

Núcleo de Metodologia de Ensino da FGV DIREITO SP
Projeto Banco de Materiais de Ensino Jurídico Participativo
Discriminação por Gênero em Contrato de Seguros
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Exercício

(*Debate*; em subgrupos de três ou quatro integrantes)

João Dias e Joana Dias são irmãos gêmeos. Na data de seu aniversário de 19 anos, cada um recebeu de seus pais um carro do mesmo ano e modelo. João e Joana celebraram contratos de seguro relativos aos seus respectivos carros com a mesma companhia seguradora. No entanto, o prêmio cobrado de João foi 12% maior do que aquele exigido de Joana em razão da diferença de gênero. Inspirado pela notícia abaixo, João ingressa em juízo, alegando que a prática discriminatória da companhia seguradora viola a Constituição brasileira.

Grupo A (lado da janela): Advogados de João

Grupo B (lado da porta): Advogados da companhia seguradora



Sex and insurance

A boy-racer's dream?

A European court puts an end to sex-based premiums

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THERE were howls of protest from the insurance industry when the European Court of Justice ruled on March 1st that a person's sex should not be used to set insurance policies. It will be expensive for some, argued insurers: no more cheap premiums for careful female drivers, and lower annuities for shorter-lived men.

The ruling has unleashed a lively debate on whether actuarial science, which assesses factors such as life expectancy and the propensity to smash cars, could not just as easily use other data besides sex to calculate likely outcomes: eating and driving habits, say, or location and wealth. Actuaries already factor in some of these things, but sex is a simpler proxy—and for things like longevity, a very well-established one.

The court's advocate-general has argued that, given social changes, risk models can no longer clearly be linked to a person's sex. This was a "kind of substitute criterion" for other features and was incompatible with the principle of equal treatment for men and women, she said.

The case was brought by Test-Achats, a Belgian consumer group, arguing that a 2004 European Union directive on equal treatment in goods and services was flawed: a pesky proviso, Article 5(2), had



unreasonably given states the option to allow the continued use of sex-based actuarial data to set risk premiums. The judges agreed with Test-Achats and abolished Article 5(2). From December 21st 2012 all new insurance contracts will have to comply with the directive.

Actuaries say that using other factors in their calculations besides sex is perfectly possible. There may be a shock to motor premiums for young women in Britain, but in continental Europe many insurers base their premiums on the car and not the driver. Belgium has had unisex car insurance since 2007 without suffering an underwriting pile-up. Test-Achats says that young people's initial premiums in Belgium converged, but that the no-claims-bonus system means that good drivers of either sex enjoy reductions in later years.

Soothing words from Belgium are not likely to calm the mood in Britain. The big issue is pensions: annuities are far more common in Britain than elsewhere in Europe. A supplementary pension-savings scheme in Germany, the Riester-Rente, has been sex-neutral since 2006. Insiders say that demand by men for Riester pensions has not slackened but they wonder whether that would be true in the absence of state subsidies.

Pricing policies on the basis of characteristics that cannot be altered, like sex, seems unfair to many. A line has already been drawn in the case of genetic testing. Insurance companies in Britain agreed in 2005 that the predictive results of genetic tests should not be used to set certain insurance premiums. That is in keeping with the mutual nature of insurance, whereby many buyers put in more than they get out.

But restricting the ability of insurers to reflect risks in setting premiums causes problems. Insurance firms argue that removing sex as a rating factor will add an uncertainty premium to everyone's bill. Using more detail on individuals' characteristics will also add to costs. If higher premiums discourage people from saving up for an annuity, for example, the court's judgment will end up helping no one.