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CONTRACT ON INSURANCE FOR THE ACCOUNT OF THIRD PARTIES OR FOR WHOM IT MAY CONCERN

SCIENTIFIC PAPER

Abstract

Contracting insurance for the account of a third party other than the Policyholder is an exception from the general rule that the contract is effective only between the contracting parties. Different lines of insurance have specific characteristics, making a contract for account of third parties very complex. Provisions of the Law on Contracts and Torts governing the insurance for the account of third parties or for whom it may concern are general, which causes a confusion because, according to their inherent clauses, they are more appropriate for the insurance of property than the civic legal liability and personal lines. The insurance for the account of third parties may be effected for both property and personal lines, because the general provisions need to be applicable to both insurance groups. In the Preliminary Draft of the Serbian civil code, the provisions of the Law on Contracts and Torts regulating insurance for the account of third parties have not been amended, which is not a satisfactory solution. This paper analyses the most important issues in this insurance line and points to the need to amend the provisions of the Law on Contracts and Torts pursuant to the special traits of the insurance for the account of third parties in property and personal lines.

***Key words**: insurance contract; the insured; beneficiary; property insurance; personal insurance: liability insurance; contract for the benefit of a third party.*

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Introduction

The insurance contract imposes rights and obligations on the contracting parties, and exceptionally it has an effect on third parties. This contract may be concluded on one's own behalf and for one's own account and/or on one's own behalf and for the account of a third party and/or on one's own behalf and for the account of one's own and a third party's. A contract for the account of third parties allows the party that is not a signatory to the insurance contract the right to claim indemnity or agreed sum directly from the Insurer, depending on whether the benefit is regulated under the insurance contract which provides cover against the risks that affect the property or to a lump sum covering the physical and psychological integrity of the insured party.

Insurance for the account of third parties first appeared with marine (navigation) insurance, whereas today is very common with inland and civil liability insurance, but can also appear in any other types of insurance.[2] Today it is most commonly encountered in navigation insurance. However, with the insurance of vessels and aircrafts, it is not of major importance, since the Policyholder is mainly the owner of the vessel and, consequently, the Insured. The situation differs with the insurance of goods in transport – there is a strong need to effect the insurance cover for the account of a third party. Under the sales agreement, the seller and buyer determine who has the obligation to insure the goods in transport. There may occur a change in ownership during transportation and insurance should provide coverage for a person who is the owner at the time of the occurrence of the insured event.[3]

The name "insurance for the account of third parties" is known in the insurance practice and accepted in the legislation of a number of countries as referring to the insurance contracts concluded for the benefit of someone else, not the Policyholder or not only the Policyholder.[4] In property insurance, the Beneficiary is the Insured and in the personal insurance, the Insured is not always the Beneficiary. With life insurance against actual death, by nature, a Beneficiary is not the Insured, but either a Policyholder or a third party, whereas with insurance in case of survival, the Beneficiaries may be the Insurer, Insured and a third party (Insured: a child concludes insurance in case of survival of his father, under which the father is to be paid

[2] In the legislation and the law doctrine there is no same view as to whether the term "insurance for the benefit of third parties" refers only to property and personal insurance. The prevailing attitude is the one that accepts that the insurance for the benefit of third parties is appropriate for the personal insurance because the sum insured is a monetary amount payable to the beneficiary (for the account of beneficiary). The prevailing assumption is that the term "insurance for the benefit of third parties" refers to the property and personal insurance and the term "insurance for the account of third parties" refers only to property insurance.

[3] Ivošević B., *Transport Insurance Guidebook*, FMS, Tivat 2010, p. 35.

[4] F. Sánchez Calero, *Ley de contrato de seguro*, Edit. Aranzadi, 2005, p. 177.

out the agreed annuity upon turning 65 years of age; third party: the Policyholder concludes a contract stating that in case of his survival of the agreed age, the sum insured shall be paid out to his child). For some property insurance, it is common to contract for the account of third parties, like civil liability insurance and the insurance written by the keepers of third party property, such as warehouses, carriers, commissioners or freight forwarders. The mechanism of contracting for the account of third parties provides insurance coverage for the benefit of a non-contracting party, and, sometimes, of the Policyholder as well. This is obvious when it comes to contracts signed by a person who can be liable for damages to third party property in his custody or usage.

The insurance for the account of third parties is deemed collective agreements where the Policyholder concludes a contract for the benefit of the person with whom he is related in some way (by contract of employment, membership in a professional or other association) and who pays the premium to the Insurer (employer for workers, association for its members, a bank for clients). If the group agreement is concluded as a framework for individual contracts between the Insured and the Insurer, it shall not be deemed insurance for the account of third parties.

When the contract is concluded for the account of third parties, the Policyholder is not the representative of the Insured/Beneficiary, because he acts on his own behalf and not on behalf of the Insured/Beneficiary. A Policyholder may authorize a person to conclude a contract on his behalf and for his or a third party's account and therefore this person may not be a party to an insurance contract[5]. If it does not arise from the circumstances that the contract has been concluded for a third party, such contract shall be deemed concluded for the account of the Policyholder.

The laws governing the insurance contract include the rules regarding the insurance for the account of third parties as part of the general (common) provisions relating to property insurance and insurance of persons or the provisions relating to property insurance. In the Law on Contracts and Torts provisions on insurance for the account of third parties are contained in the section of general provisions that apply to all insurance of property and of persons, which remains the same in the preliminary draft of the Civil Code of Serbia[6]. However, the provisions in the Law on

[5] This is explicitly provided in the Commercial Shipping Act (Article 524, paragraph 4): "A person who has concluded the insurance contract explicitly on behalf and for the account of his appointer shall not be considered a Policyholder". That this issue was raised in practice is confirmed by the judgment of the Supreme Court of Spain as of January 23, 1998: "An insurance agent is independent and in no case can be considered as a contracting party to an insurance contract, where the contracting parties include only the Policyholder, that is, the Insured and the Insurance Company ", RJ 1998, 122, Sánchez Calero, re. cit. p. 178. fn 8.

[6] Article 905 of the Law on Contracts and Torts; Article 1417 Pre-Draft of the Civil Code. French Insurance Code: Common Provisions (Article L. 112-1); Belgian Insurance Law: provisions on insurance for third party's account are comprised in the section on property insurance (Article 92). The common

Contracts and Torts regarding the insurance for the account of third parties apply to cover for the account of third parties under the insurance of property and not in all aspects under the insurance against civil liability and insurance of persons.

Characteristics and Legal Nature of Insurance for Account of Third Parties

Insurance for the account of third parties exists when the subject matter of the insurance contract is the insurance benefit, which is not the benefit of the Policyholder or not only the benefit of the Policyholder. By virtue of the clause for the account of third parties, the persons for whose account the insurance has been effected are entitled to contact the insurer directly in order to claim for the compensation or payment of the agreed sum insured.

The policy stating the name of a particular person as a beneficiary does not protect the interests of third parties who may have the insurable interest on the

provisions include the rules relating to insurance for the benefit of third parties (Article 77); Law on Insurance Contract of Spain: Common Provisions (Article 7); German Insurance Contract Law: Common Provisions (Articles 47-48). It is interesting that the provisions on insurance for third party's account of this law were included in the section dedicated to the insurance of property, only to be incorporated into the section containing general provisions, under the recent amendments to the Law. Their content, however, corresponds to the insurance of property. Article L 112-2 of the French Insurance Code provides that insurance may be concluded based on a general or special authorization, or without authorization for the account of a third party. In this latter case, the insurance is for the benefit of the party for whose account the contract is concluded, even if such party granted his authorization after the occurrence of the insured event. Insurance may also be concluded for the account of whom it may concern. In such cases, the insurance is for the benefit of the Policyholder as well as the beneficiary who is or will be known. In the Belgian Insurance Act, general provisions contain rules that apply to all insurance for the benefit of third parties. Special provisions relating to property insurance shall apply to insurance for the account of third parties. Under the general provisions, the contracting parties may agree at any time that a third party shall benefit from insurance in accordance with the agreed terms and conditions. Such a third party may not be designated or known at the time of contracting, but it must be so on the day of filling the claim to the Insurer (Article 77). Under the special provisions of insurance for the account of third parties, insurance may be concluded for the account of whom it may concern. In this case, the Insured is the person who can prove that he has an insurable interest upon occurrence of the insured event. All complaints regarding the insurance contract can be forwarded to the insured (Article 92). The Insurance Law of Spain has included the provisions on insurance within the general terms and conditions (Article 7). The Policyholder may conclude insurance for his own or for the account of a third party. In case of a doubt, it will be assumed that the Policyholder has concluded insurance for his own account. The insured person, who is not the Policyholder, may be a designated or designable person, depending on how he is defined by the contracting parties. If the Policyholder and the Insured are not the same person, the obligations under the insurance contract shall be fulfilled by the Policyholder, except those that are by nature fulfilled by the Insured. The Insurer, however, cannot refuse to have the obligations of the Policyholder be discharged by the Insured. The rights under the insurance contract, excluding the rights which belong to the Policyholder in certain cases of life insurance contract, belong to the **Insured** or the **Insurance Beneficiary** (highlighted by the author).

same object.[7] In principle, it cannot be said that, for example, a property insurance contract by nature implies the intent of contracting the benefit for any party with an insurable interest.[8] Therefore, for example, the Policy stating the name of an insured co-owner shall not protect the interest of other co-owner/s. If, however, insurance is concluded for the account of whom it may concern, Insured shall be all parties having the insurable interest, up to the amount of such interest. The multiple insures occurrence is either caused by the mutual connection between the holders of interest on the same object (e.g., the owner, the beneficial occupant and the occupying tenant, co-owners), notwithstanding whether the holders of interest are independent from each other (e.g. buyers of apartments in one residential complex). The person for whose account the insurance is concluded should consent to it, which, as a rule, he does at the conclusion of the contract. However, it is permitted to consent upon occurrence of the insured event.[9]

The law stipulates that a person whose interest is insured does not have to be named – it is the case of insurance for the account of whom it may concern. A Policyholder may contract insurance coverage for a particular person or for a person who can be determined at the time of occurrence of the insured event. The case law of the developed countries was of the opinion that with the insurance contract for the benefit of third parties other than the Policyholder, such person need not be known when concluding a contract, which was later accepted by the legislation of those countries. If the Insured is not named, he can be any person who at the moment of the occurrence of the insured event has a property interest on the insured subject matter under the property insurance. In this way, it is possible to provide insurance cover to a person who is not known at the time of the conclusion of the insurance contract and becomes the holder of the insured interest during the insurance period. For example, insurance concluded by the carrier for the account of the owner of the goods, or in case of buying home appliances which include insurance, where the Insured is only known when buying the appliance.[10]

Insurance for the account of a third party allows for the sum insured to be paid out to the party specified in the contract. If the beneficiary is not named, the rules for insurance for the account of whom it may concern shall not apply because, under this insurance, the right to in indemnity shall attach for the Insured, the person

[7] M. Picard / A. Besson, *Les assurances terrestres en droit français*, Tom I, Le contrat d'assurance, L.G.D. J., 1964, p. 384.

[8] Groutel H. et al, *Traité du contrat d'assurance terrestre*, L.G.D.J, 2008, p. 933.

[9] "The insurance concluded for the account of third party, without his order, is valid if the third party (the insured) subsequently consents to the conclusion of the insurance contract. The consent to the conclusion of the contract referred to in the 1 of this Article may also be given after the occurrence loss covered by insurance. Reporting of a claim is deemed the consent of a third party to the concluded insurance contract" (Article 525 paragraphs 1 and 2 of the Commercial Law of Serbia).

[10] N R. Mecca, *Manual del professional del seguro*, Buenos Aires 2010, p. 88.

having an interest on the insured object, which is not suitable for the insurance of persons where the Insured is not always a Beneficiary and the payment of sums does not depend of any kind of interest. That is why the rules on insurance for the account of third parties under the laws on the insurance contract of some countries apply to insurance of property and insurance of persons, and the rules on insurance for the account of whom it may concern only to property insurance. The special provisions of the laws pertaining to the insurance of persons regulate the case where the Beneficiary is not named. The sum insured shall be paid to the heirs of the Beneficiary.[11]

If neither the insurance for the account of whom it may concern nor insurance for the account of a named third party have been concluded, the insurance for the account of a third party shall not be presumed and such a position is known in comparative jurisprudence. Tacit insurance for the account of third parties is exceptionally accepted if, from the circumstances of the particular case, it can be clearly concluded that the contract was concluded for the benefit of a third party, not the Policyholder. [12]

The issue of tacit insurance for the account of third parties has long been raised in French jurisprudence.[13] Initially, the courts insisted on formally determining

[11] If the heirs do not know about the existence of a Policy, the sum insured shall remain to the Insurer. In order to prevent the Insurers from keeping the sums insured in such cases, public register of life insurance policies was introduced in France.

[12] If, in addition to the Policyholder's interest on his on property, the Policy covers the interest of third party owners of the goods in custody of the Policyholder stored in the warehouse, as well as due to the fact that the Policyholder is obliged, upon the occurrence of the loss for which he is not responsible, to notify the Insurer of who is the insured party, the Insurer shall not be entitled to deny compensation to third parties, AJ, Kellner to Fire Ass. Of Phila. 120 Wis 233, 106 NW 1060, concluded an insurance contract. Bobrow v United States Casualty Co. 231 App Div 91, 246 NYS Bobrow v United States Casualty Co. 231 App Div 91, 246 NYS63, p. 312. fn 20.

[13] In the judgment of May 25, 1943, the Court of Cassation dismissed the claim of the owner of the apartment who claimed to have the right to indemnity under an insurance contract concluded by the tenant because the intention to determine the owner as the insurance beneficiary could be assumed. The Court took the view that insurance for the account of third parties was not assumable and that it requires an undeniably expressed will. Later, courts, while remaining at the attitude that insurance for the account of third parties is not assumable, have somewhat relaxed their position, stating that such insurance must be indicative and that it is an undeniable result of the will of the contracting parties. Thus, in the reasoning of the Judgment of the Court of Cassation of 10 July 1995, it was stated that the insurance contract between the Insurer and the tenant, in addition to the risk of fire and explosion, included the risks of storm, hail, snow burden, for which the tenant is not responsible. The Court of Cassation was sufficiently satisfied that the insurance of the said risks is in the exclusive interest of the owner of the building, which indisputably indicates the intention of the tenant to conclude a contract for the account of the owner (Groutel H., op.cit., Pp. 933, fn 507). In recent French jurisprudence, this attitude has not changed. In the judgment of the Court of Cassation of January 16, 2014, the Insurer was obliged jointly with the lessee to return the paid insurance indemnity to the lessor although the contract did not state that it was concluded for his account. The Insurer is not obliged to investigate into the ownership when signing the insurance contract, but if the owner is known to him (like in this case), the Insurer is obliged to pay the indemnity to

the beneficiaries through a special contractual clause, whereas more recently it became accepted that insurance for the account of third parties might be tacit. When it is left to the court to assess whether the circumstances arise that the contract is concluded for the benefit of a third party, the court must determine the actual will of the contracting parties. If, for example, in a property insurance contract concluded by a tenant, the owner is not designated as an Insured under a special policy clause, nor is insurance concluded for the account of whom it may concern, the owner may receive insurance indemnity only if this can be concluded on the facts that were available to the court when interpreting the contract.

The insurance for the account of third parties may arise from a law or contract. According to the law, in MTPL insurance, in addition to the vehicle owners, the insurance covers the liability of the driver. Compulsory group employee insurance provides cover for employees who, in a particular legal transaction, act as the Insured. In a voluntary liability insurance contract, the cover can be extended to persons other than the Policyholder (e.g. liability of the manufacturer as the Policyholder and liability of the seller of the product; the liability of the contractor and the subcontractors; the liability of the contracting party and the relatives, spouse, etc.).

The legal doctrine has broadly examined the legal nature of the insurance contract for the account of third parties, whether it is a commercial agency contract, management of affairs of another without the authority to do so, a commission contract, and a contract for the benefit of a third party or a part of the substitution institute[14]. The most near definition is that it is the contract for the benefit of a third party, but under the insurance of persons, since the beneficiary is entitled to the sum insured but does not have the obligation to pay the insurance premium to the Insurer. This is contrary to the legal nature of the contract to the benefit of the third party. The contract in favour of third party is concluded by the creator in person or through a representative, to the creditor's benefit, and such contract is effective for a third party, so that it acquires only the claim (benefit) and not the obligation. In addition, in the case of insurance for account of third parties, the beneficiary is a person whose interest is insured whereas in the insurance of persons, when the contract is concluded for the benefit of the third party, the beneficiary is generally not an Insured. Considering the fact that the characteristics of some insurance contracts for the account of third parties are not inherent to the contract for the benefit of third party, it can be considered a special contract for the benefit of a third party. Thus, it is left to the courts to settle disputes related to this legal transaction based on the characteristics of the contract and the general rules of contract law.

the owner and not to the Policyholder (the Insurer could easily find out, from the traffic licence, that the lessor is the owner and not the Policyholder who was the vehicle lessee). Source*: www.legifrance.gouv.fr.*

[14] Assigning a third party substituent to a participant in a legal transaction who will enjoy, instead of the third party, certain rights or perform certain obligations, under the assumption that the substituent agrees. *Legal Encyclopaedia*, Belgrade, 1989, p. 1641.

Interest in Insurance for Account of Third Parties and for Whom it May Concern

The rule that an insurance contract can be concluded by a person with an insurable interest applies to all property insurance contracts and to those that are concluded for the account of third parties[15]. The Policyholder undoubtedly has some interest in concluding an insurance contract for the account of third parties but the indemnity can be claimed only by those persons who, at the time of the occurrence of the insured event, had a material interest that it does not happen. [16] Both the owner and the tenant have, for example, the interest in keeping the object safe and they can therefore appear in the capacity of the Policyholder and the Insured under the insurance contract concluded for protecting against the risk by the occurrence of which the object can be destroyed or damaged.[17]

The interest in insurance for the account of third parties appears only with property insurance. In special provisions relating to property insurance, the ZOO prescribes that there must be an insured interest when concluding a contract.[18] With property insurance for the account of third parties, the Policyholder has an interest that the person for whose account the contract is concluded does not sustain any losses, since this would also cause property losses for the Policyholder.

The legislation and legal doctrine lack a unique answer to the question whether the interest must be held by the Policyholder or it is sufficient that the Insured has it at the time of the occurrence of the insured event.[19] Due to the nature

[15] In the legal doctrine, there are authors who consider that an Insurer cannot require the Policyholder to have an insurable interest at the moment of entering into an insurance contract for the account of third parties because the nature of this insurance is contrary to such a requirement (Monette F. et al., *Traité des Assurances terrestres*, Brussels, 1949 , p.227).

[16] According to the Law on Merchant Shipping (*Official Gazette of the Republic of Serbia* No. 96 of 26 November 2015), the Insured may claim indemnity for the damage covered by insurance only if he had an interest in the insured object at the moment of occurrence of the insured event or if he acquired such interest subsequently (Article 523, paragraph 2).

[17] Šulejić P., *Insurance Law*, Official Gazette SFRY, 1980. p. 277.

[18] Article 924 ZOO: (1) Insurance of property may be concluded by any person who has an interest that the insured event does not occur, because otherwise he would sustain a certain loss (2) Only persons who, at the time of the loss occurrence had a material interest that the insured event does not occur shall be entitled to insurance rights.

[19] A person shall have an interest in objects if he suffers direct and immediate damage due to damage or destruction of such object. Interest must also exist at the time of occurrence of the insured event, but the same interest does not have to exist during the period of the contract "(Article 2581 of the Québec Civil Code). Article L 121-6 of the French Insurance Code:" Any person having an interest in an object being preserved can insure such an object". In French law, insurance of objects is commonly identified with the property insurance (casualty insurance). Article 25 of the Law on Insurance Contract of Spain stipulates, "... a contract on insurance against damages is null and void if at the time of conclusion of the contract there is no interest of the Insured to be paid out indemnity."

of property insurance, it can hardly be accepted that a contract can be concluded by a person who has no interest in concluding it. If a contract is concluded for the account of a third party, it is done for insurance to protect against the risk to which such party is exposed; however, this does not exclude the interest of the Policyholder to preserve the object of insurance. A spouse who concludes a fire insurance for an apartment owned by the other spouse has an interest because it is for an object that benefits him as well. The interest is double, it pertains to both the Policyholder ant the Insured, but the Policyholder must have such interest when concluding the contract, whereas the Insured - upon the occurrence of the event insured against. Although it is required that the Policyholder, when concluding the insurance contract for the account of a third party, have an interest that the risk does not occur, indemnity can be claimed only by individuals with a prevailing material interest at the time of insured occurrence.

Third party interest is not necessarily required at the moment of signing the insurance contract. During the period of insurance, conditions may arise for the emergence of interest with the person for whose account the insurance of the object insured has been concluded. It is enough that the contract contains elements from which it is possible to conclude the type of interest involved. A person having such interest at the moment of occurrence of the insured event has such interest may be entitled to insurance rights. In the case of property insurance for the account of third parties, the Policyholder and Beneficiary often have different interests[20]. When the warehouse keeper concludes the fire risk insurance for the account of the owner of the stored items, the owner and the warehouse keeper do not have the same interest. The owner has an interest not to suffer a material loss due to damage or destruction of his property whereas the warehouse keeper's interest is not to be liable for the resulting damage. Given these can be two different risks (fire and civil liability); the question is whether a double insurance is possible. If the owner and the warehouse keeper insure the object against the fire risk, double insurance is not possible in case the warehouse keeper is responsible for the occurrence of fire. Double insurance exists if, for example, the object is insured against the risk of fire for the same period and interest, and in this case, the interest is not the same (interest to preserve the object vs. interest not to be liable for the damage caused). The Insurer will indemnify the owner of the stored items but will not be entitled to a refund from the Policyholder if the latter is responsible for the occurrence of a fire, since he also protected himself against the risk of civil liability under the contract for the account of the owner of goods. If the insured item is damaged or destroyed

20 "The contract concluded by the carrier for insurance of goods represents the liability insurance for the carrier and property insurance for the owner of goods." Civ. 1re 16.07 1998 Bull.civ. I n 246, *Code des Assurances*, Dalloz, 2007, p. 9, fn 8. This attitude has always been advocated by the French courts and it is not disputed in legal doctrine

without the liability of the warehouse keeper for the occurrence of the insured event, it is only a matter of insurance for the owner's account. If the owner insured the objects against the same risk, double insurance may occur (the sum of the insured amounts under both contracts exceeds the value of property).

Liabilities under Contract on Insurance for Account of Third Parties

In the case of insurance for the account of third parties, the premium payment and other contractual liabilities shall be fulfilled by the Policyholder[21]. As a holder of obligations, he can in principle modify, terminate or withdraw from the contract. However, the Policyholder has obligations that, due to their nature, should be performed by the beneficiary as well, as the main risk manager. The obligation to notify about the risk deterioration, obligation to prevent the occurrence of the insured event, reduce the adverse effects upon its occurrence and the notification of the insured event, concern more the Beneficiary than the Policyholder and therefore it would be appropriate if they referred to both of them. The nature of the insurance contract would require the individual obligations to refer only to the Insured, such as, for example, in the case of reporting the circumstances of significance for the risk assessment (especially with regard to pre-contract information relevant to the risk assessment in life insurance included in the Insurer's questionnaire). Actions of the Beneficiary should be taken into account by the court when deciding upon a request for discharging the obligations of the Insurer under the insurance contract concluded for the account of third parties.[22] The possible liability of the Policyholder

[21] "In the situation where, on the basis of the collection of premiums under the insurance contract where the claimant appears as an Insurer and the first accused as a Policyholder who concluded the insurance contract for the account of the second accused but without his express authorization, is the first accused who is passively legitimized for payment of outstanding life premiums. The first and the second accused had a business relationship based on the import contract..... The second accused did not conclude the insurance contract with the claimant and therefore had no direct business relationship with him, and the second accused did not approve the insurance contract concluded for his account. With such a statement of fact, the claimant can only claim from the first accused as the Policyholder the payment of outstanding insurance premiums whereas the relationship between accused is their internal relationship that has no effect to third parties. Namely, in the concrete case, in relation to the second accused, the claimant appears as a third party with whom the second accused has no contractual relationship. The allegations from the letter of complaint of the first accused that the insurance contracts were concluded for the purpose of the realization of the import transaction and for the account of the second accused had no influence on a different decision in this dispute, but may be of influence hen regulating the mutual relations between the first and the second accused, either voluntarily or in another court proceedings ("Judgment of the Higher Commercial Court", PG 3870/2003 of 10 September 2003 - Commercial Court Case Law - *Journal of Commercial Law*, No. 4/2003 - P. 96).

[22] The German Law on Insurance Contract stipulates that, when the knowledge and actions of the Policyholder in case of insurance for account of third parties have legal importance, the knowledge and actions of the Insured shall also be important (Article 45).

towards the Insured for the fulfilment of obligations is not legally established but is a matter of their mutual relations that they can arrange before concluding the contract.

The insurer cannot refuse the performance of contractual liability of the Policyholder by the Insured, under the general rule of contract on the fulfilment of the obligations for the account of the debtor.[23] Pursuant to this rule, the Insurer shall accept the fulfilment of any obligation of the Policyholder by the Insured. The circumstance that the Insured is the carrier of the insured interest and, accordingly, interested in good functioning of the legal transaction with the Insurer, leads to the fact that he is entitled to take over the position of the Policyholder when it comes to fulfilment of the obligations under the insurance contract.

Rights under Insurance Contract for Account of Third Parties

The rights under the insurance contract belong to the Insured, that is, the Beneficiary, except the special rights of the Policyholder in case of life insurance contracts (the right to repurchase, reduction of the sum insured, the policy deposit and the advance payment). The Policyholder cannot exercise the insurance rights, even when he holds the policy, without the consent of the person whose interest is insured. However, the Policyholder has certain rights as a party to a contractual relationship, such as, the right to amend insurance contract, terminate the contract under the conditions laid down by law, and object to the contract period extensions.

If, under the property insurance, the Policyholder is responsible for the occurrence of the insured event, the Insurer shall not be entitled to a recourse based on subrogation, as the Policyholder is not a third party. A different opinion would not be in accordance with the rules on legal subrogation of the Insurer or with the nature of insurance for the account of third parties.[24] The realization of a recourse against the Policyholder would negate the insurance for the account of third parties

[23] Article 296 of the La on Contracts and Torts: (1) The obligation can be fulfilled not only by the debtor, but also by a third party; (2) The creditor shall be obliged to receive the discharge from any person having any legal interest in fulfilling the obligation, even when the debtor opposes such fulfilment. In the Spain law, the fulfilment can be done by any person, regardless of whether he has an interest in fulfilling the obligation, and regardless of whether the debtor is aware of it, whether he approves or neglects the execution.

[24] In practice, contracts for the account of the lessors are concluded by the lessees. The courts are of the opinion that the lessee, the Policyholder, is not entitled to insurance rights under such a contract. The rights shall belong only o the Insured - the Beneficiary, the leasing company, and any possible liability of the Policyholder - the lessee cannot be excluded. In such a situation, the Insurer who has paid out damages to the insurance beneficiary has the right to claim recourse for the paid out damages against the person who is in any way responsible for the damage, including the Policyholder according to the Article 939 of the Law on Contracts and Torts (Answers to the questions posed by the commercial courts, adopted at the session of the Department for Commercial Disputes of the Commercial Court of Appeal held on 26.11.2014 and 27.11.2014 and at the session of the Department for Economic Offenses and Administrative Disputes held on December 3, 2014 - *Court Practice of Commercial Courts* - Bulletin No. 4/2014).

since the Policyholder is obliged to pay the Insurer a premium and conclude the insurance if he has an interest.

In case he holds property insurance policies, the Policyholder may, on his own behalf, exercise the rights under the insurance contract if, at the time of the insured occurrence, he is the holder of the prevailing interest for which the insurance for the account of third parties has been originally concluded. In order to be entitled to collect the indemnity, the Policyholder must prove that he has the insurable interest at the moment of occurrence of the event insured against, notwithstanding the fact that he had such an interest at the moment of conclusion of the insurance contract. At the time of contract conclusion, this interest need not be linked to the ownership or some other property law, whereas upon occurrence of the insured event, it must be so.

The basic right under the insurance contract is the law of insurance indemnity or payment of the insured sum and it attaches for the Insured, i.e. the Beneficiary[25]. In principle, under the insurance contract for the account of third parties, the persons for whose benefit the insurance has been concluded may require the Insurer to execute his contractual obligation if they have a Policy. In this case, they may dispose of their own rights without the consent of the Policyholder and pursue such rights through the court of law. The Policyholder shall hand over the insurance Policy to the Insured if the latter has accepted the insurance for his benefit. If the Insured has not received the Policy until the occurrence of the insured event, the Insured can exercise his right toward the Insurer only with the consent of the Policyholder[26]. The policyholder who, with the consent of the Beneficiary having accepted the benefit, has collected indemnity is obliged to surrender it to the Beneficiary, in which case he acts as his representative.

[25] Such a position is also known in our case law. In one case, the Commercial Court of Appeal took the view that the lessee was not actively legitimized to claim insurance indemnity, but such right attaches for the Insured. From the grounds of the judgment: "The Insurer against whom an admissible case was submitted stated in his complaint that, according to the insurance Policy, the claimant is the Policyholder and that insurance is agreed to the benefit of ... d.o.o… as the Insured, that the first instance court correctly stated that the claimant had not been actively legitimized to claim for insurance indemnity pursuant to the Article 897 of the Law on Contracts and Torts, that such right attaches for the Insured, not the Policyholder... The defendant calculated the damages to the amount of 3,237, 965.15 Dinars and the defendant paid the determined amount to the Insured.. because the insurance rights under the Policy belong exclusively to the Insured in accordance with Article 905, paragraph 1 of the Law on Contracts and Torts. Therefore, the second instance court found that the claimant was not actively legitimized to claim payment of the amount arising from the insurance contract or the damage it considers to have occurred after the termination of the insurance contract. In the case of any possible omissions of the defendant in the method of calculating the amount of damage, only the Insured was actively legitimized for filing a claim for indemnity", Judgment of the Commercial Court of Appeal, Pg 1211/2015 of 24.6.2015.

[26] N.Niessen, *Die Rechtswirkungen der Versicherung für fremde Rechnung unter Besonderer Berücksichtigumg und Innenverhältnisses zwischen Versicherten und Versigherungsnehmer*, VVW GmbH, 2004, p. 7.

Due to the nature of the rights of the insured, the agreement of the amount and method of indemnity must be reached between the Insurer and Insured, not the Insurer and the Policyholder. The right of the Insured is independent of the property of the Policyholder, and consequently, exempt from the creditor or heir of the Policyholder. The Policyholder has no obligation towards the Insured or the bankruptcy estate if bankruptcy proceedings have been initiated against the Insured before the Policyholder has collected his claims against the Insured under the insurance concluded to this purpose. The Policyholder can settle such claims from the Insurer from the insurance benefit before the creditors of the Insured.[27]

In the personal insurance, the Beneficiary is entitled to payment of the insured sum. The law does not regulate under the general provisions the issue of the rights of life insurance beneficiaries, but special provisions regulate such rights. Although personal insurance for the benefit of third parties is considered insurance for the account of third parties, it is quite different from such kind of insurance covering property and other property interests. The general provisions on insurance for the account of third parties must therefore be adapted to the specific features of the insurance to which they relate.

Possible Objections of Insurer to Parties for Whose Account the Insurance is Effected

The insurer may file to the Insured or another Beneficiary of the insurance for the benefit of third parties all the objections that can be filed against the Policyholder. The right of these parties is also affected by the circumstances that may result in restrictions or termination of the right to compensation (for example, expiration of the period to which the contract is concluded, non-payment of the premium, etc.). Failure to fulfil the pre-contractual obligation of the Policyholder to report the circumstances of significance for the risk assessment, limit of the coverage for standard perils with combined insurance, the limit of indemnity or the application of the rules of proportionality and, in general, what has been agreed between the Policyholder and the Insurer directly affects the legal position of the Insured.

Insurance for Benefit of Third Parties with Civil Liability Cover

The civil liability insurance is concluded for the account of third parties in the cases when the insurance cover is provided for, in addition to the Policyholder, the third party relatives, business partners or persons in other relations with the Policyholder. This is a non-standard insurance for the account of third parties and,

[27] Article 905 paragraph 3 of the Law on Contracts and Torts.

unlike the insurance of property; it has its own specific traits that the legislator has to consider. Insurance coverage is provided to the Policyholder and third parties or a group of persons listed in the insurance terms and conditions or the insurance policy ("omnibus" clause). It is about expanding the insurance coverage offered by the Insurers to better protect the Policyholder himself, because it covers the persons whose protection is materially important for the Policyholder as well. In the terms and conditions for insurance of general civil liability, the extension is regulated under a provision that usually provides for the coverage of spouses, parents and children, adoptees and other persons living in the same household with the Policyholder.[28]In some insurance lines, the expansion of coverage is required for public interest, such as in the case of motor vehicle liability insurance that provides cover for the vehicle owner and an authorized driver, in order to better protect he victims of traffic accidents.

In the case of multiple persons insured under one insurance Policy, the rights and obligations of one insured person do not necessarily depend on the rights and obligations of other insured, and the Insurer may cover different obligations of individual insurers. For example, in the case of agreed territorial extension of cover to include damages incurred abroad, the contract may stipulate that this extension applies only to the Policyholder and no other insured persons. In addition, the Policyholder does not claim the return of the premium, since it is not separately calculated from these persons. The risk of coverage extended to third parties is included in the total premium paid by the Policyholder.

When more than one person has the status of an Insured, the question of mutual responsibility arises, whether insurance covers their liability only to third parties or liability for damage caused to each other. When the Policyholder has sustained a loss for which the other insured party is responsible, the Policyholder may be the Beneficiary, and the fact that it is exactly the Beneficiary does not give the right to the Insurer to deny the compensation, unless otherwise greed.

Foreign jurisprudence considers this issue in the context of insurance for the account of third parties.[29] One of the basic rules of this insurance is that the

[28] According to the standard terms and conditions for general civil liability insurance applied in the insurance market in Serbia, the Article with definitions of particular terms, the "Policyholder" is the person who concludes an insurance contract with the Insurer, "insured" is the person whose liability is covered by insurance and the third party is a person who is not a party to an insurance contract, or a person whose liability is not covered by the insurance as well as an employee of the Insured. In special provisions of the terms and conditions specifying the scope of the insurance coverage, it is stated to which persons other than the Policyholder the coverage is provided (spouse and children of the contracting party, household employees in everyday life liability insurance, members of the management board of various nonindustrial organizations, schools, etc.). The person to whom the liability risk coverage extends are not third parties but the Insured ("insured persons").

[29] The position of the French Court of Cassation was that, unless otherwise agreed, it does not permit the recourse claims of the Insurer against another insured covered under the same policy. Such an attitude is

Insurer does not file recourse claims against the Insured for the loss events they have insured against. This rule applies to all types of insurance, but also to insurance for the account of third parties where several persons can act as the Insured, provided one of them is liable for damage caused to a third party. The fact that a part is only an Insured and not a Policyholder does not change anything. Allowing the capacity of the Insured may be compared with the waiver from filling the claim for recourse by the Insurer. However, it is not necessary for a contract to contain a waiver provision from filing a recourse claim to the insured, bearing in mind that the very nature of insurance for the account of third parties results in such a consequence[30]. However, if the responsible person has the capacity of the Insured under the insurance contract, the Insurer cannot lodge a recourse claim against either him or his Insurer against liability (assuming that the Insured has concluded insurance contract against civil liability).

Conclusion

Complex insurance, which certainly includes insurance for the account of third parties, often causes confusion both in insurance and in court practice. The application of regulations on complex relationships between several persons involved in the insurance transaction is associated with great difficulties if those persons excessively generalize and inconsistently regulate their mutual relationships.

Insurance provisions of the Law on Contracts and Torts are in the group of general provisions relating to property and personal insurance and regulate the matter as if they were related only to property insurance. Such conclusion is supported by the following facts:

unequivocal in the decision of a dispute initiated by the Insurer to obtain the right to recourse from one insured person who was responsible for the occurrence of the insured event. The parent Company insured the goods against the fire risk in two of its subsidiaries located in the same area. Branch office X goods was damaged in a fire and the damage was compensated by the Insurer. After the analysis of the loss event, it turned out that Branch Y was responsible for the damage. The Insurer decided to file a recourse claim against Y and its civil liability insurer (the branch had, in fact, concluded an insurance contract with another insurer). The Court of Cassation took the view that the Insured may have the status of a third injured party in relation to the other Insured responsible for the damage under the same Policy (Cass. 1ére civ., 21.05.1986, RGAT 1986, p. 439, comp. J. Bigot). Insurers often enter a provision in the Policy whereby the insured persons are third parties to each other, which means that the Insured under the contract can have the capacity of the injured party in relation to the other Insured under the same contract. The Court of Appeal reminded the Court of Cassation of this in its another decision: "A provision establishing that insured persons shall represent third parties amongst each other has no effect on their status of insured persons under a contract for the account of third parties and the Insurer could not lodge any recourse claims against his Insured (Cass. 1re civ., 4 déc. 2001, RGDA 2002, p. 194, source: *http://actuassurance.free.fr/PDFs/actjuris116.pdf*).

[30] In one case, French jurisprudence did not raise the issue of the obligations of the liability insurer, however, even if it did so ,the insurer who issued cover against the fire risk would not have been able to file any claim against liability insurer (Cass 1re civ., 26 May 1993, n ° 89-18219, RGAT 1993, pp. 795)

1. Provisions for Law on Contract and Torts referring to insurance for the account of third parties are related to persons whose **interest** is insured. The notion of interest in the context of an insurance contract may be related to the insurance of the property, not to the insurance of persons. In the insurance of persons, material interest is not relevant (e.g., that the insured sum provides for the support of the beneficiaries, education, and material security in old age). The "insured interest" syntagm is in the provisions of the Article relating to property insurance and providing that a contract may be concluded when there is an interest and that the right may be exercised by a person who had an insured interest at the moment of occurrence of the insured event.

2. In order for general insurance provisions for the account of third parties to apply to all insurance, such rules should be envisaged that could be applied to them. If a rule contained in the general provision does not apply to both insurance groups, this must be stated, which has not been done in the Law on Contracts and Torts.

3. The Law on Contracts and Torts stipulates that the Policyholder have the priority right in collection of premium and contractual costs out of the outstanding indemnity amount as well as to claim the collection directly from the Insurer. These provisions are important for property insurance. They cannot be applied to the personal insurance due to the nature of the relation that exist in the personal insurance.

The Law on Contracts and Torts does not use the appropriate term for adressing the persons for whose account the insurance is concluded. The term "interested party" is quite vague, whereas the term beneficiary should not include all persons for whose account the insurance is concluded. In the insurance of property, it is the Insured. In the personal insurance for the account of third parties, the Beneficiary is a person entitled to the sum insured and as a rule, not the Insured. In the insurance of the property, the person to whose benefit the insurance is concluded is the Insured, because he has a material interest that the insured event does not occur. In the legislation and/or the insurance theory and practice, the term "beneficiary" is used with a wider meaning and includes any person who has a benefit under the insurance contract: the Insured person, the person entitled to the sum insured (under personal lines) and third party claimant (in the civil liability insurance). However, in the context of insurance for the account of third parties, the term "beneficiary" should not be used in the case of persons for whose account property insurance is effected since the term "Insured" is adequate. The term "third parties", which is otherwise used in the laws of some countries, refers to persons entitled to indemnity from the Insurer by way of liability of the Insured, which does not contribute to understanding the insurance for the account of third parties. Liability insurance is written for the account of third parties in the cases where the Insured includes other persons

beside the Policyholder and not because this insurance covers damages to injured parties that are not parties to the insurance contract.

In view of the above, the general provisions of the Law on Contracts and Torts should provide that an insurance contract can be concluded for the benefit of a third party and specify: a) that such party may be designated or designable; b) that the Policyholder may be the Insured; c) that all obligations under the contract are executed by the Policyholder and that the behaviour of the Insured affects the obligation of the Insurer; g) that the Insurer may file all the objections against the Policyholder to both the Insured and the Beneficiary. General provisions that would have those elements could apply to property insurance (objects and civil liability) and personal insurance. The special provisions relating to insurance of property and insurance of persons should regulate more closely the relations between the participants in this insurance transaction In the Preliminary Draft Civil Code, the general provisions of the Law on Contracts and Torts on insurance for the account of third parties have been taken fully. The editors did not consider it necessary to change them, which should certainly be re-examined with regard to existing solutions in comparative law.

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