Legal expenses insurance Intellectual property rights OK2

Contents

LOCALTAPIOLA

1 Concepts

Deductible

'Deductible' is the portion of loss, stated in the policy document or the policy wording, for which the policyholder remains liable.

Intellectual property right

For the purposes of this insurance, 'intellectual property right' means any copyright, patent right, utility model right, trademark right and model right. The exercise of a license right is also regarded as an intellectual property right.

Insured

The insured is the policyholder and any entity named in the policy document or in any special condition stated in the policy document.

Territorial limits

The cover provided by this insurance applies in the geographical area stated in the policy document.

2 Courts of law and period of cover

2.1 Courts of law

The insured may take advantage of this insurance in matters that can be directly referred in Finland to the Market Court or in the territorial limits to some other court or to arbitration.

2.2 Period of cover

This insurance provides cover against the perils (insured events) occurring during the period of cover of the insurance.

If the insurance has been in force for less than two years when a peril occurs, the factors on which the dispute, claim or criminal prosecution is based must have occurred during the period of cover.

The period of cover includes all the time that this insurance, together with other expired legal expenses insurance policies with equivalent content, has been in force uninterruptedly with one or several insurers.

If the extensions of cover have been in force for less than two years when a peril occurs, the extensions of cover will be in force only in respect of perils occurring after the date on which the relevant change took effect, on the condition that the cause of the peril has also occurred during the period of the extension of cover.

'Extension of cover' means an increase of the sum insured or a reduction of the deductible, or if changes are made to the perils insured or to the territorial limits, or if the opposing party's costs or some other special condition are added to the policy.

3 Perils insured, and exclusions

3.1 Perils insured

This insurance covers the insured's essential and reasonable legal expenses in disputes that concern an intellectual property right. A dispute materialises when a claim, the grounds for and the amount of which have been set out, has been contested.

Depending on the details stated in the policy document, the cover provided by this insurance applies to either the costs of defence or the costs of defence and attack.

One insured event

Matters will be considered to constitute one insured event whenever:

- two or more insureds of this insurance are on the same side in a dispute; or
- the insured has pending several disputes which are based on the same event, circumstance, legal act, or tort;
- the actions have been joined or they should be joined in the legal proceedings because they are essentially due to the same cause of action or because they concern the same case or a case that belongs to the same context.

3.1.1 Costs of defence

This insurance covers costs associated with claims brought against the insured alleging infringement of a third-party intellectual property right.

3.1.2 Costs of attack

If it is stated in the policy document that attack costs are also covered, this insurance will cover costs:

- that are associated with demands that the insured makes following infringement or breach of the insured's own valid intellectual property right; and
- that arise after an independent patent agency or another independent expert specialising in intellectual property rights has confirmed in writing that there may have been an infringement.

3.2 Perils excluded

This insurance does not cover costs that the insured incurs in matters:

- that concern registration of an intellectual property right or some other similar procedure;
- that concern an intellectual property right that has been transferred to the insured unless, at the time when the dispute materialises, two years have elapsed since the right was transferred;
- to which the insured is committed by agreement;
- that concern infringement of a business secret or breach of secret information;
- where the contestation of the claim cannot be proved;
- where the real interest of the case is small;
- that are between any of the insureds of this insurance;
- that concern bankruptcy;
- where it is contested whether the expenses arising from the insured event that the insured has reported are eligible for reimbursement under this legal expenses insurance either wholly or in part;
- which are tried as a collective action and in which the insured is a party in the capacity of applicant or group member;
- that do not concern intellectual property rights.

4 What to do after an insured event occurs

4.1 Reporting the claim

If the insured wishes to take advantage of this insurance, the insurer must be notified of this in writing in advance. The insurer will then issue to the insured a written claim settlement decision.

4.2 Appointing an attorney

The insured is required to appoint as their attorney an attorney-at-law or a lawyer who is legally authorised to serve as an attorney or legal counsel in the country belonging to the territorial limits in which the legal proceedings are intended to be instituted. No expenses will be covered if the insured does not appoint an attorney at all or appoints an attorney other than an attorney described above.

4.3 Cost claim to the opposing party

In cases where the proceedings in court have progressed to the main hearing, and in cases tried in arbitration, the insured is required to demand the opposing party to cover the insured's full legal expenses.

If the insured, without a valid reason, fails to submit a cost claim or gratuitously withdraws it or will not appeal the court's ruling on legal expenses despite being requested to do so by the insurer, cover can be reduced or it may be refused altogether under the Insurance Contracts Act.

4.4 Accepting expenses

The insured does not have a right to accept, in a manner that would be binding on the insurer, the amount of the expenses of pursuing the case. If the insured pays any of their legal expenses out of pocket, the sum paid will not be binding on the insurer when assessing whether the legal expenses are essential and reasonable.

5 Covered expenses, and exclusions

5.1 Covered expenses

This insurance covers the insured's essential and reasonable legal expenses arising from the insured event, as follows:

- The attorney's expenses, and expenses for the presentation of evidence.
- If bringing the dispute before the court is conditional on some legal act or on a decision passed in a body or in a proceeding, expenses will be covered from the moment when said condition is fulfilled.

Appeals to the Supreme Court

If appealing to the Supreme Court is subject to leave to appeal, the costs of appeal will be covered only if such leave is granted.

The costs of extraordinary appeals will be covered only if the Supreme Court accepts the complaint, annuls the judgment or provides restitutio in integrum.

Shared interest

Where the case concerns an interest materially other than the insured's own interest, or if the insured has in the case an interest to safeguard which the insured shares with any persons not covered by this insurance, this insurance will cover only that portion of the expenses which is deemed to be attributable to the insured.

5.2 Excluded expenses

This insurance does not cover:

a) the opposing party's legal expenses that the insured agrees or is ordered to pay;
b) expenses incurred from measures taken prior to the insured event or from preliminary investigation of the case. However, the expenses of materials drawn up and evidence gathered prior to the insured event are covered if the material is used as evidence;
c) expenses in cases that come before the administrative authorities;
d) expenses arising from the enforcement of a judgment or a decision;
e) the insured's waste of time, own work, loss of income or earnings, travel or subsistence expenses, or the additional expense arising from replacing the attorney or from any action that increases the insured's own expenses or incurs other unnecessary expenses;
f) expenses of acquiring expert legal opinion;
g) expenses of reporting a criminal offence to the police, of requesting an investigation, or of any pre-trial investigation of a criminal case;
h) expenses arising from factors or evidence which the court dismisses on the ground of delay;
i) expenses which the insured or the insured's attorney incur by not appearing before the court; by failing to comply with the orders given by the court; by presenting a submission which they have known or which they should have known to be groundless; by otherwise prolonging the legal proceedings intentionally or through negligence, or if the insured or the insured's attorney initiates them without the opposing party having given any reason for this, or if they otherwise cause unnecessary legal proceedings intentionally or through negligence;
j) the arbitrator's fees and costs;
k) arbitration-related application, management or cost advance expenses.

6 Calculating the amount of indemnity

The legal expenses recoverable under this insurance are awarded in accordance with the guidance governing legal expenses laid down in the Code of Judicial Procedure and the Market Court Proceedings Act.

If, following cognovit by the parties, the court does not rule on legal expenses in its judgment, or if the case is resolved amicably, the covered expenses will also be awarded with reference to the expenses usually awarded or paid in comparable cases.

With regard to the attorney's expenses, the reasonable fee for the attorney's work as well as the essential expenses will be reimbursed. When determining the reasonableness of fees and expenses, account will be taken of the value of the benefit at issue, the complexity and the scope of the case, and the volume and the quality of the work carried out.

Expenses can be covered up to the costs which the court orders the insured's opposing party to pay, unless the court expressly holds, by virtue of the reasons set out in its judgment, that the insured is personally to bear all or some of the insured's own costs.

However, the maximum amount of covered expenses is limited to the cost claim that the insured presents to the opposing party.

Deductible

Per every insured event, covered expenses are subject to the deductible stated in the policy document.

Value added tax

If, under the Value Added Tax Act, the insured is entitled to deduct the tax included in the legal expenses or in the legal expenses invoice, the value added tax included in the expenses will be deducted from the indemnity that becomes payable.

Maximum amount of indemnity

In any one insured event and in any several insured events that are allocated to one insurance period, the maximum total cover which this insurance provides is limited to the sum insured stated in the policy document times one.

7 Other indemnification regulations

7.1 Time of payment of indemnity

The insurer will indemnify the insured's legal expenses after the court's legally valid judgement or once the case has been settled amicably. In the absence of specific reasons to the contrary, the insurer can also pay the indemnity after each level of court.

In addition, the insurer may at its discretion exceptionally pay the indemnity in advance if the legal proceedings become considerably prolonged.

7.2 Opposing party's reimbursement of expenses

Any reimbursement of expenses that the insured's opposing party is ordered or undertakes to pay the insured is to be treated as reducing the insurer's liability, provided that it is successfully collected from the party liable to pay it.

If the opposing party is ordered or undertakes to pay the insured reimbursement of expenses which remains unpaid upon payment of the insurance indemnity, the insured is liable, before payment of the indemnity, to transfer to the insurer the insured's right to the reimbursement of expenses up to the amount of the insurance indemnity. If the insured has had to pay some of the insured's expenses out of pocket by reason of the expenses exceeding the sum insured stated in the policy document, the insured is liable to transfer to the insurer that portion of the opposing party's reimbursement of expenses which exceeds the out-of-pocket element paid by the insured. In order for the indemnity to be paid, the insured is also required to submit an enforceable judgment.

If the reimbursement of expenses that the insured's opposing party is ordered or undertakes to pay is paid to the insured, or if the insured otherwise claims it to the insured's benefit, the insured will be required to return this reimbursement of expenses, with interest, to the insurer up to the amount of the insurance indemnity paid.

8 Safety regulations

Compliance with the safety regulations serves to prevent loss and damage and to reduce the amount of loss caused.

A condition for the indemnity laid down in this policy wording is that the policyholder must comply with the safety regulations. In the event of failure to comply with the safety regulations, and when this failure contributes to the occurrence of loss or the amount or the scope of loss, under the Insurance Contracts Act and the General terms and conditions of contract, the indemnity can be reduced or it may be refused.

Before applying for design protection, trademark protection or a patent, the insured is required to check against the Finnish Patent and Registration Office's database, the EUIPO service, the WIPO service and the equivalent international registers that it will not infringe any third-party intellectual property rights.

The insured is required to maintain competitor monitoring regarding the insured's intellectual property rights.

In case of any dispute under these terms and conditions the original Finnish wording shall prevail.

Insurance is granted by the following mutual insurance companies in LocalTapiola Group (business ID):

LähiTapiola **Etelä** (0139557-7) | LähiTapiola **Etelä-Pohjanmaa** (0178281-7) | LokalTapiola **Sydkusten** - LähiTapiola **Etelärannikko** (0135987-5) | LähiTapiola **Itä** (2246442-0) | LähiTapiola **Kaakkois-Suomi** (0225907-5) | LähiTapiola **Kainuu-Koillismaa** (0210339-6) | LähiTapiola **Keski-Suomi** (0208463-1) | LähiTapiola **Lappi** (0277001-7) | LähiTapiola **Loimi-Häme** (0134859-4) | LähiTapiola **Länsi-Suomi** (0134099-8) | LähiTapiola **Pirkanmaa** (0205843-3) | LokalTapiola **Österbotten** - LähiTapiola **Pohjanmaa** (0180953-0) | LähiTapiola **Pohjoinen** (2235550-7) | LähiTapiola **Pääkaupunkiseutu** (2647339-1) | LähiTapiola **Savo** (1759597-9) | LähiTapiola **Savo-Karjala** (0218612-8) | LähiTapiola **Uusimaa** (0224469-0) | LähiTapiola **Varsinais-Suomi** (0204067-1) | LähiTapiola **Vellamo** (0282283-3) | LocalTapiola General Mutual Insurance Company (0211034-2)

The companies' contact details are available at www.lahitapiola.fi.

L-EH-04618-en, 1024 Edita

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