**CASELAW NO. 23/2018/AL**

*This case law is adopted by the Judicial Council of the Supreme People’s Court on 17 October 2018 and promulgated under Decision No. 269/QD-CA dated 6 November 2018 of the Chief Justice of the Supreme People’s Court.*

**Source of the case law:**

Appellate Civil Judgment No. 538/2009/DS-PT dated 31 March 2009 by the People’s Court of Ho Chi Minh City on the case *“Dispute on insurance agreement”* between the plaintiff being Ms. Pham Thi T against the defendant being P Life Insurance Company Limited; person with related rights and obligations is Ms. Vu Thi Minh N.

**Location of contents of the case law:**

Paragraphs 4, 7, and 8 of section *“Findings of the Court”*.

**Overview of the case law:**

* ***Background of the case law:***

Application dossier for life insurance indicated that the insurance buyer wished to pay the premium at the insurance buyer’s home address. Up to the deadline for paying premium and during the extension of the deadline for paying the premium, the employees of the insurance enterprise failed to go collect the premium from the insurance buyer.

* ***Legal resolution:***

In this case, it must be determined that the insurance buyer was not at fault for not paying the premium on time. The life insurance agreement does not lose its effectiveness due to the insurance buyer’s failure to pay premium in a timely manner.

**Applicable provisions of laws relating to the case law:**

Article 23 of the Law on Insurance Business 2000, amended and supplemented in 2010.

**Key words of the case law:**

*“Life insurance agreement”, “validity of life insurance agreement”, “deadline for premium payment”, “extension of deadline for paying premium”.*

### CONTENTS OF THE CASE

The plaintiff being Ms. Pham Thi T presented that: Her husband being Mr. Tran Huu L applied to buy insurance from P Life Insurance Company Limited. Her husband was involved in an accident and passed away. According to the agreement, Ms. L is the beneficiary. Thus, she requested the defendant to pay her the insurance money amounting to VND300 million and the interest amount of VND126 million based on the basic interest rate calculated since August 2005, and the total amount was VND426 million.

The defendant being P Life Insurance Company Limited was represented by the authorized representative being Mr. Nguyen Quoc T presented that: Mr. L had to pay premium for the second time on 24 June 2005, which he later received a two-month extension of time to pay the premium, but he still did not make payment. Mr. L died on 27 August 2005, which is 3 days after the insurance agreement had lost effectiveness. For this reason, the defendant refused to pay the money pursuant to the plaintiff.

The person with related rights and obligations being Ms. Vu Thi Minh N presented that: She was the defendant’s agent who sold the insurance policy to Mr. L. She and Mr. L agreed that she would directly go to his house to collect the premium when the premium became due for collection. However, she could not collect the premium when the deadline for the last date for collecting premium came because she had to attend political training course in the province. The failure to pay the premium was due to objective reasons, so she requested the defendant to pay the insurance money to the plaintiff.

In First-instance Civil Judgment No. 38/2008/DS-ST dated 21 August 2008 of the People’s Court of District 1, Ho Chi Minh City, it was ruled that:

1. Not accepting Ms. Pham Thi T’s claim for insurance money and late payment interest being an amount of VND426,000,000 from P Life Insurance Company Limited;

1. In terms of court fees: Ms. Pham Thi T shall bear the civil court fees being VND7,890,000 which was deducted from the submitted advance court fee being VND6,000,000 under Money Receipt No. 2185 dated 9 June 2006 of the Civil Judgment Enforcement [Agency] of Ho Chi Minh City.

The first-instance judgment also declared the right to appeal of the involved parties.

On 1 September 2008, Ms. Pham Thi T submitted an appeal.

At the appellate hearing:

The plaintiff did not withdraw her lawsuit and request for appeal.

The involved parties failed to reach an agreement as to the dispute settlement.

Ms. T presented her appeal and requested the Council of Adjudicators to accept her claimto compel P Life Insurance Company Limited to pay the amount of VND426,000,000 being the insurance money and the overdue interest due to late payment of the insurance money, for the reason that the employee of the company failed to collect the premium and not her failure to pay the premium. The lawyer representing Ms. T’s lawful rights and interest requested the Council of Adjudicators to accept her claim.

Mr. Nguyen Quoc T representing P Life Insurance Company Limited, together with the lawyer representing the lawful rights and interest, requested the Council of Adjudicators to uphold the first-instance judgment.

### FINDINGS OF THE COURT

1. After studying the materials of the case and verification of the evidence at the hearing and based on the arguments at the hearing, the Council of Adjudicators opined that:
2. As a matter of procedure: Ms. Pham Thi T submitted the appeal within the statutory time limit.
3. As to the merits:
4. Pursuant to the application dossier for life insurance (records 15-17), the address for P Life Insurance Company Limited to collect the premium was at Mr. L’s house No. 231 Hamlet 3, B Commune, G Town, Ben Tre Province. This was in accordance with the testimony of Ms. N being the agent selling insurance and collecting insurance premium for P Life Insurance Company Limited.
5. Considering Ms. T’s request for appeal, Mr. L’s failure to pay the premium in a timely manner was due to the fact that the company failed to send someone to collect the premium, which was evidenced as mentioned above.
6. According to the confirmation document of the Public Security of B Commune, Mr. L passed away on 27 August 2005 due to a slip and fall accident causing traumatic brain injury.
7. Considering that Mr. L signed an insurance agreement by way of an application dossier for life insurance with the insurance level of VND300,000,000, Mr. L’s failure to pay the premium for the second time as analyzed above was not his fault. Therefore, Ms. T’s request for appeal to compel P Life Insurance Company Limited to pay the insurance money for Mr. T’s death due to accident has basis for the court to accept.
8. Considering the request by P Life Insurance Company Limited’s representative to note that Mr. L failed to pay the premium for the second time with the deadline being 24 August 2005 while Mr. L died on 27 August 2005, and thus, the insurance agreement therefore is no longer effective has no basis. As analyzed above, the reason for Mr. L’s failure to pay the premium was that the company’s employee did not go to collect the premium. This is clearly evidenced at page 5, which set out the information that the clients need to know and clearly stated that home collection consisted of quarterly collection, 6-month collection, yearly collection, or for the case of more than two agreements providing for the same collection address which was the case of Mr. L who bought 3 insurance agreements from P Life Insurance Company Limited for Mr. L, Ms. T and Ms. H. As a result, the Council of Adjudicators did not accept the request of P Life Insurance Company Limited’s representative as well as request by the lawyer representing the lawful rights and interest of P Life insurance company Limited.
9. Considering Ms. T’s claim for P Life Insurance Company Limited to pay the overdue interest for late payment from 27 August 2005 to the date of the first-instance hearing, there is no basis. Since the insurance certificate issued by P Life Insurance Company Limited to Mr. L did not include any provision on interest. Therefore, the Council of Adjudicators did not accept this claim of Ms. T.
10. Therefore, the Council of Adjudicators accepted part of Ms. T’s appeal and amended the first-instance judgment to compel P Life Insurance Company Limited to pay the beneficiary being Ms. T the insurance money being VND300,000,000 following Mr. L’s death due to accident.
11. Ms. T and P Life Insurance Company Limited shall bear the court fees for the firstinstance procedures in accordance with Article 7.2 of Decree 70/CP. Specifically, Ms. T shall bear the court fees of VND6,040,000 over the rejected claim for overdue interest. P Life Insurance Company Limited shall bear the court fees of VND12,000,000 over the insurance money that it had to pay Ms. T.
12. Ms. T shall not be obliged to pay the court fees for appellate procedures in accordance with Article 132.2 of the Civil Procedure Code because the first-instance judgment was amended.

In light of the aforementioned reasons

### RULES

To apply Article 275.2 of the Civil Procedure Code.

To rule:

* To accept part of the request for appeal of Ms. Pham Thi T.
* To amend First-instance Judgment No. 38/2008/DS-ST dated 21 August 2008 of the People’s Court of District 1, Ho Chi Minh City.

1. Accept part of Ms. T’s claims.

* To compel P Life Insurance Company Limited to pay the insurance money of VND300,000,000 to Ms. Pham Thi T immediately after the judgment takes effect.
* As from the date on which the plaintiff submitted an application for judgment enforcement, if the defendant fails to comply with the aforementioned decisions, the defendant shall pay the overdue interest arising based on the basic interest rate provided by the State Bank during the relevant period of time of such failure.

2. As to the court fees for first-instance procedures: Ms. Pham Thi T shall bear the amount of VND6,040,000 (six million forty thousand Dong), which is to be deducted an amount of VND6,000,000 (six million dong) under Money Receipt No. 002185 dated 9 June 2006 of the Civil Judgment Enforcement Agency of Ho Chi Minh City.

Ms. T shall therefore pay the remaining amount of VND40,000.

P Life Insurance Company Limited shall pay the court fee of VND12,000,000 (twelve million Dong)

3. Ms. T shall not be obliged to pay the court fee for appellate procedures and is to be repaid an amount of VND50,000 (fifty thousand Dong), which was the advance court fee under Money Receipt No. 004852 dated 9 September 2008 of the Civil Judgment Enforcement Agency of District 1, Ho Chi Minh City.

The appellate judgment comes into effect as from the date of promulgation.

### CONTENTS OF THE CASE LAW

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1. *Considering that Mr. L signed an insurance agreement by way of an application dossier for life insurance with the insurance level of VND300,000,000, Mr. L’s failure to pay the premium for the second time as analyzed above was not his fault. Therefore, Ms. T’s request for appeal to compel P Life Insurance Company Limited to pay the insurance money for Mr. T’s death due to accident has basis for the court to accept.*
2. *Considering the request by P Life Insurance Company Limited’s representative to note that Mr. L failed to pay the premium for the second time with the deadline being 24 August 2005 while Mr. L died on 27 August 2005, and thus, the insurance agreement therefore is no longer effective has no basis. As analyzed above, the reason for Mr. L’s failure to pay the premium was that the company’s employee did not go to collect the premium. This is clearly evidenced at page 5, which set out the information that the clients need to know and clearly stated that home collection consisted of quarterly collection, 6-month collection, yearly collection, or for the case of more than two agreements providing for the same collection address which was the case of Mr. L who bought 3 insurance agreements from P Life Insurance Company Limited for Mr. L, Ms. T and Ms. H. As a result, the Council of Adjudicators did not accept the request of P Life Insurance Company Limited’s representative as well as request by the lawyer representing the lawful rights and interest of P Life insurance company Limited”.*