DRUNKENNESS AS A CLAUSE LIMITING LIFE INSURANCE INDEMNITY

Gabriel Deivid Soares Goulart[1]; Henrique Guaitolini[2]; Alfredo Lampier Junior[3]

[1]Graduating in Law from Centro Universitário do Espírito Santo -UNESC. [2]postgraduate degree in Consultative Advocacy (2024). Graduated in Law from Centro Universitário do Espírito Santo - UNESC (2023). 3MSc in Political Sociology from UVV - Universidade de Vila Velha (ES) (2018). He has a law degree from Centro Universitário do Espírito Santo (2001), and a postgraduate degree in Civil Law from UNESC. He has been a professor and coordinator of the Law Course at Centro Universitário do Espírito Santo (UNESC) since 2005, having been an advisor to the coordination of this course since 2002. He has experience in the area of Educational Law, with an emphasis on Civil Law and Consumer Law. He also has experience in the area of Environmental Sociology, with emphasis on the Sociology of Disasters and their effects on vulnerable communities. He works as a lawyer in the area of civil law. He is secretary-general of the OAB-ES Legal Education Commission.

ABSTRACT

This study is dedicated to the issue of drunkenness as a clause limiting indemnity in life insurance contracts and the (im)possibility of the insurance company inserting a clause removing its obligation to indemnify in the event of a traffic accident involving a drunken driver. This limitation clause has generated countless discussions in the courts and in the doctrine. In view of this controversy, the aim was to elucidate the issue by analyzing the arguments for and against the possibility of including such a clause. This study adopted a qualitative approach, based on bibliographical and jurisprudential research, in which specialized doctrines, recent judgments by state courts and the Superior Court of Justice were analyzed, as well as the current legal system. Therefore, the understanding of the courts and the majority of doctrine is that it is not possible to stipulate this type of clause. The prevailing argument in the courts is that it would harm the object protected by the contract, which is life, since even in the case of unpremeditated suicide, the legal system stipulates the payment of compensation.

Keywords: *Insurance contract, Unfair clause, Limitation clause, Drunkenness, Claim.*

1 INTRODUCTION

Human life is marked by finitude, uncertainty and insecurity, reflecting fragility in both the material and emotional scopes. Faced with this scenario, individuals seek to protect their assets, belongings and even their own lives, aiming for greater security in the face of unexpected events, both for themselves and for their loved ones and family members, in order to guarantee protection in the event of certain events. There is no denying the prevalence of taking out insurance, whether for material goods or for people, as a means of protecting such assets and lives through the payment of periodic

Corresponding author: gabrielsoaresgoulart@gmail.com

premiums, thus avoiding significant financial burdens in the event of claims, such as in the case of traffic accidents, a topic that will be addressed in this paper.

In this context, this article aims to examine the possibility of insurance companies inserting clauses limiting coverage in their contracts, which would exempt the company from the obligation to indemnify the insured in traffic accidents caused by drunk drivers. Through bibliographical and jurisprudential research based on specialized legal doctrines and state and higher court decisions, the aim is to analyze the legality and fairness inherent in these clauses restricting coverage in situations of accidents related to drivers under the influence of alcohol.

The relevance of this topic is indisputable for legal professionals and scholars, as it is frequently debated and has a direct impact on society.

In addition, its importance extends to other professionals, such as insurance brokers, and all those interested in this type of contract. The aim of this research is to promote an interpretation that favors fairness between the contracting parties, contributing to a balance in legal relations and providing benefits for society as a whole, through a debate based on specialized doctrines and recent court decisions.

2 INSURANCE CONTRACT

In the middle of 1808, insurance companies began to offer their services in Brazil, with the opening of ports to international trade, in particular, the first in the industry being Companhia de Seguros Boa-Fé, which focused on maritime trade and was governed by Portuguese law. In 1850, the Brazilian Commercial Code was promulgated, which brought with it complete regulations on marine insurance. This Code was of great importance for the development of the industry in Brazil because, among its provisions, it encouraged the emergence of various insurance companies, not only marine, but also land and life insurance, which in turn led to the expansion of the sector and attracted the attention of numerous companies that opened branches in Brazil in 1862 (Superintendência de Seguros Privados, 1997).

The most significant advance for the institute of insurance in Brazil occurred with the enactment of the Civil Code of 1916, which brought a chapter reserved for the subject, and this legal diploma together with the Commercial Code established the essential principles of insurance, as well as the rights and obligations of the parties. In

1963, Decree-Law No. 73 of November 21, 1966, established the National Private Insurance System (SUSEP), the authority responsible for regulating all insurance activities in Brazil (Superintendência de Seguros Privados, 1997).

In the current Brazilian Civil Code, the Insurance Contract is set out in a specific chapter, from art. 757 to 802, and is divided into two types: I) Damage insurance, represented by arts. 778 to 788; and II) Personal insurance, governed by arts. 789 a 802. Article 757 of the Civil Code defines the insurance contract as follows: “Through the insurance contract, the insurer undertakes, upon payment of the premium, to guarantee the legitimate interest of the insured, relating to a person or thing, against predetermined risks”. In this sense, Diniz (2024) states that this contract is an agreement in which one of the parties - the insurer - undertakes to guarantee compensation for the insured in the future occurrence of risks, such as damage to people and things and/or to the nature of the property and which are under the power of the parties, and on the other hand, the insured, therefore, obtains this right by paying the premium. Thus, the aim of social insurance is to share the risks among the insured, thereby creating security against adversity and facilitating economic growth.

Broadening the analysis of the insurance contract, Gagliano and Pamplona Filho (2023) classify the contract in question as: I) adhesion, since most of the clauses are pre-defined and the insured does not have the freedom to stipulate the clauses contained therein; II) onerous, since the insured is obliged to pay a premium; III) random, since it is based on a future event, which may or may not happen; IV) of continuous duration and provision, as it lasts over time; V) consensual, as it only becomes effective through the acceptance of the contracting party; and VI) very personal and individual, as it is concluded in its own right and only between specific people.

Since the Civil Code is endowed with principles and can be considered a “Code of Principles” (Goulart *et al,* 2024), it is worth mentioning that article 765[1] states that insurance contracts are based on the strictest good faith, in this sense, Moreira (2014)

[1] Citing the new wording of the article approved by the commission appointed to reform the code: “Art. 765. The insured and the insurer are obliged to maintain the strictest good faith and truthfulness, both with regard to the legitimate interest insured and the circumstances and declarations concerning it, in the initial negotiations, in the conclusion and execution of the contract, as well as in the post-contractual phase of its effectiveness”. Available at: https://www12.senado.leg.br/assessoria-de-imprensa/arquivos/anteprojeto-codigo-civil-comissao-de-juristas-2023 2024.pdf

argues that the principle of objective good faith is the guiding principle of this contract, since both parties undertake to act truthfully and honestly with regard to the information declared about the object of the contract.

In line with the aforementioned information, it is also worth mentioning Statement 370 of the IV Jornada de Direito Civil: “In adhesion insurance contracts, the predetermined risks indicated in art. 757, final part, must be interpreted in accordance with arts. 421, 422, 424, 759 and 799 of the Civil Code and 1o, inc. III, of the Federal Constitution”.

As for the object of the contract in question, Venosa (2024) defines the object as the insurable interest, in order to deal with any human activity or thing that presents an economic relationship and that is liable to risk and can thus become the object of insurance. The term “claim”, which we hear a lot, refers to any future and uncertain event that could pose a threat or risk to the insured object.

As explained above, the insurance contract is linked to the interest of one of the parties in guaranteeing protection for a thing, activity and/or person, always based on good faith, providing truthful information about the state of the object of the contract, which, due to some future and uncertain event, may be exposed to a risk, threatening its integrity in parts or in total, which is the reason for the existence of that contract. In short, the parties enter into bilateral obligations, whereby the contracting party is obliged to pay a sum, known as the premium, and the contracted party is obliged to indemnify/pay a benefit to someone else (the insurer or a third party nominated by them to be a beneficiary) in the event that the object of the insurance is exposed to risk and this risk materializes, which is known as a claim.

2.*1 DAMAGE INSURANCE AND PERSON INSURANCE*

The Civil Code deals with two main types of insurance: damage insurance and personal insurance. Each of these modalities has its own characteristics, which will be briefly presented below.

As for damage insurance, Rizzardo (2023) explains that it was formed to cover losses arising from damage to or loss of things that have economic value. He also points out that the latter is not only aimed at protecting things, but also interests, such as insurance aimed at civil liability and damage caused to third parties, or even those

aimed at the negative effects of advancing age, such as the loss of efficiency to carry out a certain activity.

Furthermore, according to the contemporary doctrine provided by Gonçalves (2024), the damage insurance contract does not aim to make a profit, so, as a result, in the event of a claim, it aims to cover all or only part of the damage. This is the form in which the contract actually performs its classic and primary function, which is to provide the insured with the restoration of their property, since the indemnity contract can be treated as one that guarantees that the insured will not suffer considerable financial losses after the claim.

On the other hand, the object of personal insurance is the person themselves and what is related to them, such as physical, psychological and health integrity, among others, and in this case, as a rule, a fixed amount is stipulated to be received in the event of a claim (Gama, 2004).

In practical terms, Gonçalves (2024, p. 218) states that

> The purpose of personal insurance is to benefit human life and faculties. Unlike damage insurance, it is not indemnity insurance. Its value does not depend on any limitation and varies according to the wishes and financial conditions of the insured, who can take out as many insurance policies as they wish.

In this sense, life insurance does not refer to compensation, but is called a benefit, which is why it is possible to take out more than one personal insurance policy (Gonçalves, 2024).

With the information explained above, it can be seen that damage insurance and people's insurance are similar, but there are differences, the most obvious of which is due to the payment in the event of a claim, i.e. the former can be called indemnity, differing from people's insurance, since it does not talk about indemnity but provision, so this difference generates another, since life insurance does not have an indemnity character, the person can take out as many insurances as their financial condition allows.

3 UNFAIR TERMS VS. RESTRICTIVE TERMS

According to Campoy (2014), risk represents the possibility of a future and uncertain event that could potentially harm the insured interest. He also emphasizes that risk is the very foundation of an insurance contract and is the essential element that justifies both the existence and the function of insurance.

Without risk, there would be no need for protection, and the insurance contract would lose its purpose, since uncertainty and the potential for loss underpin the contractual relationship between the insurer and the insured, forming the basis for the transfer and mitigation of the risks involved.

The principle of Contractual Freedom, or also known as Private Autonomy, includes the right to stipulate clauses that best satisfy the parties. However, the Consumer Defense Code (CDC), as a form of consumer protection, in its article 6º, IV, stipulates that it is a right to protection against abusive practices and clauses.

> Art. 6: These are basic consumer rights: IV - protection against misleading and abusive advertising, coercive or unfair commercial methods, as well as against abusive or imposed practices and clauses in the supply of products and services;

Article 51 of the CDC states that any unfair clause is void as of right and, considering that the list provided for in this article is merely exemplary *("numerus apertus"),* there is the possibility of extending it to other clauses.

> Art. 51. Among other things, contractual clauses relating to the supply of products and services which:
> [...]

It is also noteworthy that the aforementioned code, in its article 25, states that "it is forbidden to stipulate in a contract a clause that makes it impossible, exonerates or mitigates the obligation to indemnify provided for in this and the previous sections", and further on, it only makes the exception of article 51, I, which prescribes that "in consumer relations between the supplier and the consumer who is a legal entity, indemnification may be limited in justifiable situations".

However, it is undeniable that there is the possibility of the parties stipulating clauses limiting contractual liability, in which they can exclude or mitigate contractual liability, as long as they respect the precepts described in civil and especially consumer legislation. It is worth mentioning, as a curiosity, that this type of clause faces resistance in the legal sphere, however, as explained in this article, such insertion is

valid in Brazilian law, since there is no total prohibition of such a clause, according to the judgment of REsp 1.989.291/SP, judged on 07/11/2023.

In turn, Azevedo (2011, p. 3) shows when the stipulation of such clauses would become null and void: (a) they exonerate the agent in the event of intent; (ii) they go directly against a cogent rule - sometimes referred to as public order; (iii) they exempt the contractor from compensation in the event of default on the main obligation; (iv) they are of direct interest to the life and physical integrity of natural persons.

Below is the author's explanation of the issue.

> To admit the validity of the first (intent) would be to give an authorization to commit crime; the nullity of the second (cogent norm) results from items II and V of art. 145 of the Civil Code; to give effectiveness to the clauses of the third hypothesis (default of the main obligation) would make the contract an abusive legal business, because the clause would make the contractor, who benefited from it, only fulfill his main obligation if he wanted to (there would be disrespect for the prohibition of purely potestative conditions - art. 115, in fine, of the Civil Code). 115, in fine, of the CC); the nullity of the latter (people's lives and physical integrity), finally, in our opinion, results from the Constitution of the Republic, because such clauses violate the main principle of the Brazilian state, the dignity of the human person (art. 1, III, combined with art. 5, caput, both of the Constitution of the Republic).

In this way, it was differentiated that in the context of insurance contracts it is possible and legitimate to insert clauses that limit the risk that the contract will cover, however, when these go beyond the level of reasonableness and become excessively unfavorable for one party and/or are unreasonable, they become abusive and, therefore, null and void in their own right, according to the CDC. Therefore, the purpose of this chapter was to introduce the subject of the possibility of inserting limitation clauses in life insurance, specifically in cases of drunkenness, which will be dealt with below.

4 LIMITATION CLAUSE IN LIFE INSURANCE IN THE EVENT OF DRUNKENNESS

According to a survey carried out by the Institute for Applied Economic Research (IPEA), the number of traffic accidents will increase by 2.3% in 2023, with more than 390,000 deaths resulting from traffic accidents. In the same study, the main causes of

traffic accidents were found to be recklessness, speeding and drunken driving (UNILESTE, 2024).

The National Department of Transport Infrastructure (DNIT) warns that the use of psychoactive substances alters perceptions, behavior, reduces attention and impairs the driver's impairment, making driving unsafe. Therefore, driving under the influence of alcohol is prohibited by the Brazilian Traffic Code (CTB), in its article 165.

The Brazilian Association of Traffic Medicine reports that between 35% and 50% of deaths on the world's roads are attributed to alcohol. Drinking ethanol while driving is a risky behavior, putting at risk not only the lives of the driver and passengers, but also other drivers, pedestrians and cyclists, according to the Ministry of Transport website (DNIT, 2021).

Therefore, given the repercussions of the issue, there is a discussion on the question of whether the insured is drunk: can the insurer avoid payment in the event of an accident involving a drunk driver?

First of all, it is worth mentioning art. 768[2] of the Civil Code, which deals with the issue of aggravation of the risk on the part of the insured. See:

> Art. 768. The insured will lose their right to the guarantee if they intentionally aggravate the risk covered by the contract.

Mention should also be made of art. 165 of the CTB, which provides administrative sanctions for driving under the influence of alcohol or other psychoactive substances, and also of art. 306 of the CTB, which provides criminal sanctions for the same situation.

> Art. 168. Driving under the influence of alcohol or any other addictive substance: (Edited by Law No. 11.705, of 2008)
> Infraction - very serious; (Edited by Law No. 11.705, of 2008)
> Art. 306. Driving a motor vehicle with altered psychomotor capacity due to the influence of alcohol or another psychoactive substance that determines dependence: (Edited by Law No. 12.760 of 2012)

[2]In the proposed new wording approved by the commission appointed to reform the civil code, it reads: "Art. 768. The insured will lose their right to the guarantee if they intentionally and materially aggravate the risk covered by the contract. § 1 A material worsening is one that significantly increases the likelihood of the risk being realized or the severity of its effects. § 2 - In equal and symmetrical contracts, the intentional aggravation referred to in the caput of this article may be excluded as a cause for loss of the guarantee".

> Penalties - detention, from six months to three years, fine and suspension or prohibition from obtaining a permit or license to drive a motor vehicle.

An argument in favor of the limitation of liability thesis is explained by Min. Ricardo Villas Bôas Cueva in REsp n.° 1.485.717/SP, judged on 22/11/2016, which guides that the risks in car insurance are not limited only to the insured but also to the main drivers and insurance has the social function of promoting traffic safety and not encouraging the acceptance of excessive risks such as drunk driving. In addition, the insured has a duty of vigilance over who lends the vehicle, since if the driver is proven to be drunk, there will be a presumption that the risk has been aggravated.

Therefore, using the traffic law as one of their arguments, insurance companies have routinely gone to court to get out of paying the agreed benefit. Despite this, even though the law defines the situation as a crime, the Courts have not considered drunkenness to be a factor to be exempt from the payment of the benefit in life insurance cases, which led to the publication of Precedent No. 620 of the STJ, which states that “the drunkenness of the insured does not exempt the insurer from the payment of the indemnity provided for in a life insurance contract”.

Thus, in the same vein, Susep/Detec/GAB Circular Letter No. 08/2007, which advises against including drunkenness as a limitation on payment of the benefit.

> We hereby inform you that, in accordance with the legal recommendation contained in OPINION PF - SUSEP/ COORDINATOR OF CONSULTATIONS, COMPANY AFFAIRS AND SPECIAL SCHEMES - No. 26.522/ 2007, of the Federal Attorney’s Office at SUSEP, an insurance company that provides for the exclusion of cover in the event of “claims or accidents arising from acts carried out by the insured in a state of mental insanity, alcoholism or under the influence of toxic substances” must immediately make changes to the general conditions of its products, based on the provisions below: 1) **In Personal Insurance and Property Insurance, COVERAGE EXCLUSION is PROHIBITED** in the event of “claims or accidents resulting from acts committed by the insured while in a state of mental insanity, alcoholism, or under the influence of toxic substances.” (emphasis added)

Corroborating this view, Civil Appeal No. 0705204-20.2021.8.07.0020/TJ-DF ruled that even when the accident is caused by the insured being drunk, the insurer still has a duty to indemnify. This duty is drawn from the very nature of the risk contracted and any stipulation that empties the object of the contract is forbidden.

Also according to Judge Eustáquio de Castro, rapporteur of the appeal, it would not be lawful for the insurer to exempt itself from the duty to indemnify, the risk being the life of the insured, and the risk being the object of the contract.

Recently, the STJ, maintaining its position, has ruled that drunkenness at the wheel, not even excessive speed while driving the vehicle, would be grounds for forfeiting the right to insurance indemnity, in the case of life insurance, and that the payment of indemnity is due even in cases where the insured has aggravated the risk. In this sense, see the judgment of REsp n° 1.817.854/RS, judged on 13/06/2023.

To exemplify the above information, we cite REsp 1.999.624/PR, judged on 28/09/2022, in which the aforementioned court decided to order the insurance company to pay the indemnity. See excerpt from the amendment to the aforementioned judgment:

> SPECIAL APPEAL. LIFE INSURANCE TRAFFIC ACCIDENT. DEATH OF THE INSURED DRIVER. INTOXICATION. DENIAL OF COVER BY THE INSURER. ALLEGATION OF INCREASED RISK. INGESTION OF ALCOHOLIC BEVERAGES. PRECEDENT 620/STJ. CONFIRMATION. SPECIAL APPEAL DISMISSED.
> [--]
> 3. In the same vein, the case law of eg. Second Section, also supported by a significant precedent of the eg. Third Panel (REsp 1.665.701/RS, Rap. Justice RICARDO VILLAS BÔAS CUEVA), ruled that, “with greater reason, the coverage of a life insurance contract must cover cases of claims or accidents resulting from acts carried out by the insured in a state of mental insanity, alcoholism or under the influence of toxic substances, with the exception of suicide occurring within the first two years of the contract” (EREsp 973.725/SP, Reporting Justice LÁZARO GUIMARÃES).
> 4. As a result of the judgment in EREsp 973.725/SP, the eg. The Second Section issued Precedent 620/STJ, which reads as follows: “The drunkenness of the insured does not exempt the insurer from paying the indemnity provided for in a life insurance contract.” [...]
> (REsp n. 1.999.624/PR, rapporteur Minister Raul Araújo, Second Section, judged on 28/9/2022, DJe of 2/12/2022).

When the insured person takes over the driving of the vehicle, even with reduced motor capacity due to the effect of alcohol, even if he has the ability to foresee the result, an accident followed by death, the intention of his conduct is not to seek the result as a way of obtaining compensation, nor the result of death, therefore he does not act under intentional conduct, what he practices is called conscious guilt, and therefore is not characterized in the consequences of art. 768 of the Civil Code. The correct interpretation of the institute of aggravation of the risk must be that the insured

must act maliciously in order for the aggravation of the risk to be configured, as can be seen from the judgment above.

Furthermore, the judgment in Civil Appeal No. 1.0000.23.199923-6/001/TJ-MG, judged on 21/02/2024, states that allowing such contracts, most of which are adhesion contracts, to include exclusion clauses based on the increase in risk by the insured is, in the final analysis, allowing the invalidation of the contract and abusive practices in relation to the consumer. As previously mentioned, considering the very nature of life insurance, the randomness to which it is subject will always be more significant, which should not result in excessively restrictive provisions for the consumer. Furthermore, another argument that reinforces the points discussed so far is the issue of suicide in life insurance contracts, and it is well-established in the case law of the Higher Courts that the insurance claim is valid.

In accordance with the above-mentioned information, the Second Section of the STJ, by means of Junsprudential Newsletter No. 751 - transcribed in part - corroborated the understanding that the insurer has a duty to indemnify in the event of an accident involving a drunk insured person, in life insurance, ratifying the thesis presented in the judgment of REsp 1.937.399/SP, whose headline was referenced above. See excerpt from the newsletter:

> [...] In addition, the Second Section, taking this judgment as a vector, edited the summary statement number 620 of the case law of this Court with the following wording: “The drunkenness of the insured does not exempt the insurer from paying the indemnity provided for in a life insurance contract.” It is therefore proposed that the case law of the Second Section be confirmed, in relation to the understanding that, in personal insurance, it is forbidden to exclude cover in the event of claims or accidents arising from acts carried out by the insured in a state of mental insanity, alcoholism or under the influence of toxic substances.

This position has been adopted in other judgments over the years, as can be seen in the following quotes:

1) AgInt no AREsp 2282051/SP[3], judged on 21/08/2023; 2) REsp 2045637/SC[4], judged on 09/05/2023; and 3) AgInt no REsp 2112291/MG[5], judged on 18/04/23.

This understanding has been adopted by the courts in Brazil, especially the Espírito Santo Court of Justice, which, when judging disputes related to this issue, uses the aforementioned Precedent 620 of the STJ as a basis for resolving the cases. In this sense, see some judgments:

> SUMMARY: INTERLOCUTORY APPEAL IN CIVIL APPEAL. INSURANCE COLLECTION ACTION WITH INDEMNITY FOR MORAL DAMAGES. LIFE INSURANCE. EXCLUSION FROM PAYMENT OF COMPENSATION FOR DRUNK DRIVING. ABUSIVE CLAUSE. APPEAL KNOWN AND DISMISSED.
> I. The case law of the Superior Court of Justice, summarized in Ruling No. 620, has established the understanding that, in cases of Life Insurance, a clause excluding payment of the indemnity, in the event of a claim arising from the acts of the Contractor, is abusive, practiced in a state of drunkenness or under the influence of other psychoactive toxic substances, on the grounds that, in these types of Contract, it is not possible to assume that the Contractor has acted in bad faith to increase the risk assumed by the insurer, given the breadth of the cover.
> II. In the case of Life Insurance, the fact that the Insured was drunk while driving his vehicle, even if it is considered to be the definitive cause of the accident, is not capable of excluding the indemnity provided for, since we are not dealing with Vehicle Insurance in this case.
> III. Appeal known and dismissed. Decision upheld.
>
> (Civil Appeal 5000001-89.2021.8.08.0057, rapporteur Namyr Carlos de Souza Filho, 3ª Civil Chamber, date 30/Nov/2023).

> SUMMARY: CIVIL APPEAL. LIFE INSURANCE COLLECTION ACTION. CAR ACCIDENT. DEATH OF THE INSURED DRIVER. RECOGNIZED DRUNKENNESS. INAPPLICABILITY OF THE THEORY OF INTENTIONAL AGGRAVATION OF RISK. ILLEGALITY OF THE CLAUSE EXCLUDING COVER. STJ PRECEDENT NO. 620. APPEAL KNOWN AND UPHELD.
> 1) In the case herein, the insurer refused to pay the value of the life insurance policy on the grounds that the accident was caused by the drunkenness of the driver of the insured car.

[3] Access available at: https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=202300161889&dt_publicacao=28/08/2023

[4] Access available at: https://processo.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=2297731&num_registro=202103121525&data=20230511 &format=PDF.

[5] Access available at: https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=202304321391&dt_publicacao=10/04/2024

> The Court of First Instance, after examining the evidence, dismissed the case on the grounds that the intentional aggravation of the risk had been sufficiently proven.
> 2) However, the Superior Court of Justice, in 2018, issued summary entry No. 620, emphatically stating that the drunkenness of the insured does not exempt the insurer from paying the indemnity provided for in a life insurance contract.
> 3) All the discussion in these cases about whether or not the insured person's drunkenness is a determining factor in the occurrence of the claim is absolutely harmless, since the case law of the Superior Court considers the clause that provides for the exclusion of insurance cover in the event of an intentional aggravation of the risk to be unlawful. Precedents of this Honorable Court
> 4) Appeal known and upheld.
>
> (Civil Appeal 0002017-47.2018.8.08.0012, rapporteur Fernando Estevam Bravin Ruy, 2ª Civil Chamber, date 05/Jun/2024).

In car accidents that result in death under the influence of alcohol, the need for the insurance company to pay the indemnity becomes even more evident, especially when compared to suicides that occur after the grace period in the same life insurance contracts. Even though the circumstances of the accident may refer to an unintentional fatality, arising, for example, from unsuccessful overtaking, and even though drunkenness may have contributed to what happened, cover should be provided. Just as it is indisputable that compensation should be paid in situations of voluntary death without premeditation (suicide - Art. 798 of the CC[6]), it is equally fair and appropriate that this protection should apply in cases of involuntary fatalities, reinforcing the insurer's responsibility to support the beneficiaries.

On the other hand, with regard to damage insurance, Civil Appeal No. 1.0000.21.233183-9/001/TJ-MG, judged on 04/10/2023, is didactic in differentiating the situations mentioned above, in which it was ruled that, unlike car insurance, the exclusion of cover is permitted if the risk is aggravated by driving under the influence of alcohol.

Life insurance, on the other hand, is not possible. In this regard, the Court of Justice of Espírito Santo (TJES) has settled case law on the subject:

[6] Art. 798. The beneficiary is not entitled to the stipulated capital when the insured commits suicide during the first two years of the initial term of the contract, or its renewal after suspension, subject to the provisions of the sole paragraph of the preceding article.
Sole paragraph. Except in the case provided for in this article, a contractual clause that excludes payment of the capital due to the suicide of the insured is null and void.

> SUMMARY: CIVIL APPEAL - DAMAGE INSURANCE - MOTOR VEHICLE - DRUNKENNESS OF THE DRIVER - AGGRAVATION OF THE RISK - APPEAL KNOWN AND DISMISSED.
> 1. Considering that the driver of the vehicle was drunk at the time of the accident, the exclusion of cover provided for in a specific contractual clause applies in this case;
> 2. This provision is in line with the Civil Code, according to which "The insured shall lose the right to the guarantee if he intentionally aggravates the risk covered by the contract" (art. 768);
> 3. The defendant insurance company was right to deny payment of the indemnity, given that, due to drunkenness, it is presumed that the appellant intentionally aggravated the risk covered by the contract;
> 4. It was found that drunkenness was the determining factor in the collision, especially since there is no mention in any document of the existence of other circumstances that could have contributed to the accident, such as the fault of the other driver, the fault of the car itself, imperfections in the road, animals on the road, weather conditions, among others;
> 5. Precedent 620 of the Superior Court of Justice does not apply to this case: "The drunkenness of the insured does not exempt the insurer from paying the indemnity provided for in a life insurance contract." This is because, as stated in the statement itself, this conclusion is intended exclusively for life insurance contracts, and not for damage insurance contracts, such as the one in question;
> 6. Appeal known and dismissed.
>
> (Civil Appeal 0004389-84.2018.8.08.0006, rapporteur Júlio Cesar Costa de Oliveira, 1st Civil Chamber, date 14/Aug/2023).
>
> SUMMARY: CIVIL PROCEDURE. CIVIL APPEAL. ACTION FOR INSURANCE INDEMNITY AND COMPENSATION FOR MORAL DAMAGES. VEHICLE INSURANCE. TRAFFIC ACCIDENT. INTOXICATION. AGGRAVATION OF THE RISK. PROVEN. APPEAL DISMISSED.
> 1. Drunkenness alone does not exclude insurance cover in the event of a traffic accident, and the loss of the indemnity is conditional on it being established that drunkenness was a determining cause of the accident. STJ Precedents.
> 2. If drunkenness is proven, and if it was the determining factor in the accident, the insurance indemnity and the compensation for moral damages are unacceptable.
> 3.Appeal dismissed.
> (Civil Appeal 0024560-82.2012.8.08.0035, rapporteur Rodrigo Ferreira Miranda, 2nd Civil Chamber, date 13/Mar/2023).

However, when dealing with life insurance, excluding cover on such grounds is considered improper because such an exclusion would go against the very purpose of the contract, and therefore, given this premise, it is illegitimate to deny insurance cover because of the insured's intoxication. It can therefore be concluded that the clause

limiting cover does not apply and is considered an abusive clause, which is therefore null and void, and that the insurance indemnity is due within the limits set in the policy.

5 CONCLUSION

Throughout everyday life, from waking up to carrying out our various daily activities, society is constantly faced with the worrying concern of the risks that surround us. To mitigate these anxieties, the insurance contract emerged as a practical solution, whereby responsibility for the risk of the object being insured is transferred to the insurer, who in turn demands a consideration, or premium, from the insured.

In the context of life insurance, by paying this premium, the insured transfers to the insurer the responsibility to indemnify in the event of a claim. However, the essence of personal insurance is often characterized as a contract of stipulation in favor of a third party, considering that life is the object under protection. Thus, in the event of an accident, the indemnity goes to the third party named in the contract.

Despite all the legal, doctrinal and jurisprudential support that underpins the subject under analysis, there is still a large number of disputes involving life insurance, especially when it comes to the insured being the victim of a drunk driving accident. This problem is exacerbated by the insurer's resistance to paying the indemnity, on the grounds that the risk of the insured object has worsened. Given this scenario, this research was conducted with the aim of clarifying the feasibility of including a clause limiting insurance cover in situations of drunkenness.

Through a rigorous analysis of specialized doctrines and the case law of the higher courts, concluded that it was impossible to include such clauses, in accordance with Precedent 620 of the STJ, which establishes that the drunkenness of the insured does not exempt the insurer from its duty to indemnify.

In line with this precedent, Case Law Report No. 751 was published, which points out that, in personal insurance, it is forbidden to exclude cover in the event of claims or accidents resulting from acts carried out by the insured person who is mentally ill, alcoholic or under the influence of toxic substances. Therefore, it can be concluded that there is no room for the inclusion of a clause limiting insurance coverage in the insurance contract, with the aim of exempting the insurer from the responsibility of indemnifying the insured in traffic incidents committed under the influence of alcohol.

REFERENCES

AZEVEDO, Antonio Junqueira de. Cláusula cruzada de não indenizar *(cross-waiver of liability),* ou cláusula de não indenizar com eficácia para ambos os contratantes: renúncia ao direito de indenização: promessa de fato de terceiro: estipulação em favor de terceiro. Obrigações e contratos: contratos: formação e regime. Tradução. São Paulo: **Revista dos tribunais,** 2011. v. 4.

BRASIL. Lei n° 8.078, de 11 de setembro de 1990. **Institui o Código de Defesa do Consumidor.** Brasília, DF: Congresso Nacional, 1990. Disponível em: https://www.planalto.gov.br/ccivil_03/Leis/L8078compilado.htm. Acesso: 12 nov. 2023.

_____. Lei n° 9.503, de 23 de setembro de 1997. **Institui o Código de Trânsito Brasileiro.** Brasília, DF: Congresso Nacional, 1997. Disponível em: https://www.planalto.gov.br/ccivil_03/LEIS/L9503Compilado.htm. Acesso em: 12 fev. 2024.

_____. Lei n° 10.406, de 10 de janeiro de 2002. **Institui o Código Civil.** Brasília, DF: Congresso Nacional, 2002. Disponível em: https://www.planalto.gov.br/ccivil_03/LEIS/2002/L10406compilada.htm. Acesso: 05 nov. 2023.

CAMPOY, Adilson. Contrato de seguro de vida. São Paulo. **Revistas dos Tribunais.** 2014. Disponível em: https://www.jusbrasil.com.br/doutrina/contrato-de-seguro-de-vida/1306031332. Acesso em: 28 ago. 2024.
CONSELHO DA JUSTIÇA FEDERAL. Enunciado 370. In: **IV Jornada de Direito Civil.** Brasília, DF, 2006. Disponível em: https://www.cjf.jus.br/cjf/corregedoria-da-justica-federal/centro-de-estudos-judiciarios-1/publicacoes-1/jornadas-cej/IV Jornada volume I.pdf. Acesso em: 24 fev. 2024.

DEPARTAMENTO NACIONAL DE INFRAESTRUTURA DE TRANSPORTES (DNIT). **DNIT alerta que álcool e direção não combinam.** Disponível em: https://www.gov.br/dnit/pt-bi7assuntos/noticias/dnit-alerta-que-alcool-e-direcao-nao-combinam. Acesso em: 23 jul. 2024.

DINIZ, Maria Helena. **Curso de direito civil brasileiro:** teoria das obrigações contratuais e extracontratuais. v.3. Rio de Janeiro: Grupo GEN, 2024. E-book. ISBN 9788553622566. Disponível em: https://integrada.minhabiblioteca.com.br/#/books/9788553622566/. Acesso em: 19 ago. 2024.

GAGLIANO, Pablo Stolze; PAMPLONA FILHO, Rodolfo. **Novo curso de direito civil:** Contratos, v.4. São Paulo: SaraivaJur, 2023. E-book. ISBN 9786553626614. Disponível em: https://integrada.minhabiblioteca.com.br/#/books/9786553626614/. Acesso em: 15 dez. 2023.

GAMA, Guilherme Calmon Nogueira da. 0 seguro de pessoa no novo Código Civil. **Revista dos Tribunais,** São Paulo, v. 93, n. 816, p. 11-24, 2004.

GONÇALVES, Carlos R. **Direito civil brasileiro:** contratos e atos unilaterais, v.3. Rio de Janeiro: Grupo GEN, 2024. E-book. ISBN 9788553622474. Disponível em: https://integrada.minhabiblioteca.com.br/#/books/9788553622474/. Acesso em: 19 ago. 2024.

GOULART, Gabriel Deivid Soares; GUAITOLINI, Henrique; LAMPIER JUNIOR, Alfredo. Cláusulas *supressío* e *surrectío:* Aplicação e interpretação conforme o STJ. In: **20 Anos do Código Civil: desafios e perspectivas.** LACERDA; Katia Dutra Pinheiro de; LAMPIER JUNIOR, Alfredo (Coord.). 1. ed. Colatina: Editora UNESC, 2024. Disponível em: https://unesc.br/downloads/editora-unesc/20-anos-do-codigo-civil.pdf. Acesso em: 19 ago. 2024.

RIZZARDO, Arnaldo. **Contratos.** Rio de Janeiro: Forense, 2023. E-book. ISBN 9786559648153. Disponível em: https://integrada.minhabiblioteca.com.br/#/books/9786559648153/. Acesso em: 05 jan. 2024.

STJ - SUPERIOR TRIBUNAL DE JUSTIÇA. **Informativo Jurisprudencial n° 751, de 03 de outubro de 2022.** Disponível em: https://processo.stj.jus.br/SCON/SearchBRS?b=INFJ&tipo=informativo&livre=%270751%27.cod.&force=yes. Acesso em: 22 fev. 2024

_____. REsp n. 1.989.291/SP, relator Ministro Ricardo Villas Bôas Cueva, relator para acórdão Ministro Moura Ribeiro, Terceira Turma, julgado em 7/11/2023, DJe de 23/11/2023. Disponível em: https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=202200628836&dt_publicacao=23/11/2023. Acesso em: 21 ago. 2024.

_____. REsp n. 1.485.717/SP, relator Ministro Ricardo Villas Bôas Cueva, Terceira Turma, julgado em 22/11/2016, DJe de 14/12/2016. Disponível em: https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201401164312&dt_publicacao= 14/12/2016. Acesso em: 21 ago. 2024.

_____. REsp n. 1.937.399/SP, relator Ministro Ricardo Villas Bôas Cueva, Segunda Seção, julgado em 28/9/2022, DJe de 3/10/2022. Disponível em: https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=202101403497&dt_publicacao=03/10/2022. Acesso em: 23 ago. 2024.

_____. AgInt nos EDcl no REsp n. 1.817.854/RS, relator Ministro Antonio Carlos Ferreira, Quarta Turma, julgado em 13/6/2023, DJe de 3/7/2023. Disponível em: https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201700280098&dt_publicacao=03/07/2023. Acesso em: 14 fev. 2024.

_____. REsp n. 1.999.624/PR, relator Ministro Raul Araújo, Segunda Seção, julgado em 28/9/2022, DJe de 2/12/2022. Disponível em:

https://scon.stj.jus.bi7SCON/GetInteiroTeorDoAcordao?num_registro=202002642924&dt_publicacao=02/12/2022. Acesso em: 14 de fevereiro de 2024.

_____**. Súmula n. 620, Segunda Seção, julgado em 12/12/2018, DJe de 17/12/2018.** Disponível em: https://www.stj.jus.br/publicacaoinstitucional/index.php/sumstj/author/proofGalleyFile/5049/5176. Acesso em: 21 ago. 2024.

SUPERINTENDÊNCIA DE SEGUROS PRIVADOS. **Carta Circular SUSEP/ DETEC/ GAB/ No 8/2007.** Rio de Janeiro, outubro de 2007. Disponível em: https://www.susep.gov.br/textos/COODETEC 08-07.pdf. Acesso em: 13 fev. 2024.

_____**. História do Seguro.** Disponível em: https://homolog2.susep.gov.br/menususep/historiadoseguro.asp. Acesso em: 24 fev. 2024.

TRIBUNAL DE JUSTIÇA DO ESTADO DO ESPÍRITO SANTO. **Apelação Cível 5000001-89.2021.8.08.0057, relator Namyr Carlos de Souza Filho, 3ª Câmara Cível, data 30/Nov/2023.** Disponível em: https://sistemas.tjes.jus.br/consultas_publicas/busca/pje2g. Acesso em: 14 nov. 2024.

_____**. Apelação Cível 0002017-47.2018.8.08.0012, relator Fernando Estevam Bravin Ruy, 2ª Câmara Cível, data 05/Jun/2024.** Disponível em: https://sistemas.tjes.jus.br/consultas_publicas/busca/pje2g. Acesso em: 14 nov. 2024.

_____**. Apelação Cível 0004389-84.2018.8.08.0006, relator Júlio Cesar Costa de Oliveira, 1ª Câmara Cível, data 14/Aug/2023.** Disponível em: https://sistemas.tjes.jus.br/consultas_publicas/busca/pje2g. Acesso em: 14 nov. 2024.

_____**. Apelação Cível 0024560-82.2012.8.08.0035, relator Rodrigo Ferreira Miranda, 2ª Câmara Cível, data 13/Mar/2023.** Disponível em: https://sistemas.tjes.jus.br/consultas_publicas/busca/pje2g. Acesso em: 14 nov. 2024.

TRIBUNAL DE JUSTIÇA DO DISTRITO FEDERAL E DOS TERRITÓRIOS (TJ/DF). **TJ/DF mantém seguro de vida em caso de embriaguez ao volante.** Migalhas, 2021. Disponível em: https://www.migalhas.com.br/arquivos/2022/5/6EBC1820BB93CC_seguradora.pdf. Acesso em: 14 fev. 2024.

_____**.Apelação Cível n° 0705204-20.2021.8.07.0020, Acórdão 1414981,** Relator(a): EUSTÁQUIO DE CASTRO, 8ª Turma Cível, data de julgamento: 20/4/2022, publicado no DJE: 26/4/2022. Disponível em: https://pesquisajuris.tjdft.jus.br/IndexadorAcordaos-web/sistj?visaoId=tjdf.sistj.acordaoeletronico.buscaindexada.apresentacao.VisaoBuscaAcordao&controladorId=tjdf.sistj.acordaoeletronico.buscaindexada.apresentacao.C

ontroladorBuscaAcordao&visaoAnterior=tjdf.sistj.acordaoeletronico.buscaindexada.apresentacao.VisaoBuscaAcordao&nomeDaPagina=resultado&comando=abrirDadosDoAcordao&enderecoDoServlet=sistj&historicoDePaginas=buscaLivre&quantidadeDeRegistros=20&baseSelecionada=BASE_ACORDAOS&numeroDaUltimaPagina=1&buscaIndexada=1&mostrarPaginaSelecaoTipoResultado=false&totalHits=1&internet=1&numeroDoDocumento=1414981. Acesso em: 23 ago. 2024.

TRIBUNAL DE JUSTIÇA DO ESTADO DE MINAS GERAIS. **Apelação Cível n° 1.0000.23.199923-6/001, Relator(a): Des.(a) Lílian Maciel, 20ª CÂMARA CÍVEL, julgamento em 21/02/2024, publicação da súmula em 22/02/2024.** Disponível em: https://www5.tjmg.jus.br/jurisprudencia/pesquisaNumeroCNJEspelhoAcordao.do2numeroRegistro=1
&totalLinhas=1&linhasPorPagina=10&numeroUnico=1.0000.23.199923-6%2F001&pesquisaNumeroCNJ=Pesquisar. Acesso em: 15 mai. 2024.

_____**. Apelação Cível n° 1.0000.21.233183-9/001.** Des. Rei. Fernando Lins. Julgado em 04 de outubro de 2023. Publicado em 05 de outubro de 2023. Disponível em: https://www4.tjmg.jus.br/juridico/sf/relatorioAcordao?numeroVerificador=10000212331839001202356259 78. Acesso em: 21 ago. 2024.

UNILESTE. **Maio Amarelo 2024:** Taxa de mortalidade no trânsito brasileiro aumentou 2,3% no último ano. Disponível em: https://unileste.catolica.edu.br/portal/maio-amarelo-2024-taxa-de-mortalidade-no-transito-brasileiro-aumentou-23-no-ultimo-ano/#:~:text=lnstitucional-Maio%20Amarelo%202024%3A%20taxa%20de%20mortalidade%20no%20tr%C3%A2nsito%20brasileiro%20aumentou,no%20tr%C3%A2nsito%20come%C3%A7a%20por%20voc%C3%AA%E2%80%9D. Acesso em: 24 jul. 2024.

VENOSA, Sílvio de Salvo. Direito Civil: **Contratos,** v.3. Rio de Janeiro: Grupo GEN, 2023. E-book. ISBN 9786559775064. Disponível em: https://integrada.minhabiblioteca.com.br/#/books/9786559775064/. Acesso em: 19 ago. 2024.