific legal scenario is deemed essential to promote a uniform application of the law in resolving similar disputes.