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OSIGURANJE KORISNIKA KREDITNIH KARTICA

PREGLEDNI RAD

Apstrakt

U ovom radu prvo se ukratko razmatra pravna priroda i pravni okvir ugovora o kreditu i izdavanju kreditne kartice, njegovi određeni obavezni elementi i odnos tog ugovora i ugovora o osiguranju korisnika kreditne kartice, a zatim pojedini aspekti karakteristični za kreditnu karticu, njen privredni značaj i raširenost. U drugom delu rada razmatra se razvrstavanje ove usluge neživotnog osiguranja, priroda i obim opasnosti od koje se pruža osiguravajuće pokriće. Ukazuje se na akcesornu prirodu ugovora o osiguranju u odnosu na ugovor o izdavanju kreditne kartice. Osiguranje korisnika kreditne kartice autor deli na osiguranje u korist izdavaoca kreditne kartice i osiguranje u korist korisnika kreditne kartice, a zatim analizira specifičnosti osiguranja za slučaj nezaposlenosti i u slučaju nezgode osiguranika. Autor zaključuje da se osiguranje korisnika kreditnih kartica sprovodi isključivo metodom „imenovanih rizika“, da u domaćim uslovima osiguranja postoje nedostaci u pogledu definisanja pokrivenih i isključenih rizika, kao i da na inostranom tržištu postoje okolnosti za koje se na domaćem tržištu ne pruža pokriće.

Ključne reči: kredit, kreditna kartica, osiguranje, rizici, uslovi osiguranja, kovid 19

I. Uvod

Kreditna kartica spada u posebnu vrstu legitimacionih isprava kojom se njen imalac legitimira kao lice koje je ovlašćeno da njom vrši bezgotovinsko plaćanje u maloprodajnom platnom prometu. U užem smislu, kreditna kartica spada u vrstu

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platnih kartica kojima njen izdavalac kreditira dužnika (potrošača) prilikom plaćanja robe i usluga. Pored plaćanja, kreditna kartica redovno omogućava i podizanje gotovog novca kada njen imalac ne poseduje sredstva u određenom trenutku, pristajući da ista (pozajmljena) sredstva vraća u ugovorom utvrđenim rokovima. Čini se da u pravnoj teoriji postoji saglasje u pogledu toga da je kreditna kartica takođe vrsta platne kartice koju karakteriše bezgotovinsko plaćanje putem kratkoročnog kredita koji njen imalac dobija od izdavaoca kreditne kartice.² U pogledu pravne prirode kreditne kartice, preovlađuje stav da je kreditna kartica legitimaciona isprava na ime,³ dok je stav da se radi o legitimacionom znaku zastupljen kod veoma malog broja autora.⁴ U širem smislu, autor ovog rada smatra da je kreditna kartica vrsta novčane kartice koja se od drugih platnih kartica razlikuje po trenutku, obimu i dinamici namirenja duga.⁵ Bitne elemente ugovora o izdavanju i korišćenju kreditne kartice reguliše Zakon o zaštiti korisnika finansijskih usluga⁶ u čl. 7 (pismena forma ugovora i ništavost ugovornih klauzula kojima se korisnik odriče prava što su mu garantovana zakonom) i čl. 22, dok su obavezni opšti elementi okvirnog ugovora o platnim uslugama regulisani čl. 16 Zakona o platnim uslugama.⁷ I pored prinudnog karaktera odredaba o obavezanim elementima ugovora o izdavanju i korišćenju kreditne kartice iz Zakona o zaštiti korisnika finansijskih usluga, treba zapaziti da su neki od njih propisani alternativno i da će od volje klijenta i izdavaoca kartice zavisiti koji će elementi biti obavezujući. To je slučaj sa naznakom valute koja je obavezna onda kada se kredit odobrava i obračunava u stranoj valuti, kao i s navođenjem da li je ugovorena fiksna ili promenljiva kamata. Zakonom je kao obavezan element propisana i „eventualna“ obaveza zaključivanja ugovora o sporednim uslugama kao što je ugovor o osiguranju. Međutim, eventualnost navedenog obaveznog elementa sama po sebi upućuje na to da se ne radi o elementu koji navedeni ugovor u svakom slučaju mora da ima kako bi ispunio uslov punovažnosti. Da li će uz kreditnu karticu klijentu banke biti ponuđeno i osiguravajuće pokriće obaveza po kreditnoj kartici, to je prepušteno prodajnoj inicijativi osiguravača i spremnosti banaka da uslugu osiguranja ponude kao dopunsku uz kreditnu uslugu po karticama koje izdaju, imajući u vidu da se radi o dobrovoljnoj vrsti neživotnih (imovinskih) osiguranja.

Pored izloženog, obaveza informisanja kako izdavaoca kreditne kartice tako i prodavca (distributera) usluga osiguranja ostaje jedna od ključnih za ostvarivanje

² Mirko Vasiljević. *Trgovinsko pravo*, Beograd, 2016, str. 565; Slavko Carić, Miroslav Vitez, Vuk Raičević, Janko Veselinović. *Privredno pravo*, Novi Sad, 2011, str. 414; Jovan Slavnić. *Privredno / trgovinsko pravo sa osnovama građanskog prava*, Beograd, 2006, str. 430.

³ Mirko Vasiljević. *Trgovinsko pravo*, Beograd, 2016, str. 567; Slavko Carić, et al. *Privredno pravo*, Novi Sad, 2011, str. 418-419; Slobodan Jovanović. *Trgovinsko pravo*, Beograd, 2020a, str. 194.

⁴ Jovan Slavnić. *Privredno / trgovinsko pravo sa osnovama građanskog prava*, Beograd, 2006, str. 432.

⁵ Slobodan Jovanović. *Trgovinsko pravo*, Beograd, 2020a, str. 194-195.

⁶ *Službeni glasnik RS*, br. 36/2011 i 139/2014.

⁷ *Službeni glasnik RS*, br. 134/2014 i 44/2018.

prava imaoa kreditne kartice i, istovremeno osiguranika, naročito kada se radi o pravu na prigovor pružaocu usluge, pravu na prigovor nadzornom organu, pravu na odustanak od ugovora itd.⁸ Osim toga, od trenutka kada osiguravač uvede uslugu osiguranja kreditnih kartica, dužan je da ga prati i analizira prilikom njegove prodaje i primene i da, kada utvrdi da postoje bilo kakve okolnosti koje mogu negativno uticati na klijenta, preduzme mere za otklanjanje uočene situacije, kao i da bez odlaganja obavesti distributere i kupce usluge osiguranja o preduzetoj korektivnoj meri.⁹

Tražnja za ovom vrstom usluge osiguranja zavisi od postignutog stepena bogatstva pojedinca, ali i određenog broja okolnosti. Tako se na primer u ekonomskoj teoriji ističe da ekonomska situacija na nekom prostoru, pored ostalog, zavisi i od tradicije, sistema organizacije privrednih subjekata, ali i od navika u potrošnji stanovništva i raspoloživosti sredstava.¹⁰ Međutim, u istoriji osiguranja zabeleženi su i primeri kada su animoziteti između različitih društvenih grupa doprinosili širenju znanja o finansijskim instrumentima i kulturi osiguranja, uz istovremeno pružanje usluga na tržištu i zadovoljavanje ličnih interesa i interesa crkve.¹¹ Konačno, ali ne i poslednje, savremeni obrazovni planovi i programi trebalo bi da doprinose kvalitetu obrazovanja usklađenom s dinamičnim privrednim kretanjima,¹² čime bi se takođe podigla svest o potrebi zaključenja ove vrste osiguranja. S druge strane, holističko i integrativno izveštavanje koje obuhvata nekoliko dimenzija osiguravačeve delatnosti predstavlja savršen primer tehnike uvođenja nove usluge kojim se povećava vidljivost osiguravača u očima potencijalnih osiguranika.¹³

Ako analiziramo period 1993–2019. godine u Velikoj Britaniji, postaje uočljiva tendencija povećanja ukupne sume plaćene korišćenjem kreditnih kartica, s tim da su, posle izbivanja pandemije kovida 19, od aprila 2020. godine, imaoi kreditnih kartica često odlučivali da isplate dugove u celosti zbog neizvesnih finansijskih okolnosti, što je dovelo do pada iznosa plaćenog kreditnim karticama za 34%.¹⁴

⁸ Nenad Grujić, „Naknada štete zbog neispunjenja obaveze predugovornog informisanja“, *Evropska revija za pravo osiguranja*, XVIII(2), 2019, str. 17.

⁹ Ozren Uzelac, Marijana Đukić Mijatović, „Sadržina i obim obaveza tokom procesa izrade i uvođenja proizvoda osiguranja na tržište prema Direktivi EU o distribuciji osiguranja“, *Evropska revija za pravo osiguranja*, XVIII(1), 2019, str. 12–13.

¹⁰ Ivica Đorđević, Ratko Ljubojević, „Ekonomske aspekte korporativne bezbednosti“, *Megatrend revija*, 15(3), 2018, str. 120.

¹¹ Slobodan Jovanović, Ozren Uzelac, „Tradicionalne pravne ustanove i pravo osiguranja“, *Evropska revija za pravo osiguranja*, XIX(1), 2020b, str. 12.

¹² Milorad Šolević, „Savremene promene obrazovne strukture stanovništva i regionalni ekonomski razvoj“, *Megatrend revija*, 17(4), 2020, str. 126.

¹³ Mihajlo Rabrenovic, Ranka Mitrovic, Boban Kovacevic, „The relationship between strategic management and public relations and their implications for financial operations“, *International Review*, 1-2/2020, str. 92.

¹⁴ Chris Lilly, *UK credit card statistics 2020*, 17 July 2020, <https://www.finder.com/uk/credit-card-statistics>, pristupljeno 14. 1. 2021.

Plaćanje debitnim, kreditnim i pripejd karticama pokazalo se kao prvi izbor prilikom plaćanja za 68% ispitanika u Srbiji tokom 2020. godine, što dokazuje da se korisnici oslanjaju na brzinu, jednostavnost i sigurnost elektronskih plaćanja. Osim toga, korisnici su ih prepoznali kao zdravstveno bezbedniju opciju tokom pandemije, jer se broj onlajn plaćanja povećao za 15% u odnosu na period pre izbijanja pandemije kovida 19, pokazalo je istraživanje *MasterIndex Srbija*.¹⁵ Ipak, opšte restriktivne mere kretanja, javnih okupljanja, prometa robe i usluga usled pandemije prouzrokovale su opadanje broja novih ugovora o osiguranju pomoći na putu, robe u prevozu i osiguranja kredita, što će, po nekim mišljenjima, onemogućiti oporavak tražnje za ovim vrstama neživotnih osiguranja u srednjem roku.¹⁶

Imajući u vidu da se u razvijenom svetu platne transakcije izvršene kreditnim karticama registruju u milijardama i bilionima određene novčane valute, osiguranje imalaca kreditnih kartica od rizika nemogućnosti vraćanja iskorišćenih novčanih sredstava sve više dobija na važnosti. U tom smislu većina izdavalaca kreditnih kartica nudi ovu vrstu osiguranja kao dodatni izvor prihoda i kao dodatu vrednost usluge svojim klijentima,¹⁷ ali ona ima takođe funkciju obezbeđenja dobijenog kredita i lakšeg i bržeg donošenja odluke banke da odobri kredit.

II. Neke specifičnosti osiguravajućeg pokriva obaveza po kreditnim karticama na domaćem i inostranom tržištu

Osiguranje obaveza po kreditnim karticama spada u vrstu neživotnog imovinskog osiguranja, a u užem smislu spada u „osiguranje kredita“ ili „osiguranje finansijskih gubitaka zbog gubitka zaposlenja“¹⁸, ili podgrupu „osiguranje kredita i jemstava“.¹⁹ Zakon o osiguranju nije ograničio vrste rizika od kojih je moguće pokrivati finansijske gubitke, pa je pored nezaposlenosti, ostavio mogućnost da se osiguravaju i svi nepomenuti „ostali finansijski gubici“. Ako se ta činjenicu ima u vidu, na osiguranje obaveza po kreditnim karticama primenjuju se pravila o podosiguranju i nadosiguranju koja važe za imovinska osiguranja.

Od osiguranja korisnika kreditnih kartica treba razlikovati uslugu osiguranja kredita i osiguranja od finansijskih gubitaka malih i srednjih preduzeća kod kojih se osigurava isplata rata kredita zbog delimičnog ili potpunog prekida registrovane

¹⁵ *BIZLife*. „MasterIndex Srbija: 15% više onlajn kupaca nego pre pandemije“, 7.12.2020, <https://www.bizlife.rs/masterindex-srbija-15-vise-onlajn-kupaca-nego-pre-pandemije/>, pristupljeno 14. 1. 2021.

¹⁶ Jelena Kočović, Tatjana Rakonjac Antić, Marija Koprivica. „Rizik pandemije – pretnja ili šansa za delatnost osiguranja?“, *Evropska revija za pravo osiguranja*, XIX(2), 2020, str. 12.

¹⁷ Michael Stanfield. *Method and System for Providing Multi-Credit Card Insurance*, United States Patent Application Publication, US 2008/0133278 A1, June 5, 2008, tač. (0003).

¹⁸ Zakon o osiguranju, *Službeni glasnik RS*, 139/2014, čl. 9, st. 1, tač. 14 i 16, al. (1).

¹⁹ Zakon o osiguranju, čl. 10, st. 2, tač. 7.

delatnosti osiguranika zbog nastanka požara ili nekih drugih opasnosti, kao i sve druge usluge osiguranja kredita, jemstava i novčanih potraživanja pravnih lica.

Ova vrsta osiguranja štiti dužnika od nesposobnosti da održi ritam plaćanja rata kredita i pomaže mu da izbegne zapadanje u dug zbog nemogućnosti plaćanja prouzrokovane nezgodom, bolešću ili nezaposlenošću. Osigurana opasnost se ispoljava u mogućnosti da fizičko lice sredstva iskorišćena po odobrenom kreditu neće moći da vrati poveriocu u skladu sa uslovima ugovora o kreditu i izdavanju kreditne kartice. Radi se o usluzi osiguranja koja se, po pravilu, prodaje fizičkom licu u trenutku zaključenja ugovora o kreditu i kreditnoj kartici u poslovnim prostorijama banke. Zbog toga je ova vrsta osiguranja akcesorne prirode i proizvodi dejstvo samo ako je zaključen ugovor o kreditu i ako je u trenutku nastupanja osiguranog slučaja on i dalje na snazi. Sledstveno tome, ugovor o osiguranju korisnika kreditne kartice prestaje u slučaju da osiguranik ranije otplati dug ili na drugi način dođe do prestanka ugovora o kreditu i izdavanju kreditne kartice iz razloga ili rizika koji nisu obuhvaćeni ugovorom o osiguranju (raskid ili otkaz ugovora o kreditu).

Granice u definisanju širine osiguravajućeg pokrića ne postoje, zbog čega od kreativnosti osiguravača, njegove moći uočavanja i predviđanja kretanja tražnje na tržištu zavisi kakve će karakteristike imati njegova usluga osiguranja korisnika kreditnih kartica. I pored određenog poklapanja definicija pojmova, u tom smislu je teško govoriti o potpunoj istovetnosti širine pokrića i uslova kod ove usluge osiguranja. Uslovima osiguranja definiše se kada nastupa rizik od neplaćanja, odnosno kašnjenja u plaćanju zbog nesolventnosti, drugih događaja ili postupaka. Po pravilu, osiguravači nude kombinovano osiguranje korisnika kreditnih kartica od određenog broja rizika usled kojih nastupa nemogućnost plaćanja obaveza po odobrenom kreditu, ali u nekim slučajevima, i dodatnih rizika. U tom smislu treba razlikovati rizike zbog čijeg je nastupanja korisnik kreditne kartice u nemogućnosti da ispunjava ugovorne obaveze po ugovoru o kreditu i izdavanju kreditne kartice od drugih rizika čijim nastupanjem korisnik kreditne kartice trpi štetu zbog neurednog ispunjenja ugovorne obaveze trgovaca, proizvođača ili pružaoca usluga. Tako se osiguranje korisnika kreditnih kartica deli na osiguranje koje funkcioniše u korist davaoca kredita i izdavaoca kreditne kartice (banka) i osiguranje kojim se korisnik kreditne kartice štiti od radnji i propusta isporučilaca robe i pružalaca usluga kojima je, na njihovim prodajnim mestima ili preko interneta (*Point-of-Sale – POS*), platio kupoprodajnu cenu svojom kreditnom karticom.

U prvoj grupi usluga osiguranja moguće je osigurati se od rizika nemogućnosti plaćanja usled nevoljne nezaposlenosti / tehnološkog viška, nezgode, invaliditeta, teške bolesti, potrebe bolničkog lečenja, smrti i nastanka obaveze izdržavanja tokom perioda osiguranja.²⁰ Primera radi, jedan od korporativnih sindikata „Lojda“ pruža

²⁰ Lloyd's Bank. "Information for existing Payment Protection Insurance (PPI) customers", <https://www.lloydsbank.com/payment-protection-insurance-complaints/existing-customers.html>, pristupljeno 14. 1. 2021.

osiguranje nemogućnosti vraćanja duga po kreditnoj kartici usled: nezgode, bolesti, nezaposlenosti i iznenadne smrti.²¹ Na srpskom tržištu osiguranja takođe je slična situacija u vezi sa širinom osiguravajućeg pokrivača, na kojem se ova vrsta pokrivača najčešće nudi zbog prestanka radnog odnosa mimo volje korisnika kredita, smrti usled nesrećnog slučaja, potpunog trajnog invaliditeta usled nesrećnog slučaja. Neki osiguravači pokrivaju i bolničko lečenje od posledica nesrećnog slučaja, a postoji i mogućnost odvojenog zaključenja pokrivača od rizika nezaposlenosti od osiguranja rizika smrti ili trajne invalidnosti usled nezgode.

Imajući u vidu da se kreditne kartice koriste za kupovinu različitih dobara i usluga, često se nudi i pokrivače slučajeva u kojima korisnik kreditne kartice biva oštećen zbog neurednog ispunjenja ugovornih obaveza trgovaca, proizvođača i pružalaca različitih usluga ili više sile. Tako na primer, postoji osiguranje produžene garancije na kupljenu uslugu u korist korisnika kreditne kartice dodatnih godinu ili dve godine dana posle isteka proizvođačke garancije, ili od gubitka, krađe ili oštećenja robe pošto kreditna kartica bude zadužena za iznos kupoprodajne cene kupljene stvari, a tu su i rizici u vezi sa putovanjem (otkaz, prekid i kašnjenje putovanja, kašnjenje, gubitak ili krađa prtljaga), sa iznajmljivanjem motornog vozila (krađa i šteta na iznajmljenom vozilu, krađa ličnih stvari iz iznajmljenog vozila i nadoknada zbog smrti ili povreda putnika), i sa pružanjem različitih vrsta pomoći (medicinske, opšte i pravne).²² Interesantno da u ovom radu, u razmatranim uslovima osiguranja stranih tržišta i domaćeg tržišta nismo pronašli uslove osiguranja kojima se pokriva rizik zloupotrebe kreditne kartice od strane trećeg neovlašćenog lica koje je izvršilo platnu transakciju. Takođe se pruža pokrivače zbog sniženja kupoprodajne cene stvari koja je određeni period pre toga kupljena po višoj ceni. Osigurani slučaj nastaje kada u roku od dva do tri meseca, u zavisnosti od uslova osiguranja, dođe do sniženja cene stvari koja je plaćena kreditnom karticom. Do ovog slučaja obično dolazi zbog početka prodaje novog modela uređaja kada prethodnim modelima pada cena. Odštetni zahtev se u tom slučaju, po pravilu, ostvaruje tako što se prilaže račun o kupljenoj stvari, slip kreditne kartice i kopija reklame u kojoj je sadržana niža cena.

Ono što karakteriše praksu osiguranja korisnika kreditnih kartica na stranim tržištima jeste razdvojenost funkcije preuzimanja rizika i likvidacije odštetnih zahteva. Po pravilu, ovu uslugu osiguranja prodaje banka prilikom zaključenja ugovora o kreditu i izdavanju kreditne kartice, dok se u uslovima osiguranja obavezno navodi naziv firme, adresa i kontakt-podaci (elektronska adresa i telefon) firme koja administrira to

²¹ Tokio Marine Kiln Syndicates Limited. *Credit Card & Payment Protection Insurance Policy Terms & Conditions*, PC_CCPPINB_PW_TMK_V6_0620, 2020.

²² National Bank Life Insurance Company, Canassurance Insurance Company. *Purchase Protection and Travel Insurance for National Bank of Canada Mastercard credit cards* (group insurance policy no. 713705), 2020.

osiguranje i likvidira štete.²³ Autoru nije poznato da na regionalnim tržištima osiguravači poveravaju likvidaciju šteta po ovoj vrsti osiguranja specijalizovanim firmama. Primenjuje se pravilo o obavezi osiguranika ili ovlašćenog lica da bez odlaganja, a najkasnije u roku od tri dana od dana saznanja za nastanak osiguranog slučaja, o tome pismeno obavesti osiguravača (prijava osiguranog slučaja).

Ako se pođe od toga da se osiguranjem pokrivaju određeni, imenovani rizici uz obavezno navođenje nepokrivenih i isključenih rizika, za osiguravača je bez značaja kreditna sposobnost osiguranika. Ukoliko zbog slabe ili loše kreditne sposobnosti banka odbije zahtev fizičkog lica za izdavanje kreditne kartice na određeni kreditni limit, neće postojati ni zakoniti interes za osiguranjem kredita po kreditnoj kartici. S druge strane, ako korisnik kredita postane nesolventan tokom trajanja osiguranja ili bude onemogućen da uredno izmiruje obaveze zbog smanjenja zarade ili njene neredovne isplate, neće nastupiti obaveza osiguravača sve dok ne prestane radni odnos bez volje osiguranika. Ako osiguraniku poslodavac otkaže ugovor o radu iz poslovnih razloga (tehnološki višak) ili bez krivice osiguranika, on će moći da računa na osiguravajuće pokriće. Međutim, osiguranik može da dođe u nepovoljnu situaciju u vezi sa osiguranjem kada, zbog neurednog ispunjavanja obaveze poslodavca da isplaćuje zaradu, otkaže ugovor o radu. On tada neće imati pravo na nadoknadu iz osiguranja, pa će to delovati kao njegov dvostruki problem jer mu poslodavac kasni sa isplatom zarade, a on zbog toga ne može redovno da izmiruje obaveze po kreditnoj kartici. Takav slučaj nijedni uslovi osiguranja ne priznaju za pravni osnov nastanka obaveze osiguravača po polisi osiguranja korisnika kreditne kartice.

Kada bi osiguravači pokrivali i takav slučaj prestanka radnog odnosa, verovatno bi zahtevali pružanje dokaza o neurednosti isplate zarada ili duga za određeni broj zarada ili dokaz da je pokrenut sudski postupak radi naplate zarada itd. U opisanom slučaju osiguranik ne bi imao pravo na naknadu zbog nezaposlenosti što je, s druge strane, jedan od uslova za ostvarivanje nadoknade od osiguravača.²⁴ Sličan zaključak može se izvući i u slučaju kada osiguranik trpi uznemiravanje (mobing) na radnom mestu zbog kojeg dâ otkaz ugovora o radu. S druge strane, uzbunjivač kojem poslodavac otkaže ugovor o radu nesporno će biti obuhvaćen osiguravajućim pokrićem.

Institut pričeknog roka ponekad se primenjuje u osiguranju kako bi se umanjilo negativno dejstvo subjektivnog rizika i ostvario priliv od premije osiguranja pre nego što nastane obaveza osiguravača. U tom smislu, neki domaći uslovi osiguranja korisnika kreditnih kartica ne predviđaju pričekni rok za rizik od nezaposlenosti, dok inostrani sadrže odredbu da obaveza osiguravača za ovaj rizik nastupa posle proteka 120 dana od dana kada je polisa osiguranja prvi put zaključena s konkretnim

²³ Tokio Marine Kiln Syndicates Limited. *Credit Card & Payment Protection Insurance Policy Terms & Conditions*, PC_CCPPINB_PW_TMK_V6_0620, 2020, str. 1.

²⁴ Zakon o zapošljavanju i osiguranju za slučaj nezaposlenosti, *Službeni glasnik RS*, br. 36/2009, 30/2010 – dr. zakon, 88/2010, 38/2015, 113/2017 – dr. zakon i 113/2017, čl. 67, st. 2.

osiguravačem.²⁵ U ovoj vrsti osiguranja smatramo da subjektivni aspekt u vezi s rizikom od nezaposlenosti nije izražen i da nije odlučujući za uvođenje pričeknog roka zbog toga što je bilo kakvo „lažiranje“ osiguranog događaja sasvim dobro predupređeno listom isključenih okolnosti i razloga za gubitak zaposlenja (pored ostalih razloga za isključenje obaveze osiguravača, nemar i kršenje radnih obaveza, izdržavanje kazne zatvora i svojevolan prestanak radnog odnosa / otkaz osiguranika ili sporazumni prestanak radnog odnosa koji osiguranik zaključi s poslodavcem).

Ono što domaći uslovi osiguranja zanemaruju, a pri čemu osiguranici ostaju uskraćeni za osiguravajuće pokriće, jeste slučaj kada za fizičko lice koje je u radnom odnosu na neodređeno vreme nastane potreba da otkáže ugovor o radu zbog nege i pomoći supružniku, deci ili rođacima u pravoj krvnoj liniji srodstva (roditelji, babe i dede). Ako se radi o iznenadnoj situaciji koja se nije mogla predvideti u trenutku zaključenja ugovora o osiguranju, onda bi i ova vrsta događaja mogla da bude predmet osiguranja korisnika kreditne kartice. Radi se o svesnoj i svojevoljnoj odluci osiguranika da prekine radni odnos, na šta je prinuđen zbog novonastalih porodičnih prilika, pod uslovom da na njihov nastanak nikako nije mogao da utiče. Potreba za pomoći i negom drugog lica regulisana je odgovarajućim propisima u svim pravnim sistemima, a u našoj državi Zakonom o penzijskom i invalidskom osiguranju²⁶ tako da se pomoć i nega pruža licu kome je zbog prirode i težine stanja povrede ili bolesti utvrđena potreba za pomoći i negom za obavljanje radnji radi zadovoljavanja osnovnih životnih potreba.²⁷ Ta vrsta osiguravajućeg pokrića u osiguranju korisnika kreditne kartice na engleskom tržištu pruža se posle proteka 60 neprekinutih dana od dana nastanka nezaposlenosti, pri čemu je korisnik kreditne kartice pokriven osiguranjem samo ako je registrovan u Zavodu za socijalnu zaštitu kao negovatelj koji prima novčanu naknadu za pomoć i negu drugog lica. Svakako treba imati u vidu da se osiguravač obavezuje da isplati samo određeni, ugovoreni broj naknada, sve pod uslovom da je osiguranik u statusu nezaposlenog lica tokom isplate osiguranih naknada.²⁸

Preduzetnici su takođe obuhvaćeni osiguranjem korisnika kreditnih kartica, i to samo u slučaju trajnog prestanka rada preduzetničke radnje zbog okolnosti koje su potpuno van uticaja osiguranika. Inostrani uslovi osiguranja ne sadrže bliže

²⁵ Tokio Marine Kiln Syndicates Limited. *Credit Card & Payment Protection Insurance Policy Terms & Conditions*, PC_CCPIPINB_PW_TMK_V6_0620, 2020, str. 2.

²⁶ *Službeni glasnik RS*, br. 34/2003, 64/2004 - US, 84/2004 - dr. zakon, 85/2005, 101/2005 - dr. zakon, 63/2006 - US, 5/2009, 107/2009, 30/2010 - dr. zakon, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014, 142/2014, 73/2018, 46/2019 - US i 86/2019.

²⁷ Zakon o penzijskom i invalidskom osiguranju, čl. 41.

²⁸ Tokio Marine Kiln Syndicates Limited. *Credit Card & Payment Protection Insurance Policy Terms & Conditions*, PC_CCPIPINB_PW_TMK_V6_0620, 2020, str. 5.

određenje „okolnosti“ zbog koje preduzetnička radnja mora trajno da se zatvori, pa je tim pokrićem obuhvaćen i poslovni neuspeh preduzetnika. Ipak, i u tom slučaju preduzetnik, kao i svaki drugi osiguranik u ovoj vrsti osiguranja, mora da bude potpuno nezaposlen, prijavljen Zavodu za tržište rada, da prima novčanu naknadu zbog nezaposlenosti, da aktivno traži posao i da nije primio otpremninu u celosti ili da je ne prima u obliku mesečnih isplata od prethodnog poslodavca.²⁹

Konačno, ali ne i najmanje važno pitanje na koje se od osiguravača očekuje adekvatno postupanje u uslovima pandemijskih rizika jeste način na koji oni formulišu uslove osiguranja, kako bi bile otklonjene bitne nedoumice u vezi sa širinom pokrića od rizika nezgode i smrti. Pored opasnosti da reosiguravač odbije da nadoknadi obavezu osiguravača koju je ispunio u korist osiguranikovog poverioca zbog obolevanja od kovida 19, „sa nastupanjem pandemije raste i reputacioni rizik za osiguravače“.³⁰ Tokom istraživanja, autor je uočio da domaći, kao i engleski osiguravači, u uslovima osiguranja korisnika kredita od nezgode izričito isključuju svoje obaveze koje bi nastale usled ostvarenja tog rizika ili uopšte zaraze bilo kojim tipom virusa ili bakterija.³¹ U tom smislu jedan od stranih osiguravača je isključio sve odštetne zahteve koji na bilo koji način direktno ili posredno nastanu usled: (1) SARS-CoV2 (teški akutni respiratorni sindrom *Coronavirus* 2); (2) kovid 19 (novi soj SARS-CoV2); (3) mutacija ili varijacija SARS-Cov2 ili kovid 19; ili (4) tokom perioda dobrovoljne ili prinudne izolacije zbog infekcija pod tač. (1), (2) ili (3).³² Primena metoda „imenovanih rizik“ sa listom rizika isključenih iz pokrića, po mišljenju autora, može da dovede do nedoumica u vezi s rizicima koji nisu navedeni kao pokriveni, ako nisu navedeni u listi nepokrivenih (isključenih) rizika ili šteta na način na koji je to učinjeno u gorenavedenom primeru uslova osiguranja. To naročito može da bude osetljivo pitanje u odnosima osiguranja kada informacija o usluzi osiguranja kod konkretnog ugovarača osiguranja stvori pogrešan utisak kod potencijalnog osiguranika da će kupovinom te usluge u potpunosti zadovoljiti potrebe koje je imao na umu kada je tražio (i eventualno upoređivao) različite informacije i uslove osiguranja (predmet osiguranja, širina pokrića, isključeni rizici, franšiza, itd.).³³ O tom problemu autor je izneo određene zaključke u jednom svom ranijem radu, koji mogu da ukažu na poželjan smer postupanja prilikom jezičkog formulisanja odredaba uslova osiguranja.³⁴

²⁹ Tokio Marine Kiln Syndicates Limited, str. 3.

³⁰ Jelena Kočović et al., „Rizik pandemije – pretnja ili šansa za delatnost osiguranja?“, *Evropska revija za pravo osiguranja*, XIX(2), 2020, str. 13.

³¹ Tokio Marine Kiln Syndicates Limited, str. 1.

³² Tokio Marine Kiln Syndicates Limited, str. 4.

³³ Slobodan Jovanović, „Pravilo *contra proferentem* u pravu osiguranja i neki aspekti tumačenja nejasnih odredbi uslova osiguranja“, (urednici Slobodan Jovanović i Pjerpaolo Marano), Beograd, 2020c, str. 19.

³⁴ S. Jovanović, (2020c), str. 19.

III. Zaključak

Osiguranje korisnika kredita putem kreditnih kartica opravdano je zbog neizvesnosti svakodnevnog života i ishoda pravnih odnosa u koje stupa njen imalac. Ostvarenje interesa svih zainteresovanih strana neće uvek biti moguće najmanje iz sledeća dva razloga: zbog restriktivnosti osiguravajućeg pokrivača i zbog olakog očekivanja korisnika kreditnih kartica da budu potpuno osigurani. To je i razlog za postizanje i unapređivanje transparentnosti postupanja osiguravača prema osiguranimcima u pogledu prirode usluge osiguranja, premije i pokrivenih i nepokrivenih rizika.

Osiguranje korisnika kreditnih kartica sprovodi se isključivo primenom metoda „imenovanih rizika“ uz kombinovanje različitih rizika i šteta, što doprinosi raznovrsnosti širine pokrivača. U domaćim uslovima osiguranja uočeni su određeni nedostaci u pogledu definisanja pokrivenih i isključenih rizika koji mogu da prouzrokuju dilemu u vezi sa (ne)postojanjem obaveze osiguravača. Pored toga, postoje i brojne druge situacije za koje se pruža pokrivač na inostranom tržištu, a kod nas su izostavljene. Stepenn ličnog bogatstva, razvijenost privrednih odnosa, kultura trgovinske prakse i ponašanja u potrošačkim ugovorima utiču na tražnju za uslugama osiguranja i verovatno dovode do nezainteresovanosti osiguravača da ponude uslugu osiguranja u kojoj bi osiguranik istovremeno bio i korisnik naknade osiguranja u vezi sa neurednim ispunjenjem obaveza trgovaca, proizvođača i pružalaca usluga ili dejstva više sile u određenom kontekstu kupoprodajnog ili nekog drugog pravnog odnosa.

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CREDIT CARD INSURANCE

REVIEW ARTICLE

Abstract

This paper first briefly discusses the legal nature and legal framework of the loan and credit card agreement, its specific mandatory elements, and the relationship between such agreement and the credit card insurance agreement, followed by particular aspects of a credit card, its economic importance, and widespread presence. The second part of the paper deals with the classification of this non-life insurance service, and the nature and scope of risks covered by insurance. The accessory nature of the contract for credit card insurance is pointed out. The author divides the insurance of the credit cardholders into insurance in favour of the credit card issuer and insurance in favour of the credit cardholder, and then analyses the specifics of insurance in the event of unemployment and accident suffered by the insured person. The author concludes that the insurance of credit cardholders is carried out exclusively using the method of “named risks”, whereas Serbian insurance terms and conditions have deficiencies in terms of defining covered and excluded risks, while there are circumstances on the foreign market for which no coverage is provided.

Keywords: *loan, credit card, insurance, risks, insurance terms and conditions, COVID-19*

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I. Introduction

A credit card belongs to a special type of identification documents which identifies its holder as a person who is authorized to make non-cash payments in retail payment transactions. In a narrower sense, a credit card belongs to the type of payment cards with which its issuer lends funds to the debtor (consumer) to pay for goods and services. In addition to payments, the credit card regularly enables the cash withdrawal at times when its holder has no funds and agrees to return these (borrowed) funds within the periods defined in the contract. There seems to be a consensus in legal theory that a credit card is also a type of payment card characterized by non-cash payment through a short-term loan that its holder receives from a credit card issuer.² Regarding the legal nature of a credit card, the prevailing view is that a credit card is an identity document in holder's name,³ while a very small number of authors argues that, in fact, it is an identification mark.⁴ In a broader sense, the author of this paper considers that a credit card is a type of money card that differs from the other payment cards in terms of time, extent and schedule of debt settlement.⁵ Important elements of the agreement on issuing and use of a credit card are regulated by the Law on the Protection of Financial Service Consumers⁶ in Article 7 (written form of the contract and the nullity of the contractual clauses by which the user waives the rights guaranteed to him by law) and Article 22, while the mandatory general elements of the framework agreement on payment services are regulated by Art. 16 of the Law on Payment Services.⁷ Despite the compulsory nature of the provisions on mandatory elements of the credit card issuance and use agreement from the Law on Protection of Financial Services Consumers, it should be noted that some of them are prescribed alternatively and that the binding elements will depend on the client's and card issuer's will. This is the case with an indication of the currency that is required when the loan is approved and calculated in a foreign currency, as well as with an indication of whether a fixed or variable interest rate has been contracted. The law also prescribes the "possible" obligation as a mandatory element to conclude contracts for ancillary services, such as insurance contracts. However, the possibility of the said mandatory element in itself suggests that it is not an element that the said contract must have in any case in order to fulfil

² Mirko Vasiljević. *Trgovinsko pravo*, Beograd, 2016, pp. 565; Slavko Carić, Miroslav Vitez, Vuk Raičević, Janko Veselinović. *Privredno pravo*, Novi Sad, 2011, pp. 414; Jovan Slavnić. *Privredno / trgovinsko pravo sa osnovama građanskog prava*, Beograd, 2006, pp. 430.

³ Mirko Vasiljević. *Trgovinsko pravo*, Beograd, 2016, pp. 567; Slavko Carić, et al. *Privredno pravo*, Novi Sad, 2011, pp. 418-419; Slobodan Jovanović. *Trgovinsko pravo*, Beograd, 2020a, pp. 194.

⁴ Jovan Slavnić. *Privredno / trgovinsko pravo sa osnovama građanskog prava*, Beograd, 2006, pp. 432.

⁵ Slobodan Jovanović. *Trgovinsko pravo*, Beograd, 2020a, pp. 194-195.

⁶ *Official Gazette of RS*, nos. 36/2011 and 139/2014.

⁷ *Official Gazette of RS*, nos. 134/2014 and 44/2018.

the condition of validity. Whether credit card coverage will be offered to the bank's client along with the credit card is left to the insurer's sales initiative and the willingness of banks to offer the insurance service as a supplement to the credit card service they issue, bearing in mind that it is a voluntary type of non-life (property) insurance.

In addition to the above, the obligation to inform both the credit card issuer and the seller (distributor) of insurance services remains one of the key obligations for exercising the rights of credit cardholders and, at the same time of the insureds, especially when it comes to the right to lodge a complaint to the supervisory authority, the right to waive the contract, etc.⁸ In addition, from the moment the insurer introduces the credit card insurance service, it is obliged to monitor and analyse it during its sale and use and, when he determines that there are any circumstances that may adversely affect the client, take measures to eliminate the situation and promptly inform the distributors and customers of the taken corrective measure.⁹

The demand for this type of insurance service depends on the level of wealth reached by an individual, but also on a certain number of circumstances. Thus, for example, economic theory emphasizes that the economic situation in an area, among other things, depends on the traditions, the organisational system of entities, and also on the consumer habits and the availability of funds.¹⁰ However, in the history of insurance, there have been examples when resentments between different social groups have contributed to spreading knowledge about financial instruments and insurance culture, while providing services in the market and satisfying personal interests and interests of the church.¹¹ And last but not least, modern syllabuses should contribute to the quality of education that is in line with dynamic economic trends,¹² thus raising awareness of the need to be covered by this type of insurance. On the other hand, a holistic and integrative reporting approach that incorporates several dimensions of insurer's business is a brilliant example of the new business and reporting technique used to increase the insurers' visibility in the eyes of prospective customers.¹³

⁸ Nenad Grujić, „Naknada štete zbog neispunjenja obaveze predugovornog informisanja“, *European Insurance Law Review*, XVIII(2), 2019, pp. 17.

⁹ Ozren Uzelac, Marijana Dukić Mijatović, „Sadržina i obim obaveza tokom procesa izrade i uvođenja proizvoda osiguranja na tržište prema Direktivi EU o distribuciji osiguranja“, *European Insurance Law Review*, XVIII(1), 2019, pp. 12–13.

¹⁰ Ivica Đorđević, Ratko Ljubojević, „Ekonomski aspekti korporativne bezbednosti“, *Megatrend revija*, 15(3), 2018, pp. 120.

¹¹ Slobodan Jovanović, Ozren Uzelac, „Tradicionalne pravne ustanove i pravo osiguranja“, *European Insurance Law Review*, XIX(1), 2020b, pp. 12.

¹² Milorad Šolević, „Savremene promene obrazovne strukture stanovništva i regionalni ekonomski razvoj“, *Megatrend Review*, 17(4), 2020, pp. 126.

¹³ Mihajlo Rabrenovic, Ranka Mitrovic, Boban Kovacevic, „The relationship between strategic management and public relations and their implications for financial operations“, *International Review*, 1-2/2020, pp. 92.

If we analyse the period 1993–2019 in the UK, there is a noticeable tendency to increase the total amount paid by credit cards, however, after the outbreak of the COVID-19 pandemic in April 2020, credit card holders often decided to pay off debts in full due to uncertain financial circumstances, which led to a 34% drop in credit card payments.¹⁴ In 2020, payments by debit, credit and prepaid cards proved to be the first payment choice for 68% of respondents in Serbia, which proves that cardholders rely on the speed, simplicity, and security of electronic payments. In addition, cardholders recognized card payments as a healthier option during the pandemic, as the number of online payments increased by 15% compared to the period before the outbreak of the COVID-19 pandemic, according to a *MasterIndex Serbia* survey.¹⁵ However, general restrictive measures on movement, public gatherings, trade in goods and services due to the pandemic have caused a decline in the number of new contracts for roadside insurance, transport and credit insurance, which will, according to some, in the medium term prevent the recovery of demand for these types of non-life insurance.¹⁶

Given that in the developed countries, credit card transactions are recorded in billions of certain monetary currencies, insuring credit cardholders against the risk of not being able to return used funds has become increasingly important. To that extent, most credit card issuers offer this type of insurance to their customers¹⁷ as an additional source of income and as an added value, but it also has the purpose of securing the obtained loan and helps banks to decide on loan approvals more quickly and easily.

II. Certain Specificities of Covering Credit Card Liabilities by Insurance on the Serbian and Foreign Market

Credit card liability insurance is a type of non-life property insurance, and in a narrower sense it belongs to “credit insurance” or “insurance of financial losses due to loss of employment”¹⁸, or a sub-group „credit and warranty insurance”.¹⁹ The Law on Insurance did not limit the types of risks against which it is possible to cover

¹⁴ Chris Lilly. *UK credit card statistics 2020*, 17 July 2020, <https://www.finder.com/uk/credit-card-statistics>, accessed on 14-01-2021.

¹⁵ *BIZLife*. „MasterIndex Srbija: 15% više onlajn kupaca nego pre pandemije”, 7.12.2020, <https://www.bizlife.rs/masterindex-srbija-15-vise-onlajn-kupaca-nego-pre-pandemije/>, accessed on 14-01-2021.

¹⁶ Jelena Kočović, Tatjana Rakonjac Antić, Marija Koprivica. „Rizik pandemije – pretnja ili šansa za delatnost osiguranja?”, *Evropska revija za pravo osiguranja*, XIX(2), 2020, pp. 12.

¹⁷ Michael Stanfield. *Method and System for Providing Multi-Credit Card Insurance*, United States Patent Application Publication, US 2008/0133278 A1, June 5, 2008, item. (0003).

¹⁸ Insurance Law, *Official Gazette RS*, 139/2014, Art. 9, par. 1, items 14 and 16, al. (1).

¹⁹ Insurance Law, Art. 10, para. 2, item 7.

financial losses, so in addition to unemployment, it left the possibility to insure all “other financial losses” not mentioned elsewhere. If this fact is taken into account, the rules on underinsurance and overinsurance that apply to property insurance apply to credit card liability insurance.

A distinction should be made between credit card insurance, credit insurance and insurance against financial losses of small and medium-sized enterprises where the insurance cover includes payment of the loan instalment due to partial or complete interruption of the insured’s registered business activity caused by fire or allied perils, as well as all other services of insuring credit, warranties and pecuniary claims of legal entities.

This type of insurance protects debtors from the inability to follow the loan repayment schedule and helps them avoid falling into debt after an accident, illness or unemployment due to the inability to pay. The insured risk is manifested in the possibility that the individual will not be able to return the funds used under the approved loan to the creditor in accordance with the terms of the loan agreement and the credit card issuance. As a rule, in the bank’s offices, the insurance service is sold to an individual at the time of concluding loan and credit card agreement. Therefore, this type of insurance is of an accessory nature and produces effect only if the loan agreement has been concluded and if it is still in force at the time of the insured event. Consequently, the credit cardholder’s insurance contract terminates if the insured repays the debt earlier or otherwise terminates the loan and credit card agreement for the reasons or risks not covered by the insurance contract (termination or cancellation of the loan agreement).

There are no limits in defining the scope of insurance coverage, which is why the insurer’s creativity, and ability to detect and predict the trends of market demands depend on the characteristics of its credit card insurance service. Despite a certain overlapping of term definitions, it is difficult to say the scope of coverage and conditions for this insurance service are fully identical. Insurance conditions define the situation when there is a risk of default i.e. late payment due to insolvency, other events or actions.

As a rule, insurers offer combined credit card insurance against a number of risks which make it impossible to pay obligations under the extended loan, but in some cases, they also offer the coverage against additional risks. In that sense, it is necessary to distinguish the risks due to which the credit cardholder is unable to fulfil the contractual obligations under the loan and credit card agreement from other risks upon which occurrence credit cardholders suffer damage due to a default in the fulfilment of contractual obligations of merchants, producers, or service providers. Thus, credit card insurance is divided into insurance that works for the benefit of the lender and the credit card issuer (bank) and insurance that protects the credit cardholder from actions and omissions of suppliers and service providers

whom the cardholder has paid the purchase price with his credit card at their points of sale (POS) or online.

The first group of insurance services provides insurance against the risks of default in payment due to involuntary employment / redundancy, accident, disability, critical illness, hospitalisation, death and need for becoming a carer during the insurance period.²⁰ For example, one of the corporate Lloyd's unions provides insurance for the inability to repay credit card debt due to: accidents, illness, unemployment and accidental death.²¹ The situation on the Serbian insurance market concerning the scope of insurance coverage is similar. Namely, this type of coverage is often offered as a protection against the involuntary termination of borrowers' employment, accidental death, and full permanent disability due to an accident. Some insurers also cover hospital treatment of the consequences of an accident, and there is also the possibility to separately conclude the unemployment coverage against the risk of death or permanent disability due to an accident.

Given that credit cards are used to purchase various goods and services, the offer often contains the cover of events where the credit cardholder suffers damage due to improper fulfilment of contractual obligations of merchants, manufacturers and providers of various services, or force majeure. For example, there is an extended warranty insurance for the purchased service in favour of the credit cardholder for an additional year or two after the expiry of the manufacturer's warranty, or against the loss, theft or damage to goods after the credit card is charged for the price of purchased item, and there are also travel risks (cancellation, interruption and delay of travel, delay, loss or theft of luggage), motor vehicle rental (theft and damage to the rented vehicle, theft of personal belongings from the rented vehicle and compensation for death or injury of passengers), and the provision of various types of assistance (medical, general and legal).²² It is interesting that in this paper, in the considered insurance terms and conditions effective in the foreign markets and the domestic market, we did not find insurance conditions that cover the risk of credit card misuse by a third unauthorized party who performed a payment transaction. Coverage is also provided due to the reduction of the purchase price of the item previously purchased at a higher price. The insured event occurs when, within two to three months, depending on the insurance terms and conditions, the price of the item paid by credit card is reduced. This case usually occurs due to the initial sales of a new device model when the price of previous models goes down. In that case, the

²⁰ Lloyd's Bank. "Information for existing Payment Protection Insurance (PPI) customers", <https://www.lloyds-bank.com/payment-protection-insurance-complaints/existing-customers.html>, accessed on 14 January 2021.

²¹ Tokio Marine Kiln Syndicates Limited. *Credit Card & Payment Protection Insurance Policy Terms & Conditions*, PC_CCPIPINB_PW_TMK_V6_0620, 2020.

²² National Bank Life Insurance Company, Canassurance Insurance Company. *Purchase Protection and Travel Insurance for National Bank of Canada Mastercard credit cards* (group insurance policy no. 713705), 2020.

claim for compensation is, as a rule, made by enclosing an invoice for the purchased item, a credit card slip, and a copy of the advertisement which contains a lower price.

What characterizes the practice of insuring credit cardholders in foreign markets is the separation between the function of underwriting risks and claim settlement. As a rule, this insurance service is sold by the bank when concluding a loan agreement and issuing a credit card, while the insurance terms and conditions mandatory contain the company name, address, and contact details (e-mail address and phone number) of the company that administers the insurance and settles claims.²³ The author does not have the information whether that in the regional markets, insurers entrust the claim settlement of this type of insurance to specialized companies. The rule is that the insured or the authorized person is obliged to inform the insurer in writing, without delay, and no later than within three days from the date of becoming aware of the occurrence of the insured event (notification of the insured event).

If it is assumed that the insurance covers certain, named risks with the mandatory indication of uncovered and excluded risks, the creditworthiness of the insured is irrelevant for the insurer. If, due to weak or unfavourable creditworthiness, the bank rejects the request of an individual to issue a credit card to a certain credit limit, there will be no legitimate interest in insuring a credit card loan. On the other hand, if the borrower becomes insolvent during the insurance period or is unable to settle his / her obligations due to reduced or irregular salary, the insurer's obligation will not attach until the unwilling termination of insured's employment. If the insured's employer terminates the employment contract for business reasons (redundancy) or through no fault of the insured, he will be able to count on insurance coverage. However, the insured may get into an unfavourable insurance situation when he terminates the employment contract due to irregular fulfilment of the employer's obligation to pay the salary. In such case, he will not be entitled to insurance compensation and thus, this will appear as a double problem because his employer is late with the payment of his salary, and he cannot regularly pay his credit card obligations. Such case is not recognized by any insurance conditions as the legal grounds for the insurer's liability under the credit card insurance policy.

If insurers covered such a case of employment termination, they would probably require the evidence of irregular payment of wages or debt for a certain number of wages or proof that court proceedings have been initiated to collect wages, etc. In the described case, the insured would not be entitled to unemployment benefits, which, on the other hand, is one of the conditions for receiving

²³ Tokio Marine Kiln Syndicates Limited. *Credit Card & Payment Protection Insurance Policy Terms & Conditions*, PC_CCPINB_PW_TMK_V6_0620, 2020, pp. 1.

compensation from the insurer.²⁴ A similar conclusion can be drawn in the case when the insured suffers harassment (mobbing) at the workplace due to which he terminates the employment contract. On the other hand, the whistleblower whose employer terminates the employment contract will indisputably be covered by insurance.

The institute of waiting period is sometimes applied in insurance in order to reduce the negative effect of subjective risk and to realize the inflow of insurance premium before the insurer's obligation arises. In that sense, some domestic credit card insurance conditions do not provide for a waiting period for unemployment risk, while foreign ones contain a provision that the insurer's obligation for this risk occurs after 120 days from the date when the insurance policy was first concluded with a specific insurer.²⁵ In this type of insurance, we believe that the subjective aspect regarding the risk of unemployment is not pronounced and not decisive for the introduction of a waiting period because any "fake" insured event is well prevented by a list of excluded circumstances and reasons for job loss (in addition to the other reasons for the exclusion of insurer's obligations, negligence and breach of work obligations, serving a prison sentence and arbitrary termination of employment / dismissal of the insured or termination of employment by mutual agreement concluded between the insured and the employer).

What domestic insurance conditions neglect, while insured persons are deprived of insurance coverage, is the case when a permanently employed individual needs to terminate employment contract for care and assistance to a spouse, children or relatives in the first line of kinship (parents, grandparents). If it is a sudden situation that could not have been foreseen at the time of concluding the insurance contract, then this type of event could also be the subject of credit card insurance. It is a matter of a conscious and arbitrary decision of the insured to terminate the employment relationship, which he was forced to do due to the new family circumstances, provided that he could not influence their occurrence in any way. The need for assistance and care provided to another person is regulated by appropriate regulations in all legal systems, and in our country by the Law on Pension and Disability Insurance²⁶ so that due to nature and seriousness of injury or disease the assistance provided by a caregiver has been duly established in order to be able to satisfy their basic living

²⁴ Law on Employment and Unemployment Insurance *Official Gazette of RS*, No. 36/2009, 30/2010 – other law, 88/2010, 38/2015, 113/2017 – other law and 113/2017, Article 67, paragraph 2.

²⁵ Tokio Marine Kiln Syndicates Limited. *Credit Card & Payment Protection Insurance Policy Terms & Conditions*, PC_CCPIPINB_PW_TMK_V6_0620, 2020, pp. 2.

²⁶ *Official Gazette of RS*, no. 34/2003, 64/2004 - US, 84/2004 – another law 85/2005, 101/2005 – another law, 63/2006 - US, 5/2009, 107/2009, 30/2010 – another law, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014, 142/2014, 73/2018, 46/2019 - US and 86/2019.

needs.²⁷ This type of insurance coverage in credit care insurance on the English market is provided after 60 uninterrupted days from the date of unemployment, whereby the credit cardholder is covered by insurance only if he is registered with the Social Welfare Office as a caregiver receiving cash benefits for care of another person. It should certainly be borne in mind that the insurer undertakes to pay only a certain, agreed number of benefits, all provided that the insured is in the status of an unemployed person during the payment of insured benefits.²⁸

Entrepreneurs are also covered by the credit card insurance, but only in the case of permanent cessation of entrepreneurial activity due to circumstances that are completely beyond the control of the insured. Foreign insurance conditions do not contain a closer definition of the "circumstances" due to which the entrepreneurial activity must be permanently closed, so this coverage also includes the business failure of the entrepreneur. However, in that case, the entrepreneur, like any other insured person in this type of insurance, must be fully unemployed, registered with the Labour Market Bureau, receive unemployment benefits, be an active job-seeker, and not receive full payment or severance pay or not receive it in the form of monthly payments from the previous employer.²⁹

And last but not least important issue on which insurers are expected to adequately act in the circumstances of pandemic risks is the manner in which they formulate insurance conditions, in order to eliminate significant doubts about the scope of coverage from the risk of accident and death. In addition to the risk of reinsurer refusing to reimburse the insurer's obligation that he fulfilled in favour of the insured's creditor due to COVID-19 infection, "with the onset of the pandemic, the reputational risk for insurers increases."³⁰ During the research, the author noticed that Serbian, as well as English insurers, explicitly exclude their liabilities from the terms and conditions of credit card insurance against accident that would arise due to the occurrence that risk or infection with any type of virus or bacteria.³¹ In this regard, one of the foreign insurers has excluded all claims arising in any way directly or indirectly due to: (1) SARS-CoV2 (severe acute respiratory syndrome *Coronavirus* 2); (2) COVID-19 (new strain of SARS-CoV2); (3) mutation or variation of SARS-Cov2 or COVID- 19; or (4) during a period of voluntary or involuntary isolation due to infections under point. (1), (2) or (3).³² The "named risks" method with a list of risks excluded

²⁷ Law on Pension and Disability Insurance, Article 41.

²⁸ Tokio Marine Kiln Syndicates Limited. *Credit Card & Payment Protection Insurance Policy Terms & Conditions*, PC_CCPIPINB_PW_TMK_V6_0620, 2020, pp. 5.

²⁹ Tokio Marine Kiln Syndicates Limited, pp. 3.

³⁰ Jelena Kočović et al. „Rizik pandemije – pretnja ili šansa za delatnost osiguranja?“, *Evropska revija za pravo osiguranja*, XIX(2), 2020, pp. 13.

³¹ Tokio Marine Kiln Syndicates Limited, pp. 1.

³² Tokio Marine Kiln Syndicates Limited, pp. 4.

from coverage, in the author's opinion, may lead to doubts about risks that are not listed as covered, if they are not included in the list of uncovered (excluded) risks or damages in the way it is done in the above example of insurance conditions. This can be a particularly sensitive issue in insurance relations when information about an insurance service from a particular policyholder gives to a potential policyholder the wrong impression that purchasing the service will fully meet the needs he had in mind when requesting (and possibly comparing) different information and insurance conditions (subject of insurance, scope of cover, excluded risks, deductible, etc.)³³ The author presented certain conclusions about this problem in one of his earlier papers, which may indicate a desirable course of action when formulating the wording of insurance terms and conditions.³⁴

III. Conclusion

Credit card insurance is justified due to the uncertainty of everyday life and the outcome of the legal relationships that its holder enters into. It will not always be possible to realize the interests of all stakeholders for at least two reasons: due to the restrictiveness of insurance coverage and because of light-minded expectations of credit cardholders to be fully covered. This is also the reason for achieving and improving the transparency of insurers' treatment of policyholders regarding the nature of insurance services, premiums, and covered and uncovered risks.

Credit card insurance is carried out exclusively by applying the method of "named risks", with a combination of different risks and damages, which contributes to the diversity in the scope of coverage. In Serbian insurance terms and conditions, particular deficiencies were noticed in terms of defining covered and excluded risks that may cause a dilemma regarding the (non) existence of the insurer's liability. In addition, there are numerous other situations for which coverage is provided on the foreign market, and in Serbia they have been left out. The level of personal wealth, development of economic relations, trade practice and behaviour in consumer contracts affect the demand for insurance services and probably lead to disinterest of insurers to offer insurance services in which the insured would also be a beneficiary of insurance indemnity in connection with the defaults of merchants, manufacturers and service providers, or acts of force majeure in a particular context of sales or other legal relationship.

³³ Slobodan Jovanović, „Pravilo *contra proferentem* u pravu osiguranja i neki aspekti tumačenja nejasnih odredbi uslova osiguranja“, (urednici Slobodan Jovanović i Pjerpaolo Marano), Beograd, 2020c, pp. 19.

³⁴ S. Jovanović, (2020c), pp. 19.

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