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The scope of tasks of the Insurance Guarantee Fund in the context of the concept of “compulsory insurance” in Polish law

Abstract

The article concerns the scope of liability of the Polish guarantee body – the Insurance Guarantee Fund. The Polish statutory regulation of the scope of UFG’s liability does not raise any doubts when it comes to compulsory third-party liability insurance for motor vehicle owners, compulsory third-party liability insurance for farmers, compulsory insurance of buildings on farms and life insurance. However, it is difficult to clearly interpret the scope of UFG’s guarantee liability concerning other compulsory insurance – concerning third-party liability resulting from the performance of business or professional activity. The author puts forward the thesis that UFG is liable in the event of bankruptcy of an insurance company only in relation to compulsory insurance in the strict sense and only to the extent in which insurance protection for a given entity is required by law.

Keywords: compulsory insurance, Polish insurance law, Insurance Guarantee Fund, minimum insurance amount, guarantee protection, bankruptcy of the insurer, civil liability insurance (third party insurance)

JEL Codes: G22, G52

Zakres zadań Ubezpieczeniowego Funduszu Gwarancyjnego w kontekście pojęcia „ubezpieczenia obowiązkowe” w prawie polskim

Streszczenie

Artykuł dotyczy zakresu odpowiedzialności polskiego podmiotu gwarancyjnego – Ubezpieczeniowego Funduszu Gwarancyjnego. Polskie regulacje ustawowe zakresu odpowiedzialności UFG nie budzą wątpliwości, jeśli chodzi o obowiązkowe ubezpieczenia OC posiadaczy pojazdów mechanicznych, obowiązkowe ubezpieczenia OC rolników, obowiązkowe ubezpie-

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czenia budynków w gospodarstwach rolnych oraz ubezpieczenia na życie. Trudno jednak jednoznacznie zinterpretować zakres odpowiedzialności gwarancyjnej UFG w odniesieniu do innych obowiązkowych ubezpieczeń – dotyczących odpowiedzialności cywilnej z tytułu wykonywania działalności gospodarczej lub zawodowej. Autor stawia tezę, że UFG ponosi odpowiedzialność w przypadku upadłości zakładu ubezpieczeń wyłącznie w odniesieniu do obowiązkowego ubezpieczenia w ścisłym tego słowa znaczeniu i tylko w zakresie, w jakim ochrona ubezpieczeniowa dla danego podmiotu jest wymagana przez prawo.

Słowa kluczowe: ubezpieczenie obowiązkowe, polskie prawo ubezpieczeniowe, Ubezpieczeniowy Fundusz Gwarancyjny, minimalna suma ubezpieczenia, ochrona gwarancyjna, upadłość ubezpieczyciela, ubezpieczenie OC

Kody JEL: G22, G52

General remarks

The provisions of European Union law, and following them – the regulations of the Member States, have created over decades the protection of the interests of injured persons who pursue claims against insurance companies. This system primarily protects the interests of persons injured in road accidents who pursue claims in connection with damage caused by the movement of a motor vehicle. Secondly, the systemic protection covers persons pursuing claims for damage covered by the compulsory insurance system resulting from the provisions of European law or the regulations of the Member States of the European Union.

The current insurance guarantee system is of a transitional and partial nature. It applies to arbitrarily selected elements of the insurance market (claims resulting from selected insurance contracts), not to the insurance market as a whole. At the European level, actions unifying the guarantee system concern primarily compulsory third-party liability insurance for motor vehicle owners and claims of people injured in road accidents. The coming years will probably bring comprehensive solutions covering the entire insurance market or significant parts of it, separated according to clear and uniform criteria in all European Union Member States (Kościńska 2022, p. 39–60).

This article is intended to answer the question of the qualification of the injured party's claim as a claim covered by compulsory third-party liability insurance for motor vehicle owners or other compulsory insurance. This qualification is necessary to determine whether, in crisis situations specified in law, the injured party will be able to count on benefits paid by the guarantee institution. The considerations contained in this article are based on Polish law, although their significance in some aspects goes beyond the area of Polish law. This applies in particular to those compulsory insurances that have been mandated by the provisions of European Union law, and at the same time, benefits for injured parties in these insurances are guaranteed by the guarantee institution.

In Polish law, the determination of whether the claim is covered by compulsory insurance (in the strict sense given by the Act) is of particular importance for the recognition that a given claim should be satisfied by the Polish Insurance Guarantee Fund (pol. *Ubezpieczeniowy Fundusz Gwarancyjny*, UFG)¹. Therefore, the subject of the analysis in this article will be to determine which insurances are compulsory insurances in the strict sense, and what is the statutory scope of the insurer's liability in each of the compulsory insurances.

1. Compensation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation has not been satisfied

In Article 10 of Directive 2009/103/EC², the European legislator ordered Member States to establish a guarantee body in their national legal systems, whose task would be to protect the interests of road accident victims. This concerns cases where the standard insurance system fails due to the objective impossibility of pursuing claims from the civil liability insurer. These are “crisis” situations – such that the road accident victim would be deprived of the means to repair the damage.

Article 10 subparagraph 1 of the directive 2009/103/EC provides: *Each Member State shall set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in Article 3 has not been satisfied.*

As can be seen, the scope of the warranty obligation of the body responsible for compensation is determined by the limits of the insurer's hypothetical liability, which would apply if the vehicle was identifiable and properly insured with compulsory third-party liability insurance for motor vehicle owners (*at least up to the limits of the insurance obligation for damage to property or personal injuries*). This does not concern an actually concluded insurance contract (because it is impossible to establish that such a contract was concluded), but a hypothetical contract.

It therefore concerns the insurance cover that would be provided to the vehicle owner if he or she could be identified and, at the same time, if he or she had fulfilled his or her statutory obligation to conclude an insurance contract. This is a liability in a uniform and minimum scope, mandatory for every vehicle owner. It is a liability that should

¹ The Insurance Guarantee Fund (UFG is an institution with great traditions and many years of experience in operation. The development of the structure and tasks of the UFG has been described in: Z. Ofiarski (1991, p. 23–30), and under new legal system – E. Turkowska-Tyrluk (2003, p. 500–508), M. Orlicki (2007, p. 129–156).

² Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (Codified version), OJ L 263, 7.10.2009, p. 11–31.

be expected to exist in every case if the perpetrator of the damage was identified and properly insured.

In the scope of extensions or modifications of liability above the minimum level required by law, insurance loses its mandatory character and becomes voluntary insurance. In the scope of voluntary insurance, the guarantee body does not operate.

It should be emphasized that the required minimum scope of insurance cover in individual Member States of the European Union is specified by the legislator in each Member State (although, of course, it cannot be lower than the scope specified by the European legislator in the content of the directive).

2. Compensation for damage caused by vehicle insured by a bankrupt insurance company

Article 10a subparagraph 1 of the directive 2009/103/EC provides: *Each Member State shall set up or authorise a body entrusted with the task of providing compensation to injured parties resident within its territory, at least up to the limits of the insurance obligation, for damage to property or personal injuries caused by a vehicle insured by an insurance undertaking, from the moment when:*

- (a) the insurance undertaking is subject to bankruptcy proceedings; or*
- (b) the insurance undertaking is subject to winding-up proceedings as defined in Article 268(1), point (d), of Directive 2009/138/EC.*

In this case, the task of the guarantee body is to pay compensation in the event that it is certain that a compulsory civil liability insurance contract for motor vehicle owners has been concluded. It is also known which insurance company concluded this contract and what its provisions were (including the scope of the insurance company's liability towards the person injured in a road accident).

Does this mean that the guarantee body must pay compensation to the injured person in accordance with the content of the insurance contract actually concluded by the vehicle owner, if the scope of the insurer's liability resulting from that contract was wider than the minimum scope (i.e. the scope that had to be mandatorily indicated in the civil liability insurance contract)?

This would mean that the guarantee body would bear liability of different amounts for different motor vehicle liability insurance policies. In the event of bankruptcy of an insurer that concluded insurance policies with amount exceeding the minimum level, the guarantee body would also have to pay compensation up to the amount of the actual liability of the bankrupt insurer, and not up to the amount of the minimum liability resulting from the content of the applicable national law in this area.

However, such a conclusion is not reflected in the provisions of the Directive. Article 10 paragraph 2 of the Directive provides: *Each Member State shall take*

appropriate measures to ensure that the body referred to in paragraph 1 has sufficient funds available to compensate injured parties in accordance with the rules set out in paragraph 10 when compensation payments are due in situations provided for in paragraph 1, points (a) and (b).

The European legislator clearly refers to the scope of liability of the compensation body specified in Article 10 – thus to uniform liability resulting from the content of the applicable law and minimum. This means that in the event that the insurance contract actually concluded determines the scope of liability wider than that specified by law, the guarantee body is obliged to pay the injured party in a road accident compensation (which should be paid by the bankrupt company) insurance within the limits of the minimum liability specified by law. This is the minimum level of insurance protection specified in the law of a Member State (but not lower than that set out in the directive).

Therefore, it can be concluded that European law requires that the guarantee bodies in motor vehicle owners' insurance allow injured parties to obtain compensation to the minimum extent required by law of a Member State. This applies to all cases of liability of the guarantee body – both liability in the event of inability to identify the vehicle, as well as failure to fulfil the insurance obligation and bankruptcy of the insurance company.

3. Liability of the Insurance Guarantee Fund under Polish law

The guarantee body under Polish law is the Insurance Guarantee Fund (UFG). In accordance with the provisions of the Polish Act on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau³, the tasks of the UFG include satisfying claims under compulsory insurance: civil liability of motor vehicle owners and civil liability of farmers, within the limits specified on the basis of the provisions of the Act on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau, for damages incurred in the territory of the Republic of Poland:

- 1) in the case of personal injury, when the injury was caused in circumstances justifying the civil liability of the owner or driver of the motor vehicle, and their identity has not been established;
- 2) in the case of property damage, in the case of damage in which at the same time any participant in the event suffered death, impairment of the functioning of a bodily organ or health disorder lasting longer than 14 days, and the injury was caused in circumstances justifying the civil liability of the owner or driver of the motor vehicle, and their identity has not been established;

³ Act of 22 May 2003 on compulsory insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau (consolidated text: OJ 2023, item 2500).

- 3) in the case of personal injury, property damage, both personal injury and property damage, when:
- a) the owner of the identified motor vehicle, the movement of which caused the damage, was not insured with compulsory third party liability insurance for motor vehicle owners,
 - b) the owner of the identified motor vehicle, the movement of which caused the damage, registered abroad in the territory of a country whose national office is a signatory to the Multilateral Agreement, was not insured with compulsory third party liability insurance for motor vehicle owners, and the motor vehicle was devoid of registration marks, or these marks were not, at the time of the event, assigned to that vehicle by the competent authorities,
 - c) the farmer, a person living with him in a common household or a person working on his agricultural holding are obliged to pay compensation for damage caused in connection with the farmer's possession of the agricultural holding, resulting from death, bodily injury, health disorder or loss, destruction or damage to property, and the farmer was not insured with compulsory third party liability insurance for farmers.

As can be seen, the scope of liability of the Insurance Guarantee Fund in the event of the inability to identify the person responsible for the damage or failure to conclude a compulsory insurance contract is not limited to the compulsory civil liability insurance of motor vehicle owners, but also includes the compulsory civil liability insurance of farmers.

In the event of the declaration of bankruptcy of an insurance company or the dismissal of the application for the declaration of bankruptcy of an insurance company or the discontinuation of bankruptcy proceedings, if the debtor's assets are clearly not sufficient even to cover the costs of bankruptcy proceedings or in the event of an order for the compulsory liquidation of an insurance company, if the claims of entitled persons cannot be covered from assets covering technical insurance reserves, the Fund's tasks also include satisfying the claims of entitled persons from:

- 1) compulsory insurance contracts: civil liability of farmers and insurance of farm buildings, for damages incurred in the territory of the Republic of Poland, within the limits specified under the provisions of the Act;
- 2) compulsory insurance contracts for civil liability of entities covered by insurance for damages caused to natural persons while performing activities, performing a profession or conducting business or resulting from product defects, specified in the Act introducing a given obligation or an international agreement ratified by the Republic of Poland, in the amount of 50% of the claim, up to an amount not exceeding the equivalent in zloty of EUR 30,000;
- 3) life insurance contracts, in the amount of 50% of the claim due to a natural person, up to an amount not exceeding the equivalent in zloty of EUR 30,000.

The Insurance Guarantee Fund's tasks also include satisfying the claims of injured parties or persons entitled to compensation, residing or having their registered office in the territory of the Republic of Poland, under compulsory third party liability insurance contracts for motor vehicle owners, resulting from events that occurred in the territory of the Republic of Poland and arose in connection with the movement of a motor vehicle, the owner of which has concluded a third party liability insurance contract for motor vehicle owners with an insurance company having its registered office in a Member State of the European Union against which bankruptcy or liquidation proceedings have been initiated.

4. Scope of guarantee protection related to various types of compulsory insurance and life insurance

Polish law provides for the operation of a guarantee body in a much broader scope than is required by the provisions of European law mentioned at the beginning. This scope includes not only claims from compulsory third-party liability insurance for motor vehicle owners, but also other (all) compulsory insurances in Poland, as well as life insurance.

However, the intensity of protection provided by the guarantee body in Poland varies. It depends on two factors:

- type of damage (in the case of the inability to identify the perpetrator of the damage or the perpetrator's failure to comply with the insurance obligation) or type of insurance (in the case of bankruptcy of the insurer),
- status of the injured party (in particular whether it is a natural person or a legal person).

The most privileged are people injured as a result of events that are considered insurance accidents in the third-party liability insurance of motor vehicle owners for damages caused in connection with the movement of these vehicles and in the civil liability insurance of farmers for the possession of an agricultural holding, when the person responsible has not been identified, has neglected the obligation to insure or when the insurance company has declared bankruptcy. UFG pays compensation benefits to these people to the widest extent. Only in this case does UFG pay benefits to all those entitled to compensation – both individuals and other entities.

To a lesser extent, benefits paid by UFG may be used by individuals entitled to compensation under compulsory insurance of buildings that are part of a farm against fire and other accidental events. In such a case, UFG's liability is limited to a situation where the entitled individual cannot obtain compensation due to them in the event of the declaration of bankruptcy of the insurance company or discontinuation of bankruptcy proceedings, if the debtor's assets are obviously not sufficient even to cover the costs of bankruptcy proceedings or in the event of ordering compulsory

liquidation of the insurance company, if the claims of entitled persons cannot be covered from assets covering technical and insurance reserves.

The most modest are the rights of natural persons injured as a result of events that are recognized as insurance accidents in compulsory civil liability insurance resulting from the provisions of separate acts (i.e. other than the Act on Compulsory Insurance) or international agreements ratified by the Republic of Poland, imposing on specific entities the obligation to conclude an insurance contract. In such a case, the liability of the UFG is limited to a situation where the entitled natural person cannot obtain the compensation due to them in the event of the declaration of bankruptcy of the insurance company or discontinuation of bankruptcy proceedings, if the debtor's assets are obviously not sufficient even to cover the costs of bankruptcy proceedings or in the event of ordering compulsory liquidation of the insurance company, if the claims of entitled persons cannot be covered from assets covering technical and insurance reserves. The UFG is obliged to provide a benefit in the amount of 50% of the receivable, up to an amount not exceeding the equivalent in zloty of EUR 30,000.

5. The issue of identifying the type of insurance as mandatory in the context of UFG liability

The provisions of Polish law cited earlier indicate that UFG liability is related to the following types of insurance:

- a) compulsory third-party liability insurance for motor vehicle owners,
- b) compulsory third-party liability insurance for farmers,
- c) compulsory insurance for buildings on farms,
- d) life insurance,
- e) compulsory insurance for various types of activities, if Polish law or an insurance agreement ratified by the Republic of Poland imposes an obligation to insure on specific entities.

The types of insurance specified in points a-d are easy to identify. Compulsory insurance specified in points a-c are clearly and specifically regulated in the provisions of the Act on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau. Therefore, there is no problem in determining what insurance is meant and what is the scope of the Insurance Guarantee Fund's liability.

Also in the case of life insurance, their identification is not difficult. They are clearly regulated in the provisions of the Polish Civil Code⁴.

The situation is different in the case of compulsory insurance for various types of activities, if Polish law or an insurance agreement ratified by the Republic of Poland

⁴ Act of 23 April 1964 – Civil Code (consolidated text: OJ 2024, item 1061).

imposes an obligation to insure on specific entities. This concerns many different types of insurance, which result from many different legal acts, concern different types of economic or professional activity.

The Act on Mandatory Insurance indicates the criteria that should be used to recognize a given insurance as mandatory insurance in the strict sense. However, these criteria are understood in different ways, and their application leads to different conclusions.

The most important reason why it should be clear which insurance should be recognized as compulsory insurance in the strict sense is the precise determination of the scope of UFG's liability in the event of the insurer's bankruptcy⁵. UFG is liable only when the insurance is mandatory within the meaning of the Act on Mandatory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau and within the scope of liability specified by law. In other cases, UFG is not liable.

6. Compulsory insurance in the strict sense

The most general definition of compulsory insurance has been formulated in the provision of art. 3 sec. 1 of the Act on Compulsory Insurance. This provision states that compulsory insurance is the civil liability insurance of an entity or property insurance if an act or an international agreement ratified by the Republic of Poland imposes the obligation to conclude an insurance contract.

The insurance obligation must have **a clear and direct statutory basis or a basis in an international agreement ratified by Poland**, and all issues related to compulsory insurance must be specified in detail in a legal act or a statutory provision containing the authorization to issue an implementing act.

Art. 3 sec. 1 of the Act on Compulsory Insurance states that compulsory insurance is **civil liability insurance of an entity or property insurance**, if an act or an international agreement ratified by the Republic of Poland imposes an obligation to conclude an insurance contract⁶. This means that all compulsory insurance within

⁵ I. Szczęsna, writing about the prospects of building a pan-European insurance guarantee system, indicates that a special category of insurance contracts that could be covered by guarantee protection in the event of the bankruptcy of an insurance company are compulsory insurance. However, the author also points out the difficulties associated with this: "At the EU level, there is no definition anywhere of what is to be understood as compulsory insurance. In Polish conditions, the huge number of compulsory insurances, as well as the fact that many of them are offered by a single insurer, means that covering all of them with a 100% guarantee would not make much economic sense." Source: Szczęsna (2020, p. 67).

⁶ The concept of "compulsory insurance" in Polish law is consistent with the provisions of the Solvency II Directive (Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance – Solvency II), OJ L 335, 17.12.2009, p. 1. Article 179 of this Directive states: "1. Non-life insurance undertakings may offer and conclude compulsory insurance contracts under the conditions set out in this Article. 2. Where a Member State imposes an obligation to take out insurance, an insurance contract shall not satisfy

the meaning of the Act on Compulsory Insurance is property insurance. Therefore, no compulsory insurance can be personal insurance (i.e. life insurance or accident insurance).

This means that personal insurance, which is defined as “compulsory” in special acts, is not compulsory insurance in the strict sense, e.g.

- a) compulsory accident insurance in sports for an athlete participating in a sports competition organized by a Polish sports association and an athlete of the national team (Article 38, paragraph 1 of the Act on Sports⁷),
- b) compulsory accident insurance for rescue firefighters and candidates for rescue firefighters and members and guardians of youth fire brigades and children’s fire brigades (Article 10, paragraph 1, point 2 of the Act on Volunteer Fire Brigades⁸).

Insurance is compulsory in the strict sense if the legislator imposes a **firm obligation to conclude an insurance contract, and not an obligation to “secure”, which can be fulfilled in several different ways, e.g. by concluding an insurance contract or by means of an insurance guarantee**. In those cases, when various legal instruments (and not only an insurance contract) can be used in accordance with the law, we are not dealing with compulsory insurance in the strict sense.

This means that insurance or an insurance guarantee concerning the use of a vehicle in motorsport events and activities, including races, competitions, training, testing and demonstrations in a restricted and demarcated area, is not compulsory insurance in the strict sense. In such a case – in accordance with Directive 2021/2118 – Member States may provide that the organizer of the activity or any other party has taken out an alternative insurance or guarantee policy covering the damage to any third party, including spectators and other bystanders but not necessarily covering the damage to the participating drivers and their vehicles (Article 23 of Directive 2021/2118, Article 23(3) of the Act on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers’ Bureau).

It should be added that all compulsory insurance in the strict sense is **civil liability insurance** (third party insurance), and the only exception to this rule is insurance of buildings that are part of an agricultural holding.

This means that they cannot be considered compulsory in the strict sense, e.g.:

- crop insurance against a specific risk of the effects of random events in agriculture⁹,

that obligation unless it complies with the specific provisions relating to that insurance laid down by that Member State.” This means that the European legislator also assumes that compulsory insurance should not be of the nature of life insurance, and the scope of the insurance obligation results from the law of the Member State.

⁷ Act of 25 June 2010 on sports (consolidated text: OJ 2014, item 715).

⁸ Act of 17 December 2021 on Volunteer Fire Departments (OJ 2021, item 2490).

⁹ Act of 7 July 2005 on insurance of agricultural crops and farm animals (consolidated text: OJ 2015, item 577).

- insurance of medical expenses for travelers participating in a tourist event¹⁰,
- insurance of compulsory reserves of crude oil or fuels against fire and other accidental events¹¹.

Moreover, the scope of the obligation should be precisely and unambiguously defined. Article 10 section 1 of the Act on compulsory insurance, which states that the obligation to conclude a civil liability insurance contract is considered to be fulfilled if the contract was concluded in accordance with the provisions of the Act or separate acts or international agreements introducing the obligation to insure, with a insurance amount not lower than the minimum insurance amount established for a given insurance. If the minimum insurance amount has not been established for a given insurance, then there is no basic parameter of insurance protection resulting from compulsory civil liability insurance.

If the legislator has not specified the scope of the obligation to provide civil liability insurance (in particular by specifying the scope of risks and the required minimum insurance amount), then it is not possible to separate compulsory insurance (insurance within the scope of compulsory insurance) from excess insurance (i.e. voluntary insurance).

However, if the legislator has precisely defined the scope of mandatory insurance coverage, then it is possible to determine where the obligation ends and the area of voluntariness and contractual freedom begins. In the scope of extensions or modifications of liability above the minimum level required by law, insurance loses its mandatory character and becomes voluntary insurance. In the scope of voluntary insurance, the guarantee institution does not operate¹².

¹⁰ Act of 24 November 2017 on tourist events and related tourist services (consolidated text: OJ 2023, item 2211).

¹¹ Act of 16 February 2007 on reserves of crude oil, petroleum products and natural gas and the principles of conduct in situations of threat to the fuel security of the country and disruptions on the oil market (consolidated text: OJ 2024, item 1281).

¹² M. Monkiewicz and G. Sordyl noticed this. These authors wrote: "However, the protection of a wide range of beneficiaries – injured parties – has been significantly expanded, due to the fact that the number of compulsory insurances within the meaning of art. 4 item 4 of the Act is growing dynamically. While in 1991 this criterion was met by three groups of compulsory insurances, at present it is estimated that there are almost 50 such groups. Paradoxically, along with the growth of the broadly understood compulsiveness of various insurances, the number of insurances that do not fall within the definition of the above-mentioned art. 4 item 4 of the Act is growing at the same time, even though the legislator uses wording in the regulations concerning them indicating the obligation to conclude, as a rule, third party liability insurance". Source: Monkiewicz, Sordyl (2015, p. 170).

7. Motives for the guarantee protection of injured parties pursuing claims from compulsory civil liability insurance

The thesis on the scope of UFG's liability should find its justification not only in the wording of the provisions of the Act, but should also correspond to considerations of equity and implement specific social, economic and moral values (Orlicki 2021, p. 11–22). It is therefore necessary to ask whether it is right to engage UFG to protect the interests of injured parties who have a claim against a bankrupt insurance company, in a situation where that company provided insurance coverage from compulsory insurance of business or professional activity?

The motives that speak in favor of recognizing a given civil liability insurance as compulsory also speak in favor of securing the effectiveness of pursuing claims by the injured party in the event of the insurer's bankruptcy. The legislator's will be to ensure the reality of compensation claims of a certain group of privileged injured parties. Their privilege consists in creating legal mechanisms ensuring the solvency of the debtor, who will be obliged to pay the compensation benefit.

The first – usually sufficient – step is to impose an insurance obligation on specific entities performing business or professional activities of a specific type. The second step is to create a guarantee mechanism that will ensure that the injured party's claims will be effective even if the insurance company has declared bankruptcy.

The essence of the matter is well illustrated by the words taken from the justification of the draft German act on the reform of insurance contract law (*Gesetz zur Reform des Versicherungsvertragsrecht*), which came into force on 1 January 2008: “The insurance obligation is introduced at least also in the interest of the injured party, in order – within the framework of minimum guaranteed amounts – to provide them with a debtor ready to negotiate and pay, and also certain in their solvency.”

This “certainty of solvency” of the insurer is not only its good financial condition (which should prevent bankruptcy), but also a legal mechanism guaranteeing that even in the event of the insurer's bankruptcy, the injured party will not be left without compensation.

On the other hand, however, the guarantee mechanism, in order to be effective, must have clear limits of its operation. The scope of insurance in relation to which the UFG is liable must clearly and unambiguously result from the applicable regulations. That is why this article puts forward the thesis that the UFG is liable only in relation to precisely defined types of insurance by law, including compulsory civil liability insurance in the strict sense given to it by the provisions of the Act on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau.

Summary: Consequences of recognizing insurance as compulsory in the strict sense for the existence and scope of liability of the Insurance Guarantee Fund

The Insurance Guarantee Fund is liable in the event of bankruptcy of the insurer who concluded the insurance contract. compulsory insurance contract for civil liability of entities covered by insurance for damages caused to natural persons while performing activities, performing a profession or conducting business or resulting from product defects, specified in the Act introducing a given obligation or an international agreement ratified by the Republic of Poland.

However, it must be compulsory insurance in the strict sense given to it by the Act on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau and to the extent resulting from the provisions of the Act or a ratified international agreement.

The problem is that in Poland many insurances are called "compulsory", although they do not meet the criteria for being classified as compulsory insurance in the strict sense. This means that without a detailed legal analysis it is difficult to decide which insurances are actually compulsory and in which cases the injured parties in the event of the insurer's bankruptcy can count on assistance from the Insurance Guarantee Fund.

Fortunately, insurer bankruptcies are very rare in Poland and so far the lack of clarity in the regulations regarding the recognition of insurance as "compulsory" has not had any practical consequences regarding the difficulties in the activities of the Insurance Guarantee Fund. However, bankruptcies do happen and – sooner or later – this problem will arise. Therefore, regulating the legal status regarding compulsory insurance and UFG liability is a great challenge for the Polish legislator.

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