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TWO CURRENT FORMS OF MANDATORY PROFESSIONAL LIABILITY INSURANCE IN THE REPUBLIC OF SERBIA

REVIEW ARTICLE

Abstract

The paper highlights two current forms of mandatory professional liability insurance in Serbia. Hence, the paper comprises two parts and a conclusion. The first part considers the form of short-term mandatory professional liability insurance of the bankruptcy trustee and the basic elements of the procedure for concluding supplementary insurance against the professional liability of the bankruptcy trustee under the Law on Agency for Licensing of Bankruptcy Trustees and the Law on Bankruptcy. The second part first outlines the legal position of a licensed real estate appraiser as a new freelance profession, followed by considerations of a form of long-term mandatory professional liability insurance of the real estate appraisers under the Law on Real Estate Appraisers. In conclusion, the author recommends a few amendments, first to the Bankruptcy Law and then to the Law on Real Estate Appraisers.

Key words: *the form of short-term mandatory insurance; the form of long-term mandatory insurance; bankruptcy trustee; real-estate appraiser.*

1. Introductory Note

The subject of the paper includes two forms of compulsory professional liability insurance, which are prescribed under the applicable laws of the Republic of Serbia. The basis for consideration are the regulatory shapes or forms of mandatory liability insurance. Such shapes or forms of the mandatory insurance rely upon the classical division into voluntary and mandatory insurance, according to the manner of insurance creation². In the past, the legal and unconditionally prescribed forms of mandatory liability insurance have dominated the legal theory

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² Prof. Predrag Šulejić, PhD, *Insurance Law*, Fifth Amended Edition, Dosije, Belgrade, 2005, p. 69–73.

of the RS³ but there were also a few conditionally prescribed forms of this type of insurance. We can classify all previous legal forms of mandatory liability insurance in the RS as short-term mandatory liability insurance.

Serbian insurance law prescribes the short-term insurance form as a contractual insurance with a term of one year or less⁴, considering which, the contractual insurance with a term of validity of more than one year was deemed a long-term insurance. At the beginning of the second decade of the 21st century, a novelty appeared in the RS legislature - a form of long-term compulsory insurance against the professional liability of real estate appraisers. This novelty, in addition to the existing numerous forms of legal and short-term mandatory liability insurance, completed the current picture of the compulsory liability insurance in the RS.

2. Applicable Laws Stipulating Forms of Mandatory Insurance

2.1. Law on Bankruptcy

2.1.1. The Law on Bankruptcy⁵ was adopted in 2009, but started to apply as of 1st July 2010. Prior to its adoption, the Serbian⁶ theory of insurance law proposed to include into the bankruptcy legislature a mandatory professional liability insurance for bankruptcy trustees. The law in general accepted this proposal. However, other proposals coming from the insurance law⁷ science in relation to the mandatory bankruptcy trustee insurance await one of the next Law amendments.

2.1.2. The law has applied for more than a decade. During this time, an Article including four highly developed paragraphs⁸ stipulated a form of mandatory professional liability insurance of the bankruptcy trustee. The subtitle above the article is mandatory insurance. Given the focus of this paper is on forms of mandatory professional liability insurance and the cited Article touches upon a supplementary insurance, it is necessary to dwell upon all paragraphs of the mentioned Article. Already in the first paragraph, the Law provided that an active bankruptcy trustee⁹ was obliged to conclude a contract on mandatory professional

³ Slobodan Ilijić, LL.M., Forms of Compulsory Insurance at the Beginning of 2008 (I), *Insurance Trends*, no. 3–4 / 2008, p. 3–17; Slobodan Ilijić, MA, Forms of Compulsory Insurance at the Beginning of 2008 (II), *Insurance Trends* no. 1–2, 2009, p. 26–40.

⁴ Prof. Boris Marović, Ph.D., Asst. Nebojša Žarković, PhD, *Leksikon osiguranja*, DDOR “Novi Sad”, AD and DP *Budućnost*, Novi Sad, 2002, p. 124.

⁵ Law on Bankruptcy – Law, *Official Gazette of the RS*, no. 104/2009, 99/2011–other law, 71/2012–US, 83/2014, 113/2017, 44/2018 and 95/2018).

⁶ Prof. Vladimir Čolović, PhD, “Compulsory Liability of the Bankruptcy Trustee”, *Proceedings of the Conference* by Privredni savetnik a.d. from Belgrade, held in Vrsac, on March 2007.

⁷ Slobodan Ilijić, LL.M., “New Form of Liability Insurance”, *Osiguranje*, Dunav Insurance Company a. d. about. no. 347 (March 2008), p. 64–65.

⁸ The Law, Art. 30.

⁹ Law, Art. 30, para. 1.

liability insurance with the Insurer to the amount of at least EUR 30,000 in RSD equivalent at the date of conclusion of the contract. Moreover, the first paragraph of the cited Article stipulates that the active bankruptcy trustee shall conclude the said contract on his own behalf and for his own account; by the end of the first paragraph, it is emphasized that the mandatory insurance of the bankruptcy trustee shall cover all the risks associated with the performance of the bankruptcy trustee activities. As per the second paragraph¹⁰ of the same Article, the creditors committee is entitled to demand, at any time, that the bankruptcy trustee conclude a supplementary professional liability insurance contract for a specific bankruptcy proceedings the amount of which exceeds EUR 30,000, whereas the trustee is obliged to effect such insurance, unless he can prove that no such cover was available on the market. The third paragraph¹¹ of the same Article authorizes the creditors committee to determine an amount of the supplementary insurance in view of the amount of the bankruptcy estate and particular circumstances, as well as the existing and pending risks, whereby the bankruptcy judge, acting ex officio or upon request of the interested party, may order the amount reduction or ban the assumption of supplementary insurance if the judge assesses that the cost of the supplementary insurance premium is unreasonably high. Finally, according to the fourth paragraph¹² of the same Article, the supplementary insurance premium is the obligation of the bankruptcy estate. The foregoing first resulted in the legal rules regulating the conclusion of bankruptcy trustee's mandatory insurance and then in the basic elements for concluding the bankruptcy trustee's supplementary professional liability insurance.

2.1.3. Unlike the legal rules regulating the conclusion of the mandatory insurance contract, the bankruptcy trustees' mandatory professional liability insurance in practice is effected based on the Law on the Agency for Licensing of Bankruptcy Trustees¹³. Namely, the entire procedure for obtaining the bankruptcy trustee license (examination of theoretical and practical knowledge of candidates) is carried out in accordance with the Law on the Agency, so in case of a positive outcome of this part of the procedure, the candidate obtains the bankruptcy trustee license. When an individual candidate obtains a bankruptcy trustee license under the Law on Agency, he is still a practically inactive bankruptcy trustee, that is, he cannot, in such a capacity, be appointed a bankruptcy trustee for a particular bankruptcy case. The status of an active bankruptcy trustee under the Law on Agency is only acquired when the new licensee has concluded a contract on mandatory professional liability insurance, in accordance with the legal rules. It is only after the conclusion of the mandatory insurance that an active bankruptcy trustee shall become eligible to be appointed by a bankruptcy judge

¹⁰ The Law, Art. 30 para. 2.

¹¹ The Law, Article 30, Paragraph 3

¹² Law, Article 30, Paragraph 4

¹³ Law on Agency for Licensing of Bankruptcy Administrators - Law on Agency, *Official Gazette of RS*, No. 84/2004, 104/2009 and 89/2015.

for a particular bankruptcy case. We conclude that the legal rules on concluding a contract on mandatory insurance of a bankruptcy trustee are legally regulated but the status of an active bankruptcy trustee who qualifies for the appointment by a bankruptcy judge for a particular bankruptcy case is regulated under the Law on Agency. This procedure includes the writing of the mandatory insurance contract for a bankruptcy trustee professional liability.

2.1.4. Upon conclusion of the mandatory insurance contract, the bankruptcy judge of the active bankruptcy trustee may bring a Decision to appoint a bankruptcy trustee for a specific bankruptcy case. The Bankruptcy Trustee has since become the body of the specific bankruptcy proceedings. Substantially and temporally much later, when the creditors' assembly elects the creditors' committee in an open bankruptcy proceedings, the procedural assumptions set out in the law require that the board of trustees require the bankruptcy trustee to additionally insure against professional liability for an insurance amount of more than EUR 30,000 in RSD equivalent. Undoubtedly, at the moment of submission of the request of the creditors committee, the bankruptcy trustee is obliged to have possessed the insurance cover for EUR 30,000 in RSD equivalent. As for the procedure for acquiring supplementary insurance, the required sum insured depends on the actual and estimated risks that the bankruptcy estate is exposed to and the interests and rights of creditors in the particular bankruptcy proceedings. Depending on such risks, the creditors committee shall determine the sum insured to which the supplementary insurance may be contracted. The following fact is important in the procedure of acquiring a supplementary insurance cover: namely, the trustee is obliged to contract the required insurance unless he can prove that there was no available market offer for such insurance. Finally, the bankruptcy judge may reduce the sum insured or, in general, ban the conclusion of the bankruptcy trustee's supplementary insurance contract if he considers the cost of the supplementary insurance premium to be unreasonably high. Within the described legal procedure on the elements of concluding supplementary insurance, the bankruptcy judge's right should relate to two legal facts. The first is that, in the case of mandatory insurance contract, bankruptcy trustee pays the premium out of his own pocket. On the contrary, when contracting the supplementary insurance, the premium is paid from the assets of the bankruptcy estate. For this reason, the bankruptcy judge has a final word as regards the basic elements of concluding a supplementary insurance contract. The form of mandatory insurance against the professional liability of bankruptcy trustee is regulated under the provisions of the Law and the Law on the Agency and is known in insurance practice as statutory mandatory insurance. The basic elements of supplementary insurance against the professional liability of the bankruptcy trustee are regulated by the Law and are characterised according to the acquisition procedure for this kind of contract.

2.1.5. The regulation of the mandatory professional liability insurance form has inspired the legislator to define the basic elements of the procedure for entering into supplementary insurance contracts. The first element used in the Law was a type of insurance business. By stipulating the form of mandatory

insurance, the Law¹⁴ started from the type of insurance when determining the basic elements. The liability insurance, in particular, is a type of insurance business usually considered as property line. The legislator treats the Policyholder as the same and the type of insurance is the same. The second used element is a short-term insurance. Starting from the insurance practice in Serbia, the Lawmakers considered that professional liability insurance is usually contracted as short-term. In other words, the bankruptcy trustee's insurance contract for the primary and supplementary insurance is concluded to the period of one year. The third item used in the Law expresses in the manner of determining the sum insured. Namely, the Law denominates the sum insured in euros, but its level is stated in dinar equivalent as of the date of conclusion of the mandatory insurance contract and/or the date of the conclusion of the supplementary voluntary insurance contract. According to a few attitudes¹⁵, the legislator used this method of determining the sum insured to solve the problem of executing the insurance contract in a period of high inflation. Such a method of determining the sum insured has for some time persisted in a number of laws, so, in this respect, the adoption of this law in 2009 was nothing new. The fourth element used in the Law proposes to define the insurance coverage. The definition of insurance coverage in the Law covered all the risks associated with performing the activities of a bankruptcy trustee¹⁶. According to the author of this paper, the legal definition of insurance coverage is not clear, since it requires a preliminary determination, in each particular case, whether an activity, act or omission is related or unrelated to the bankruptcy trustee industry and whether the exclusions and limitations under the general insurance terms and conditions apply to it. Namely, the bankruptcy trustee can cause damage to the participant of the procedure if, for example, in the case of a blocked account of the bankruptcy debtor he favours one creditor to the detriment of another (pays out one, fails to pay another). A bankruptcy trustee can cause damage to a third party if, when drafting a list of creditors, for example, he includes one creditor and fails to include another. In this situation, the creditor that is not listed becomes a third party as compared to other creditors listed within a particular bankruptcy case. Such third party creditor is so damaged by the bankruptcy trustee (though the damage could have been caused directly by an employee of the bankruptcy trustee). The described practical examples are among a few clear situations for the insurer or the court, but due to the given legal definition, many more situations remain unclear and will need to be resolved in the court of law. The author recommends that one of the following amendments to the Law should cast out the specified definition of insurance coverage as unclear. The proposed definition should express the scope of insurance coverage, so that coverage in a specific bankruptcy proceeding

¹⁴ The Law, Article 30

¹⁵ Prof. Predrag Šulejić, PhD, "Legal Issues in Insurance in Serbia", *Law and Economy*, no. 5–6 / 2001, pp. 644–645.

¹⁶ Slobodan Ilijic, MSc, "Positive Legal Aspects of Compulsory Insurance for Bankruptcy Trustees and Lawyers in Serbian Insurance Law", *Insurance Trends* no. 1/2019, p. 10.

includes the following: “any omissions and errors that have caused damage to the party to the proceedings or to a third party.” The fifth element used in the Law relates to the liability of the trustee. Namely, the insurance practice considers that the bankruptcy trustee is liable only for property (financial) damage, which he may cause by his omission or error in the bankruptcy proceedings. The Law, as we see, used the five elements that helped define the mandatory insurance to lay down the basic elements for negotiating the supplementary insurance, being one of the specifics of this Law.

3. Law on Real Estate Appraisers

3.1. The Law on Real Estate Appraisers¹⁷ entered into force on 6 January 2017, but started to apply as of the 150th day following the date of its entry into force. This means that the Law began to apply on May 26, 2017. The Law introduced a new profession, as a concept of real estate appraiser. The comparative law used the same or similar title for the subject new profession¹⁸. In addition to the real estate appraiser, the comparative law also included the following titles¹⁹: authorized real estate appraiser, certified appraiser, permanent court expert for real estate appraisal (in Croatian law). The law regulated a number of issues related to the liability of real estate appraisers, introducing, on such a basis, a long-term mandatory liability insurance of real estate appraisers. The law and regulations in comparative European law were inspired by the Directive 2014/17/EU²⁰. This Directive regulated many aspects of consumer credits for real estate covered by a mortgage or other similar collateral. It introduced standards in the appraisal of real estate by independent appraisers. In the implementation of the Directive, a number of countries (in addition to EU member states) have introduced independent appraisers and many also a compulsory professional liability insurance for the real estate appraisers. The specificity of the Law of the Republic of Serbia is a form of long-term mandatory insurance against professional liability of real estate appraisers.

3.2. The provisions of the Law of the Republic of Serbia on the liability of the real estate appraiser proposed an answer to the question what constitutes the subject of work of this new profession, that is, what includes the real estate appraised by the real estate appraiser? According to the Law, the real estate²¹ includes land

¹⁷ Law on Real Estate Appraisers - Law, *Official Gazette of RS*, no. 108/2016 and 113/2016-other law

¹⁸ Goran Blagojevic, Denis Pačariž, “Legal Status of Appraisers in Particular European Countries, Research Paper (Comparative Review)”, Research Center of the Parliamentary Institute of the Republic of Montenegro, Podgorica, June 2019, 1-19, [www.skupština.me / images / dokument/biblioteka + istraživanje/ 2019/](http://www.skupština.me/images/dokument/biblioteka_istraživanje/2019/)

¹⁹ G. Blagojević, D. Pačariž, pp. 11

²⁰ Directive 2014/17 / EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48 / EC and 2013/36 / EU and Regulation (EU) No 1093/2010 Text with EEA relevance - Directive 2014/17 / EU

²¹ The Law, Article 2, Item 1.

(agricultural, construction, forests and forest land), facilities (business, residential, commercial and any combination of these etc.) and other facilities as well as special parts of the building (apartments, business premises, garages and garage locations etc.) that may be subject to a separate right of ownership. However, the comparative law defines some other cases that the appraiser evaluates. Under the Slovenian law²², certified real estate appraisers evaluate enterprises, plants and equipment, as well as other assets of an entity. According to Croatian law²³, this Law applies in appraising the real estate, their parts, parcels and other real property rights, such as actual value. The appraisal in Croatian law is a multidisciplinary procedure of assessing the actual value as per requirements of the Ordering Party, carried out by permanent court experts for property appraisals and permanent court appraisers, whose authority derives from special regulations governing the work of courts and enforcement procedures. In contrast to the comparative law examples cited above, the Law of the Republic of Serbia defines a real estate appraiser only for the purpose of appraising the accurately pre-defined real estate.

3.3. From the point of view of the topic of this paper, the provisions of the Law that introduce a form of long-term professional liability insurance of appraisers are particularly important. Specifically, it stipulates that a licensed appraiser shall conclude a professional liability insurance to a period of at least three years.²⁴ According to the Law, the contract shall be submitted by the appraiser to the competent Ministry when applying for the title of a licensed appraiser, as well as the policy of the contract with each application for renewal of the appraiser's license. The mentioned Law provisions introduced, for the first time in the independent state of Serbia, a long-term mandatory liability insurance. There are relatively few provisions on this form of long-term mandatory insurance in the Law, comparing their number with the number of articles treating the administrative and legal regime of the real estate appraiser. Only the implementation of the Law is expected to raise important legal issues regarding this form of long-term mandatory professional liability insurance.

3.4. From the provisions of the Law, some features of the long-term mandatory insurance of real estate appraisers can be derived. One of the first features is that such kind of insurance contract is to be concluded before the interested party obtains the real estate appraiser's licence and before the renewal of such licence. This should be understood as the interest of the legislator to make the act of writing an insurance contract as an indispensable and inevitable condition for obtaining and renewing the license of a real estate appraiser. In terms of insurance practice, however, this contract still looks like a pre-contract, because it is effected before the license is acquired and before the insurer can identify and assess the risks of the type of appraisal that a prospective policyholder would opt for. Another feature of this long-term mandatory insurance form refers

²² Audit Law, *Official Gazette* no. 65/2008, Article 87

²³ Law on Real Estate Appraisal, *Official Gazette* No.88 / 2015, Article 3

²⁴ Law, Article 12, Paragraph 1.

to the right of the licensed appraiser and insurer, as contracting parties, to agree on the period for which this mandatory professional liability insurance applies. The shortest stipulated period for which this form of long-term mandatory insurance is agreed is three years, as provided under the Law. This means that the Law allowed the contract to be concluded, in addition to a three-year validity period, to a four-year, five-year, as well as a longer period. The third characteristic of this long-term mandatory insurance relies upon the calendar criteria for determining long-term insurance. Namely, in the introduction of this paper, it is clear that long-term insurance is considered in Serbian industry to be the one that is contracted for a period of more than a year. However, comparative insurance law stipulates different criteria for defining the long-term insurance. One of these different criteria is known in the Alpine insurance tradition²⁵ (southern Germany, Switzerland, northern Italy, Austria), where long-term insurance is expressed by the fact that the client-insured opts for a long-term period cover by a single insurer, that is, the client does not change insurer every year or even in a shorter period. The fourth feature of this mandatory insurance form is the statement that a licensed appraiser can only cause third parties pure property loss. The current general insurance terms and conditions for real estate appraisers²⁶ have provided for the term pure financial loss. The said insurance terms and conditions have more closely defined such a loss as direct loss of money that has nothing to do with damage to property or personal injury. Thus, the mandatory long-term professional liability insurance has some features that are not encountered with the short-term mandatory professional liability insurance.

3.5. The law stipulates that the annual sum insured under a professional liability insurance contract be at least 50,000 euros in RSD equivalent²⁷. From that legal norm, first came the provision on the sum insured determined on an annual basis, then the provision on the minimum sum insured and, finally, the provision on the sum insured calculated in dinars, so logically the premium is paid in dinars. Unlike the short-term mandatory insurance under the Bankruptcy Law (and other laws), this Law did not provide for the sum insured related to the moment of conclusion of the insurance contract. This represents one of the differences with respect to short-term mandatory liability insurance in the legislation of the Republic of Serbia. Moreover, this means that the editor of the Law believes that the sum insured does not pose a problem for the execution of this long-term contract on mandatory long-term liability insurance in the sense that existed at the time of inflation and external sanctions.

3.6. The provisions governing the sum insured referred to several features of this form of mandatory professional liability insurance of real estate appraisers.

²⁵ Berislav Matijević, "The European Insurance Market through the Prism of the Insurance Tradition", *Proceedings Insurance, Damages and Civil Procedure* (Edited by: Z. Petrovic), 2014, pp.94–95.

²⁶ Professional Liability Insurance Terms and Conditions for professional liability of real estate appraisers, *Bulletin of Dunav Insurance a. d. o.*, applied as of 2 March 2017.

²⁷ The Law, Article 12, para. 4.

The first feature of the provisions of the Law referring to sum insured indicated that the Insured and the Insurer may contract an annual sum insured exceeding the minimum legally stipulated. In this case, the appraiser-Insured would be required to pay a higher or additional insurance premium. The minimum sum insured defined under the Law has allowed an author to highlight that, from economic point of view²⁸, the premium for this type of insurance for the licenced appraiser shall not represent the financial burden and that it shall be near the premium paid by a bankruptcy trustee. Another feature of the provisions of the Law regulating the sum insured indicated that particular contracts can be valid only if the estimated value of real estate in such contracts was appraised and determined by a licensed appraiser from the list kept with the competent Ministry. These are the contracts that set up²⁹ the value of real estate in bankruptcy proceedings and contracts for the purchase and sale of real estate in out-of-court settlement. If the value appraisal in these two types of contracts (from two different procedures) were performed by a licensed appraiser who is not on the said list, a notary public or another body authorized by law to certify or conclude a real estate purchase contract could refuse the required official action³⁰. The third feature of the provisions of the Law on the sum insured referred to the conclusion of a mortgage loan agreement and the conclusion of other transactions of financial institutions secured by a mortgage³¹. In order to conclude the mentioned contracts, it was necessary that the real estate be appraised by a licensed appraiser. Nevertheless, the contract would not be legally void, as in the previous subparagraph, if the appraisal of the real estate were performed by a licensed appraiser who is not included in the list of the competent Ministry. The fourth feature of the provisions of the Law on the sum insured included optional³² appraisals of real estate, which may or may not be performed by a licensed real estate appraiser. The law considered the appraisals of real property that are subject to execution in an enforcement proceedings. The fifth feature of the provisions of the Law on the sum insured also included the optional appraisals of real estate. The law stipulated that a licensed appraiser make real estate valuations, as well as verification of data from the real estate price register in the process of mass³³ appraisal of real estate in accordance with the Law and by-laws regulating the assessment of the actual value of real estate registered in the real estate cadastre. It is clear from the summary of the provisions of the Law regarding the sum insured that the licensed real estate appraiser has a wide scope of work but also the risk to cause, by his acts or omissions, a property damage to the participant of the said official proceedings or to a third party within the level of the sum insured.

²⁸ Mr. Željko Albanese, "Introducing the Profession of the Appraiser into Our Practice", *Radno-pravni savetnik*, no. 1/2017, p. 73–88.

²⁹ Law, Article 3, Paragraph 1, Item 2 and 3

³⁰ Law, Article 3, Paragraph 3

³¹ Law, Article 3, Paragraph 1, Item 1.

³² Law, Article 3, Paragraph 4

³³ Law, Article 3, Paragraph 5

3.7. Given that licensed real estate appraisers in the RS do not represent a large risk community and that an appraiser licensed under the Law has the right and obligation to be a member of one of the accredited professional associations listed with the competent Ministry, the Law could provide for the possibility of an accredited professional association of appraisers to effect a group contract on the long-term mandatory insurance for all members of the association for a period of at least three years. This legal option would be an alternative to the right and obligation of the appraiser to enter into an individual contract for long-term mandatory professional liability insurance. Through a group long-term insurance contract, an insured licensed appraiser would be paying a lower premium than when contracting individual long-term mandatory liability insurance with a single insurer. Such legal possibility is already foreseen in the legislation of the RS³⁴ for one of the freelance professions, whereas the real estate appraiser may be deemed a freelance profession. Therefore, one of the future amendments to the Law should provide for the possibility of concluding a group agreement on long-term mandatory insurance against professional liability of the real estate appraiser as the alternative to the conclusion of an individual contract for the same mandatory insurance.

Conclusions

1) It is recommended that in one of the following amendments to Article 30, paragraph 1 of the Bankruptcy Law, the words “for all risks associated with the performance of activities of a bankruptcy trustee” be replaced by the words “for all omissions or errors which caused property damage to the participant in that bankruptcy proceedings or third parties.”

2) It is recommended that one of the next amendments to the Law on Real Estate Appraisers provide for the conclusion of a group long-term mandatory professional liability insurance contract with a validity period of at least three years, via an accredited association of appraisers for the benefit of members of the association, as an alternative to individual conclusion of long-term mandatory insurance contract with a validity of at least three years. If the proposed amendment is accepted, the Law should not be to the detriment of the right of the real estate appraiser to conclude an individual mandatory long-term professional liability insurance contract for a period of at least three years.

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³⁴ Law on Practicing Legal Profession

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DVA AKTUELNA OBLIKA OBAVEZNOG OSIGURANJA OD PROFESIONALNE ODGOVORNOSTI U REPUBLICI SRBIJI

PREGLEDNI RAD

Apstrakt

U radu su osvetljena dva aktuelna oblika obaveznog osiguranja od profesionalne odgovornosti u Srbiji. Otuda, rad ima dva dela i zaključak. U prvom delu razmotreni su oblik kratkoročnog obaveznog osiguranja od profesionalne odgovornosti stečajnog upravnika i osnovni elementi postupka za zaključenje dodatnog osiguranja od profesionalne odgovornosti stečajnog upravnika prema Zakonu o Agenciji za licenciranje stečajnih upravnika odnosno Zakonu o stečaju. U drugom delu najpre je izložen pravni položaj licenciranog procenitelja vrednosti nepokretnosti, kao nove slobodne profesije, a zatim je razmotren oblik dugoročnog obaveznog osiguranja od profesionalne odgovornosti procenitelja vrednosti nepokretnosti po osnovu Zakona o proceniteljima vrednosti nepokretnosti. U zaključcima, autor se opredelio za preporuke za neku od sledećih novela najpre Zakona o stečaju, a zatim Zakona o proceniteljima vrednosti nepokretnosti.

Ključne reči: *oblik kratkoročnog obaveznog osiguranja; oblik dugoročnog obaveznog osiguranja; stečajni upravnik; procenitelj vrednosti nepokretnosti.*

1. Uvodno razmatranje

Predmet rada čine dva oblika obaveznog osiguranja od profesionalne odgovornosti, koji su propisani u važećim zakonima Republike Srbije. U osnovi razmatranja nalaze se propisani oblici ili forme u obaveznom osiguranju od odgovornosti. Te forme ili oblici obaveznog osiguranja zasnovani su na klasičnoj podeli na dobrovoljno i obavezno osiguranje, a sve to prema načinu nastanka osiguranja.² U pravnoj teoriji RS³ preovlađivali su do sada zakonski i bezuslovno propisani oblici

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² Prof. dr Predrag Šulejić, *Pravo osiguranja*, peto izmenjeno i dopunjeno izdanje, Dosije, Beograd, 2005, str. 69–73.

³ Mr Slobodan Ilijić, Oblici obaveznog osiguranja na početku 2008. godine (I), *Tokovi osiguranja*, br. 3–4/2008, str. 3–17;

Mr Slobodan Ilijić, Oblici obaveznog osiguranja na početku 2008. godine (II), *Tokovi osiguranja* br. 1–2/2009, str. 26–40.

obaveznog osiguranja od odgovornosti, ali je među njima bilo i uslovno propisanih oblika ove vrste osiguravajuće zaštite. Svi do sada propisani oblici obaveznog osiguranja od odgovornosti u zakonodavstvu RS mogli su da se svrstaju u oblike kratkoročnog obaveznog osiguranja od odgovornosti. U srpskom pravu osiguranja uzima se da je oblik kratkoročnog osiguranja ugovoreno osiguranje s rokom važenja od godinu dana ili kraćem,⁴ iz čega je sledila konstatacija da je ugovoreno osiguranje s rokom važenja preko godine dana smatrano za dugoročno osiguranje. Na početku druge decenije XXI veka u zakonodavstvu RS pojavila se jedna novina – oblik dugoročnog obaveznog osiguranja od profesionalne odgovornosti procenitelja vrednosti nepokretnosti. Ta novost, uz postojeće brojne oblike zakonskih i kratkoročnih obaveznih osiguranja od odgovornosti, upotpunila je aktuelnu sliku oblika obaveznih osiguranja od odgovornosti u RS.

2. Važeći zakoni s predviđenim oblicima obaveznog osiguranja

2.1. Zakon o stečaju

2.1.1. Zakon o stečaju⁵ donet je 2009. godine, ali je počeo da se primenjuje od 1. jula 2010. Pre nego što je donet, srpska⁶ teorija prava osiguranja predlagala je da se u stečajno zakonodavstvo uvede obavezno osiguranje od profesionalne odgovornosti stečajnog upravnika. Zakon je u načelu prihvatio taj predlog. Međutim, ostali predlozi iz izvora nauke o pravu osiguranja⁷ u odnosu na obavezno osiguranje stečajnog upravnika čekaju neku od narednih novela Zakona.

2.1.2. Zakon je u primeni više od decenije. Za to vreme u jednom članu sa četiri vrlo razvijena stava⁸ propisan je oblik obaveznog osiguranja od profesionalne odgovornosti stečajnog upravnika. Nadnaslov iznad člana glasi obavezno osiguranje. S obzirom na to da je težište ovog rada na oblicima obaveznog osiguranja od profesionalne odgovornosti i da se u cit. članu pominje i dodatno osiguranje, neophodno je prikazati sve stavove tog člana. Zakon je već u prvom stavu predvideo da je aktivni stečajni upravnik⁹ dužan da sa osiguravačem zaključi ugovor o obaveznom osiguranju od profesionalne odgovornosti sa osiguranom sumom u iznosu od najmanje 30.000 evra u dinarskoj protivvrednosti na dan zaključenja ugovora. Takođe, u prvom stavu ovog člana predviđeno je da aktivni stečajni upravnik zaključuje navedeni ugovor u svoje ime i za svoj račun, a na kraju

⁴ Prof. dr Boris Marović, doc. dr Nebojša Žarković, *Leksikon osiguranja*, DDOR „Novi Sad“, AD i DP „Budućnost“, Novi Sad, 2002, str. 124.

⁵ Zakon o stečaju – Zakon, *Službeni glasnik RS*, br. 104/2009, 99/2011-dr. zakon, 71/2012-US, 83/2014, 113/2017, 44/2018 i 95/2018).

⁶ Prof. dr Vladimir Čolović, „Obavezno osiguranje od odgovornosti stečajnog upravnika“, *Zbornik radova sa savetovanja „Privrednog savetnika“ a.d. iz Beograda, održanog u Vršcu, marta 2007.*

⁷ Mr Slobodan Ilijić, „Novi vid osiguranja od odgovornosti“, *Osiguranje*, Kompanija „Dunav osiguranje“ a. d. o. br. 347 (mart 2008), str. 64–65.

⁸ Zakon, čl. 30.

⁹ Zakon, čl. 30, st. 1.

prvog stava istaknuto je da obavezno osiguranje stečajnog upravnika pokriva sve rizike povezane s obavljanjem poslova stečajnog upravnika. Prema drugom stavu¹⁰ istog člana, odbor poverilaca ovlašćen je da u bilo kom trenutku od stečajnog upravnika zahteva da zaključi ugovor o dodatnom osiguranju od profesionalne odgovornosti za konkretan stečajni postupak i na iznos veći od 30.000 evra, a stečajni upravnik dužan je da takvo osiguranje ugovori, osim ako ne dokaže da na tržištu takvo osiguranje nije mogao ugovoriti. Treći stav¹¹ istog člana ovlašćuje odbor poverilaca da odredi iznos ugovora o dodatnom osiguranju s obzirom na visinu stečajne mase i posebne okolnosti, kao i postojeće i moguće rizike, s tim što stečajni sudija, postupajući po službenoj dužnosti ili po zahtevu zainteresovanog lica, može naložiti umanjeње tog iznosa ili u potpunosti zabraniti preuzimanje dodatnog osiguranja ako proceni da su troškovi premije dodatnog osiguranja neopravdano visoki. Najzad, prema četvrtom stavu¹² istog člana, premija dodatnog osiguranja predstavlja obavezu stečajne mase. Iz navedenog su proizašla, prvo, pravna pravila pomoću kojih se zaključuje ugovor o obaveznom osiguranju od profesionalne odgovornosti stečajnog upravnika, i drugo, osnovni elementi po kojima se zaključuje dodatno osiguranje od profesionalne odgovornosti stečajnog upravnika.

2.1.3. Za razliku od pravnih pravila o zaključivanju ugovora o obaveznom osiguranju iz Zakona, praktično konstituisanje oblika obaveznog osiguranja od profesionalne odgovornosti stečajnog upravnika sprovodi se po osnovu Zakona o Agenciji za licenciranje stečajnih upravnika.¹³ Naime, celokupan postupak za sticanje licence stečajnog upravnika (provera teorijskog i praktičnog znanja kandidata) realizuje se po Zakonu o Agenciji, pa u slučaju pozitivnog ishoda tog dela postupka kandidat stiče licencu stečajnog upravnika. Kad neki kandidat (fizičko lice) po Zakonu o Agenciji stekne licencu stečajnog upravnika, to lice je postalo stvarno neaktivni stečajni upravnik, to jest lice koje u tom svojstvu ne može biti birano za stečajnog upravnika u određenom stečajnom predmetu. Svojstvo aktivnog stečajnog upravnika po Zakonu o Agenciji stečajni upravnik stiče kad sa osiguravačem zaključi ugovor o obaveznom osiguranju od profesionalne odgovornosti, saglasno pravnim pravilima iz Zakona. Tek posle zaključenja tog ugovora o obaveznom osiguranju, aktivni stečajni upravnik postaje podoban da ga stečajni sudija imenuje za određeni stečajni predmet. Dakle, pravna pravila o zaključivanju ugovora o obaveznom osiguranju stečajnog upravnika predvideo je Zakon, ali do ranga aktivnog stečajnog upravnika koga može da imenuje stečajni sudija za konkretan stečajni predmet dolazi se putem primene Zakona o Agenciji i na tome putu zaključuje se stvarno ugovor o obaveznom osiguranju od profesionalne odgovornosti stečajnog upravnika.

¹⁰ Zakon, čl. 30 st. 2.

¹¹ Zakon, član 30 stav 3.

¹² Zakon, član 30 stav 4.

¹³ Zakon o Agenciji za licenciranje stečajnih upravnika – Zakon o Agenciji, *Službeni glasnik RS*, br. 84/2004, 104/2009 i 89/2015.

2.1.4. Po zaključenju ugovora o obaveznom osiguranju, stečajni sudija aktivnog stečajnog upravnika može rešenjem da imenuje za stečajnog upravnika za konkretan stečajni predmet. Od tada stečajni upravnik po Zakonu postaje organ konkretnog stečajnog postupka. Vremenski i prostorno znatno kasnije, kad u otvorenom stečajnom postupku skupština poverilaca izabere odbor poverilaca, nastupaju Zakonom predviđene proceduralne pretpostavke da odbor poverilaca zahteva od stečajnog upravnika da se dodatno osigura od profesionalne odgovornosti na sumu osiguranja od preko 30.000 evra u dinarskoj protivvrednosti. Nesumnjivo, u momentu podizanja zahteva odbora poverilaca stečajni upravnik je već obavežno osiguran na sumu osiguranja od 30.000 evra u dinarskoj protivvrednosti. Što se tiče procedure pristupanja dodatnom osiguranju, visina zahtevane sume osiguranja zavisi od stvarnih i procenjenih rizika po stečajnu masu i interese i prava poverilaca u konkretnom stečajnom postupku. U zavisnosti od tih rizika, odbor poverilaca opredeljuje sumu osiguranja, na koju se može zaključiti dodatno osiguranje. U proceduri pristupanja zaključenju dodatnog osiguranja važna je i sledeće činjenica. Naime, stečajni upravnik dužan je da zahtevano osiguranje ugovori, osim ako ne dokaže da na tržištu nije bilo mogućnosti da se takvo osiguranje zaključi. Konačno, stečajni sudija može umanjiti visinu sume osiguranja ili uopšte zabraniti zaključenje ugovora o dodatnom osiguranju stečajnog upravnika ako oceni da su troškovi premije dodatnog osiguranja neopravdano visoki. U okviru opisane zakonske procedure o elementima zaključenja dodatnog osiguranja, pravo stečajnog sudije treba dovesti u vezu s dvema zakonskim činjenicama. Prva je ta da kod zaključenog ugovora o obaveznom osiguranju premiju plaća stečajni upravnik iz sopstvenih sredstava, a prilikom ugovaranja o dodatnom osiguranju premija se plaća iz sredstava stečajne mase. Otuda, među osnovnim elementima za zaključenje ugovora o dodatnom osiguranju stečajni sudija ima završnu reč. Oblik obaveznog osiguranja od profesionalne odgovornosti stečajnog upravnika regulisan je odredbama Zakona i Zakona o Agenciji i poznat je u osiguravajućoj praksi kao zakonsko obavežno osiguranje. Osnovni elementi dodatnog osiguranja od profesionalne odgovornosti stečajnog upravnika regulisani su Zakonom i imaju karakter procedure po kojoj se može pristupiti zaključenju tog ugovora u praksi.

2.1.5. Regulisanje oblika obaveznog osiguranja od profesionalne odgovornosti inspirisalo je zakonodavca da odredi osnovne elemente procedure za pristupanja zaključenju ugovora o dodatnom osiguranju. Prvi korišćeni elemenat u Zakonu bio je vrsta posla osiguranja. Konstituišući oblik obaveznog osiguranja, Zakon¹⁴ je u utvrđivanju osnovnih elemenata pošao od vrste posla osiguranja. Naime, osiguranje od odgovornosti jeste vrsta posla osiguranja i obično se smatra imovinskim osiguranjem. Dakle, zakonodavcu je isti ugovarač osiguranja i vrsta posla osiguranja je ista. Drugi korišćeni elemenat jeste kratkoročno osiguranje. Polazeći od osiguravajuće prakse u Srbiji, Zakon je imao u vidu da se osiguranje od profesionalne odgovornosti uobičajeno ugovara kao kratkoročno osiguranje. Drugim rečima, ugovor o osiguranju stečajnog upravnika za osnovno i dopunsko

¹⁴ Zakon, član 30.

osiguranje zaključuje se na period od godinu dana. Treći korišćeni momenat u Zakonu izražen je u načinu utvrđivanja sume osiguranja. Naime, Zakonom je suma osiguranja nominovana u evrima, ali se njena visina utvrđuje u dinarskoj protivvrednosti na dan zaključenja ugovora o obaveznom osiguranju, odnosno na dan zaključenja ugovora o dopunskom dobrovoljnom osiguranju. Ima mišljenja¹⁵ da je takvim načinom utvrđivanja sume osiguranja zakonodavac nastojao rešiti problem izvršenja ugovora o osiguranju u periodu velike inflacije. Takav način utvrđivanja sume osiguranja izvesno vreme bio je zastupljen u brojnim zakonima, tako da u tom pogledu donošenje ovog zakona 2009. godine nije predstavljalo ništa novo. Četvrti korišćeni elemenat u Zakonu ima u vidu definisanje osiguravajućeg pokrića. Formulacija osiguravajućeg pokrića u Zakonu obuhvatila je sve rizike povezane s obavljanjem poslova stečajnog upravnika.¹⁶ Po mišljenju potpisnika ovog rada, zakonska definicija osiguravajućeg pokrića nije jasna budući da u svakom konkretnom slučaju zahteva prethodno utvrđivanje da li je neka aktivnost, radnja ili propuštanje povezana ili nepovezana s poslovima stečajnog upravnika i da li je predviđena među isključenjima i ograničenjima u opštim uslovima osiguranja. Naime, stečajni upravnik može pričiniti štetu učesniku postupka ako, na primer, kod blokiranoг računa stečajnog dužnika favorizuje jednog poverioca na račun drugog (jednom isplati, drugom ne isplati dugovano). Stečajni upravnik može da pričinii štetu trećem licu ako pri izradi spiska poverilaca, na primer, jednog poverioca unese, a drugog ne unese u taj spisak. U toj situaciji poverilac, koga nema u spisku, postao je treće lice u odnosu na ostale poverioce unete u spisak u određenom stečajnom predmetu. Tome poveriocu – trećem licu pričinjena je šteta za koju odgovara stečajni upravnik (iako je štetu mogao neposredno da učini zaposleni kod stečajnog upravnika). Opisani primeri iz prakse spadaju među malobrojne jasne situacije za osiguravača ili sud, ali usled navedene zakonske formulacije mnogo je više nejasnih situacija koje će se morati raspraviti na sudu. Potpisnik ovog rada preporučuje da se prilikom jedne od sledećih novela Zakona napusti navedena definicija osiguravajućeg pokrića jer je nejasna. Predložena formulaciju treba da izrazi obim osiguravajućeg pokrića, tako da to pokriće u konkretnom stečajnom postupku obuhvati sledeće: „sve propuste i greške kojim je pričinjena šteta učesniku tog postupka ili trećem licu“. Peti elemenat korišćen u Zakonu odnosi se na odgovornost stečajnog upravnika. Naime, u osiguravajućoj praksi smatra se da stečajni upravnik odgovara samo za imovinsku (finansijsku) štetu, koju može da prouzrokuje svojim propustom ili greškom u stečajnom postupku. Dakle, izloženih pet elemenata pomoću kojih je konstituisan oblik obaveznog osiguranja Zakon je koristio i da bi postavio osnovne elemente za pregovaranje kod dodatnog osiguranja, što spada u specifičnosti ovog zakona.

¹⁵ Prof. dr Predrag Šulejić, „Pravni problemi osiguranja kod nas“, *Pravo i privreda*, br. 5–6/2001, str. 644–645.

¹⁶ Mr Slobodan Ilijić, „Pozitivnopravni aspekti obaveznog osiguranja stečajnih upravnika i advokata u srpskom pravu osiguranja“, *Tokovi osiguranja* br. 1/2019, str. 10.

3. Zakon o proceniteljima vrednosti nepokretnosti

3.1. Zakon o proceniteljima vrednosti nepokretnosti¹⁷ stupio je na snagu 6. januara 2017. godine, ali je za početak primene utvrđen 150. dan od dana stupanja na snagu. To znači da je Zakon počeo da se primenjuje 26. maja 2017. godine. Zakon je konstituisao jednu novu profesiju i nazvao je procenitelj vrednosti nepokretnosti. Isti ili sličan naziv za tu novu profesiju korišćen je i u uporednom pravu.¹⁸ Pored naziva procenitelja vrednosti nepokretnosti, u uporednom pravu¹⁹ zastupljeni su i sledeći nazivi: ovlašćeni procenitelj vrednosti nepokretnosti, ovlašćeni procenitelj, a u hrvatskom pravu stalni sudski vještak za procjenu nekretnina. Zakon je regulisao niz pitanja iz domena odgovornosti procenitelja vrednosti nepokretnosti i na toj osnovi uveo je oblik dugoročnog obaveznog osiguranja od odgovornosti procenitelja vrednosti nepokretnosti. Zakon, kao i propisi u uporednom evropskom pravu, inspirisani su Direktivom 2014/17/EU.²⁰ Ta direktiva regulisala je brojne aspekte potrošačkih kredita za nepokretnosti pokrivene hipotekom ili nekim drugim sličnim sredstvom obezbeđenja. Ona je uvela standarde u proceni vrednosti nepokretnosti putem nezavisnih procenitelja. U primeni te direktive niz država (pored članica EU) konstituisalo je nezavisne procenitelje vrednosti, a većina i oblik obaveznog osiguranja od profesionalne odgovornosti za procenitelja vrednosti nepokretnosti. Specifičnost Zakona Republike Srbije jeste oblik dugoročnog obaveznog osiguranja od profesionalne odgovornosti procenitelja vrednosti nepokretnosti.

3.2. U okviru odredaba Zakona Republike Srbije o odgovornosti procenitelja vrednosti nepokretnosti, odgovoreno je na pitanje šta čini predmet rada ove nove profesije, odnosno koje nepokretnosti procenjuje procenitelj nepokretnosti? Po Zakonu, u nepokretnosti²¹ spadaju: zemljište (poljoprivredno, građevinsko, šume i šumsko zemljište), zgrade (poslovne, stambene, komercijalne, bilo koja kombinacija tih zgrada i dr.) i drugi građevinski objekti, kao i posebni delovi zgrade (stanovi, poslovne prostorije, garaže i garažna mesta i drugo) na kojima može postojati zasebno pravo svojine. Međutim, u uporednom pravu ima i drukčije

¹⁷ Zakon o proceniteljima vrednosti nepokretnosti – Zakon, *Službeni glasnik RS*, br. 108/2016 i 113/2016-dr. zakon

¹⁸ Goran Blagojević, Denis Pačariž, „Pravni status procenitelja u pojedinim evropskim državama, istraživački rad (komparativni pregled)“, Istraživački centar Parlamentarnog instituta Supštine Crne Gore, Podgorica, jun 2019, 1–19, www.skupština.me/images/dokument/biblioteka+istraživanje/2019/

¹⁹ G. Blagojević, D. Pačariž, str.11

²⁰ Direktiva 2014/17/EU Evropskog parlamenta i Saveta od 4. februara 2014. o ugovorima o potrošačkim kreditima koji se odnose na stambene nepokretnosti i o izmeni direktiva 2008/48/EZ i 2013/36/EU i Uredbe (EU) br. 1093/2010, (Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 Text with EEA relevance) - Direktiva 2014/17/EU

²¹ Zakon, član 2, tač 1.

definisanih predmeta koje procenitelj procenjuje. Prema slovenačkom pravu,²² ovlašćeni procenitelji vrednosti nepokretnosti procenjuju preduzeća, postrojenja i opremu, kao i drugu imovinu pravnog lica. Prema hrvatskom zakonu,²³ taj zakon se primenjuje prilikom procene vrednosti nekretnina, njihovih sastavnih delova, njihovih pripadaka i drugih stvarnih prava na nekretninama, kao tržišne vrednosti. Procena vrednosti u hrvatskom zakonu jeste multidisciplinarni postupak tržišnog vrednovanja prema zadacima naručitelja, koji sprovode stalni sudski veštaci za procenu nekretnina i stalni sudski procenitelji, čije ovlašćenje proizlazi iz posebnih propisa kojima se uređuje rad sudova i postupci izvršenja. Za razliku od navedenih primera iz uporednog prava, Zakon Republike Srbije konstituisao je procenitelja vrednosti nepokretnosti, i to samo za procenu vrednosti tačno utvrđenih nepokretnosti.

3.3. S gledišta teme ovog rada naročito su važne odredbe Zakona kojima je uveden oblik dugoročnog obaveznog osiguranja od profesionalne odgovornosti procenitelja. Naime, predviđeno je da je licencirani procenitelj dužan da zaključi ugovor o osiguranju od profesionalne odgovornosti na period važenja od najmanje tri godine.²⁴ Taj ugovor procenitelj je po Zakonu dužan da dostavi nadležnom ministarstvu prilikom podnošenja zahteva za sticanje zvanja licenciranog procenitelja, a tako i polisu tog ugovora uz svako podnošenje zahteva za obnavljanje licence procenitelja. Navedenim odredbama Zakona prvi put je u samostalnoj državi Srbiji među oblike obaveznog osiguranja od odgovornosti uveden oblik dugoročnog obaveznog osiguranja od odgovornosti. O tom obliku dugoročnog obaveznog osiguranja ima srazmerno malo odredaba u Zakonu ako se njihov broj uporedi s brojem članova čija je tema upravno-pravni režim procenitelja vrednosti nepokretnosti. Očekuje se da će tek primena Zakona otvoriti važna pravna pitanja u vezi s tim oblikom dugoročnog obaveznog osiguranja od profesionalne odgovornosti.

3.4. Iz odredaba Zakona mogu se izvesti neke karakteristike oblika dugoročnog obaveznog osiguranja procenitelja vrednosti nepokretnosti. Jedna od prvih karakteristika bila bi da se ugovor o ovom osiguranju ima zaključiti pre nego što zainteresovano lice stekne licencu procenitelja vrednosti nepokretnosti, kao i pre nego što mu bude obnovljena licenca. Ovo treba shvatiti kao interes zakonodavca da činu zaključenja ugovora o osiguranju prida značaj nezamenljivog i nezaobilaznog uslova za sticanje i obnavljanje licence procenitelja vrednosti nepokretnosti. S gledišta osiguravajuće prakse, ovaj ugovor ipak liči na predugovor, jer je zaključen pre nego što je stečena licenca i pre nego što je osiguravač mogao saznati i proceniti rizike vrste procene vrednosti za koji će se opredeliti budući osiguranik. Druga karakteristika ovog oblika dugoročnog obaveznog osiguranja obuhvatila bi pravo licenciranog procenitelja i osiguravača da se kao stranke mogu sporazumeti o periodu na koji će važiti ovaj ugovor o obaveznom osiguranju od

²² Zakon o reviziji, *Uradni list br. 65/2008*, član 87

²³ Zakon o proceni vrijednosti nekretnina, *Narodne novine br.78/2015*, član 3

²⁴ Zakon, član 12 stav 1.

profesionalne odgovornosti. Rok od tri godine predviđen je Zakonom kao najkraći propisan period na koji se može zaključiti ovaj oblik dugoročnog obaveznog osiguranja. Time se htelo reći da Zakon dozvoljava da se ugovor, pored trogodišnjeg roka važenja, zaključi kao četvorogodišnji, petogodišnji, kao i na duži rok važenja. Treća karakteristika ovog oblika dugoročnog obaveznog osiguranja zasnovana je na kalendarskom kriterijumu za utvrđivanje dugoročnog osiguranja. Naime, iz uvida ovog rada postalo je izvesno da se u srpskom osiguranju smatra da je dugoročno osiguranje ono osiguranje koje se ugovara na period od preko godinu dana. Međutim, u uporednom pravu osiguranja ima i drukčijih kriterijuma za utvrđivanje dugoročnog osiguranja. Jedan od drukčijih kriterijuma poznat je u alpskoj osiguravajućoj tradiciji²⁵ (južna Nemačka, Švajcarska, severna Italija, Austrija), gde se dugoročno osiguranje izražava činjenicom da se klijent-osiguranik dugoročno opredeljuje za jednog osiguravača, odnosno klijent ne menja osiguravača svake godine ili u još kraćem razdoblju. Četvrta karakteristika ovog oblika obaveznog osiguranja svela bi se na konstataciju da licencirani procenitelj može pričiniti trećem licu samo čistu imovinsku štetu. Savremeni opšti uslovi osiguranja procenitelja vrednosti nepokretnosti²⁶ predvideli su izraz čista finansijska šteta. Tako nazvanu štetu navedeni opšti uslovi bliže su odredili kao neposrednu štetu koja se sastoji u novcu, a nije ni u kakvoj vezi sa štetom na stvarima, niti sa štetom na licima. Dakle, oblik dugoročnog obaveznog osiguranja od profesionalne odgovornosti ima neke karakteristike koje se ne susreću kod oblika kratkoročnog obaveznog osiguranja od profesionalne odgovornosti.

3.5. Zakonom je predviđeno da godišnja suma osiguranja za ugovor o osiguranju od profesionalne odgovornosti iznosi najmanje 50.000 evra u dinarskoj protivvrednosti.²⁷ Iz te zakonske norme proizašle su, najpre, odredba o sumi osiguranja utvrđenoj na godišnjem nivou, zatim odredba o najmanjem iznosu sume osiguranja, i najзад, odredba o sumi osiguranja koja se izračunava u dinarima, pa se logično i premija plaća u dinarima. Za razliku od oblika kratkoročnog obaveznog osiguranja iz Zakona o stečaju (i drugih zakona), Zakon nije predvideo sumu osiguranja vezanu za momenat zaključenja ugovora o osiguranju. To predstavlja jednu od razlika u odnosu na kratkoročna obavezna osiguranja od odgovornosti u zakonodavstvu Republike Srbije. To dalje znači da redaktor Zakona smatra da suma osiguranja ne predstavlja problem za izvršenje ovog dugoročnog ugovora o obaveznom osiguranju od profesionalne odgovornosti u onom smislu kakav je postojao u vreme inflacije i spoljnih sankcija.

3.6. Odredbe koje regulišu sumu osiguranja uputile su na nekoliko karakteristika ovog oblika obaveznog osiguranja od profesionalne odgovornosti procenitelja vrednosti nepokretnosti. Prva karakteristika odredaba Zakona,

²⁵ Berislav Matijević, „Evropsko tržište osiguranja kroz prizmu tradicije osiguranja“, *Zbornik Osiguranje, naknada štete i parnični postupak* (urednik: Z. Petrović), 2014, str. 94–95.

²⁶ Uslovi za osiguranje profesionalne odgovornosti procenitelja vrednosti nepokretnosti, *Službeni list Kompanija „Dunav osiguranje“ a. d.* o primenjuju se od 2. marta 2017. godine.

²⁷ Zakon, član 12, stav 4.

vezana za sumu osiguranja, ukazala je na to da osiguranik sa osiguravačem može ugovoriti i višu godišnju sumu osiguranja od najnižeg iznosa utvrđenog u Zakonu. U tom slučaju procenitelj-osiguranik bio bi dužan da plati veću ili dodatnu premiju osiguranja. Minimalna suma osiguranja utvrđena u Zakonu na godišnjem nivou omogućila je jednom piscu da iz ekonomskog ugla²⁸ istakne kako premija ovog osiguranja za licenciranog procenitelja neće predstavljati finansijski teret te da će biti približna premiji koju plaća stečajni upravnik. Druga karakteristika odredaba Zakona, koje regulišu sumu osiguranja, ukazala je na to da određeni ugovori mogu biti punovažni samo ako je procenjenu vrednost nepokretnosti u tim ugovorima utvrđivao i utvrdio licencirani procenitelj s liste koja se vodi kod nadležnog ministarstva. Reč je o ugovorima kojima se utvrđuje²⁹ vrednost nepokretnosti u postupku stečaja i o ugovorima pri kupoprodaji nepokretnosti u postupku vanskudskog namirenja. Ako bi procenu vrednosti nepokretnosti kod ovih dveju vrsta ugovora (iz dva različita postupka) izvršio licencirani procenitelj koji nije na navedenoj listi, javni beležnik ili drugi organ koji je zakonom ovlašćen za overu ili za zaključenje ugovora o prometu nepokretnosti mogao bi da odbije traženu službenu radnju.³⁰ Treća karakteristika odredaba Zakona o sumi osiguranja odnosila se na zaključenje ugovora o kreditu obezbeđenog hipotekom i zaključenje drugih poslova finansijskih institucija obezbeđenih hipotekom.³¹ Zaključenje navedenih ugovora zahtevalo je da procenu vrednosti nepokretnosti utvrđuje licencirani procenitelj, ali Zakon nije pribegao sankciji u vidu ništavosti ugovora, kao u prethodnoj podtački, ako procenu vrednosti nepokretnosti obavi licencirani procenitelj koji nije na listi nadležnog ministarstva. Četvrta karakteristika odredaba Zakona o sumi osiguranja obuhvatila je fakultativne³² procene vrednosti nepokretnosti, koje može ali i ne mora da vrši licencirani procenitelj vrednosti nepokretnosti. Zakon je imao u vidu one procene vrednosti nepokretnosti koje su predmet izvršenja u izvršnom postupku. Peta karakteristika odredaba Zakona o sumi osiguranja imala je u vidu takođe fakultativne procene vrednosti nepokretnosti. Zakonom je predviđeno da licencirani procenitelj može da vrši procene vrednosti nepokretnosti, kao i verifikaciju podataka iz registra cena nepokretnosti u postupku masovne³³ procene vrednosti nepokretnosti u skladu sa zakonom i podzakonskim aktima koji regulišu utvrđivanje tržišne vrednosti nepokretnosti upisanih u katastar nepokretnosti. Iz kratkog prikaza odredaba Zakona o sumi osiguranja proizlazi da licencirani procenitelj vrednosti nepokretnosti ima široko polje rada, ali i mogućnosti da u okviru sume osiguranja svojim propustom ili greškom pričinu imovinsku štetu učesniku navedenih oficijelnih postupaka ili trećem licu.

²⁸ Mr Željko Albaneze, „Uvođenje profesije procenitelja u našu praksu“, *Radno-pravni savetnik*, br. 1/2017, str. 73–88.

²⁹ Zakon, član 3. stav 1. tač. 2. i 3.

³⁰ Zakon, član 3. stav 3.

³¹ Zakon, član 3. stav 1. tač. 1.

³² Zakon, član 3. stav 4.

³³ Zakon, član 3. stav 5.

3.7. Polazeći od činjenica da licencirani procenitelji nepokretnosti u RS ne predstavljaju veliku zajednicu rizika i da licencirani procenitelj po Zakonu ima pravo i obavezu da bude član nekog od akreditovanih profesionalnih udruženja procenitelja sa liste kod nadležnog ministarstva, Zakon je mogao predvideti pravo akreditovanog profesionalnog udruženja procenitelja da zaključi kolektivni ugovor o dugoročnom obaveznom osiguranju za sve članove tog udruženja na period važenja od najmanje tri godine. Ta zakonska mogućnost bila bi u alternativni s pravom i obavezom procenitelja da zaključi individualni ugovor o dugoročnom obaveznom osiguranju od profesionalne odgovornosti. Putem kolektivnog ugovora o dugoročnom osiguranju osiguranik licencirani procenitelj plaćao bi manju premiju od premije koju plaća ugovarajući individualno dugoročno obavezno osiguranje od odgovornosti s pojedinim osiguravačem. Takva zakonska mogućnost već je predviđena u zakonodavstvu RS³⁴ za jednu od slobodnih profesija, a procenitelj vrednosti nepokretnosti može se uvrstiti i u slobodne profesije. Stoga, prilikom jedne od budućih novela Zakona treba predvideti mogućnost zaključenja kolektivnog ugovora o dugoročnom obaveznom osiguranju od profesionalne odgovornosti procenitelja vrednosti nepokretnosti u alternativni sa zaključenjem individualnog ugovora o istom ovom obaveznom osiguranju.

Zaključci

1) Preporučuje se da se prilikom jedne od narednih novela u članu 30 stav 1 Zakona o stečaju reči koje glase „za sve rizike povezane sa obavljanjem poslova stečajnog upravnika“ zamene rečima koje glase „za sve propuste ili greške, kojim je pričinjena imovinska šteta učesniku u tom postupku ili trećem licu“.

2) Preporučuje se da se prilikom jedne od narednih novela Zakona o proceniteljima vrednosti nepokretnosti omogući zaključenje kolektivnog ugovora o dugoročnom obaveznom osiguranju od profesionalne odgovornosti s periodom važenja od najmanje tri godine putem akreditovanog udruženja procenitelja za račun članova tog udruženja, kao alternativa za zaključenje individualnog ugovora o dugoročnom obaveznom osiguranju s periodom važenja od najmanje tri godine. Ako se prihvati predloženo noveliranje, u Zakonu ne treba dirati dosadašnje pravo procenitelja vrednosti nepokretnosti da zaključuje individualni ugovor o obaveznom dugoročnom osiguranju od profesionalne odgovornosti na period važenja od najmanje tri godine.

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³⁴ Zakon o advokaturi i dr.

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