

Request by an insurer for additional information from an insured

1. The onus to prove that a claim falls within the four corners of a contract rests with the insured.
2. The onus to prove that an exclusion clause is applicable rests with the insurer.
3. A contract may contain a provision requiring that the insurer “must be provided with any substantiating evidence it may require, including but not limited to identification documents, death certificates and medical reports for purposes of considering and investigating a claim under the policy”.
4. Such a clause could certainly be used by the insurer to compel an insured to furnish information relating to his claim (par 1), failing which it can be declined. The real question is, however, whether the insured (or his successor in title) can be compelled in terms of such a clause to furnish additional information relating to the invocation of a possible defence based on an exclusion clause (par 2).
5. The clause itself, as formulated, does not provide a clear answer to this question. One could presumably apply the *contra proferentem* principle to limit it to the class of evidence falling under paragraph 1 above.

6. Such a limiting interpretation may, however, be unfair in its effect to the insurer, especially if its consistent application would enable an insured to succeed with what would appear, on the face of it, to be a fraudulent claim.
7. Whatever the exact legal position may be, our equity jurisdiction, which postulates fairness to both sides to a dispute, should permit us to apply clauses of this nature by posing this further question: Is the insurer's request for further information from the insured *reasonable* having regard to the circumstances of the case and the particular interests of both parties?
8. Where the insurer's request is little more than a "fishing expedition", in the hope of unearthing evidence on the strength of which a defence can be fashioned, the answer is clearly in the negative.
9. But where there is some evidence on file which points to a credible defence to a claim, a request for further information to elaborate on any existing evidence may not be unreasonable.
10. So, for instance, it may be reasonable if the anticipated evidence is clearly relevant and falls within the exclusive knowledge and possession of the insured; *aliter*, if such evidence is readily available to the insurer from other sources.

The matter can also be rationalised on another basis: the onus to prove the exception rests on the insurer; if he can produce some evidence which *on the probabilities* calls for a response, the duty of rebuttal would shift to the insured. A failure on the part of the insured to co-operate by furnishing the required evidence may well justify the inference that the insured has something to hide which, if revealed, would substantiate the insurer's defence. And if that is so, the conclusion may reasonably be drawn that the insurer has discharged the onus resting upon it of proving the exception.