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AUTHOR'S REVIEW
FOR THE PURPOSES OF HABILITATION AWARD PROCEEDINGS

[PRESENTATION OF SCIENTIFIC OUPUT]

Gdańsk, October 2011

1. KEY INFORMATION ABOUT THE CANDIDATE

1.1. INTRODUCTION

Pursuant to the requirements of the habilitation (degree of *doctor habilitatus*) award proceedings this is to present information about my scientific output and achievements. Certainly, is it very difficult to present **the output of 40 years of scientific activities and practical experience in the field of insurance law** in a short *author's review*. Nor is it possible, as I am deeply convinced, to show the scientific activity in the area of legal sciences without mentioning - besides papers and participation in conferences - cooperation with the practice of socio-economic and legal life (in the form of professional opinions and expert reports developed) and experience gained thanks to performance of managerial positions in units of administration and business.

Guided by Art. 16 par. 2 of the Act of 14 March, 2003 on Scientific Degree and Title (…) here I am to present my **scientific output having taken the form of a cycle of publications devoted to one subject, viz. that of legal issues of compulsory insurance,** although hardly are these the only matters in which I have taken interest in my research. The author's review includes only short information about the results of my work done on legal problems of compulsory insurance. Full texts of key papers of which the cycle titled *"Compulsory insurance as a legal form of insurance coercion"* is composed have been included in a separate volume.

1.2. EDUCATION

I was born on 3 September, 1947 in Sochaczew, near of Żelazowa Wola, hence all the schools I used to attend were bearing the name of Frederic Chopin, my great compatriot born in the same area. From 1954 until 1961 I attended „F.Chopin" Elementary School, and from 1961 until 1965 – „F.Chopin" Comprehensive Secondary School [Liceum Ogólnokształcące] of Sochaczew. By the way, I have always greatly admired musical output of the composer.

In 1965 I started studies at the Faculty of law and Administration of the University of Warsaw. I decided to specialise in civil law and thanks to very good marks obtained in civil law I was qualified to the master's graduate seminar led by Professor Witold Czachórski. In 1970 I graduated from the faculty, with a very good note for my master's thesis on the principle of risk as applied to civil law liability for occupational accidents.

In 1971 I was accepted to legal training at the Voivodeship (Provincial) Court of Warsaw. The training was not completed by me, though, since in the meantime I was admitted to Doctoral Studies at the Faculty of Law and Administration of the University of Warsaw. A precondition for the admittance was resignation from the court legal training, which I did, albeit with much regret.

I chose to specialize in insurance law, and it was Professor Witold Warkałło, an outstanding authority in the field. that agreed to be the supervisor of my doctor's thesis. When selecting the subject of the doctoral theses, a precondition to us was to take into account public law aspects, as the Studies were run at the Institute of Administration and Management of the University. In agreement with the supervisor, I took up the subject of insurance prevention, then a statutory function of insurance. I defended my thesis on 21 October, 1974 and was conferred the degree of doctor of law (LL.D.). Upon being published later, my doctor's thesis was granted a scientific award of the Minister of Science and Higher Education.

1.3. PROFESSIONAL AND SCIENTIFIC CAREER

My professional life, as conducted to date, can be divided into **two periods:** 1) the time of research and didactic work at the Faculty of Law and Administration of the University of Gdańsk (1973-1993) and 2) the period of professional work in the business insurance industry (1991-2011).

For over 20 years I worked at the position of an associate professor (*adiunkt*) at the **Faculty of Law and Administration of the University of Gdańsk**. Among my achievements during the work at the University I can name introduction of the "insurance law" and "business insurance" subjects into curricula of legal and administrative (full-time and weekend) studies and studies in economics.

Definitely a good reason to be proud of is the fact that over 300 graduates of law and administration at the University were people whose masters' theses were supervised by me. I drew a lot of satisfaction from being, in the years 1979-1980, the **Dean's Plenipotentiary for Student Matters.** On many occasions I sat on recruitment and programmatic committees of the Faculty of Law and Administration.

In 1990's I took up cooperation with business practice, mostly as far as counselling in legal matters of insurance was concerned. I find it a telling thing that, while working for the University, I felt a need for practical activities, and while being involved in business practice – a need to develop my research activities. After quitting the University I did not stop my scientific work, just the opposite – I actually intensified it. Over half of my publications have come from that very time. I still participate in scientific conferences and seminars, cooperate with the *Sejm* (Diet), governmental agencies, the Insurance Ombudsman, as well as editorial teams of key insurance journals. I occasionally lecture or run seminars in insurance law, mostly for post-graduate students. From a dozen of years or so I have been involved in expert-type and training activities.

Judging from current perspective, I find the **combination of theory with business practice** a most advantageous arrangement. My activities in the insurance market, the brokerage (the demand side) and management of insurance societies (the supply side) allowed me to better learn both economic aspects of insurance and legal ones, as concerning contracts of insurance.

As far as scientific activity is concerned, I find my being the co-author of "*Prawo ubezpieczeniowe"* [Insurance Law] by W. Warkałło, W. Marek, W. Mogilski, PWN, Warsaw 1983, distinguished with the award of the Minister of Science and Higher Education, **my biggest scientific achievement.** Regarding the practice of business life, my greatest success consists in development of licence-related documentation and the launching of Sopockie Towarzystwo Ubezpieczeń „HESTIA INSURANCE" S.A. ["Hestia INSURANCE", Joint-Stock Company in Sopot], presently STU ERGO HESTIA S.A., in which company I was the President and Vice-President of the Management Board for about 1½ years. The said society was one of Poland's first commercial-type insurance societies, now counted among the leading entities of the kind (the fact not being, needless to say, my merit any more).

My experience in business life is vast. For 4 years I was either president or vice-president of management boards of insurance companies, for 8 years - I operated as an insurance broker, and for 20 years – like an advisor and consultant on insurance law matters.

Professional career in the years 1973 – 2011

1973 – 1993	Assistant professor (*adiunkt*) at the Faculty of Law and Administration of the University of Gdańsk
1990 – 1992	President and Vice-president of the Board of STU „HESTIA INSURANCE" SA [STU "HESTIA INSURANCE", Joint-Stock Company], currently: STU ERGO HESTIA SA (Sopot)
1994 – 1994	President of Management Board of Towarzystwo Ubezpieczeń i Reasekuracji „GWARANT" S.A. ["GWARANT" Insurance & Reinsurance Society, Joint-Stock Company] of Gdańsk
1998 – 2006	Biuro Brokerskie PARTNER ["PARTNER" Brokerage Office] (Sopot)
2002 – 2006	Member of Management Board „CIECH – SERVICE" Sp. z o. o. ["Ciech-Service" Limited Liability Company], an entity being the *"inhouse broker"* of CIECH Chemical Group (Warsaw)
2004 – 2006	President of Management Board of Kancelaria Ubezpieczeniowa „RECOVER" Sp. z o. o. ["Recover" Insurance Office, Limited Liability Company] (Sopot)
2006 - 2006	Member of Supervisory Board of „Polskie Towarzystwo Ubezpieczeń" S.A. [Polish Insurance Society, Joint-Stock Co.] (Warsaw)
2006 - 2007	Vice-President of Management Board of „Polskie Towarzystwo Ubezpieczeń" S.A. [Polish Insurance Society, Joint-Stock Company] (Warsaw)
2006 - 2007	Member of Supervisory Board of „UNIVERSUM" Towarzystwo Ubezpieczeń na Życie S.A. ["Universum" Life Insurance Society, Joint-Stock Company] (Warsaw)
2007 – to date	Biuro Doradztwa Ubezpieczeniowego PARTNER ["PARTNER" Insurance Consulting Office] (Gdańsk)

2. MY TEACHERS AND MENTORS

I find it my very pleasant duty to state that my scientific development was highly influenced by the outstanding Professors whom I had the honour to meet during my studies and professional career. The first of them was Professor **Witold Czachórski,** the supervisor of my master's thesis. Thanks to his enormous knowledge and splendid erudition Professor W. Czachórski was able to instill in his disciples true love of civil law doctrines, usually for the rest of their lives. From my personal point of view it is to Professor **Witold Warkałło**, an outstanding specialist in insurance law while a great personality, my Master and supervisor of my doctor's thesis, that I owe particular gratitude for his invaluable support. It is thanks to Professor Warkałło that I keep interest in insurance law, lasting till these days.

During my work at the University of Gdańsk I had the pleasure of working under the guidance of professors: **Zbigniew Jaśkiewicz** (public business law), **Zdzisław Brodecki** and **Jerzy Młynarczyk** (maritime law) or **Kazimierz Kruczalak** (commercial law). As far as environmental insurance is concerned, I benefited from consultations with Professor **Janina Ciechanowicz-McLean**. I owe a lot to the said Professors as regards my scientific development in the period in question.

For more than a dozen of years I have been cooperating with Professor **Eugeniusz Kowalewski** of Nicholas Copernicus Unviersity of Toruń, probably the only professor of law in Poland specializing in issues of private insurance law, which cooperation has always been particularly valuable to me.

3. MAIN DIRECTIONS OF RESEARCH

My research interests, starting from the doctor's thesis, were determined by the fact that during the Doctoral Studies at the University of Warsaw I got a broad look on issues of public law. When doing research in insurance prevention, I would benefit, in particular, from the output of the doctrine of administrative, business and financial law. During my work at the University of Gdańsk, despite my penchant for civil law, I was involved, in my didactic activities, in matters of public business law. I also ran lectures and seminars in maritime and commercial law.

In keeping with chronology, I can name my main scientific interests (**research directions**) in the field of insurance law:

1) insurance prevention -

legal issues of so-called insurance prevention were dealt with by me in continuation of the matters I addressed in the doctors' thesis. I have published a dozen or so of papers on the issue and I was a co-author of Poland's report to the 5th World Congress of Insurance Law (Madrid 1978). In 1977 I organized a national conference on „Insurance and Prevention" at the University of Gdańsk. I also published *„Prewencja ubezpieczeniowa. Zagadnienia prawne*" [Insurance prevention. Legal issues] monograph (1981), and was granted a scientific award of the Minister of Science and Higher Education as a result.

2) law of maritime insurance -

I developed my interest in maritime insurance while working for the Chair of Maritime Law of the University of Gdańsk, under the guidance of Professor Zdzisław Brodecki. Besides conducting master's graduate seminars and monographic lectures, I also guided the Postgraduate Studies in Maritime Law, which proved helpful to me in my cooperation with the business practice (Maritime Institute, Maritime Chambers, WARTA Insurance and Reinsurance Society, Joint-Stock Company etc.). In 1977 I succeeded in calling to being a Maritime Branch of Polish Section of A.I.D.A (Association Internationale de Droit des Assurances - International Association of Insurance Law) of Sopot, which I guided until 1990.

3) insurance for the benefit of third party -

my interest in issues of *„pactum in favorem tertii"* as used in insurance business I owe to Professor A. Wąsiewicz, of whose inspiration I developed a paper on the *Agreement of insurance for the benefit of third parties* (1994). Among other things, I suggested reinstatement of an „agreement on a third party account" *(*German: *Vertrag zum fremde Rechnung*), which was, in fact, done under the amendments to the Civil Code of 2007 (Art. 808). Over the last years I participated in conferences and workshops concerning application of the agreement in group life insurance and group insurance of bank customers *(bancassurance*).

4) compulsory insurance -

the issues of compulsory insurance became my specialty, which I have been dealing with for many years. It fully subscribes to the direction of my earlier interests in matters existing at the junction of private and public law. For more than 20 years now I have been participating in the conceptual and legislative work in the area of compulsory insurance. I participated in the drafting of the Act on Compulsory Insurance of 22 May, 1993. Recently I joined the work done on development of the idea of Polish Insurance Code, for which proposed piece of legislation I have worked assumptions regarding compulsory insurance. It was with satisfaction that I met the findings and postulates of the Conference of Polish Chamber of Insurance and Civil Law Legislative Committee (Warsaw, 20 June, 2011) supporting those changes in the legal system of compulsory insurance which I had been long advocating.

4. REVIEW OF THE SCIENTIFIC OUPUT

Over the last years, my scientific interests were focused on **legal matters of compulsory insurance.** Other issues receded into the background, owing either to legislative alterations (e.g. prevention being no more a statutory function of insurance), or to economic changes (e.g. a dramatic drop in interest in maritime insurance as a result of marginalisation of Poland's maritime economy).

Despite my having become focused on matters of compulsory insurance, in my current research I attempt at taking up all key or current legal insurance issues. These are, for example, the following subjects: the legal position of the wronged party under motor insurance, structure of group insurance or insurance of patients against medical accidents.

The total number of 75 scientific publications developed by me includes:

- publications in books and collective works 16
- articles 34
- editing of books and periodicals 6
- reviews 9
- legal opinions and expert reports 10

5. PRESENTATION OF RESULTS OF THE RESEARCH

Guided by Art. 16 par. 2 of the Act of 14 March, 2003 – I present below ***the results of my research*** *on: „Compulsory insurance as a legal form of insurance coercion" from the years 1997 – 2011. The material have been taken into account in chronological order, with their object and results. In a separate volume I published full text of the papers, which altogether make up* ***the cycle of publications devoted to one subject*** *being the basis for evaluation of scientific output of the candidate to habilitation* (*degree of* doctor habilitatus).

COMPULSORY INSURANCE AS A LEGAL FORM OF INSURANCE COERCION

1. Diagnosis of the problem and key findings [1997 – 1999]

Object and results of the research: **classification of forms of insurance coercion under Polish legislation**

Although compulsory insurance have been in use in Poland for many years, the issue of its legal nature became topical under the Act of 28 July, 1990 on Insurance Activities. Removed by the Act from Polish legal system was insurance emerging by law (*ex lege*), in which legal scheme the will of the parties in creation of the insurance relation was replaced by a provision of law. Such insurance survived, however, its usefulness under conditions of market economy, in which system various insurance societies compete with one another.

In 1990 a rule was adopted that the only and indispensable source of the legal relationship of insurance is the **contract of insurance.** The distribution of insurance into compulsory and voluntary schemes was, nevertheless, upheld. In such a situation, coercion in insurance was limited to the duty to conclude a contract of insurance, the contract itself not having been eliminated, though (as the case had been under the previous system). The legal doctrine had it had even before, though, that the insurance relationship is one of civil law nature, regardless if its source was a contract, statute or decision of an administrative agency.

The thing that inspired me to take a up more detailed research on the issues was a critical assessment of the dichotomic distribution of insurance into voluntary and compulsory schemes, as adopted in 1990. In order to examine the issue I carried out a detailed analysis of the law in force introducing either the compulsory insurance or a duty to conclude a contract of insurance or other limitations of the freedom of contract.

In order to provide a general term that could denote all the situations I adopted the notion of the **"insurance coercion"** (used by J. Łazowski as early as in 1934). When talking about coercion in insurance, it is the direct coercion, expressed as a legal duty that is meant. The indirect coercion (like a requirement towards the lessee to insure the object of leasing) is not taken into account here.

The research has confirmed that the dichotomic distribution of insurance schemes into voluntary and compulsory insurance is not actually reflected in Polish law. Statutorily imposed legal schemes have proved to be much more diversified. Not all types of insurance of limited voluntary nature have, in fact, turned out to be compulsory ones, just as not all insurance schemes – though apparently not compulsory - could actually be recognized as those voluntary. Considering the said, it proved an important task to establish certain systematics of the forms of insurance coercion, as applied under Polish law.

Upon a thorough analysis I arrived at the conclusion that the **insurance coercion takes the legal forms** of:

1) compulsory insurance – with consequences provided for in the statutes (e.g. as far as the control of meeting of the duty and sanctions for its not having been met are concerned);
2. duty of insurance – imposed by law, but lacking the features of compulsory insurance, i.e. there existing no system of control and sanctions (such as penalty payments);
3. obligation to insure – a form of indirect coercion, not being a duty imposed by law, but a result of a legal transaction, manifesting itself as:
    a) administrative duty – consisting in the party of administrative proceedings being required to conclude a contract of insurance as a precondition for the issuance of an administrative act (e.g. a permit, licence) or

b) contractual obligation – manifesting itself in the contracting party being required to conclude a contract of insurance as a precondition for conclusion or validity of a relevant agreement (e.g. that of leasing or a banking credit).

I realized with satisfaction that my remarks were favourably met by representatives of the legal doctrine (cf. *inter alia* A. Szpunar, *A few remarks concerning compulsory insurance,* Wiadomości Ubezpieczeniowe 1998, vol. 11-12, p. 4). The distinction between compulsory insurance and the duty of insurance proved to be of particular importance.

A review of the legislation showed lack of a clear concept of operation of compulsory insurance and a distressing discretion in introducing new types of it. The insurance coercion was imposed, most often, by laws concerning professional corporations, with insurance being regarded as an issue of minor importance and fundamental rules of insurance law often not taken into account. The result was an uncontrolled development of quasi-compulsory insurance. That situation prompted a postulate to adopt a law whereby the legal system of compulsory insurance could be integrated.

2. Work on the Act on Compulsory Insurance [2000-2003]

Object and result of the research: **development of a new piece of legislation concerning compulsory insurance**

During the initial years of operation of insurance market in Poland it proved impossible to determine the role and place of compulsory insurance within the system. After statutory (*ex lege*) insurance was eliminated, the issue of legal nature of compulsory insurance remained unresolved. The diversification of forms of insurance coercion went ever further, while the number of compulsory insurance schemes, particularly those concerning third party insurance on account of performance of a specified job or service would grow. It was against that background that an important postulate of the legal doctrine and insurance business was formulated concerning **adoption of a new law on compulsory insurance.** The reason for that consisted in the intention to unify forms of the coercion and provide statutory regulation in matters of citizens' duties. It was also vital that proper relations

should be established between the proposed law and the Civil Code. The new Act-to-be was expected to become the *"master law"* of the system of compulsory insurance.

A starting point for sorting out the forms of compulsory insurance (the latter having contractual form, as it was indicated before) lay in determination of the essence of compulsory insurance. Basing on the provisions of the Act of 1990 on Insurance Activities it was assumed that regarded as compulsory would be the insurance in the case of which the duty to conclude the insurance agreement stemmed from a law or international convention.

It seemed that thanks to the simple operation the expected Act would introduce the much desired notional order, reducing the liberty of contract only as far as the **duty to conclude an agreement** is concerned, without setting compulsory insurance against voluntary schemes. According to the assumption made, all insurance contracts, regardless of the scope in which the said liberty was limited, were civil law contracts, the imposed duty to conclude the contract not changing their nature. An approach like that seemed to correspond with the division of insurance law between the **insurance contract law** and **law concerning the structure of insurance** (belonging to the field of administrative and financial law). As reasons to the bill had it, *"the contract of compulsory insurance does not sustain any material modifications through the fact that it is concluded in the execution of a statutory duty",* for the issue was that the problems of the duty of insurance were ones of public law nature and lay beyond the contract itself.

The package of laws of the year 2003 did not cover changes in the contract of insurance; these were left to be further worked on, albeit the need itself for the changes were not questioned. In that respect two main trends were clashing: one of them assumed adopting a separate law on the contract of insurance, combined with the repealing of Articles 805-834 of the Civil Code, the other proposed that the contract of insurance, though put to fundamental changes, should be retained within the Civil Code. I advocated the other idea myself, mostly in order to secure stabilisation of legal regulation of the insurance contract and to emphasise its importance as a "code-based" agreement.

The isolation of the **"compulsory insurance contract"** was not at variance with the principle of homogeneity of the contract of insurance as provided for in 2003. The law does not stress the dichotomic division of insurance schemes any

more, but it stresses voluntary nature of the contract of insurance, exclusions being made for compulsory insurance. Provisions of the Civil Code are applicable to the contract of compulsory insurance, the Act on Compulsory Insurance being a *lex specialis* in that respect. The contract of compulsory insurance is thus subject to double legal regulation, the absolutely binding (mandatory) norms of the Civil Code on the one hand, and provisions of the Act on Compulsory Insurance on the other hand.

The Act intervenes into legal regulation of the contract of insurance only in the scope not covered by mandatory provisions of the Civil Code, i.e. only into the matters where freedom is left by the Code to the parties on how to provide for the legal relationship of insurance themselves. Examples include covering intentional fault by compulsory third party insurance (as allowed by Art. 827 par. 2 of the Civil Code) or fixing a 30-day time limit for payment of damages as a mandatory one (differently from Art. 817 par. 1 of the Civil Code then). Where it is the insurance of a qualified fault of the loss' perpetrator (including the intentional fault) that is concerned, a grave error of the initial version of the Act lay in eliminating the (originnally included in the bill) institution of the "atypical recourse", or the insurer's recourse claim to the insured (loss perpetrator) in the situation of his/her qualified fault. That error was corrected under an amendment to the Act. Another example of the dissimilarity of the contract of compulsory insurance lies in the fact that covered by the contract of insurance is both **contractual liability and liability in tort**. The said corresponds with current trends in insurance law where, mostly under the influence of consumer-related tendencies, differences between individual regimes of third party liability get blurred.

The issue of possible contradictions between the contract of insurance and provisions of the law was resolved differently than the case is with the Civil Code. As far as compulsory insurance is concerned, the **rule of precedence of law over contract** was established. Consequently, a contract of compulsory insurance being in conflict with provisions of law is considered to have been concluded in compliance with the legal provisions. The solutions go further than the sanction of nullity provided for in Art. 807 par. 1 of the Civil Code does, which is being justified by specific features of compulsory third party insurance, where effects of nullity of the contract might infringe interests of those wronged.

3. Development of the sector of compulsory insurance [2004-2008]

Object and results of the research: **identification of reasons for and conditions of introduction of new types of compulsory insurance**

After 2003 the sector of Poland's compulsory insurance has been developing systematically. New types of compulsory insurance were implemented, mostly as far as third party insurance concerning performance of services or a job is concerned. Compulsory third party insurance was ever more frequently viewed in that period as a panaceum to problems of third party liability borne my members of professional corporations.

There were no mechanisms that could help curb the trend, and the adopted principles of the compulsory insurance even strengthened it. Almost 100 types of insurance emerged as a result. It became an urgent task to develop reasons and requirements that would condition the introduction of new types of compulsory insurance.

Certainly, **reasons for coercion** are different with third party liability and with other types of insurance. As far as third party insurance is concerned, the issue is how to provide coverage to those harmed, particularly in the case of personal injury (e.g. in traffic, medicine), damages occurring on a massive scale (e.g. at sporting events), resulting from hazardous activities (e.g. nuclear power generation) or highly specialist services (e.g. legal or tax consulting, services of the architect etc.). As regards property insurance, coercion can be justified only by a particularly important social interest, level of awareness on the part of those wronged being very low.

Insurance coercion means limitation of rights, hence is has to be imposed particularly cautiously. Lack of system-type solutions, legal premisses and requirements at introducing new types of compulsory insurance does not allow to curb the "inflation" of new laws in that respect. At many conferences and seminars, as well as in my papers, I would formulate suggestions as to introduction of such requirements.

4. Compulsory insurance in the context of the idea of an insurance code [2009-2010]

Object and results of the research: **development of assumptions for the legal regulation of compulsory insurance to be contained in the drafted Insurance code**

The opportunities to resolve many a problem concerning the field of compulsory insurance there appeared in connection with the idea to develop an insurance code in Poland, communicated by Professor E. Kowalewski at a conference held at Nicholas Copernicus University of Toruń in April 2009. Development of such a code is bound to be hard to achieve and take long time. At present, rather than talk about the code, we should actually strive towards codification of the insurance law so as to help resolve numerous problems related to compulsory insurance. The key issue in that respect is **determination of the scope of legal regulation** of compulsory insurance. The question is whether the insurance should be provided for in the code solely as far as private law (issues of the contract of compulsory insurance) is concerned or comprehensively (i.e. as regards both private and public law).

I am in favour of **comprehensive** regulation, as in compulsory insurance making a division between private and public law issues is not actually possible, compulsory insurance being regulated by means of provisions from both branches of law. **Public law** is the right field for determining issues like, for instance, the duty of insurance, control of meeting the latter and sanctions for the requirement not having been met. As opposed to it, **private law** is the right area within which the contract of compulsory insurance should be provided for. Under the current shape of the legal system, a proof of the duality is the existence of separate pieces of legislation, i.e. the Act of 2003 on Compulsory Insurance and the Civil Code, which is a cause of problems occurring at times on the junction of both statutes.

Amending the law concerning compulsory insurance is necessary, as the system of compulsory insurance from the years 1990-2003 gives rise to serious reservations. Many of them stem from legislative errors which should be perceived as a reason for the amendments themselves.

A code or a separate Act of Parliament would be the right instrument of comprehensive legal regulation of compulsory insurance. It is not possible to resolve the legislative problems of compulsory insurance at the level of insurance laws, since pieces of insurance legislation may not set binding rules for introduction of insurance coercion nor decide when an insurance coercion may be imposed by the legislator and in what shape. Provisions concerning compulsory insurance may only resolve which types of insurance are considered by them as "compulsory", the fact leading towards definition thereof.

5. An attempt at providing legal definition of compulsory insurance [2010-2011]

Object and results of the research: development of a legal definition of compulsory insurance

Defining compulsory insurance has been a controversial task from its very inception. The problem was caused by the Act of 2003 dividing compulsory insurance into common compulsory insurance schemes and other types of the insurance. The Act provides for principles of concluding and implementing the contracts of compulsory "common" insurance (motor third party insurance, third party insurance of farmers and farming buildings insurance), specifying only the rules for other insurance contracts that should be complied with. Such a dualism of sources of law hardly can be called a beneficial phenomenon. Nor has been compulsory insurance unmistakably separated from the duty of insurance. The adopted definition of compulsory insurance does not take into consideration all its features resulting from the Act of 2003 on Compulsory Insurance.

Identification of the duty of insurance with the duty to conclude a contract of insurance gives rise to serious reservations. Hardly can be such narrowing of the concept viewed as correct. It is, in fact, not only the act of concluding the contract itself, but also the having of insurance coverage at the required time at place that should be taken into account. It is hence therefrom that the postulate stems to take account of the insurance contract on a third party account (Art. 808 of the Civil Code) by recognising that the duty of insurance is also met where the contract was concluded by another entity (the insuring party) on account of the subject burdened with the duty.

Having carried out detailed analyses I found compulsory insurance to be a specific ("qualified") form of a duty of insurance which, besides the statutory duty, embraces a number of additional requirements stemming from law. Upon results of the analyses I formulated a definition stating that ***"compulsory insurance is the insurance in case of which a duty to insure is imposed by law onto certain subjects, a minimum required scope of the insurance and consequences of not having met the duty being also specified by law".***

The statutory basis for compulsory insurance is an obvious thing. The shift from the duty to conclude a contract of insurance to a duty of insurance is also out of question. As regards the minimum scope of insurance, should that component be missing assessment whether the duty of insurance has been duly met would not be possible. It is also necessary to determine the consequences of not meeting the requirement to insure. And it is not sufficient to simply word the provision imperatively, as hardly can we talk about a legal duty that cannot be enforced. A so defined "compulsory insurance" can be distinguished from other cases of the coercion to insure, even though the problem does not get resolved by the same.

It is not clear how the cases for which the law only establishes the duty of insurance, other elements of the definition having been skipped, should be qualified. There are nearly 100 cases of that kind in Polish legislation. In my opinion, the cases of insurance coercion which do not meet all statutory requirements for compulsory insurance should be regarded as instances of the "ordinary" duty of insurance, not entailing legal effects of compulsory insurance. In those cases, the only limitation of the liberty of contract is the impact exerted on conclusion of the contract, everything else being a matter the parties can freely decide on.

Considering the said, it is for a long time that that I have being talking about two forms of insurance that include elements of coercion: 1) the **compulsory insurance** *sensu stricto* (in the strict meaning) of the notion, and 2) the **insurance covered by a statutory duty** not having impact, though, on the contents, scope or effects of not meeting the duty. A highly disputable issue is that concerning legal nature of a few tens of cases of so understood duty of insurance which may not be recognized as compulsory insurance within the legal meaning of the term. I believe that the forms do not entail legal effects of compulsory insurance within the meaning of the Act of 2003, i.e. do provide a duty of insurance, but regarded in a way different from compulsory insurance.

An example of that can be the recent (effective as of 1 January 2012) duty imposed on hospitals to insure their patients against medical accidents. There are many reasons to believe that – contrary to the intention of the legislators – the said is not compulsory insurance in the legal meaning. It falls, first of all, within the category of personal insurance, and the latter may not function as compulsory. The conclusion raises doubts as to the entire new scheme of insurance of patients. I devoted to the issue my paper to the Conference at Nicholas Copernicus University of Toruń (4-5 May, 2011) concerning compensation of losses resulting from medical accidents. My earlier papers on distinction made between various forms of the duty of insurance proved instrumental in that respect.

6. The need for a reform of compulsory insurance law [2011]

Object and results of the research: **recommendations concerning reform of the compulsory insurance law**

Yet another ex ample of the said above, besides insurance of patients, is a „quasi-compulsory" third party insurance of persons taking care of children up to 3 years of age, introduced in 2011. Hence, despite the long-lasting discussions, we still lack a clear definition of "compulsory insurance", which fact makes it possible for various forms of insurance coercion to develop uncontrollably despite the assumptions adopted in 2003. The situation results in the postulate of comprehensive codification of the law on compulsory insurance being still a topical one. The issue is both important and urgent and it should much regretted that the postulate was not taken into account in the course of current legislative work.

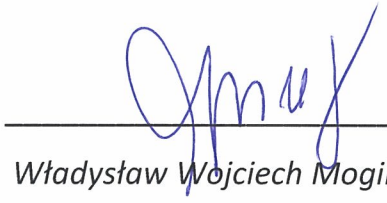
Over a couple of last years the Council for Development of Financial Market and the Ministry of Finance conducted intensive work on amendments to the Act on Compulsory Insurance of 2003. An amendment adopted in 2011 did not, however, address fundamental issues, being restricted to corrections of defects and lacks of the Act in the field of compulsory traffic insurance in particular. As one of the experts on the issue justly observed, after the amendments have been made it is still unclear **what the compulsory insurance is and in what the duty of insurance consists.** Further amendments will thus be needed, aimed at perfection of the current, incoherent and not well-thought system of compulsory insurance (as M. Orlicki observed in "Prawo Asekuracyjne" 2011, vol. 1, p.21).

The above made remark confirms that my views concerning the notion and contents of compulsory insurance as a legal category are just and keep remaining a topical issue.

An interesting summary to the research conducted by me on legal issues of compulsory insurance was provided by a scientific conference organized on 20 June, 2011 by the Polish Chamber of Insurance together with the Civil Law Codification Committee. The conference aimed at working out directions of changes in the legal system of compulsory third party insurance in Poland, based on assessment of the current state of affairs and diagnosis of the needs, against the background of the solutions and experience of countries like France, Germany or Spain.

Making a reference to the conference, postulates in that respect resulting from a more than a dozen of years' lasting work were contained by me in a paper titled *"The need for a reform of the legal system of compulsory insurance"*, „Wiadomości Ubezpieczeniowe" 2011, a special volume (in print).

Summing up, I should like to express hope that the research conducted by me on legal issues of compulsory insurance has had a positive impact on development of legal science and practice, as well as insurance-related legislation. I am perfectly aware, though, that hardly has the work been completed and that further scientific research on legal matters of compulsory insurance should be done.



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