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POSITIVE LEGAL ASPECTS OF COMPULSORY INSURANCE OF BANKRUPTCY MANAGERS AND ATTORNEYS IN SERBIAN INSURANCE LAW

REVIEW ARTICLE

Abstract

The paper deals with a part of legislative reforms in the field of justice in two laws. The Bankruptcy Law from 2009 and the Advocacy Law from 2011 analysed positive legal aspects of introducing compulsory professional liability insurance of bankruptcy managers and attorneys. The author first stated positive legal provisions in each of these two laws, as well as by-laws enacted according to these legal provisions. For each of these two laws, certain elements of compulsory professional liability insurance of bankruptcy managers and attorneys were examined. The conclusion states that the Bankruptcy Law stipulates compulsory and supplementary professional liability insurance of bankruptcy managers and that only some important elements of compulsory professional liability insurance of bankruptcy managers are regulated, therefore, only revision of that part of the Bankruptcy Law was proposed. In relation to the Advocacy Law, it was concluded that the elements of compulsory professional liability insurance of attorneys are regulated and require revision of that law, in accordance with the arguments presented in this paper.

Key words: *compulsory professional liability insurance, bankruptcy manager, attorney, law.*

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I. Introductory Notes

1.1. In Serbian legislation at the beginning of the 21st century, major reforms in the field of justice have begun. Compulsory professional liability insurance was introduced in these laws relating certain judicial professions. The valid Bankruptcy Law² was enacted in 2009, and its implementation has begun from 1st July 2010. In the next year, the Advocacy Law³ was enacted. It entered into legal force on 17th May 2011, and implementation of provisions introducing compulsory professional liability insurance of attorneys has begun on 18th May 2012. Within a relatively short period, the BL and the AL introduced a compulsory professional liability insurance of bankruptcy managers and/or attorneys. In this paper, we will talk about some aspects of compulsory professional liability insurance of only bankruptcy managers and attorneys.

1.2. An individual bankruptcy manager and an attorney belong to the judicial profession. When it comes to attorneys, there was no dilemma about whether they belonged to judicial professions. Dilemmas⁴ about belonging to judicial professions were linked only to bankruptcy managers **1.2.1.** This dilemma was particularly present at the beginning of the 10-year implementation of the BL. In that period, there were the Privatization Agency and the Deposit Insurance Agency. Agencies had the authority to appoint their certain employees-representatives to participate in bankruptcy proceedings of social enterprises in the capacity of a representative of a collective bankruptcy manager. These representatives of a collective bankruptcy manager performed the role of bankruptcy managers in bankruptcy proceedings, as well as individual bankruptcy managers. In the meantime, the Privatization Agency ceased to exist. An employee-representative in the Deposit Insurance Agency does not belong to the judicial profession. The Head of the Deposit Insurance Agency appoints him. He does not take the exam for a bankruptcy manager within the Bankruptcy Supervision Agency, and thus does not acquire the status of an active bankruptcy manager appointed by a bankruptcy judge, and which is especially important he is not obliged, as a representative of a collective bankruptcy manager, to take a compulsory professional liability insurance. Therefore, these representatives of a collective bankruptcy manager do not belong to the judicial profession. The judicial profession includes only individual active bankruptcy managers appointed by a bankruptcy judge from the list of active bankruptcy managers (previously formed by the Bankruptcy Supervision Agency). **1.2.2.** Furthermore, an individual bankruptcy

² The Official Gazette of RS, no. 104/2009, 99/2011-state law, 71/2012-US, 83/2014, 113/2017 and 44 (2017 (hereinafter referred to as the BL).

³ The Official Gazette of RS, no. 31/2011 and 24/2012-US (hereinafter referred to as the AL).

⁴ Slobodan Ilijić, LL.M.: *Obavezno osiguranje stečajnih upravnika u Republici Srbiji*, Pravna riječ no. 32/2012, p. 757-768.

manager and an attorney differ in terms of civil liability. The state and a bankruptcy manager may be liable for any omission or mistake made by a bankruptcy manager⁵ to the extent of his personal assets, while only an attorney⁶ may be liable for any omission or mistake made by an attorney to the extent of his personal assets. **1.2.3.** The focus of this paper will be on the positive legal aspects of compulsory professional liability insurance of an individual bankruptcy manager and an attorney. In further exposure, a bankruptcy manager is considered an individual bankruptcy manager.

1.3. In addition to the AL, the judicial reform in Serbia brought in 2011 two more laws that introduced compulsory professional liability insurance. These are the Law on Public Notary⁷ and the Law on Enforcement and Security⁸. The space in this paper did not allow for consideration of positive legal aspects of compulsory professional liability insurance of notaries and public enforcement officers.

II. Introduction of Compulsory Professional Liability Insurance according to the Bankruptcy Law

2.1. In the course of the bankruptcy procedural law⁹, a bankruptcy manager is described as the central or the most important legal institution of bankruptcy proceedings, but it is considered that a bankruptcy manager is a person. By explaining in more detail the first part of the previous statement, the quoted authors specified that the success of the bankruptcy proceeding itself largely depends on ability, conscientiousness and fairness of the conduct of a bankruptcy manager. They also emphasized that the qualifications, i.e. vocational education required for a bankruptcy manager, are necessary for conducting the debtor's started business activities. By explaining in more detail the second part of the aforementioned statement, the quoted authors stated that the personal abilities and moral qualities of a bankruptcy manager, especially his reliability, accuracy, precision, honesty, fairness, etc., are of particular importance. **2.1.1.** Bankruptcy proceedings in the countries of the former SFRY have their own specificities. Analyses conducted in the bankruptcy proceedings in comparative law and in Serbia¹⁰ pointed out that bankruptcy due to a long-term

⁵ Docent Vladimir Kozar, PhD: *Osnovi odgovornosti za štetu u stečajnom postupku*, Pravni informator no. 2/2012, p. 19-25; Docent Vladimir Kozar, PhD: *Građanskopravni osnovi odgovornosti stečajnog upravnika i države u stečajnom postupku*, „Pravo“, teorija i praksa, no. 1-3/2012, p. 44-59.

⁶ Article 2 of the AL.

⁷ The Official Gazette of RS, no. 5/2011 from 9th May 2011.

⁸ The Official Gazette of RS, no. 5/2011 from 9th May 2011.

⁹ Professor Gordana Stanković, PhD, and Professor Nevena Petrušić, PhD: *Stečajni upravnik kao subjekt stečajnog postupka*, Pravo i privreda no. 5-8/ 2004, p. 618-630; Professor Gordana Stanković, PhD, and Professor Nevena Petrušić, PhD: *Stečajno procesno pravo*, Službeni list SCG, Beograd, 2006, p. 81.

¹⁰ Professor Nebojša Jovanović, PhD: *Stečajna nacionalizacija (konfiskacija) u Srbiji*, Anali Pravnog fakulteta Univerziteta u Beogradu no. 1/2010, p. 130-149.

insolvency did not exist in developed European economies, but existed in Serbia and Croatia. **2.1.2.** One of the specificities of bankruptcy proceedings in Serbia was that they lasted for a long time. This is supported by data from the interview given by the acting director of the Bankruptcy Supervision Agency¹¹. In the interview given to the stated daily newspaper, the following data was indicated: 47% of proceedings lasted for three years and less, 35% of proceedings lasted for three years and more, and 2% of proceedings lasted for four years and more. Therefore, data on duration of bankruptcy proceedings in Serbia contributed to a better understanding of the environment where the BL regulated introduction of compulsory professional liability insurance of a bankruptcy manager.

2.2. When it was enacted, the BL was the first law in the field of justice in Serbia that imposed a compulsory professional liability insurance of an active bankruptcy manager. **2.2.1.** The capacity of an active bankruptcy manager is determined by the Bankruptcy Supervision Agency after a successful completion of the examination and conclusion of a compulsory professional liability insurance. A bankruptcy judge appoints a bankruptcy manager from the list of active bankruptcy managers, as one of the bodies of a specific bankruptcy proceeding.

2.3. According to Paragraph 1, Article 30 of the BL, a bankruptcy manager is obliged to take a compulsory professional liability insurance on his/her own behalf and for his/her own account, which means that the bankruptcy manager is the insured in a compulsory professional liability insurance contract. **2.3.1.** It is quite clear from the quoted paragraph that the BL did not allow the compulsory professional liability insurance contract of a bankruptcy manager to be concluded by a policyholder or another attorney in fact, or his/her representative on behalf of and for the account of a bankruptcy manager. **2.3.2.** Paragraph 1, Article 30 of the BL, stipulates the lowest amount of the sum insured. It is the amount of about 30,000 Euros in Dinar counter value on the date of signing a compulsory professional liability insurance contract of a bankruptcy manager. The BL defined the minimum sum insured for a compulsory insurance of bankruptcy managers, thus enabling an insurer to, starting with the size of group of risks, determine the amount of premium and the scope of insurance coverage (applying the rules of the actuarial profession). **2.3.3.** It should be noted that Article 30 of the BL does not mention the possibility of concluding a collective compulsory professional liability insurance contract of bankruptcy managers. Attention is drawn to this, given that the AL was enacted in the following calendar year, as well as other laws, which, by introducing a compulsory professional liability insurance of attorneys, envisaged the possibility of concluding a collective compulsory professional liability insurance of attorneys, notaries and

¹¹ Marijana Avakumović in a daily newspaper "Politika" interviewed Ivana Matić, acting director of the Bankruptcy Supervision Agency, under a title: *Steačjni upravnici ne sahranjuju, oni samo "otpevaju opelo"*, Politika, rubrika „Ekonomija“, 25th July 2014, p. 1 and 11.

public enforcement officers. **2.3.4.** A bankruptcy manager concludes individually a compulsory professional liability insurance contract with an insurer. The result is a possibility to have in Serbia as many different compulsory professional liability insurance contracts of bankruptcy managers as the number of bankruptcy managers, i.e. insurers. **2.3.5.** In Paragraph 1, Article 30 of the BL, the subject of that contract is marked by a formula - all risks associated with activities performed by a bankruptcy manager. In the first part of interpretation of this formula, caution required first the expression - all risks - since it indicates a real omnibus of very different risks, which insurers can further define in general insurance terms and conditions with specific limitations and exclusions from this insurance¹². In any case, the term - all risks - originates from maritime insurance **2.3.6.** The remaining part of the formula from Paragraph 1, Article 30 of the BL - relating to activities performed by a bankruptcy manager - opened a series of questions. One of them may be: Does this insurance cover liability of a bankruptcy manager only for errors or omissions made to the participants in a bankruptcy proceeding, or does this insurance cover liability of a bankruptcy manager for errors or omissions made both to the participants in bankruptcy proceeding and third parties? The answer to this question is contained in linking the said legal formulation with general and special insurance terms and conditions. **2.3.7.** As a rule, the term of an insured event is contained in general or special insurance terms and conditions. Serbian insurers acted in that manner¹³ and made special insurance terms and conditions, in which they envisaged the term of an insured event in a compulsory professional liability insurance of a bankruptcy manager. According to this source of the contract law of insurance, an insured event in a compulsory professional liability insurance of a bankruptcy manager could take the following three types: (1) if an insured event is based on a written document and/or a document signed by an insured; (2) if an insured event occurred due to an error or omission, when the action should have been taken at the latest to avoid any damage; (3) in all other events, when a bankruptcy manager gave a wrong instruction or committed an erroneous act. In this way, the insurers implemented formulation of the imperative provision from Paragraph 1, Article 30 of the BL, which stated that a bankruptcy manager was insured against professional liability. **2.3.8.** The stated formulation that a bankruptcy manager is obliged to take a compulsory professional liability insurance does not only affect the issue of the term of an insured event. It also raises the question: What constitutes a mistake or an omission of

¹² Editors Sanja Andrijašević, PhD, and Tatjana Račić-Žlibar: *Rječnik osiguranja*, Masmedija, Zagreb, 1997, p. 410.; Mr Slobodan Samardžić: *Osiguranje imovine po načelu „svi rizici“*, Revija za pravo osiguranja no. 1-2/2008 p. 11-18.

¹³ Zoran Ilkić, PhD, a legal representative in unit for claims in DDOR Novi Sad: *Pravna zaštita korisnika usluga osiguranja od odgovornosti*, Zbornik radova Pravnog fakulteta Univerziteta u Kragujevcu iz maja 2013, 361-375; Upravni odbor Kompanije „Dunav osiguranje“ a.d.o. from 14th June 2010: *Uslovi za osiguranje profesionalne odgovornosti stečajnih upravnika*.

a bankruptcy manager? The BL did not provide a legal answer to that question. **2.3.9.** By generalising commercial-court practice, the bankruptcy law indicated some of omissions or mistakes made by bankruptcy managers. The following examples from the court practice are singled out: (1) privileges of some creditors at the expense of other creditors; (2) a bankruptcy debtor's account is blocked, and a bankruptcy manager made a payment contrary to the statutory rules; (3) a bankruptcy manager acknowledged the fictitious contract and thereby damaged creditors¹⁴. **2.3.10.** Unlike generalisation of commercial-court practice, the insurance law theory dealt with an answer to the question of who could be damaged by an omission or a mistake made by a bankruptcy manager. The following answer was offered to this question: the circle¹⁵ of third injured parties in this compulsory professional liability insurance would include all participants in a bankruptcy proceeding, as well as persons with an interest in seeking compensation from insurers or a bankruptcy manager. These opinions deserve the attention of our legislator. **2.3.11.** Long before the adoption of the BL, insurance practice and insurance law theory in SFRY agreed on the views. Namely, they agreed that any damage made by a bankruptcy manager to a claimant belonged to pure financial losses. Its definition¹⁶ is usually contained in an insurer's general insurance terms and conditions and reads as follows: a pure financial loss means a loss directly comprised in money, which did not occur due to a person's violation or damage or destruction of property. This form of pure financial loss is present not only in a compulsory professional liability insurance of a bankruptcy manager, but also in a compulsory professional liability insurance of attorneys (this will be addressed in the next section of this paper).

2.4. According to Paragraph 2 Article 30 of the BL, the creditors' committee may at any time require from a bankruptcy manager to conclude a contract on supplementary professional liability insurance for a specific bankruptcy proceeding and to an amount greater than the amount referred to in Paragraph 1 of this Article. In that case, a bankruptcy manager is obliged to take such insurance unless he proves that he is not able to take such insurance on the market. According to Paragraph 3 Article 30 of the BL, the amount referred to in Paragraph 2 of this Article is determined by the creditors' committee in view of the amount of the bankruptcy estate and the special circumstances, as well as the existing or potential risks, while a bankruptcy judge, acting ex officio or upon request of an interested party may impose a reduction of that amount or completely prohibit taking of additional insurance if he assesses that the costs of the supplementary insurance premium are unjustifiably high. **2.4.1.** The

¹⁴ Professor Mihailo Velimirović, PhD: *Stečajno pravo, drugo izmenjenoj dopunjeno izdanje*, Pravni fakultet Univerziteta Union i Javno preduzeće Službeni glasnik, Beograd, 2010, p.186.

¹⁵ Professor Slobodan Stanišić, PhD: *Osiguranje stečajnog upravnika od odgovornosti za štetu*, Pravna riječ no. 40/2014, p. 527-535.

¹⁶ Vojislav Sokal, PhD, independent advisory to ZOIL „Dunav“, in retirement: *Prilog diskusiji na temu Kopaoničke škole prirodnog prava „Šteta i njena naknada“*, Pravni život no. 1-2/1993, p. 185.

first conclusion along with provisions of Paragraphs 2 and 3 of Article 30 of the BL was that a supplementary professional liability insurance of a bankruptcy manager was introduced in this manner. The BL envisaged appropriate legal powers for various bodies of bankruptcy proceedings with introduction of a supplementary professional liability insurance. Objective of provisions of Paragraphs 2 and 3 of Article 30 of the BL was that several bodies of bankruptcy proceedings reviewed and passed the decision on conclusion of a supplementary professional liability insurance of a bankruptcy manager. **2.4.2.** The conclusion of a supplementary professional liability insurance of a bankruptcy manager means a sum insured greater than 30,000 Euros. This is the second conclusion based on provisions of Paragraphs 2 and 3 of Article 30 of the BL. In other words, the legislator left to a bankruptcy manager and other bodies of a specific bankruptcy proceeding to negotiate with an insurer on risks present in a particular situation. These are positive aspects of this legal solution. **2.4.3.** The theory of insurance law¹⁷ brought the following question: are the bodies for bankruptcy proceedings (creditors' committee, a bankruptcy judge, a bankruptcy manager) competent to decide on whether a bankruptcy manager should conclude a supplementary professional liability insurance with an insurer? In connection with the raised question, it is undoubtedly that by now provisions of Paragraphs 2 and 3 of Article 30 of the BL were not accepted for revision of the BL. Will the legislator accept them in the future, remains to be seen.

2.5. From provisions of Paragraph 4 Article 30 of the BL, an important legal rule emerged, which read as follows: a supplementary insurance premium referred to in Paragraph 2 of this Article represented the obligation of the bankruptcy estate. **2.5.1.** An active bankruptcy manager concludes an individual compulsory professional liability insurance and pays the insurance premium under that contract from his own funds. An active bankruptcy manager concludes also a supplementary professional liability insurance individually, but the insurance premium is debited to the bankruptcy estate. In addition to the amount of sum insured, there are some of differences between a compulsory and a supplementary professional liability insurance of a bankruptcy manager. **2.5.2.** The mentioned rule from Paragraph 4 became actual today. Namely, the rule from Paragraph 4 in relation to one of provisions from Paragraph 1 of that Article (that a bankruptcy manager concludes a contract - in his own name and on his own account) served as arguments in a public debate¹⁸ regard-

¹⁷ Professor Jovan Slavnić, PhD: *Posebne odredbe o obaveznom osiguranju od odgovornosti kao predmet regulisanja zakona koji uređuje ugovor o osiguranju*, Zbornik radova Udruženja za pravo osiguranja Srbije sa savetovanja održanog aprila 2011, p. 173-215 (particularly p. 191 and footnote no. 41).

¹⁸ Slobodan Ilijić, LL.M: *Obavezno osiguranje stečajnih upravnika u Republici Srbiji*, Pravna riječ no. 32/2012, p. 757-768. Professor Predrag Šulejić, PhD: *Osiguranje od odgovornosti organa pravnog lica – pravna priroda*, Zbornik radova Udruženja za pravo osiguranja Srbije iz aprila 2011, p. 284-299; Professor Predrag Šulejić, PhD: *Osiguranje od odgovornosti organa pravnog lica – pravna priroda i primena*, Tokovi osiguranja no. 2/2012, p. 5-19 and other.

ding the undisclosed insurance for account of third parties and/or an undisclosed insurance for the policyholder to whom it may concern (Article 1417 and others in the Preliminary Draft of the Civil Code of the RS¹⁹). **2.5.3** Regarding the laws in Serbia enacted by 2009²⁰, which introduced a compulsory liability insurance, Article 30 of the BL differed from them by prescribing the amount of the minimum amount of sum insured for a compulsory professional liability insurance of a bankruptcy manager. In addition to the basic compulsory professional liability insurance, the BL introduced a supplementary professional liability insurance, which was accompanied by the appropriate powers of a body of a bankruptcy proceeding in decision-making on whether it was purposeful to conclude a supplementary professional liability insurance of a bankruptcy manager. However, the BL left some of important elements of a compulsory professional liability insurance of bankruptcy managers, outlined in this chapter, to an insurance practice, so in this part this compulsory insurance is regulated by the BL.

III. Introduction of a Compulsory Professional Liability Insurance according to the Advocacy Law

3.1. There are opinions²¹ that advocacy is as old as the state and the law. In the course of history, the relationship between the state and the law on one hand, and the advocacy on the other, was dynamic, with each government placing the advocacy within certain normative and legal boundaries. With the change of the government, including the change of a legal system in a society, the need for understanding, interpreting and explaining legal institutes continued to grow, and thus the advocacy as well. **3.1.1.** According to the same opinion²², the constitutional basis for the advocacy as a profession is envisaged in Article 67 of the Constitution of the RS, which includes forms of legal aid to citizens. Namely, Article 67 of the Constitution of the RS stipulates that legal aid to citizens is provided by the advocacy, as well as legal aid services established in local self-government units. In addition, this opinion indicated that the advocacy as a profession is closely related to application of several Articles of the Constitution of the RS. The above stated opinion especially pointed out the following: Article 32 of the Constitution of the RS, which stipulates the right to a fair trial; Article 33 of the Constitution of the RS, which stipulates the

¹⁹ Wording of the Preliminary Draft of the Civil Code of the RS from May 2015. Professor P. Šulejić, PhD, *ibidem*.

²⁰ Slobodan Ilijić, LL.M.: *Oblici obaveznog osiguranja na početku 2008.godine (I)*, Tokovi osiguranja no. 3-4/2008, p. 3-17; Mr Slobodan Ilijić: *Oblici obaveznog osiguranja na početku 2008.godine (III)*, Tokovi osiguranja no. 1-2/2009, p. 26-40.

²¹ Đorđe D. Sibinović, PhD: *Profesija advokat*, Printmedija, Beograd, 2010.

²² *Ibidem*, p. 19-24.

special rights of the defendant; Article 34 of the Constitution of the RS which regulates legal security in criminal law; Article 35 of the Constitution of the RS, which stipulates the right to rehabilitation and the right to compensation for damages. In addition to the Constitution of the RS, the advocacy as a profession is regulated by a series of special (particularly) procedural laws. They establish advocacy as an independent profession, but also as service activities to natural persons and legal entities. In the foregoing manner, this opinion circled a contemporary view of the advocacy as a profession. **3.1.2.** Based on the above-mentioned constitutional provisions, provisions of the LA and the Articles of Association of the Bar Association of Serbia²³, the Bar Association of Serbia adopted the Code of Professional Ethics of Attorneys²⁴ (hereinafter referred to as the Code). The commentator of the said Code²⁵ drew attention to ten principles and a whole series of other rules, whose violation is considered to be an unlawful conduct of an attorney, i.e. or that an attorney violated the profession, to professionals in this field, and thus insurers and attorneys' clients. This unlawfulness is a cause for disciplinary proceedings before the disciplinary body of the Bar Association. This unlawfulness indicates the behaviour of attorneys covered by compulsory professional liability insurance, but at the same time also the behaviour of attorneys not covered by this compulsory insurance. Therefore, it is clear that in Serbia there was intention to cover advocacy as a profession with laws and by-laws. Since the AL for the first time in Serbia regulated the legal institute of a compulsory professional liability insurance of attorneys, the answer to the question of how successful it was would ultimately give the insurance practice.

3.2. The most important provisions on a compulsory professional liability of attorneys are stipulated in Article 37 of the AL. Above that article, the title was – a compulsory professional liability - which suggests that Article 37 of the AL was only intended to introduce a compulsory professional liability insurance of attorneys. In fact, the introduction of a compulsory professional liability insurance of attorneys was one of the goals, which explained the adoption of a new AL. On the list of countries that introduced a compulsory insurance²⁶ of attorneys are almost all European countries²⁷ and almost all republics of the former SFRY, and Serbia is with this AL

²³ The Official Gazette of the RS, no. 85/2011.

²⁴ The Official Gazette of the RS, no. 27/2012.

²⁵ Slobodan Beljanski, PhD: *Komentar novog Kodeksa profesionalne etike advokata*, Pravni instruktor no. 19 (May 2012), p. 24-27.

²⁶ Professor Jovan Slavnić, PhD: *Obavezno osiguranje, osnove sistema i koncept njegovog regulisanja*, Savremena administracija, Beograd, 1978, p.75-84; Sergej Simoniti: *Uvođenje obaveznih osiguranja – Evropska unja i slovenačka iskustva*, Zbornik radova Udruženja za pravo osiguranja Srbije iz aprila 2008, p. 70-96; Slobodan Ilijić, LL.M: *Oblici prava osiguranja u važećem zakonodavstvu Srbije*, Pravni informator no. 7-8/2008, p. 69-74.

²⁷ Slobodan Ilijić, LL.M: *Seminar Društva za podršku osiguranja u Srbiji povodom Predloga zakona o advokaturi u kome je predviđeno obavezno osiguranje od odgovornosti advokata*, Revija za pravo osiguranja no. 1-2/2006, p. 69-78

among the last countries in Europe that introduced a compulsory professional liability insurance of attorneys²⁸. **3.2.1.** Paragraph 1 Article 37 of the LA stipulates that an attorney is obliged to conclude a compulsory professional liability insurance with the organization registered for this insurance type. In other words, conclusion of a compulsory professional liability insurance was treated as an attorney's legal obligation, but the legislator transferred its obligation to determine the minimum amount of such insurance to the Bar Association of Serbia in agreement with the competent ministry. **3.2.2.** The second subject of Paragraph 1 Article 37 of the AL was an organization registered for this insurance type. The editor of the AL had in mind an insurer that received a licence from the insurance supervisory body for dealing with this insurance type. The second issue was why the editor of the AL in the stated wording took into account the term insurance organization, which was obsolete, and not a valid term - an insurance company. Finally, in connection with the aforementioned wording from Paragraph 1 Article 37 of the AL, the legislator had to bear in mind the fact that an insurer with the licence for sale of this insurance type is not legally obliged to conclude compulsory professional liability insurance contracts of attorneys (collective or individual), if its business policy estimated that in this business there is no prospect of success (for example, because it is a small group of risks, etc.).

3.3. There were complaints²⁹ regarding provisions of Article 37 of the AL that they contain provisions on a compulsory professional liability insurance of attorneys and that these provisions do not provide answers to numerous questions about functioning of this insurance, so that unregulated insurance issues in the AL are left to some other laws (the Law of Contracts and Torts, the Companies Act, etc.), as well as general and special insurance terms and conditions passed by insurers. **3.3.1.** By specifying numerous unregulated issues of this insurance in the AL, the same author³⁰ exposed the following: the obligation to conclude an insurance contract, to determine the policyholder, the extent of coverage, or the subject matter of insurance, the minimum coverage limit, the insured event and objections that an insurer cannot point out to a claimant, as well as exclusions from this insurance. Thus, the stated author criticized the entire provisions of Article 37 of the BL. **3.3.2.** In further criticism of the concept of the AL, the same author³¹ particularly referred to Article 48, Paragraph 1, Item 5 in conjunction with Article 37 of the AL. In his opinion, these two articles from the AL do not provide a reliable answer to the following question. Does the conclusion of a compulsory professional liability insurance of a

²⁸ Z. Ilikić, a footnote no. 13.

²⁹ Professor Predrag Šulejić, PhD: *Osiguranje od odgovornosti advokata*, Zbornik radova Saveza udruženja pravnika Srbije i Republike Srpske iz juna 2011. godine, p. 83-92.

³⁰ Ibidem.

³¹ Ibidem.

law office with an insurer results in insurance of only a law office or both the law office and all members-attorneys of that law office? **3.3.3.** Without reference to the first author and linking the mentioned articles of the AL from the previous item, the other author³² noted that the legal liability of attorneys was covered in the AL. Such liability included employed attorneys and senior associates, associates and other staff of the law office, for any material loss caused to a client by an attorney's practice. Therefore, it seems that the first and the second author reached different conclusions about the same provisions of the AL. **3.3.4.** According to the signatory of this paper, when the legislator does not find the right measure in formulating all elements of a legal institute, that is, when a compulsory professional liability insurance remains summarily regulated, as was the case with provisions of Article 37 of the AL, professionals in this field take contradictory legal interpretations of links between individual articles of that law.

3.4. Pursuant to Paragraph 2 Article 37 of the AL, the Bar Association may conclude a collective professional liability insurance for all attorneys registered in its directory of attorneys. According to Paragraph 3 Article 37 of the AL, the Bar Association of Serbia determines the minimum amount of sum insured for damages from professional liability. Finally, in Paragraph 4 Article 37 of the AL, the Bar Association shall refuse to grant or extend the validity of an Attorney Identification Card to an attorney who has not concluded an insurance contract, except in case of insurance referred to in Paragraph 2 of this Article. **3.4.1.** By submitting a request for registration in the Bar Association, an attorney is obliged to submit to the Bar Association an individual compulsory professional liability insurance contract concluded with an insurer, which means that the initial status is an individual compulsory professional liability insurance contract. **3.4.2.** Provisions of the Articles of Association of the Bar Association of Serbia (Articles 273 to 278) (hereinafter referred to as the AA of the Bar Association of Serbia) elaborated the circumstances, deadlines and other conditions necessary for an attorney with a concluded individual contract to be included in the collective compulsory professional liability insurance³³ for the next calendar year and vice versa, to terminate the collective contract and conclude the individual contract again, all under the prescribed conditions **3.4.3.** According to the signatory of this paper, presented legal regime of the AL and the AA of the Bar Association of Serbia regarding the conclusion of a contract on a compulsory professional liability insurance (individual or collective) enabled that in Serbia insurers compete with one another when concluding an individual or a collective insurance contract of attorneys. Presented legal regime of the AL and the AA of the Bar Association of Serbia provided

³² Z. Ilkić, PhD, footnote no. 13.

³³ Docent Nataša Petrović-Tomić, PhD: *Osiguranje od profesionalne odgovornosti advokata (predlog rešenja u srpskom pravu)*, Pravni život no. 10/2011, p. 835-864.

insurers great freedom in defining the scope of coverage and the diversity of general or special insurance terms and conditions for attorneys. Negative side of this legal regime consisted in unequal protection of the advocacy and unequal protection of claimants due to attorneys' mistake in the territory of Serbia. In a word, presented legal regime in the AL and the AA of the Bar Association of Serbia is made as if there were no delays or disagreements over the collective contracting of this insurance, nor would it be in future. **3.4.4.** According to the signatory to this paper, a collective³⁴ compulsory professional liability insurance of attorneys (concluded on the level of the Bar Association of Serbia or a regional bar association) is more favourable for an individual attorney, an insured person, than an individual compulsory professional liability insurance contract of an attorney-insured. A collective insurance concluded through the Bar Association of Serbia (or one of the nine regional associations) may encompass a larger group of risks, which entails a smaller premium for an attorney-insured and a higher sum insured for all insured persons during the validity of a one-year collective compulsory insurance. **3.4.5.** A number of working groups (for almost one decade) worked on the drafting of the AL within the Bar Associations (Belgrade and Serbia). One of the working groups³⁵, in the beginning of their work, cleared the issue of the subject matter of a compulsory professional liability insurance in the future AL. In this respect, the opinion was that the subject matter of future compulsory professional liability insurance of attorneys consisted of: (1) untimely filing a lawsuit or declaring a legal remedy; (2) denial of legal aid or failure to provide legal aid to a client even after the cancellation of the power of attorney if it is necessary to remove a loss for a client (30 days after the cancellation of the power of attorney); (3) absence from a sitting or a hearing; (4) recognition of a claim, waiver of a claim or the right to appeal, withdrawal of a lawsuit, etc. contrary to the will of a client; (5) conclusion of a contract contrary to the will of a client and to a client's harm or non-conclusion of a contract, or untimely conclusion of a contract; (6) disclosure of professional secrets; (7) untimely return of a case file to a client, that is, failure to return a file to a client in general or the loss of the file and documentation entrusted to an attorney in order to exercise a right; (8) other. Not even more recent legal notices on the subject matter of an attorney's liability, that is, the subject matter of compulsory professional liability insurance of attorneys³⁶ do not deviate significantly from the stated positions of the quoted working group. However, the AL did not clearly, in legal and legislative terms, set the usual advocacy activities.

³⁴ Docent Nataša Petrović-Tomić, PhD: *Osiguranje od odgovornosti advokata novina u srpskom pravu*, Pravo i privreda no. 10-12/2011, p. 168-170.

³⁵ Mileva Bogdanović: *Odgovornost advokata i osiguranje za štetu od advokatske delatnosti*, Zbornik radova Udruženja za pravo osiguranja Jugoslavije iz aprila 2003, p. 130-136.

³⁶ Borivoje Živković, sudija Apelacionog suda u Beogradu: *Odgovornost advokata za greške i pravo na naknadu štete*, Zborni radova Udruženja za odštetno pravo iz septembra 2016, p. 97-111.

Therefore, it is not easy for an attorney's client in Serbia to grasp the borders of an insurance coverage of attorneys, and exclusions and restrictions from compulsory professional liability insurance of attorneys. **3.4.6.** After the adoption of the AL, the AA of the Bar Association of Serbia, the Management Board of the Bar Association of Serbia, by decision of July 14, 2012,³⁷ concluded that an attorney can be appointed as a non-executive independent director of a company under the following three conditions: (1) that an attorney does not get employed in a company in order to perform activities of a non-executive and independent director; (2) that an attorney who performs activities of a non-executive and independent director shall not be registered in the Serbian Business Register Agency as a representative or procurator of that company; (3) that there is no conflict of interest. Apparently, that decision was made after the implementation of Article 37 of the AL. **3.4.7.** Separating the issue of lawfulness³⁸ of the said decision, according to the signatory of this paper, the said decision has or may have multiple effects for future compulsory professional liability insurance of attorneys. Firstly, that decision tightened the issue of the subject matter of this compulsory insurance, which is regulated in the AL. Attorney's activities based on that decision are coming out of the circle of usual advocacy activities in Serbia. Secondly, that decision indicated undoubtedly the need to revise the AL with the idea of enabling the introduction of compulsory professional liability insurance of attorneys for such and similar attorneys' activities. In German law of the compulsory professional liability insurance of attorneys³⁹, due to these and similar attorneys' activities, supplementary professional liability insurance of attorneys is stipulated. Thirdly, that decision presents a new circumstance in relation to already concluded collective or individual compulsory professional liability insurance of attorneys. As a new circumstance, the aforementioned decision points to the need of insurers to re-evaluate risks in relation to the concluded compulsory professional liability insurance of attorneys in Serbia. **3.4.8.** Somehow, after implementation of provisions of the AL on compulsory professional liability insurance of attorneys in Serbian law, the Council of Bars and Law Societies of Europe⁴⁰ recommended to national associations or societies that the minimum sum insured is 100,000 Euros per insured event and a total of 200,000 Euros in the year of insurance coverage. Amounts of such determined sums insured are suitable for countries with about one hundred thousand or more

³⁷ Professor Zlatko Stefanović, PhD: *Pravo advokata da bude imenovan za neizvršnog-nezavisnog direktora privrednog društva (Značaj Odluke Upravnog odbora Advokatske komore Srbije i mogućnost primene u praksi)*, Pravni instruktor no. 27, for September 2012, p. 16-19.

³⁸ Ibidem.

³⁹ Zoran M. Janjić, attorney from Belgrade: *Prevod sa nemačkog Posebnih uslova i opisa rizika za advokate*, Zbornik radova Društva za podršku osiguranja u Srbiji iz oktobra 2005., p. 1-4.

⁴⁰ Nevenka Lalić: *Obavezno osiguranje od profesionalne odgovornosti sa osvrtom na advokatsku delatnost*, Pravni instruktor no. 19/2012, p. 60-62.

attorneys, such as, for example, Germany⁴¹, with 140,000 attorneys. **3.4.9.** All of the above stated indicates that the legal institute of compulsory professional liability insurance of attorneys is regulated in the AL.

Conclusions

1. The Law on Bankruptcy from 2009 introduced compulsory and supplementary professional liability insurance of bankruptcy managers, while the Advocacy Law from 2011 introduced only compulsory professional liability insurance against of attorneys.

2. In the Advocacy Law from 2011, the legal institute of compulsory professional liability insurance of attorneys is regulated summarily in its entirety. Compulsory professional liability insurance of bankruptcy managers in the Bankruptcy Law from 2009 is regulated only in one part summarily. It would be desirable for both laws to assess the need for their revision in terms of suggestions and proposals from this paper.

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