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CONFERENCE REVIEW

## **INSURANCE AND LEGAL AND ECONOMIC ENVIRONMENT**

The 23<sup>rd</sup> annual Conference organised by the International Association for Insurance Law and the Association of Serbian Insurers entitled "Insurance and Legal and Economic Environment – Wider and Narrower Framework" was held in Šabac from 30<sup>th</sup> March to 1<sup>st</sup> April 2022.

In his introductory speech at the opening of the Conference, the President of the International Association for Insurance Law, **Professor Slobodan Jovanović, PhD**, pointed out that studying insurance law and monitoring changes in practice and science of insurance law presents the common interest of members of both associations and other Conference participants. He emphasized the importance of a comprehensive review of current insurance trends, pointing out a number of topics whose consideration has been announced.

– Science and insurance are expected to provide answers and solutions to certain issues, bearing in mind the stability and sustainability of the insurance sector. By presenting papers on selected topics, these issues are analysed and explained, and round tables are an opportunity to discuss the proposed opinions and solutions that can give rise to some new views of current problems - said Professor Slobodan Jovanović, PhD, expressing confidence that the Conference will take place in an academic atmosphere and in discussions about interesting topics.

### **A Billion Euros in Premium is Achieved**

**Dragica Janković, PhD**, a Risk Manager from the company "Dunav osiguranje" j.s.c., had the honour to introduce the participants of the Conference with

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current trends in the Serbian insurance market where after years of expectations the premium of billion Euros was achieved.

– Despite the COVID-19 pandemic, which was current in 2021, the Serbian insurance market achieved a premium of 119 billion and 408 million RSD, which is an increase of 8.64 percent compared to the previous year. Non-life insurance premium increased by 10.2 percent, and non-life insurance without MTPL insurance by 16 percent. In 2020, non-life insurance increased by only 1.66 percent compared to the previous year. On the other hand, life insurance premium increased by 3.62 percent last year, not reaching the growth from 2020, which was 4.38 percent – said Dragica Janković, pointing out that these are preliminary data prepared and processed by the Serbian Chamber of Commerce and that they have so far proved to be reliable.

– Observed by insurance lines, especially significant growth, higher than 27 percent, was achieved in voluntary health insurance (VHI). That insurance line has significant potential for development in Serbia and has grown by over 20 percent in the last few years. Growth of over 10 percent was achieved in motor hull insurance; increase in insurance premium for cargo insurance as a result of increased economic activity was higher than 27 percent; fire insurance premium increased by 9.23 percent; premium in insurance line 9 (a group of various risks starting from agriculture to the electric power industry, machinery breakdown, builder's risk insurance and other) increased by 16.57 percent, which is a consequence of insurance of large infrastructure projects, but also growth of agriculture, where insurance premium for crops increased by 22 percent. MTPL insurance recorded a more modest growth of only 2.4 percent, and the growth of general liability insurance as a modern insurance line that has yet to be developed reached 2.54 percent. Despite the growth of over 113% in road assistance insurance, primarily related to travel health insurance (THI), in 2021 the level of premium from 2019 was not reached, when the premium was by 15.6% higher than the one realized in 2021 – said Dragica Janković.

She stated that the generator of growth in life insurance has been group credit life insurance for several years now, and that the growth of 33 percent in life insurance related to unit-linked insurance in the absolute amount is not excessive, but it still indicates that investment funds will find their development direction in our country.

Analysing the structure of premium by insurance lines, Dragica Janković stated that VHI reached a share of 5.78% in the total premium and was almost equal to fire insurance, which was once the main insurance line for generating premium and profits. The VHI premium is now 6 billion and 900 million RSD, and fire insurance premium is 6 billion and 970 million RSD. With 12 billion RSD of premium and a share of 10 percent in the premium, motor hull insurance has twice the premium than fire insurance. The insurance line 9 (other property) is dominant with a 14% share, with the exception of MTPL insurance, whose share has fallen to 31%.

All of the above led to an increase in the share of non-life insurance in the total premium from 76 to 77.3% and a decrease in the share of life insurance from 23.8 to 23.7%.

– Share in the total premium of natural persons and legal entities is favourable at first glance – 52 and 48%. However, if you exclude life insurance that is naturally related to natural persons, this ratio changes in favour of insurance of legal entities and then it is 42 and 58%, and when you exclude MTPL insurance, where the share of natural persons is 74% , that relation is even more unfavourable, i.e. 21 and 79%. These data indicate a big space for development of personal insurance in our market, and that should be our focus – Dragica Janković pointed out.

– MTPL insurance is significant due to its high share of one third in the total premium, as well as its liquidity and profitability. In 2021, there were 3.27% more concluded insurances than MTPL, and the premium in that insurance line was by 2.41% higher. The lower growth of the premium was influenced by the change of the bonus-malus system that occurred in the middle of 2020, despite the increase in the premium resorted to by some insurance companies. In the last two years, the market share in MTPL insurance has changed so that most companies recorded decline: "Dunav osiguranje" fell from 35.1 to 31.6%, "Generali osiguranje" from 22 to 19%, DDOR from 11.1 to 10%, "Milenijum osiguranje" from 7.9 to 7.5%, "Triglav osiguranje" from 7.8 to 5.9%, "Sava neživot" from 4.4 to 3.3%, "Wiener" from 3.6 to 2.2%, "Uniqa neživot" from 0.9 to 0.6%. The absolute winner is "Globos osiguranje", whose market share reached 9%, and growth was also recorded by "AMS osiguranje" (from 8.7 to 9.6%) and "Grawe" (from 0.4 to 1.2%) – stated Dragica Janković.

The ranking of companies according to their total premium share, at least when it comes to the first two positions, has not changed compared to previous years, and the first place is still held by "Dunav osiguranje", the second place belongs to "Generali osiguranje", while only after the publication of the official data by the National Bank of Serbia (NBS) the positions of other companies will be known, said Dragica Janković.

– Settled claims in 2021 amounted to 54 billion RSD and were by 7.61% higher compared to the previous year, which was less than the premium growth by one percentage point. In non-life insurance, claims increased by only 1.92%, while premium increased by as much as 10%. If we observe non-life insurance without MTPL insurance, the claims are lower by 6% than in the previous year, while the premium is by 16% higher. However, it is interesting to note the increase in claims paid with motor hull insurance – 13.7%, which is slightly more than the increase in premium (10%), and is a consequence of the increase in prices of automobile parts that are likely to continue to rise. In MTPL insurance, this growth was even more drastic and reached 18.45, while the premium increased by just over 2%. Given that this is an insurance line with a large number of not so big losses, and that the risk dispersion

is quite good, this growth is significant and resulting from trends in the automotive industry. Insurance companies should take special care of that, pay special attention to the loss reserve so that there would be no surprises in the balance sheets in future – Dragica Janković warned.

She stressed that 2021 was also marked by losses in life insurance, which increased by 3.13 billion RSD (by 22%), and already in 2020 they were by 1.2 billion RSD (9.2%) higher than the previous year. According to the data of the Statistical Office of the Republic of Serbia, mortality in 2021 compared to 2020 increased by 18.2% or almost 21,000 people, and in 2020 compared to 2019 by 14% or 14,000 people. As losses in life insurance mainly relate to group credit life insurance, a large part of these losses was transferred from 2020 to 2021, which is significantly burdened in life insurance balances.

### **Growth of Capital and Technical Reserves**

– In 2021, the growth of capital continued, and at the end of the third quarter of 2021 it amounted to 68.4 billion RSD, which was an increase of 4.9% compared to the same period last year. Capital adequacy as an indicator of a long-term financial stability of insurance market and insurance companies, i.e. the entire insurance sector, according to the Solvency I Directive requirements, for non-life insurance is at the level of 210%, and for life insurance at the level of 244.6%. It is certain that the stated percentage in life insurance will fall at the end of 2021 due to losses leading to poor results of insurance companies – said Dragica Janković.

Technical reserves are growing and are constantly covered in accordance with the law. Since 2005, they increased from 264 million to 1 billion and 667 million Euros, i.e. by 6.3 times. If the premium increased by 2.5 times in the same period, the difference in the growth of premium and technical reserves was an indicator of increasing financial stability of the insurance market, as well as the security of each insured person that losses (if and when occurred) will be indemnified. As Dragica Janković pointed out, this is a real example of good market regulation and what the NBS, as a regulator, achieved for the stability of the insurance market since it has been dealing with its regulation.

– We are facing harmonization with the EU regulations, and I would like to refer to the Solvency II Directive, which is different from the Solvency I Directive. It is based on risk exposure, as is the case in other parts of the financial sector, especially banks. It entered into force in the EU in 2016, and we started with the implementation in 2017. We successfully completed the first phase and half of the second phase. During previous two years, there were no major activities, which, as it turned out, was not bad because the EU, after four years of implementing Solvency II, made a decision on its revision. The Directive brought many benefits

through high risk management standards and extensive regulatory public reports, but also excessive capital requirements, solvency volatility, high operating and cost burdens, which ultimately have to be paid by insured persons, making European insurance companies less competitive in the global market. The aim of the revision is to simplify the concept that will avoid all the mentioned negative effects of the Solvency II implementation. Considering the implementation phase in Serbia, we will be able to implement the most favourable solution that the EU countries reach after the revision of the Directive – said Dragica Janković.

She also referred to the global economic crisis, pointing to its possible disastrous consequences for the insurance sector, which she supported by data on long-term recovery of insurance from crisis in the 1990s in Serbia, and then from global economic crisis in 2008.

– Global crisis may cause an increase in inflation and a decline in investment, which is a significant generator of premium. In 1990, inflation completely destroyed life insurance, whose recovery began only with the arrival of foreign companies on our market. Share of life insurance in the total premium in Serbia reached 9.51 percent only in 2005. The growth of their share continued and reached a maximum of 25.9 percent in 2016. That year, due to economic growth, infrastructure projects, decline of interest rates, non-life insurance began to grow faster, while the share of life insurance in the total premium decreased to 22.7 percent in 2021. In 16 years, life insurance premium increased almost six fold. Non-life insurance premium increased from 367 million Euros in 2005 to 517 million in 2008. In times of the global economic crisis, non-life insurance premium started to decrease and only in 2016 did we manage to surpass the 2008 premium, not thanks to real growth but to rising MTPL prices in 2015 and 2016. However, if we observe non-life insurance premium without MTPL, only in 2018 did the premium from other non-life insurance reach the one from the beginning of the crisis in 2008. In 16 observed years, non-life insurance premium has doubled.

Dragica Janković concluded that Serbian insurance market is not sufficiently developed, but that it has significant space for growth as well as new challenges in future. Premium increased, but its share in GDP is still 2% because GDP also recorded growth. Percentage of the premium share in GDP in Serbia is on average as the one in countries of the Central and Eastern Europe, but significantly lower than the EU countries, where its share is 8%.

– If we exclude life insurance, we can say that we did not do badly during the COVID-19 pandemic. The NBS has timely adopted well-balanced measures to prevent, reduce and eliminate its negative effects, insurance companies carefully implemented them and made additional efforts to meet the needs of insured persons by introducing new risks and accelerating digitalization of the process. There were 16 insurance companies and 4 reinsurance companies operating on the market,

of which 15 were majority foreign-owned companies. There has been a slight increase in the number of employees of only one percent, so that 11,300 people now work in the insurance sector. Operations of 16 banks, 6 financial leasing providers, one public postal operator, 104 insurance agencies and insurance brokerage companies, 78 natural persons and entrepreneurs acting as insurance agents, and 4,241 persons operating as insurance agents and brokers also contributed to these results.

### Round Tables

The Conference also included thematic round tables, and the first was on the topic "General Issues in Law and Insurance Sector". The paper "(Un)certainity in the Field of Obsolescence of Claims from Reinsurance Contracts" was presented by **Slobodan Jovanović, PhD**, a professor at the Faculty of Business Economics and Entrepreneurship in Belgrade. **Professor Wolfgang Rohrbach, PhD**, from the European Scientific and Art Academy of Salzburg, Austria, addressed the topic of "Sustainability and Insurance". The paper "Credit Insurance in Practice of the National Home Loan Insurance Corporation" was prepared by **Mladenka Balaban, PhD**, an Associate Professor at the Belgrade Banking Academy – Faculty of Banking, Insurance and Finance, and **Dejan Hadžić, B.Sc.** in Economy, and **Rade Tojagić, B.Sc.** in Law, from the Insurance and Real Estate Group of the Ministry of Finance of the Republic of Serbia, who presented the paper.

The regulatory framework of insurance and consumer protection was discussed at the second round table. The first paper "Legal Aspects of Processing Patient Data in Healthcare Insurance in the Legal System of Taiwan" was submitted by **professor Mihajlo Rabrenović, PhD**, from the Torlak Institute for Virology, Vaccines, and Serums in Belgrade as a co-author of the paper whose authors were **Fauzi Budi Satria, MD, MPH**, and **Usman Iqbal, PhD**, both from the Medical Faculty in Taipei, Taiwan. **Ljiljana Stojković, PhD**, an attorney in Belgrade and the vice president of the International Association for Insurance Law of Serbia, presented a paper entitled "Implementation and Interpretation of Law in Context of Proper Insurance Supervision."

At the round table dedicated to MTPL insurance, the participants' attention was drawn by the paper "Insurance of Losses Caused by Artificial Intelligence – a Critical Analysis of Development of European Current Policy", presented by **Shu Li, PhD** a researcher in postdoctoral studies in artificial intelligence and law at the University in Helsinki, while the co-author was **Michael Faure, PHD**, a professor of Comparative and International Environmental Law at the Maastricht University and a professor of Comparative Private Law and Economics at the Erasmus School of Law in Rotterdam. **Miloš Radovanović, PhD**, a research fellow at the Institute of Comparative Law, presented a paper "Fire on a Parked Vehicle and MTPL Insurance". **Caroline Van Schoubroeck, PhD**, a professor at the University of Leuven in Belgium,

addressed the conference with a paper on "Amended EU Directive on MTPL Insurance: Back to Future", which she submitted to the conference organizer in a video.

Due to inability to personally attend and present his paper at the General Insurance round table, **Konstantinos Ntallas** of Rokas Law Firm in Athens, Greece, also sent a video of a paper entitled "Collective Pension Insurance Funds and Contractual Insurance Law". **Nebojša Žarković, PhD**, a full professor at the University Business Academy in Novi Sad, presented the paper "Modern Household Insurance", and **Milica Goravica, LLM**, a judge of the Second Basic Court in Belgrade, presented the paper "Statutory Default Interest on Insurers' Claims".

Three papers were selected for the round table Pre-contractual information and new technologies. **Katarina Ivančević, PhD**, a professor at the Faculty of Law, Union University - Belgrade, spoke on the topic of "Disclosure Duties in Personal Insurance Contract". **Nikola Filipović, LLM**, from the law firm "Živković – Samardžić" in Belgrade presented a paper entitled "Future of Pre-contractual Information Duties in Insurance Law", and **Katarzyna Malinowska, PhD**, a professor at Kozminski University in Warsaw, sent a video of her paper entitled "Legal Aspects on the Role and Subject of Insurance Contracts in the World of New Technologies".

## **Healthcare Institutions and Providing VHI Services**

The last round table at this year's Conference, which brought together top experts from the insurance sector as well as experts on tax issues, dealt with healthcare insurance not provided by insurance companies, the legality of such services and their tax and legal treatment. Numerous dilemmas arising within these services from various aspects were explained by participants of the round table **Nataša Petrović Tomić, PhD**, a full professor of Insurance Law at the Faculty of Law, University of Belgrade, **Miloš Milanović**, a member of the Executive Board of "Dunav osiguranje", **Boris Batarilo**, a tax advisor and **Nenad Grujić, PhD**, a Head of Legal Department in "Generali osiguranje" and a member of the Commission for Legal Affairs of the Association of Serbian Insurers, who was also a moderator of the round table.

– Voluntary health insurance has been expanding in recent years largely due to the COVID-19 pandemic. Certain healthcare institutions started offering packages of VHI services to corporate customers, i.e. companies in the capacity of employers for their employees parallel with insurance companies a few years ago. In the beginning, these packages included a number of at least 100 employees, which was later reduced to 50 or fewer people, and healthcare institutions began creating certain funds, but not in a way as to provide each person with the opportunity to conclude an insurance package, aware that such a package would be fully used by everyone. This raised the question of protecting interests of users of such services – whether they are familiar with the service they bought and what they received for what they

paid for. A concluded insurance contract presents everything that is prescribed by the Insurance Law, such as actuarial methods, risk management rules and everything else stipulated by the Law and the regulator in order for an insurance service user to be protected. Therefore, the question has been raised whether institutions without appropriate licences that do not operate by the rules strictly stipulated for insurers should be allowed to deal with insurance services – said Miloš Milanović.

The foundation in legal regulations of contracting VHI by healthcare institutions was considered by Professor Nataša Petrović Tomić, PhD.

– Only a licensed insurer has the right to form a risk community that operates on the principles of actuarial mathematics, i.e. the one that obtained a licence from the National Bank of Serbia to engage in certain insurance operations. If someone else offered insurance services, even if they were VHI services, according to aleatory contracts, regardless of the actual "cost" of the review, and formed a certain quasi-community of risks, through some protocols offered special benefits and not only for the employer's employees with whom he concluded a contract but up to a certain limit and for family members of an employee, contracted participation in a certain percentage borne by employees as direct service users, then he definitely aspired to conclude an insurance contract. All this represents unfair competition to insurers who pay numerous taxes and everything else required for legal conduct of business operations. If the conclusion of such contract simulates another contract, i.e. insurance contract, then the question of its legal consequences must be raised. The Law on Contracts and Torts stipulates that simulated contracts do not obligate contracting parties, and the Insurance Law contains mandatory rules that restrict freedom of contracting. In order to contract insurance, you must obtain a licence from the NBS – reminded professor Petrović Tomić.

– The Insurance Law unequivocally stipulates that insurance services can be provided only by those with a licence, and it is a criminal offense if a responsible person in a legal entity without a licence concluded insurance contracts with other persons as a service provider or other contracts that were by their nature insurance contracts. Logical result is the nullity of such agreements – Nenad Grujić pointed out. – Article 55 of the Law of Contracts and Torts stipulates that a legal entity in legal transactions may enter into contracts only within the framework of its legal capacity. Legal capacity of medical institutions is limited by the Decision of the Ministry of Health, which gives them a licence to provide healthcare services, and only those approved by that decision. Therefore, that part of the healthcare package simulating insurance is not only simulated, that is the apparent legal business, but is null and void because it is contrary to mandatory regulations, and that is the essence of this phenomenon on the market – Grujić emphasized.

The round table also included a discussion about tax treatment of employer's payments for employees for certain healthcare packages, which was explained by Boris Batarilo.



– If an employer pays preventive examinations for its employees, i.e. examinations intended for early detection or prevention of damage to the health of employees in connection with work, then such payments of an employer are not subject to taxation. Healthcare services of diagnostic and therapeutic or rehabilitation nature are taxable. Namely, the Law on Personal Income Tax stipulates that any employee's earnings is considered a salary, whether it is a cash income, hot meal vouchers, services, goods, certain actions, benefits, or direct payment in favour of an employee, and certain tax rates and contribution rates for compulsory social insurance are applied to salaries – said Batarilo and added that the question arises as to the consequences of an employer who accepts certain "health packages" for his employees, and they contain various types of healthcare services, such as preventive as well as diagnostic and therapeutic ones.

– During tax control, the tax authority may determine a tax liability that the employer is obliged to pay voluntarily or under enforcement. In addition, the tax authority calculates interest, from the moment the tax liability arises until the moment of payment, and it is equal to the key policy rate and an additional 10 percentage points annually. If it is determined in the misdemeanour proceedings that there was also a tax misdemeanour, the employer may be liable for the misdemeanour, and penalties amount to 30 to 100% of the determined tax liability, all depending on whether the misdemeanour was committed negligently or intentionally. It should be borne in mind that it is understood that the employer as a legal entity is obliged to know tax regulations, so he cannot say that he did not know about the obligation to pay tax to certain healthcare services he provided for his employees. If he knew that the healthcare services he paid for employees were taxable and failed to pay the tax in order to avoid the tax obligation, and in the criminal proceeding the existence of the tax obligation and his guilt were proven, i.e. direct intent, in which case imprisonment is imposed. Depending on the amount of evaded tax, the Criminal Code stipulates prison sentences of one to ten years – said Batarilo and pointed out that the employer must be very careful when concluding contracts for the provision of healthcare services, especially those offered in the form of certain packages.

He added that tax practice in determining tax liabilities related to payment of healthcare services to employees is still quite scarce.

By concluding insurance contracts simulating a VHI contract, healthcare service users are put at a disadvantage compared to what they would have if they concluded a contract with insurers licenced to perform these activities and that are bound by regulations concerning protection of insurance service users, such as, inter alia, the obligation to provide pre-contractual information. A user who is dissatisfied with the provided insurance service can file a complaint to the insurer, insurance broker or agent, but also to the National Bank of Serbia, under whose auspices and with whose mediation he can try to resolve the dispute, which is not possible if the user has not concluded an insurance contract. As VHI contracts are

often concluded for one year, if bankruptcy were initiated against the insurer dealing with VHI, users would be protected because the portfolio is transferred to another insurance company, which, again, would not be possible if they concluded a contract with someone that is not an insurer. In addition, the Law on Healthcare Insurance stipulates the obligation for insurance companies that intend to deal with VHI to obtain, in addition to the NBS licence, the prior opinion of the Ministry in charge of healthcare, which introduces another type of control and additional protection of insurance service users, explained Professor Nataša Petrović Tomić.

Miloš Milanović spoke of experience from the 1990s when insurance companies emerged as newsstands, without any control and funds that would provide security to insured persons that they would be indemnified in the event of a loss.

– The insurance sector is now properly regulated. It is not easy to establish an insurance company, and their operation is under strict supervision precisely because of the protection of service users - said Milanović. He stated an example of insurance companies opening their own hospitals in the world, as we had in Serbia, but those hospitals are special legal entities registered with the Ministry of Health for provision of healthcare services, while in this case these are healthcare institutions that want to deal with insurance but they are not registered for that.

– Although we heard in the discussion that these are covert jobs in insurance, they are often not covert jobs at all, because it is possible that alongside insurance companies, healthcare institutions also participate in bids announced by employers for public procurement of VHI services – Milanović stated, suggesting that the way to solve the mentioned problem should be sought through talks with healthcare institutions.

The 23<sup>rd</sup> International Conference of the International Association for Insurance Law of Serbia brought together a large number of insurance law experts from universities, insurance companies, insurance lawyers and other insurance-related businesses and experts. The organizers pointed out that they are proud of the fact that this year's Conference gathered an equal number of domestic and foreign authors from different EU member states, friends of the International Association for Insurance Law of Serbia and associates from national insurance law sections. As it turned out during the three-day Conference it was not only a meeting place for old acquaintances from the insurance sector, meeting new participants, but above all exchanging experience and information on numerous innovations in insurance law and practice. The collection of papers on the general topic of this year's conference "Insurance and Legal and Economic Environment - Wider and Narrower Framework" was published this year in electronic form, and all papers contained in it were registered using DOI numbers, which enabled the professional public, which was unable to participate in the conference, greater visibility and accessibility.

*Translated by: Jelena Rajković*