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## **COMPARATIVE ANALYSIS OF THE TERMS AND CONDITIONS FOR MOTOR HULL INSURANCE OFFERED BY THE INSURERS OPERATING ON THE MARKET OF THE REPUBLIC OF SERBIA**

REVIEW ARTICLE

### **Abstract**

Motor hull insurance includes all types of conventional road motor vehicles and also covers towed vehicles, special and working vehicles intended for use on land, motorcycles, rolling stock and working machines and components thereof. It represents a voluntary type of insurance governed by the terms and conditions pre-defined by insurance companies in accordance with the Insurance Law and the Law of Contracts and Torts.

The significance and purpose of the analysis lies in better understanding of motor vehicle insurance and comparison, clarification and additional explanations of the terms and conditions offered to insurance customers by different insurance companies. Insurers offer different coverages, different insurance rates and terms that help determine the compensation after the occurrence of the insured event. Customers are often flooded with a large number of information they have to analyse

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and thus often make their choices based on rumours or vague statements, which may result in the loss of money and unexpected consequences. For the purpose of this analysis, a comparative method was used to compare and analyse motor hull insurance terms and conditions of the three most prominent domestic insurers.

We intentionally chose to analyse this line of insurance since it proved to be highly dynamic both regionally and globally.

**Key words:** *motor hull insurance, insurance offer, risk, insurance terms and conditions, insurance market.*

## 1. Introductory Considerations

Humans have always been threatened by various perils that endangered their survival, life, health, or property. They had to constantly struggle with such perils and arrange specific forms of protection. As new dangers emerged, various forms of protection had to be constantly improved, whereas new ones had to be created, especially as the technological revolution unfolded and new inventions emerged (e.g. cars). A widespread use of cars began in urban areas, after the First World War. Cars were relatively fast and dangerous at that stage, but there was still no compulsory form of car insurance anywhere in the world. This meant that casualties would rarely receive any compensation after an accident, whereas drivers were often faced with considerable costs that damage to vehicles and property entailed. Therefore, the need arose to introduce the kind of insurance that would cover different risks and partial damage to, or complete loss of a motor vehicle. The term CASCO is an acronym made from the initial letters of the words *Casualty* and *Collision*. In fact, the word is of Spanish origin and was first used as a term in maritime insurance, only to subsequently apply to the insurance of aircrafts, trucks and river ships.<sup>4</sup> In Serbia, Casco insurance implies the insurance of the very vehicle, which also includes the insurance of tools, accessories and spare parts customarily delivered for the subject vehicles, as well as the insurance of anti-theft devices, vehicle fire fighting equipment, warning triangle, seat belts, first aid kit and the like.<sup>5</sup>

Voluntary characteristic of this insurance and the diversity of the offered risks speak of a large number of different options this insurance offers. The insurers, whose terms and conditions are analysed in this paper, are: Dunav Insurance a.d.o., Beograd; DDOR "Novi Sad" a.d.o., Novi Sad and Generali Insurance Serbia a.d.o., Beograd.

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<sup>4</sup> Ranko Renovica, *Tehnologija osiguranja*, Univerzitet Singidunum, Beograd, 2010, pp.181

<sup>5</sup> Boris Marović, Bogdan Kuzmanović, Vladimir Njegomir, *Osnovi osiguranja i reosiguranja*, Beograd, 2009, pp.166

## 2. Automobile Casco Insurance Market in Serbia

In 2017, 21 insurance companies operated in Serbia, short of two companies that operated in the preceding year. Seventeen companies dealt exclusively with insurance business, whereas only 4 companies pursued reinsurance business. Out of 17 companies engaged in insurance business, 12 companies offered motor hull insurance (Automobile Casco). In 2017, insurance companies generated a total premium of 93.1 billion Dinars (786 million Euros or 939 million Dollars). In the premium structure, the share of non-life and life lines accounted for 75.6% and 24.4%, respectively. In the total premium, motor vehicles participated with 7.79 billion Dinars or 8.36 %.<sup>6</sup>

In the Serbian market, leasing companies account for a large premium share in Automobile Casco. Leasing (from English word *to lease* – hire, rent) is a form of financing which entails the right to use an object, in this case a car, for a particular period and in consideration of an appropriate payment.

Lease purchase of a vehicle may be defined as a written contract between two parties:

- leasing company (lessor) and
- vehicle user (lessee).

In this transaction, the lessor procures a vehicle from a supplier and gives it for use to the lessee, for a particular period of time and in turn, the lessee is obliged to effect periodical payments to the lessor, under the conditions defined in the contract.

Upon the lease purchase of a vehicle, Casco insurance (against the standard risks of theft and embezzlement) becomes compulsory type of insurance. Expenses of Casco insurance are borne by the lessee – buyer, who may be legal or natural person.

The three aforementioned insurers recorded a dominant share in motor insurance premium, as follows: Dunav Insurance a.d.o., Beograd with 1.98 billion Dinars or 25.4 % of market share, followed by DDOR Novi Sad a.d.o., Novi Sad with 1.54 billion Dinars or 19.7 % of market share, and Genarali Insurance Serbia a.d.o., Beograd with 0.97 billion Dinars or 12.5 % of market share.

The aggregate share of this motor insurance line offered by the three leading insurers in the Serbian market amounted to 4.49 billion or 57.6% of the market share.<sup>7</sup>

The situation is similar when it comes to claim compensation in which the customers using this insurance line are mostly interested. In 2017, in all types of

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<sup>6</sup> National Bank of Serbia, Insurance Supervision Department, Total insurance premium by companies and types of insurance as at 31-12-2017, 2018., [http://www.nbs.rs/internet/latinica/60/60\\_2/index.html](http://www.nbs.rs/internet/latinica/60/60_2/index.html), accessed on 23-08-2018 at 11.08h.

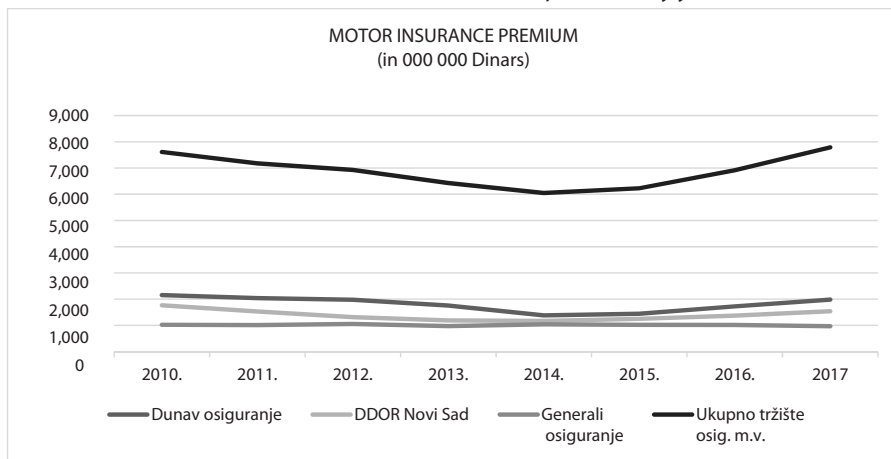
<sup>7</sup> National Bank of Serbia, Insurance Supervision Department, Total insurance premium by companies and types of insurance as at 31-12-2017, 2018.

insurance, insurance companies settled claims amounting to 36.8 billion Dinars. The share of motor insurance claims in total claims amounted to 5.5 billion Dinars or 14.9%. Three insurers recorded a dominant share in the settled motor claims, namely: Dunav Insurance a.d.o, Beograd with 1.3 billion Dinars or 23.6% of the share in the total motor claims settled, then "DDOR Novi Sad" a.d.o., Novi Sad 1.07 billion Dinars or 19.5%, and "Generali Insurance Srbija" a.d.o., Belgrade with 0.80 billion Dinars or 14.5% share in the total motor claims settled. In the aggregate, this accounted for 3.17 billion Dinars or 57.6 % of the total settled motor claims.<sup>8</sup>

These data, taken from the National Bank of Serbia, indicate the relevance of insurance companies chosen for our research.

The total motor insurance premium and the insurance premium generated in the reporting period by these three companies are shown in the nominal amount, in the table below:

*Chart 1 – Trend of motor insurance premium by years*



Source: Documented by authors based on the data taken from the National Bank of Serbia<sup>9</sup>

Chart 1 shows the trend of motor insurance premium in 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017. It can be clearly seen that the curves of two insurance companies (Dunav and DDOR) follow the curve of the overall market trend for motor vehicle insurance, whereas the curve of Generali Insurance does not change from year to year and balances around the line of one billion.

<sup>8</sup> National Bank of Serbia, Insurance Supervision Department, Claims settled by companies and types of insurance as at 31-12-2017, [http://www.nbs.rs/internet/latinica/60/60\\_2/index.html](http://www.nbs.rs/internet/latinica/60/60_2/index.html), accessed on 23-08-2018. at 12.08h.

<sup>9</sup> [www.nbs.rs/internet/cirilica/60/60\\_2/index.html](http://www.nbs.rs/internet/cirilica/60/60_2/index.html), accessed on 11-09-2018 at 12.05 h

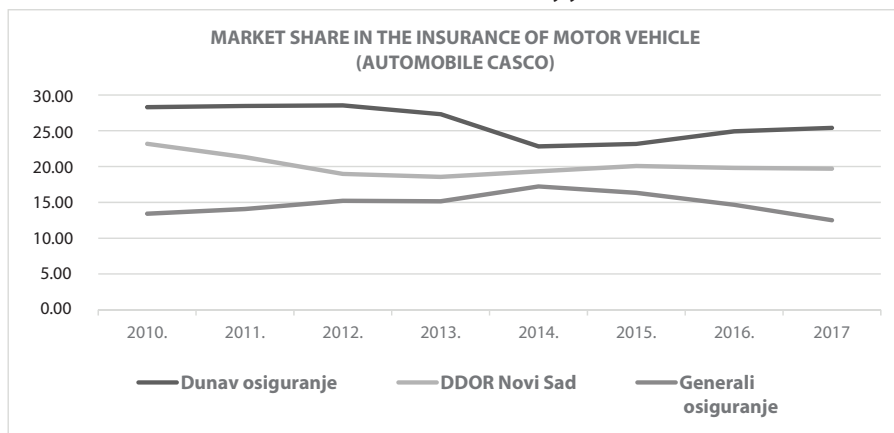
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The next table shows the distribution of market shares and market players in this type of insurance:

*Chart 2 – Market share trend of insurance companies in the total motor insurance market by years*



Source: Documented by authors based on the data taken from the National Bank of Serbia<sup>10</sup>

Chart 2 shows the trend of market share of insurance companies in the total motor insurance market by years. In this chart, it can be seen that in the observed period, in the first four years, Dunav Insurance strikingly maintained a market share of around 28%, followed by a sharp fall to 22.8% in 2014, and in the subsequent years it came closer and stabilized to approximately 25% i.e. 25.4% at the end of 2017.<sup>11</sup>

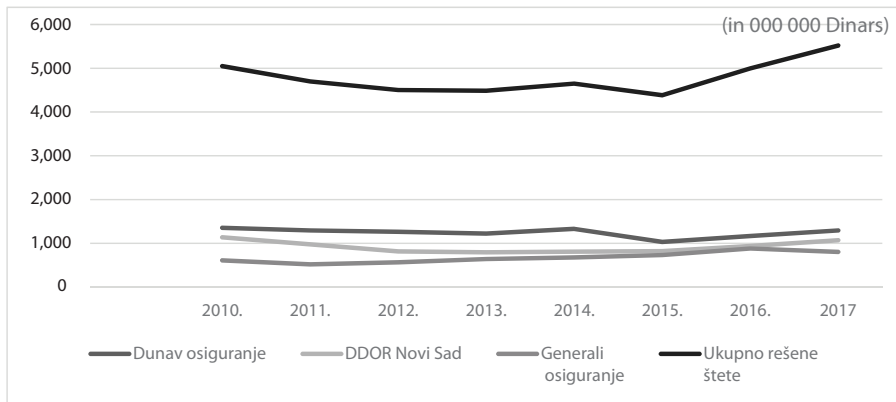
DDOR osiguranje recorded a drop in market share from 23.17% in 2010 to 18.50 at the end of 2013, and then a mild rise and stability to about 20% in 2015, 2016, and 2017. The curve of Generali Insurance market share is almost opposite from the previous two. It shows the rise from 13.42% to 17.23% which began in 2010 and lasted through the end of 2014, only to record a drop in subsequent years reaching its minimum of 12.5% at the end of 2017.<sup>12</sup>

<sup>10</sup> [www.nbs.rs/internet/cirilica/60/60\\_2/index.html](http://www.nbs.rs/internet/cirilica/60/60_2/index.html), accessed on 11-09-2018 at 12.05 hours

<sup>11</sup> National Bank of Serbia, Insurance Supervision Department, Total insurance premium by companies and types of insurance as at 31-12-2017, 2018

<sup>12</sup> National Bank of Serbia, Insurance Supervision Department, Total insurance premium by companies and types of insurance as at 31-12-2017, 2018

Chart 3 – Motor insurance claims settled by years



Source: Documented by authors based on the data taken from the National Bank of Serbia<sup>13</sup>

Chart 3 shows the amount of claims settled by insurance companies and in the aggregate. The curves of settled claims do not show significant deviations in terms of amounts i.e. level of claims in the observed years. A mild downward trend of the share in total settled claims can be observed by the end of 2010 until 2015, when it recorded a rise, particularly at the end of 2017 when the highest sum of claims settled in motor insurance was recorded in the amount of 5.52 billion Dinars.

Since insurance companies are founded as for-profit companies and in their operation, their founders focus on generating the highest possible profit i.e. net profit after taxation, one of the reasons why it is necessary to conduct an analysis of business profitability by types of insurance is to see whether or not the insurance company's current business attains the goals of their owners. Analysing the above data, it is evident that Automobile Casco is not a particularly profitable line of insurance and thus, the Serbian insurers resort to the introduction of various mandatory deductibles - participation of the insured in a damage.

### 3. Analysis of Motor Insurance Terms and Conditions

The Insurer is obliged to hand over the insurance terms and conditions to the person who wishes to conclude the insurance contract and who submitted the application along with the document which contains the following information of:

- 1) business name, legal form, head office and the head office address of the insurance company with which the contract is concluded;

<sup>13</sup> [www.nbs.rs/internet/cirilica/60/60\\_2/index.html](http://www.nbs.rs/internet/cirilica/60/60_2/index.html), accessed on 11-09-2018 at 12.20h

2) insurance terms and conditions and the law applicable to the insurance contract.<sup>14</sup>

Traditionally, insurance terms and conditions have a standard content because this is in line with the rules of the profession, but the problem is that the provisions laid out in the conditions are not explained to the policyholder. The fact that the terms and conditions contain the set of provisions relevant for the content of insurance cover is not sufficient. These conditions also need to be interpreted to the policyholder who enters into a contract, making sure that the policyholder has understood their significance.

Insurance contract, as an adhesion contract, is a standard form of contract. When entering into insurance contract, one contracting party prepares the terms under which the contract will be concluded, whereas the other party has the option either to accept or refuse such terms.<sup>15</sup>

Insurance companies adopt the insurance terms and conditions in advance and thus, generally, but also unilaterally, define the content of future contracts. A research conducted in cooperation between the Association of Insurance Intermediaries and Consumers Union in Spain showed that more than a half of insured persons read the terms and conditions just once, by glancing through, whereas 18% stated that they had not even read them. After that research, it was decided that Customer Guides should be printed in order to familiarise customers with insurance terminology and language and facilitate the understanding of the contract.<sup>16</sup>

Insurance terms and conditions represent contractual and legal source of insurance law and are laid down as a set of clauses which regulate the rights and obligations of the contracting parties under the concluded insurance contract. For these reasons, further in the text we will deal with the analysis of comprehensive motor vehicle insurance terms and conditions (Automobile Casco), namely, we will analyse those provisions that among the mentioned insurers differ and considerably impact insurance rates, potential insurance compensation, and clients themselves.

### **3.1. Subject Matter of Insurance**

The subject matter of insurance, with all its characteristics, is a condition preceding the conclusion of insurance contract and insurance period and as such, must be specified in the insurance policy. Insurance terms and conditions explain in more detail which objects are considered automatically covered, and which objects are the subject of insurance extension with the payment of an appropriate loading to the basic premium. Majority of insurance companies define in the very beginning of

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<sup>14</sup> Insurance Law, "Official Gazette of RS", no. 139/2014, Article 82

<sup>15</sup> Ilija Babić, *Leksikon obligacionog prava*, Official Gazette of SRY, Beograd, 1997., pp. 414.

<sup>16</sup> Sandoval Shaik D., *Las condiciones generales del contrato de seguro y su control interno e internacional*, Madrid, 2013, s. 331. fn. 311.

their standard cover the subject matter of insurance, and also define what needs to be specially agreed in the insurance policy in consideration of additional premium payment. This part is similarly phrased in the conditions of all three insurers and thus, we will quote from a part of the conditions issued by DDOR.

“Unless agreed otherwise, the subject matter of insurance shall be all types of conventional motor vehicles, all types of towing, working, special vehicles and rolling stock (hereinafter “vehicles”) and the components thereof.

(2) Component parts of vehicles shall be:

1) tools, accessories and spare parts regularly delivered from the factory for a specific type of a vehicle;

2) anti-theft device, fire extinguisher, warning triangle, seat belts, tachograph, tow rope or bar, first aid kit, spare light bulbs, additional exterior and interior mirrors, head-lamp-flasher for marking a vehicle stopped at night on the road, halogen lights, fog lights, backglass defogger, front and back glass wiper, head restraint, tire chains, radio, CD player, video and other audio devices, car phone, radio station and other equipment installed by the vehicle manufacturer or the insured prior to the conclusion of the insurance contract.”<sup>17</sup>

It is worth noting that all vehicles eligible for Casco insurance are customarily classified into the following groups:

1. Passenger cars
2. Heavy goods vehicles
3. Buses
4. Tow tractors
5. Special motor vehicles
6. Motorbikes
7. Towed vehicles
8. Motor vehicles with foreign licence plates
9. Working vehicles
10. Rolling stock

In addition, for particular, aforementioned types of motor vehicles, special modalities of Casco insurance are adopted.<sup>18</sup>

### **3.2. Casco Risks**

In hull insurance, there are two main types: full and partial hull insurance.

Full hull insurance covers the loss against damage to, destruction or disappearance of an insured vehicle occurred as a consequence of sudden events independent from the will of the insured or the driver.<sup>19</sup>

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<sup>17</sup> DDOR Novi Sad, Novi Sad, Terms and Conditions for Motor and Rolling Stock Insurance, page 2

<sup>18</sup> Boris Marović, Darko Gojković, *Osiguranje, špedicija i transport*, Novi Sad, 2000., pp. 68 and 69

<sup>19</sup> Mile Bijelić, *Osiguranje i reosiguranje*, Zagreb, 2002., pp.167



Partial hull insurance may include the following risks (depending on the choice made by the insured when concluding the insurance contract):

1. fire, lightning, explosion, storm, fall of an aircraft, theft, robbery, demonstrations, manifestations and the like.
2. glass breakage on a motor vehicle, except the light glass, as well as damages that could be caused by wildlife and domestic animals,
3. Towing expenses or expenses for the transportation of passengers from the place of accident to the place of residence, and the like.<sup>20</sup>

The information of the risk insured (accident, theft, hail, lightning, fire) limits the liability of the insurer solely to the consequences of the risk indicated in the policy. The definition of the risk insured is provided in the insurance terms and conditions for a particular type of insurance. In terms of the event which is subject to insurance (insured event), which must be a future event, uncertain and entirely independent of the contracting party's will<sup>21</sup>, the terms and conditions of all three insurers lay down the risks against which motor vehicles may be insured:

1. Traffic accident (e.g. overturn, collision, impact, skidding, plunging and the like),
2. Fall or impact of an object (unless the fall occurred as a consequence of earthquake).
3. Fire
4. Sudden external thermal or chemical impact,
5. Explosion, except for nuclear explosion.
6. Lightning,
7. Storm
8. Hail,
9. Avalanche
10. Flood, torrent and high waters
11. Manifestations and demonstrations,
12. Malicious actions or wantonness of third parties.
13. Fall of an aircraft,
14. Damage to the vehicle upholstery when administering the first aid to persons injured in traffic accidents or in some other way,
15. Intentionally causing damage to an insured object in order to prevent a more substantial damage to such an object or another object and persons.
16. Flooding of a vehicle ( in DDOR and Generali subject to special contracting)
17. Earthquake (in DDOR and Generali subject to special contracting)
18. Theft of a vehicle (in Dunav and DDOR subject to special contracting of so-called additional Casco risks and in Generali, through the special

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<sup>20</sup> B. Marović, B. Kuzmanović, V. Njegomir, 2009, pp.166

<sup>21</sup> Law of Contracts and Torts, Article 898, paragraph 1

combination of B risks – in addition to the abovementioned risks it also covers the theft of a vehicle).<sup>22</sup>

19. Frauds (only in Generali. In Dunav and DDOR this risk is included in the embezzlement)
20. Embezzlement (in Dunav and DDOR subject to special contracting of so-called additional Casco risks)

### **3.3. Partial Hull Insurance**

Depending on the wishes and intentions of the policyholder, partial hull insurance may include different risk combinations, as follows:

1) B Combination – in DDOR, damage to the passenger car directly caused by wildlife and domestic animals (not included in the conditions of Dunav and Generali).

2) C Combination - in DDOR, breakage and damage to glass on passenger cars, heavy goods vehicles and buses, except mirrors, glass (plastic) on signal light devices and roof) – in Dunav, through Auto Bonus Plus package and in Generali, through Auto Plus package, which include:

- partial hull – glass insurance;
- roadside assistance;
- insurance of drivers and passengers against traffic accident;

3) D combination – in DDOR, costs of towing or transportation of a passenger car to the place of residence or to the seat of the insured if the vehicle is not roadworthy due to a traffic accident, as well as the costs of transportation of drivers and passengers who rode in the subject passenger car (means of transport) by public transport, to the place of residence, maximum up to the number of the registered seats. (in Dunav and Generali, this is auto bonus plus and auto plus package, respectively)

4) E combination – Breakage and damage to headlights, except for: indicators (unless they are a component part of the headlights), combined rear lights, fog lights (unless they are a component part of the headlights), other lights on passenger cars, headlight supports and decorative mouldings below headlights. (only in DDOR)

5) G combination – in DDOR, replacement passenger car (of a lower or medium category) in the event of risk actuation stipulated in Article 3 of the Terms and Conditions, maximum 2 (two) occurrences per year or in the total duration of up to 8 days during the insurance period. (in Dunav and Generali this is a separate insurance according to the special roadside insurance terms and conditions and can be effected irrespectively of the Automobile Casco insurance policy)

6) H combination – Damages to passenger cars occurred as a consequence of the occurrence of lightning, storm (storm is considered a wind at a speed of 17.2 m

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<sup>22</sup> Generali insurance Srbija a.d.o., Beograd, Conditions of Motor Comprehensive Insurance (auto casco), page 3

per second and/or 62 km per hour - force 8 according to Beaufort Scale or more), hail, avalanche (insurance also includes the damages caused by the consequential air pressure), flood, torrent and high water. (DDOR offers only C combination, Dunav does not include this option).

Unlike full hull insurance, partial hull in Serbia is underdeveloped, although it provides at least some protection to the motor vehicles and is considerably cheaper than full hull.

### **3.4. Exclusions from Insurance**

Legal regulations require from the insurer to pay special attention when giving notice of insurance exclusions that largely determine the insurer's obligation to effect the payment after the occurrence of the insured event i.e. after the actuation of the insured risk. The insurance and court practice have shown that the policyholder is often dissatisfied when he finds that the insurance he has concluded seeking protection from the consequences of the occurrence of the insured risk contains no cover.<sup>23</sup>

General and special insurance terms and conditions constitute an integral part of the insurance contract. They are printed on the policy or as a separate material which is handed over to the policyholder together with the policy. The policyholder has to confirm with his signature that he has received the insurance terms and conditions. Apart from the fact that the conditions have to be clear and unambiguous, it is necessary to separately set out clauses concerning the limitations and exclusions from insurance with which the contractor must separately agree.

When it comes to the exclusions of the insurer's liability, they are mainly the same in all three insurance companies and mostly relate to the risk elements i.e. to the fact that the insured event must be a future event, uncertain and independent of the will of the policyholder. Below are mentioned but a few:

1. through the risk of fraud if committed by a person who would have the right to insurance compensation (policy) under the insurance contract and/or these terms and conditions;
2. due to freezing of liquid in the cooler or engine assembly block;
3. due to breakdown of engine, gear box or other fits of the vehicle resulting from the loss of oil or cooling liquid occurred because the vehicle has been driven on after the damage;
4. due to the loss of fuel and/or lubricant after the occurrence of the insured event;
5. due to the loss of engine oil, differential assembly and gear box, as well as the loss of cooling liquid;

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<sup>23</sup> Andrej Pak, *Insurance Contract Conclusion and Termination*, 2016, Novi Sad, pp.78

6. from cargo transported by an insured vehicle, except in the event of a traffic accident;
7. from cargo loaded into or unloaded from the vehicle;
8. due to starting up a damaged vehicle;
9. due to technical defects of a vehicle, overloading beyond permitted capacity, worn off wheel tyres beyond prescribed limits for wear and tear and non-observance or violation of the provisions regulating protective measures;

### **3.5. Forfeiture**

Forfeiture (in German - Aufgabe, Erlöschen) is a sanction imposed on the insured for failing to fulfil his or her obligations arising from the insurance contract. The insured loses his right to the payment of claim compensation. His obligations arising from the insurance contract remain unaffected. In the event of forfeiture (as opposed to the exclusion from insurance when the risk is not included in the cover), the risk is covered by insurance and the insured would have been entitled to compensation had he not breached a contractual obligation.<sup>24</sup>

The right of the insured arising from hull insurance shall be forfeited:

1. If the vehicle was operated by a driver under the influence of alcohol, drugs and other narcotics.
2. If the damage was caused intentionally or fraudulently by:
  - a) a policyholder, the insured, or a coinsured person other than the person for whose actions the insured is responsible on any grounds whatsoever;
  - b) a driver.
3. If the damage was caused by running a red light and by overtaking a vehicle where that is explicitly forbidden by the vertical or horizontal road markings, unless stipulated otherwise by special agreements.
- 5) If the damage due to the additional risk of theft was caused by leaving keys and other vehicle start devices in the vehicle, and the like.

Forfeiture mostly relates to the will of the policyholder and/or the insured. The event, which is subject to insurance, has to fulfil a condition that concerns its independence from the sole will of the policyholder. If the event stipulated in the insurance contract has occurred through the sole will of the policyholder, the insurer shall not be obliged to pay out either insurance compensation or the sum insured (Article 920 of the Law of Contracts and Torts). For example, under the motor insurance contract, the insurer is not obliged to indemnify the damage and compensate the costs incurred as a result of wilful intent or gross negligence of the policyholder, the

<sup>24</sup> <http://www.poslovnih.hr/leksikon/gubitak-prava-iz-osiguranja-424>, accessed on 11-09-2018 at 12.00 hours

insured, or the driver. Gross negligence is considered: a vehicle, which is the subject matter of insurance, running a red light.<sup>25</sup>

### **3.6. Territorial Scope of Insurance**

The insurance is valid while the vehicle is on the territory of the insurer's country and in the countries of Europe, unless agreed otherwise (in DDOR and Generali, whereas in Dunav, territorial scope is extended to include the whole territory of Turkey).

### **3.7. Sum Insured**

The sum insured is the amount to which the insurance contract (policy) is concluded and represents the insurer's maximum liability upon the occurrence of the insured event. Depending on the subject matter of insurance and manner of contracting the scope of cover, it may be effected as:

- 1) sum insured to the value at any given time; (Dunav, DDOR, Generali)
- 2) sum insured to the fixed pecuniary amount; (Generali)
- 3) sum insured to „the first loss“.<sup>26</sup> (Dunav, DDOR, Generali)

If the insurance contract (policy) is concluded with the sum insured to the value at any given time, the sum insured represents the actual value of a vehicle and other subjects of insurance as at the date of the occurrence of the insured event and is not expressed in the insurance contract (policy) as a pecuniary amount. In such case, when calculating the insurance compensation, the provisions on overinsurance and underinsurance laid out in the insurance terms and conditions are not applied.

If the insurance contract (policy) is concluded with the sum insured to the fixed amount of money, the stated amount represents a fixed amount of money contractually agreed between the policyholder and the insurer at the time of the conclusion of the insurance contract (policy) for each respective subject matter of insurance. In such case, the overinsurance and underinsurance apply to the calculation of insurance compensation.

The underinsurance exists when the amount of insurance specified in the insurance contract is lower than the actual value of the insurance subject at the moment of the conclusion of the insurance contract, or at the moment of the occurrence of the insured event. For example, the actual value of the Casco insured vehicle is three million Dinars, whereas it is insured to the value of five hundred thousand Dinars.

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<sup>25</sup> Dunav Insurance ADO, Beograd, Terms and Conditions for Comprehensive Motor Insurance (Automobile Casco), Article 14, paragraph 28 pp. 16

<sup>26</sup> Generali Insurance Srbija a.d.o., Beograd, Terms and Conditions for Comprehensive Motor Insurance (Automobile Casco), page 7

What are the consequences of underinsurance?

In case of underinsurance, the insurer receives a premium that is lower than the premium charged for the insurance to the full value of the insured object. For that reason, the insurer is not obliged to fully indemnify the insured person upon the occurrence of the insured event.

However, one should distinguish between two possible situations.

Firstly, if due to the occurrence of the insured event the insured object is completely destroyed, the insurer will pay out the insured amount to the insured. The difference between the paid insurance compensation and the full amount of loss shall be borne by the insured, because the insurance was not effected for such part of the value.<sup>27</sup>

Secondly, if due to the occurrence of the insured event, the insured object is partly destroyed or damaged, when assessing the insurance compensation the condition of average will be applied. The insurer will pay to the insured the amount of damage in proportion between the sum insured and the value of the insured object. This proportion also reflects the relationship between the premium which was charged and which would have been charged if the insurance had been contracted to the full value of the insured object.<sup>28</sup>

$$\text{Insurance compensation} = \frac{\text{sum insured} \times \text{amount of damage}}{\text{value of the object insured}}$$

This can be demonstrated in the previous example where three million Dinars is the actual value of the vehicle insured against the Casco risk to the amount of one million and five thousand Dinars and, upon the occurrence of a traffic accident and resulting partial damage worth 500 000 Dinars, the insurance compensation to be paid out to the insured by the insurer is determined according to this proportional formula and amounts to 250 000 Dinars.

If the insurance contract (policy) is concluded as the "first loss" sum insured, to a fixed amount, that amount is a fixed amount of money mutually agreed between the policyholder and the insurer at the time of the conclusion of the insurance contract (policy) for each and every insurance object. In such case, when calculating the insurance compensation, the provisions on overinsurance and underinsurance laid out in insurance terms and conditions will not be applied. Upon the payment of insurance compensation, the "first loss" sum insured is reduced by the amount of compensation paid for each and every insured object the amount of which is

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<sup>27</sup> Slobodan Perović, Dragoljub Stojanović, Komentar zakona o obligacionim odnosima, volume two, Faculty of Law Kragujevac, page 871

<sup>28</sup> Slobodan Perović, Dragoljub Stojanović, page 871

expressed as “first loss”. Insurance will be terminated for an individual insured object if the “first loss” sum insured is exhausted.

### **3.8. Determining the Amount of Damage and Insurance Compensation**

The maximum liability of the insurer per any one occurrence of the insured event is the agreed sum insured. Insurer’s liability may not exceed the actual value of the vehicle as at the date of claim settlement.

The damage on the insured motor vehicle is assessed by a professional employed by the insured.

The determined damage to a vehicle is entered into the Vehicle Damage Assessment Report, Additional Damage Report and /or based on an expert report, so that the scope of damage to the insured vehicle can be determined. The amount of damage is determined as follows:

When the vehicle is destroyed (total damage) - according to the actual value of the vehicle as at the date of claim settlement reduced by the market value of wreckage, according to the condition the vehicle was in immediately before the occurrence of the loss; in case of vehicle disappearance– according to the value of the vehicle as at the date of claim settlement and the condition the vehicle was in immediately before the occurrence of the loss.

Actual value of the vehicle is determined based on the purchase value, age of the vehicle, operational performance, general conditions, investments and use method, supply and demand, subject to the application of particular standards.

When the vehicle is damaged (partial damage) – unless agreed otherwise – to the amount of repair costs. The repair costs also include the costs of dismantling, mounting and necessary transportation.<sup>29</sup> Dunav and Generali Insurance have the provisions similar to those stipulated in this Article of DDOR insurance terms and conditions.

In replacement or destruction of : tyres, batteries, tarpaulins, exhaust system elements and radio devices, the depreciation (wear and tear) is deducted.<sup>30</sup>

A part which shows difference relates to the depreciation in connection with the replacement of parts of the vehicle older than 5 years in Dunav and Generali Insurance or older than 4 years in DDOR.

When calculating replacement components or equipment due to damage, destruction or theft of vehicles that were older than 5 years at the moment of the conclusion of insurance contract, depreciation (wear and tear) is deducted depending on the age, general condition of the vehicle, parts and equipment.<sup>31</sup> DDOR sets this

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<sup>29</sup> DDOR Novi Sad, Novi Sad, Terms and Conditions for Motor and Rolling Stock Insurance, page 8

<sup>30</sup> Dunav Insurance, pp. 34

<sup>31</sup> Dunav Insurance, pp. 34

age limit to 4 years. "When calculating the amount of damage to the motor vehicles that are older than 4 years, for parts or assemblies anticipated for replacement, the purchase costs of spare parts are taken as the value of used part or the value of unoriginal part, except when such parts are not available on the market."<sup>32</sup>

### **3.9. Agreed Share in the Damage – Deductible**

When concluding the insurance contract (policy), the policyholder and the insurer agree on the share in the damage – deductible, in accordance with the insurer's underwriting rules and appropriate premium tariff.<sup>33</sup>

The deductible may be:

a) absolute cash amount, when the Insured himself shall bear all damages to the insured object up to a specified amount, whereas the Insurer shall pay only that amount of any one loss in excess of the specified amount but not more than the actual value of the vehicle at the time of claim statement, and

b) relative – percentage amount, when the insured shall participate in any one loss up to a specified percentage of the share in a loss, whereas the insurer shall pay only that amount of any one loss in excess of the specified percentage but not more than the actual value of the vehicle at the time of claim statement.<sup>34</sup>

The provisions of this Article of Dunav insurance Terms and Conditions are similar to those of DDOR and Generali, however, each insurer determines minimum cash deductible by issuing special instructions and premium tariffs. To that extent, the higher the insured's share the lower the insurance price and vice versa.

### **3.10. Additional Share in the Damage**

For the insured who has up to 10 (ten) insured vehicles (up to 6 in DDOR), and who during the insurance year has 3 (three) or more claims settled (paid) and reserved (outstanding), additional share in the damage is calculated. Upon the claim settlement, the additional share in the damage is deducted from the amount of insurance compensation by way of reducing the related insurance compensation by the amount of additional deductible.

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<sup>32</sup> DDOR Novi Sad, pp. 8

<sup>33</sup> Generali Insurance, pp.12

<sup>34</sup> Dunav Insurance, pp.7



*Table 1 – Amount of additional share of the insured in the damage*

	<b>Dunav</b>	<b>DDOR</b>	<b>Generali</b>
<b>for 3 claims</b>	90%	100%	75% min.100 Euro
<b>for 4 claims</b>	150%	150%	100% min.300 Euro
<b>for 5 claims</b>	200%	200%	200% min.500 Euro
<b>and any subsequent claim</b>	200%	200%	200% min.500 Euro

*Source: Documented by authors based on the data taken from the Insurance Terms and Conditions*

Table 1 shows that in addition to a lower percentage deductible, Generali Insurance introduced a minimum nominal amount that will reduce the insurance compensation in the event of three or more claims, which is less favourable for the insured individuals.

For the insured with 11 (eleven) or more insured vehicles, additional share in the damage is not calculated according to the insurance terms and conditions of Dunav and Generali, as well as according to the insurance conditions of DDOR: "The insured who has concluded standard hull insurance covering 6 or more vehicles, for the period of minimum one year, and where the ratio between the settled claims and written technical premium (inclusive of the data as at 31 December in the last analysed calendar year) exceeded 110 %, in the subsequent insurance period shall be subject to premium loading – malus to the amount of one half of the difference between 110% and ratio percentage, however, such loading may not exceed 110%."<sup>35</sup>

Additional participation in the damage stipulated in the insurance terms and conditions of Dunav Insurance is calculated only if the insured event occurred as a consequence of traffic accident, and not for other Casco risks, which represents a special benefit for the insured persons. In Generali Insurance, when calculating the additional participation in the damage, the following damages will not be taken into account:

- 1) occurred as a consequence of saving casualties;
- 2) occurred as a result of minimizing harmful consequences, upon the consent of the insurer;
- 3) where there are grounds for recourse of the entire insurance compensation.<sup>36</sup>

In DDOR, all agreed risks are taken into account when calculating the additional participation in the loss.

<sup>35</sup> DDOR, pp.10

<sup>36</sup> Generali Insurance, pp. 12

### 3.11. Decrease in Insurance Premium – Bonus

In hull insurance, the bonus/malus concept found its fully fledged application. If the vehicle was uninterruptedly insured for not less than one year and if within such period the insured did not receive insurance compensation for up to 6 (DDOR) or 10 vehicles included in the insurance cover, in the subsequent year, the policyholder will be entitled to the premium discount for such vehicle in the amount of:

Table 2 – Amount of bonus by insurance years

	<b>Dunav</b>	<b>DDOR</b>	<b>Generali</b>
<b>2 years</b>	10%	15%	10%
<b>3 years</b>	20%	30%	20%
<b>4 years</b>	30%	40%	30%
<b>5 years</b>	40%	45%	40%
<b>6 years and any subsequent year</b>	50%	50%	50%

Source: Documented by authors based on the insurance terms and conditions

If in the previous insurance year the insured was granted the right to bonus and reported a claim, he will lose his right to bonus in the subsequent period (DDOR and Generali Insurance).

If the insured reported any claims in the previous insurance period, in the next period, the right to granted bonus will be reduced or forfeited, depending on the percentage share in the technical insurance premium of the claims settled and outstanding claims that were reported but not settled in the previous insurance period.

Table 3 – Reduction or loss of bonus depending on the technical result<sup>37</sup>

Bonus shown in the policy in %	Technical result in the year preceding insurance renewal						
	0	0<TR≤ 50	50<TR≤ 100%	100<TR≤ 200%	201<TR≤ 300%	301<TR≤ 500%	over 500%
	<b>Bonus in % granted on renewal</b>						
<b>0</b>	10	0	0	0	0	0	0
<b>10</b>	20	10	10	0	0	0	0
<b>20</b>	30	20	20	10	0	0	0
<b>30</b>	40	30	30	20	10	0	0
<b>40</b>	50	40	40	30	20	10	0
<b>50</b>	50	50	50	40	30	30	20
<b>50-2<sup>nd</sup> time</b>	50	50	50	50	40	30	30
<b>50-3<sup>rd</sup> time and each subsequent time</b>	50	50	50	50	50	50	40

Source: Dunav Insurance ADO, Beograd, Terms and Conditions for Comprehensive Motor Insurance (Automobile Casco)

<sup>37</sup> Dunav Insurance, pp. 28

Technical result is the ratio between cumulative annual claim and technical premium.

$$\text{Technical result} = \frac{\text{cumulative annual claim}}{\text{technical premium}} \times 100$$

Let us assume, hypothetically, that all three insurers have one insured person each, and that such an insured person has taken out car insurance for the period of three years. The insurance policy for the current year will show the same amount of bonus for all three insurers - 30%. These insureds have been paying the same amount of insurance premium of 50,000.00 Dinars and had one settled claim amounting to 75,000.00 Dinars. The question is, will they be granted a bonus in the subsequent insurance period i.e. subsequent year and what percentage thereof? According to the insurance terms and conditions of DDOR and Generali Insurance, the insured with at least one reported claim will lose his right to bonus, namely, he will pay the full amount of premium in the subsequent insurance period. In this particular case, such amount will be 68,587 Dinars for the insured of Generali or 69,204 Dinars for the insured of DDOR. When it comes to the third insured of Dunav, the situation is somewhat different because the right to bonus is determined based on the ratio between the claims and the premium and, in this particular case, technical result is 214% and thus the bonus amount is determined according to the Table 3. In this case, in the next period it will amount to 10%, namely, the insured will pay the insurance premium of 61,728 Dinars, which represents an additional benefit for the persons insured in that company.

### **3.12. Reduction of Insurance Premium – Bonus for the Insured Having 6 or More Vehicles (DDOR) or 11 or More Vehicles (Dunav and Generali)**

When contracting insurance for the subsequent insurance period, the insured having 11 (eleven) or more insured vehicles is entitled to the premium reduction (bonus) for all insured vehicles, based on the ratio between relevant claims (settled and reserved (outstanding)) and relevant premium. Relevant insurance premium means the premium charged in the past insurance year for each individual vehicle included in the calculation. Relevant claims mean settled and reserved (outstanding) claims per vehicle included in the calculation of the relevant premium. In such case, the reduction of insurance premium (bonus) for each individual vehicle in the subsequent insurance period will amount to:

- 1) 10% of the insurance premium, if the ratio between relevant claims and relevant premium is between 45.01% and 55.00%;

- 2) 20% of insurance premium, if the ratio between relevant claims and relevant premium is between 35.00% and 45.00%;
- 3) 30% of insurance premium, if the ratio between relevant claims and relevant premium is lower than 35.00%.<sup>38</sup>

In DDOR, when the insured person takes out hull insurance covering 6 or more vehicles for the period of minimum one year, and where the ratio between settled claims and written technical premium in the past three calendar years (inclusive of the data as of 31 December in the last analysed calendar year) is lower than 80 %, a premium discount is calculated for the subsequent insurance period in the amount of one half (50%) of the difference between 80% and the percentage of the achieved ratio.<sup>39</sup>

In Dunav Insurance Company, when the insured person has 11 and more insured vehicles, bonus and malus are determined based on the technical result for all vehicles insured in the previous 36 months from the date of insurance conclusion /renewal.

In the subsequent period, a 40% discount (bonus) on insurance premium will be granted to the insured person who in the past 36 months from the date of insurance conclusion/renewal did not have any paid and reported claims.

The insured, whose technical result in the past 36 months from the date of insurance conclusion/renewal was lower than 80%, will be granted a discount (bonus) on the insurance premium in the subsequent insurance period amounting to one half of the difference between 80% and percent of the attained technical result, however, not more than 35%.

The insured, whose technical result in the past 36 months of insurance was between 80% and 110%, will not be granted either discount (bonus) or malus.

The insured, whose technical result in the past 36 months of insurance was more than 110%, will be subject to insurance premium loading (malus) in the subsequent insurance period to the amount of one half of the difference between 110% and percent of the attained technical result, however, not more than 50%.<sup>40</sup>

The provisions on reducing the insurance premium – bonus for the insureds with 6 or more vehicles (DDOR) or 11 or more vehicles (Dunav and Generali) can be much better understood on a concrete example of the three so-called fleet insureds who took out motor hull insurance in these insurance companies. These insureds have paid the same amount of insurance premium of 500,000.00 Dinars and to them, claims worth 200,000.00 Dinars were paid out. The question is whether in the next insurance period they will be able to receive bonus and in what percentage?

According to the Generali Insurance Terms and Conditions, in the next insurance period the insured will be eligible for the bonus amounting to 20 % (20%

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<sup>38</sup> Generali Insurance, pp. 18

<sup>39</sup> DDOR, pp.10

<sup>40</sup> Dunav Insurance, pp. 30

of the insurance premium if the ratio between the relevant claims and the relevant premium is between 35.00% and 45.00%).<sup>41</sup>

The Terms and Conditions of Dunav and DDOR do not contain the data on the level of technical premium as portion of a gross premium and thus, based on the provisions of these conditions, it is not possible to determine the amount of bonus for the subsequent insurance period. If we assume that the technical premium is 70% of the gross premium, then we obtain a technical result of 57%. This means that in the subsequent insurance period the bonus will be 11.5%.

Other Articles of Insurance Terms and Conditions issued by these three insurers contain very slight differences or none at all, and in our analysis will not be the subject of consideration.

## **4. Conclusion**

The practice has shown that small print and too many technical terms contained in Insurance Terms and Conditions complicate the conclusion of insurance contract for the clients. Depending on the insurance line stipulated in the contract, the insured person will need minor or major expert assistance to be able to understand the scope of cover and rights and obligations arising from the insurance contract or particular provisions of the Insurance Terms and Conditions. The insured persons mainly do not pay sufficient attention to the Insurance Terms and Conditions. Long-standing experience in insurance industry has shown that the misunderstandings between the policyholders and the insurers mostly arise because the policyholder was not sufficiently familiar with the differences between the cover offered in the conditions of insurers and the cover the policyholder opted for when concluding insurance contract. The insurer is obliged to inform the policyholder about all the details contained in the insurance contract, notably about the insurance premium, interpretation of the terms and conditions, and the scope of insurance cover.

According to the conducted research, the analysed offers of three leading insurance companies regarding this insurance line contain the insurance cover against the most significant risks (over 20) to which motor vehicles are exposed according to the Insurance Terms and Conditions. In our comparison of these terms and conditions we highlighted special benefits offered by insurers. In addition, slight differences between the insurers' offers were identified which, nevertheless, significantly impact the scope of cover, insurance premium, and possible insurance compensation paid out upon the occurrence of the insured event stipulated in the insurance contract. We believe and hope that with this analysis we succeeded in explaining, comparing and clarifying particular provisions of the Comprehensive Motor Vehicle Insurance

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<sup>41</sup> Generali Insurance, pp. 18

Terms and Conditions (Automobile Casco) and attained our goal to help the insured person to select the best possible insurance offer.

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