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Research Article

FEATURES OF COMPULSORY PROFESSIONAL LIABILITY INSURANCE AND ITS ROLE IN INSURANCE RELATIONS

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ABSTRACT

This article analyzes the features of compulsory professional liability insurance. The role of compulsory professional liability insurance in insurance relations is revealed.

KEYWORDS

Insurance, professional liability insurance, compulsory civil liability insurance, notary, auditor, bailiff, insurer, insurance business.

INTRODUCTION

Despite the fact that the legislator provides for ways to ensure the fulfillment of obligations, insurance is the most appropriate mechanism for indemnifying losses associated with the occurrence of professional liability. Liability insurance allows you to distribute the risk of liability for damage caused to a client among a certain number of persons, assigning compensation to the insurance company. For a number of professions that are most in demand in civil relations and can cause harm to their clients when performing certain types of services, the legislator has provided for mandatory civil liability insurance.

THE MAIN RESULTS AND FINDINGS

Law of the Republic of Uzbekistan "On Notaries".

According to the second part of Article 7, "a notary engaged in private practice does not have the right to carry out his activities without concluding a contract of compulsory civil liability insurance."

The object of insurance under a notary's civil liability insurance contract is property interests associated with the risk of his liability for obligations arising from causing property damage to a citizen or legal entity and

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(or) third parties who applied during the execution of the contract. notarial act (Article 191 of the Law on Notaries, part three of the article). The rules of compulsory liability insurance apply only to notaries engaged in private practice since state notary offices perform notarial acts on behalf of the Republic of Uzbekistan and the state bears responsibility for their activities. A notary civil liability insurance contract is concluded for a period of at least one year, during the validity period of this contract, with the condition of compensation for property damage caused during the limitation period established by property insurance contracts. The insured amount under a civil liability insurance contract for a notary engaged in private practice cannot be less than the following minimum amount:

• To organize the activities of a notary engaged in private practice in the cities of Tashkent, Nukus and the administrative centres of the regions - no less than a thousand times the base calculation;

• for organizing the activities of a notary engaged in private practice in other localities - no less than five hundred times the amount of the basic calculation (part five of Article 191 of the Law on Notaries).

Thus, damage caused to the property of a citizen or legal entity is covered by insurance compensation under a notary's civil liability insurance contract or, if this insurance compensation is not enough, by insurance compensation under a notary's civil liability insurance contract. notary. In case of insufficiency of the notary chamber or the last insurance compensation - from the personal property of the notary, and in case of insufficiency of his property - from the compensation fund of the notary chamber.

An insured event under a notary's civil liability insurance contract is the fact of causing property damage to a citizen or legal entity, when the actions (inaction) of a notary as a result of illegal notarial actions are recognized by a court decision or an insurer, as well as disclosure of information about notarial acts performed.

Lack of intent in the actions of a notary is one of the legal grounds necessary to recognize an event as insurable. The presence of intent in the illegal actions of a notary excludes the occurrence of property liability of the insurer and creates an obligation to compensate for damage directly by the notary. If the notarial actions were performed by the notary in full compliance with the law, if he did not intend to cause harm, then there is no reason to hold him accountable, or to impose an obligation on the insurance company that insured him to pay insurance compensation. A notary engaged in private practice bears full property liability for damage caused to the property of a citizen or legal entity as a result of an illegal notarial act or for an unlawful refusal to perform a notarial act, as well as for the disclosure of information about the person who performed the notarial act. Compensation for damage is carried out at the expense of insurance compensation under the civil liability insurance contract of a notary engaged in private practice, in case of insufficiency - at the expense of the property of such a notary within the difference between the insurance compensation and the actual amount of insurance compensation. amount of damage.

In accordance with the legislation on appraisal activities, the appraiser does not have the right to engage in appraisal activities without concluding an insurance contract, since unreliable information about the real value of any type of property can become the main reason for causing material damage to legal entities and individuals. Insurance of civil liability of appraisers can be carried out in the form of concluding

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an insurance agreement for a specific type of appraisal activity or a specific agreement for the assessment of an object (depending on the object of appraisal). In this case, the insured event is the fact of damage caused by the actions (inaction) of the appraiser, recognized as a result of the violation of the requirements of national valuation standards, international standards and rules by a court decision that has entered into force by an arbitration court decision, or an insurer whose appraisal activities are organized by a self-regulatory organization of appraisers, the damage caused is currently a member of the appraiser.

Several other laws also contain provisions for professional liability insurance. Thus, in order to ensure the liability of participants in the insolvency process (debtor, creditors) and other persons, court administrators are also required to enter into liability insurance contracts (part five of Article 22 of the Insolvency Law). Financial support for this obligation is compulsory insurance of civil liability of bailiffs. Compulsory liability insurance agreement for court administrators: with an insurance organization accredited by the self-regulatory organization of court administrators; for this period it must be established for at least one year with the condition of extension.

The main objectives of liability insurance for court administrators are to protect the property rights of persons participating in insolvency proceedings, to provide these persons with guarantees of protection of their rights and interests protected by law, as well as to prevent the financial situation of the debtor. from deterioration as a result of unlawful actions (inaction) of the court administrator. Liability insurance is provided by the legislator under the contract for the provision of audit services. According to part one of Article 29 of the Law "On Auditing Activities", "audit activities are carried out only if there is a liability insurance policy for the audit organization".

The Law "On Auditing Activities" does not determine the level of responsibility of auditors, therefore in insurance it is determined by agreement of the parties. Insurance risks, as well as exclusions from insurance coverage, are formed based on the legal obligations of the auditor. An insured event is recognized as: a court decision that has entered into force; the presence of a causal relationship between the incorrect auditor's conclusion and the damage caused, a justified claim of third parties.

It should be noted that professional liability insurance in our country is not yet sufficiently expressed in legislation. Previously, professional liability insurance for customs brokers and customs carriers, builders, and insurance brokers was mandatory. Also, in accordance with paragraph eleven of part one of Article 6 of the Law "On the Bar," it is established that a lawyer has the right "to insure the risk of property liability associated with his professional activities in the performance of his professional activities." "In this case, professional insurance for a lawyer serves to reduce the risk of possible civil liability.

Limiting the possibility of liability insurance under a contract to cases provided for by law does not prevent the emergence of corresponding contractual structures, if the conclusion of such contracts is widespread in the practice of the insurer and does not contradict the public interests. There is a demand on the market for voluntary insurance of professional errors of medical personnel that do not depend on the negligent or negligent performance of their professional duties, resulting in harm to the life or health of a citizen.

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Poor quality medical care often leads not only to patient dissatisfaction or violation of contract terms, but also harms the health and life of the patient. In the event of harm to life and health as a result of the provision of medical services and the injured patient applies to the court with a claim for compensation for this harm, issues of assessing the quality of medical services move into the legal sphere. space, and the court considers not the quality of medical services, but the actions of the medical institution - the doctor who caused the harm: legal or requiring assessment as illegal actions.

The provision of medical services is always associated with the risk of liability of the doctor if the treatment does not lead to the desired result for the patient. It should be noted that the patient is diagnosed and counseled before treatment begins. For the patient, the result of the consultation (consultation) is often decisive for his decision on a specific treatment method (surgery, etc.). This problem is now escalating sharply for some health workers, forcing them to look for ways and means to resolve conflicts.

Thus, the subject of the professional liability insurance contract of an insurance organization is to provide insurance protection to the insured, and the insurance object under the professional liability insurance contract for medical personnel is physical damage caused by an unintentional mistake of a doctor.

The foregoing shows that, based on established practice, as well as scientific approaches, professional liability insurance is the most optimal mechanism for ensuring the fulfillment of obligations and is used as one of the types of civil liability insurance when insuring persons providing services in various fields of activity.

The legislator provides for liability insurance in the field of property insurance. The object of professional liability insurance is the property interests of the policyholder (service provider) in connection with the obligation to compensate third parties for damage caused to third parties in connection with the professional activities of the policyholder. An individual carrying out professional activities as an entrepreneur enters into a professional liability insurance contract, and a company acting as a legal entity enters into a civil liability insurance contract. Based on this, a legal entity has the right to insure the civil liability of its employees to third parties for damage caused during the performance of work, service, or official duties.

The legal basis for the claim is damage caused to the client as a result of a breach of contractual obligations by the service provider (firm) and a third party acting on his behalf, as well as the fact that the level of care and professionalism does not meet the specified requirements. Consequently, the category reflecting the realized insurance risk is an insured event, and the legislator binds the insurer to the obligation to pay insurance benefits. In this case, guilt is an important and necessary element of civil liability. The legal criterion for holding a person liable for a professional mistake is the recognition of his guilt and the presence of evidence that must be assessed by insurance experts. A necessary criterion for the fact of guilt when determining liability under a contract is non-fulfillment or improper fulfillment of a contractual obligation.

A mistake made by a professional can have long-term consequences. This means that the damage caused by such an error may occur much later than the error actually occurred. Therefore, professional liability insurance contracts must provide for a long period for making a claim after the end of the insurance contract (or, generally, during the limitation period). In this

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case, the insurer may be directly responsible for the actions of the person with whom the insurance contract was concluded (the insured person), as well as for the actions of persons hired by the insured person to assist him in his professional activities.

Based on current legislation, insurance contracts can be concluded in the following options: the insurer's responsibility for the activities of the insured in accordance with the consultant's profession specified in the contract; the insurer's responsibility for a certain type of professional activity (consulting on taxation, law, etc.); the insurer's responsibility for the provision of services by the policyholder (insured) only under a specific contract concluded with a specific client (the necessary conditions for such practice may be the episodic nature of the provision of services by the policyholder or the specifics of a specific contract for the provision of consulting services).

The current legislation uses two approaches to confirm the occurrence of an insured event under a civil liability insurance contract: a court decision that has entered into legal force to hold the insured person liable; Typically, an insured event is determined by other documents that record the result of the pre-trial investigation of the event.

Currently, in the scientific literature there is no uniform definition of the concept of "professional liability" and a professional liability insurance contract. It can be seen that this contract should be based on, firstly, the features that distinguish a professional liability insurance contract from tort and contractual liability insurance, and secondly, the features that define the specific features of these relationships.

Firstly, a feature of this agreement is the presence of a special person carrying out professional activities. The factors determining the occurrence of an insured event are within the scope of the insured's professional responsibilities and are considered dependent on his professional authority.

Secondly, a feature of a professional liability insurance contract (as well as civil liability insurance in general) is that losses and damages caused by a third party (the beneficiary), and not the insured person, are compensated. Because here we are talking about an agreement in favor of a third party. However, traditionally in the literature there is an ambiguous attitude towards understanding an insurance contract as a contract concluded in favor of a third party. The inclusion of property and business risk insurance in an agreement with a third party has raised objections among the authors, and many authors do not include professional liability insurance in such agreements. It should not be forgotten that insurance is a much older and more permanent form of economic activity.

In particular, according to V. A. Rakhmilovich, if a liability insurance contract is recognized as an agreement concluded in favor of a third party, then who is indicated in the liability insurance contract as a beneficiary for damage or the contract does not indicate a beneficiary at all, then the beneficiary is always only the beneficiary, as required by law... will be the victim. "As a result, the injured party has the right to sue the insurer regardless of the will of the insured." In this case, the policyholder buys insurance protection for himself in the event that he may be held liable for damage caused to third parties, and the ability to fully realize this protection for the policyholder is in the hands of these third parties.

In our opinion, this point of view is controversial. In a liability insurance contract, including professional liability, the interests of two subjects are protected - a professional, that is, a person who does not suffer negative consequences due to the existence of an

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insurance obligation in the event of damage to the client, and a person who has the right to receive compensation in the event of damage damage in connection with the existence of this insurance obligation. The presence of a third party who can sue the insurer does not mean that the policyholder is deprived of insurance coverage. He exercises his right by changing the obligation to compensate the insurer and not bear the negative consequences of his professional error.

A different interpretation of this agreement, in our opinion, worsens the position of the victim, who must first contact the insurer, and he, in turn, must file a claim with the insurer, which will lead to an extension of the period for receiving payment. However, one can agree with the opinion expressed by the author regarding part four of Article 918 of the Federal Code. According to this rule, if liability for damage is insured due to the need to insure it, as well as in other cases provided for by law or the insurance contract for such liability, a person who is considered to have entered into an insurance contract in his own favor has the right to make a claim directly to the insurer for compensation damage within the insured amount.

Thus, the legislature, in our opinion, introduces an arbitrary restriction. And here we can agree with the following opinion of V.A. Rakhmilovich: "the reason for this limitation and insurance compensation is due to the mandatory norm of part three of Article 931

It is still difficult to say what the difficulty is in transferring it to the person to whom it should be transferred completely and unconditionally. If the beneficiary cannot be anyone other than the victim, then Article 362 of the Federal Code has no reason to deviate from the general rule on contracts in favor of a third party... however, according to part four of Article 918 of the Federal Code, unless otherwise specified in the contract, compensation may be demanded only the policyholder, in which case he must transfer what he received to the beneficiary in the future."

Even in the practice of applying the law, a clear approach to insuring the risk of civil liability of a financial company for causing damage has not been formed. In particular, the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan dated November 29, 2017 No. 45 "On some issues of the use of legal documents by courts in resolving disputes arising from insurance contracts" does not contain any recommendations on Article 918 of the Criminal Code.

The scientific literature offers a different basis for interpreting this norm. K. Ishkho notes that the possibility of a victim's direct appeal to the insurer arises not in cases provided for by law or contract, but because liability for harm is mandatory or the law or contract requires that such liability be insured. This conclusion is confirmed by judicial practice.

We consider a general civil liability insurance contract to be a contract concluded in favor of a third party, in particular, in connection with compliance with the requirements of Article 362 of the Federal Code. In this regard, we believe that the law should establish the right of the victim to file a claim directly with the insurer in all cases. It should be noted that with compulsory insurance, the circle of third parties is known to the policyholder, since it must be determined by law (Part 1 of Article 922 of the Criminal Code).

The voluntary insurance contract must indicate the circle of third parties (not a clear indication, but an indication of the category of these persons).

Thirdly, the insurance risk in such a contract is the possibility of injury while performing professional duties. In this regard, it is very important to determine

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the circumstances of civil liability for damage caused by the insured person, as well as the amount of the damage itself. In professional liability insurance, the insured risk is the possibility of injury while performing professional duties.

The scientific literature expresses a slightly different point of view. In particular, V.V. Rassokhin and Yu.B. Fogelson believe that the risk of liability is insured by liability insurance. Since risk is the potential for damage, liability risk is the damage that results from the imposition of liability. Y.P. Sweet also believes that the risk of civil liability is insured.

In our opinion, the main criterion for the emergence of insurance legal relations is the presence of damage, losses (it is their delivery that requires compensation). If no damage is caused, insurance legal relations do not arise. The same civil liability arises as a result of causing harm. Thus, when insuring professional liability, the insurance risk is not covered by liability for damage caused during the performance of professional duties.

The current state of the economy of the world community, given the dominance of elements of the market system, contributes to the emergence of new types of professional activities, such as IT medicine, bioengineering and SEO optimization, as well as changes in the composition of old ones. Due to the novelty of many industries in our country, practical experience of including these professions in existing economic processes has not been formed, which can cause great losses to all economic entities. It follows from this that it will be necessary to take a more responsible approach to the risks and problems that may arise in these areas of activity.

It is also necessary to take into account all the extensive legal experience of foreign countries and the world community as a whole. Forms of insurance of property interests of various categories of persons that can cause real damage to third parties in the course of their professional activities are combined into the general concept of professional liability insurance. Professional liability insurance is the most closed and stable economic regulator of damages, which arises in cases where the insurer, for a fee, assumes responsibility for risks arising in the professional activities of the subject.

The demand for insurance protection among specialists is currently steadily growing, since in modern reality new forms of competition have appeared on the market against the background of the development of the market system and the presence of a document on professional liability insurance of an enterprise carrying out professional activities helps to increase customer confidence in this specialist. In most countries of the modern world, professional liability insurance is seen as a fast-growing insurance industry, bringing great benefits to insurers and peace of mind, stability and confidence in the future of their business to professionals.

To achieve the goals of providing services, accepting important and legally significant orders, confirming important transactions, a lawyer, notary, doctor, consultant, real estate agent, etc. must have a financial safety net in case of negative changes, harmful actions, etc. dangerous situations. Otherwise, loss of professional career, reputation or the corresponding status of the organization cannot be ruled out. Compulsory professional liability insurance is common in foreign legal systems.

Due to the presence of a number of factors: awareness of the legal rights and interests of the population, increasing the well-being of citizens and, accordingly, the total amount of solvency and increasing the amount of damage, an increase in the number of cases

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of damage, an increase in the number of causes of damage, first of all, the industrialization of society, the development of technology, the forms of damage create the possibility of a broad interpretation of this process. All of the above reasons are associated with the highest level of economic and social guarantees, rights and freedoms achieved by the world community in the process of growth. Also for these reasons, it is necessary to take a broader approach to the study of foreign insurance experience. Professional liability insurance in countries of the developed world community is characterized by a wide variety of liability insurance.

From a consulting perspective, the most common types of insurance include compensation for damage caused by the negligence of the insured, compensation for errors in behavior or deficiencies in the performance of professional duties, and insurance associated with the risk of covering claims for professional negligence, professional liability insurance of the policyholder.

Based on this, in most civilized countries of the world community, professional liability insurance is mandatory for a number of activities, including:

- lawyers;

- employees of financial institutions;

- pharmacists;

- doctors;

- insurance and stock brokers;

- sports and entertainment facilities, hotels, restaurants, casinos, etc.

Based on foreign statistics, as well as the testimony of many law firm consultants and insurance experts, we can conclude that the costs of professional liability insurance for lawyers in the United States exceed all other costs. Statistics show that on average, at least five out of one hundred insured attorneys in private practice face a breach of fiduciary duty claim. In the second half of the twentieth century, professional liability insurance for doctors in the form of medical malpractice insurance developed significantly in foreign countries. We are not talking about criminal mistakes, but about mistakes made by doctors in good faith and using their knowledge and experience to the best of their ability. A significant impetus for the development of this type of insurance is the precedents created by the judicial authorities, according to which large sums were recovered in favor of the plaintiffs. Currently, premium rates for physician liability insurance in the United States, for example, range from $15,000 to $20,000 per year.

For European countries, the system of compulsory professional liability insurance is almost as widespread as compulsory liability insurance for vehicle owners. In accordance with German legislation, specialists whose activities may cause serious property damage to the client must carry out their activities under professional liability insurance. The French law on the organization of the legal profession provides for compulsory professional civil liability insurance. In addition, by law the minimum amount of insurance is 2 million francs per year per subject.

An insurance contract can be drawn up by a specific lawyer or group of lawyers, or a legal organization. Thus, the institution of professional liability insurance is considered traditional for the legal regulation of consulting activities in foreign countries. Receiving and providing medical services always involves the risk of placing great responsibility on a professional, such as a doctor, if the treatment does not lead to the desired

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result for the patient. For the doctor-client, the results of the consultation are often decisive for deciding on a particular treatment mechanism. This problem is currently acutely felt by representatives of certain professions in the field of medical services, which encourages them to look for new methods and mechanisms for solving problematic situations. Thus, according to the standard contract of almost any insurance company in Europe, the subject of a professional liability insurance contract is to provide insurance protection for the insured, and the subject of insurance under a professional liability insurance contract for medical personnel is physical damage caused by a careless mistake by a doctor.

To form a more complete picture, attention should be paid to the consideration of the legal aspects of professional liability insurance in the global community. Most legislators associate this type of liability insurance with property insurance. The object of professional liability insurance is the property interests of the insured associated with the obligation to compensate third parties for losses caused by the insured consultant in connection with the performance of professional activities in accordance with the law. An individual carrying out professional activities as an entrepreneur enters into a professional liability insurance contract, and a company acting as a legal entity enters into a civil liability insurance contract.

Based on this, a legal entity has the right to insure the civil liability of its employees to third parties for harm caused in the performance of labor, official and official duties. The legal basis for the claim is the breach of contractual obligations by the service provider, as well as third parties acting on its behalf, and if the level of responsibility and professional skills do not meet the requirements of the established body, resulting in detriment to the client. Consequently, the risk that represents a realized insurance risk is an insured event, and the legislator binds the insurer to the obligation to pay insurance benefits. A specialist error and a problematic situation can have very long-term consequences, which are difficult and often impossible to predict. This means that the damage caused by such an error occurs long after the error itself. As a result, professional liability insurance contracts provide in advance for a long claim period after the end of the insurance contract.

In this case, the insurance company may be liable for the actions of the person with whom the insurance contract was concluded, as well as for the actions of persons hired by the insured person to assist him in his professional activities. A distinctive feature of professional liability insurance is the procedure for determining the insured amount in the contract, which is called the "limit" of liability. When insuring liability, the parties determine in the contract the maximum amount of compensation - the limit of the insured's liability, which may arise in the event of damage to third parties by the insured.

According to Western experts, the price of professional liability insurance services is significantly influenced by a number of specific factors:

- type of consulting activity and information about the organization;

- area of services provided;

- experience of specialists and qualifications;

- technologies and control systems used;

- type of consulting activity; total revenue for services provided;

– information about partners;

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– presence of requirements in the past and high probability of the future.

CONCLUSION

Based on the above and the established practice of this type of activity, as well as scientific research, professional liability insurance is considered the most appropriate regulator for ensuring the fulfillment of obligations and is used to insure individuals in various fields of activity. Professional liability insurance contributes to the progress of technological and economic development, and at the same time we should not forget about the stabilization of social status, since reducing the dependence of subjects of economic and social life on material conditions from various accidents serves to stabilize the socio-economic situation. economic development. Insurance business is the most important aspect of entrepreneurship and should be used more widely and diversified in the process of developing a market economy.

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