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UTICAJ REOSIGURAVAČA NA ODLUKE OSIGURAVAČA NAKON NASTUPANJA OSIGURANOG SLUČAJA

PREGLEDNI NAUČNI RAD

Apstrakt

Funkcija ugovora o reosiguranju je pokriće viška rizika, to jest šteta koje prelaze samopridržaj osiguravača. Reosiguravač, nakon nastanka osiguranog slučaja, isplaćuje sumu definisanu ugovorom o reosiguranju. No postavlja se pitanje da li reosiguravač može uticati na rešavanje zahteva za naknadu postavljenog od strane osiguranika, bilo tako što će direktno kontrolisati i uticati na navedeno, bilo tako što će imati pravo da bude obaveštavan o toku rešavanja zahteva. Ugovorom o reosiguranju mogu biti predviđene klauzule koje definišu navedena prava reosiguravača. Jedna klauzula se odnosi na saradnju (*Claims Cooperation Clause*), a druga na kontrolu (*Claims Control Clause*). Klauzula o kontroli daje šira ovlašćenja reosiguravaču. Praksa pokazuje da se definišu i druge slične klauzule koje određuju prava reosiguravača. U radu se posvećuje pažnja kako karakteristikama navedenih klauzula, tako i Principima ugovornog prava reosiguranja koji posebno definišu odnos reosiguravača i osiguravača (reosiguranika) nakon nastupanja osiguranog slučaja.

Ključne reči: reosiguranje, reosiguravač, reosiguranik, rizik, samopridržaj, osigurani slučaj, klauzula o saradnji, klauzula o kontroli.

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I Uvodna razmatranja

Kad osiguravajuće društvo (osiguravač) preuzima u pokriće velike rizike, tada, u mnogim slučajevima, to zahteva i zaključenje ugovora o reosiguranju. To su situacije kada osiguravač proceni da eventualna šteta, tačnije nastanak osiguranog slučaja, može dovesti do opasnosti za njegovu finansijsku stabilnost. Zaključenje ugovora o reosiguranju stvara poseban ugovorni odnos između osiguravača, kao reosiguranika, i reosiguravača, uz postojeći odnos osiguranja između osiguravača i osiguranika, to jest uz postojanje osnovnog ugovora o osiguranju. Osnovna svrha zaključenja ugovora o osiguranju jeste osiguravajuće pokriće rizika koji preti osiguraniku, a cilj sklapanja ugovora o reosiguranju je efikasna zaštita osiguravača od strane reosiguravača, nakon nastupanja osiguranog slučaja. Zato i za reosiguranje kažemo da se radi o osiguranju osiguravača, iako taj institut moramo šire posmatrati. Ugovor o osiguranju i ugovor o reosiguranju su nezavisni, oni su samostalni ugovori. Osiguravač ima obaveze u okviru ugovora o osiguranju, a reosiguravač u okviru ugovora o reosiguranju. Ukoliko nastane osigurani slučaj, osiguravač, na osnovu zaključenog ugovora o osiguranju, isplaćuje sumu osiguranja, a nakon toga, na osnovu ugovora o reosiguranju, osiguravač, kao reosiguranik, zahteva isplatu iznosa od reosiguravača. Ipak, u praksi je drugačije. U mnogim ugovorima o reosiguranju nalazimo odredbe koje omogućavaju reosiguravaču da utiče na rešavanje isplate iznosa sume osiguranja po nastalom osiguranom slučaju još u fazi rešavanja ovog pitanja od strane osiguravača. Naime, po tim odredbama, osiguravač mora da obavesti reosiguravača o osiguranom slučaju i ne sme da zauzme konačni stav o isplati pre usaglašavanja s reosiguravačem. To može dovesti do kašnjenja isplate osiguravača i nepoštovanja rokova sa kojima se saglasio, pa se postavlja pitanje suprotstavljenosti takvog postupanja osnovnim pravilima ugovornog prava osiguranja.[2] Ali, kako smo rekli, da bi ta obaveza osiguravača kao reosiguranika postojala i da bi reosiguravač bio uključen u rešavanje pitanja po zahtevima za naknadu postavljenih od strane osiguranika, potrebno je ugovoriti određene klauzule, koje daju mogućnost reosiguravaču da se manje ili više meša u rešavanje osiguranog slučaja. O kakvoj vrsti uticaja reosiguravača na rešavanje osiguranog slučaja se radi, zavisi od vrste klauzule koja je ugovorena. Najčešće se ugovaraju dve klauzule koje navedeno omogućuju. Prva je *Claims cooperation clause* (klauzula o saradnji), koja se najčešće ugovara kod fakultativnih ugovora o reosiguranju. Ta klauzula obavezuje osiguravača da u rešavanje osiguranog slučaja uključi reosiguravača u onom delu koji prelazi samopridržaj osiguravača, s tim što se ostavlja sloboda osiguravaču da upravo u tom delu koji predstavlja samopridržaj samostalno odlučuje o isplati sume

[2] Marijan Ćurković, Claims cooperation clause: Utjecaj reosiguratelja na odnos „osiguratelj–osiguranik“ kod rješavanja osiguranog slučaja, https://www.osiguranje.hr/ClanakDetalji.aspx?23319, 19. 7. 2025.

osiguranja. Druga klauzula je *Claims control clause* (klauzula o kontroli). Ta klauzula je otežavajuća za osiguravača, jer mu zabranjuje zauzimanje stava o isplati sume osiguranja bez prethodne saglasnosti reosiguravača. Osim toga, ona je suprotna odredbama ugovornog prava osiguranja, koje, inače, propisuje rokove u kojima osiguravač mora da isplati sumu osiguranja osiguraniku ili ga obavesti da zahtev za isplatu nije osnovan.[3]

II Reosiguranje kao zaštita ugovora o osiguranju

1. O reosiguranju uopšte

I fizička i pravna lica sve su više izložena brojnim rizicima i pritiscima, što utiče na njihove zahteve kao osiguranika prema osiguravačima, a preko osiguravača i prema reosiguravačima. Ti zahtevi se odnose na bolje usluge osiguravača i reosiguravača, koje se tiču i raznovrsnosti ponude osiguranja, kao i višeg standarda osiguravajućeg pokrića. To znači da sektor osiguranja mora biti spreman da odgovori na nove izazove, ali i na procenu sopstvenih očekivanja u obavljanju svoje delatnosti. Osiguravači stalno moraju da vrše procenu sopstvenih poslovnih strategija.[4] Na tržištu osiguranja beležimo da, još uvek, postoji određena inercija, iako su sve veći pritisci izazvani konkurencijom novih osiguravača i reosiguravača, kao i pojačanih zahteva osiguranika. Tržište osiguranja ne može dopustiti sporost u neminovnim promenama u poslovanju.[5]

Osiguravač je dužan da reosigura obaveze iz ugovora o osiguranju iznad svog samopridržaja. Samopridržaj predstavlja iznos ugovorom preuzetih rizika koji osiguravač uvek zadržava u sopstvenom pokriću i koji može pokriti sopstvenim sredstvima. Osiguravač mora uvek da zadrži deo rizika u samopridržaju.[6]

Reosiguranje funkcioniše na jednostavan način. Reosiguranik plaća premiju reosiguravaču, a zauzvrat reosiguravač pokriva deo obaveza reosiguranika kao osiguravača prema osiguraniku. Reosiguranik i reosiguravač slobodno utvrđuju sadržinu ugovora kod kojeg nema potrebe definisati odredbe kojima se posebno štite interesi jedne ugovorne strane, kao što je to slučaj kod ugovora o osiguranju, gde se prvenstveno štite interesi osiguranika kao fizičkog lica.[7]

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3 *Ibidem.*

4 Robert Stude, „Promjena izgleda rizika u osiguranju/reosiguranju", *Zbornik Pravnog fakulteta u Zagrebu*, vol. 58, br. 1-2/2008, 678.

5 *Ibid*., 679.

6 Vladimir Čolović, *Osiguravajuća društva – zakonodavstvo Srbije, pravo EU, uporedno pravo*, Institut za uporedno pravo, Beograd 2010, 21.

7 Jasna Pak, *Pravo osiguranja*, Beograd 2011, 41.

Razlikujemo dva glavna oblika reosiguranja. Prvi, fakultativno reosiguranje, kod kojeg reosiguravač pojedinačno odlučuje o svakoj polisi osiguranja u okviru koje treba da pruži pokriće. Taj oblik je manje fleksibilan, ali omogućava veću zaštitu reosiguravača. Drugi je ugovorno reosiguranje, gde se postiže sporazum u okviru kojeg reosiguravač prihvata pokriće određene vrste rizika. Kod tog oblika reosiguravač prihvata sve polise unutar navedenih kategorija rizika. Ugovorno reosiguranje je manje fleksibilno, ali je efikasnije sa stanovišta funkcionisanja osiguranja uopšte.[8]

Osiguravači u mnogo slučajeva moraju da preuzmu osiguranje pojedinačnih rizika koji po veličini prelaze njihov kapacitet, kao i rizike kod kojih postoji mogućnost nastanka masovnih šteta, kumulacije šteta i katastrofalnih šteta, kada jedan osiguravač ne može da ispuni svoje obaveze prema osiguranicima. No zaključenjem ugovora o reosiguranju, osiguravači povećavaju svoje kapacitete, čime štite i svoj bonitet i interese osiguranika. Neki veliki rizici prevazilaze samopridržaj osiguravača, pa je u tom slučaju potrebno dodatno obezbeđenje. S druge strane, reosiguranje omogućava da osiguravači homogenizuju svoj portfelj, što dovodi do smanjenja iznenađenja koja nastaju usled značajnih odstupanja između nastalih šteta i naplaćenih premija.[9]

Osim toga, sam institut reosiguranja označava indirektan prenos dela obaveze iz ugovora o osiguranju bez učešća osiguranika. Osiguranje je vertikalna podela rizika, koji se u odnosu osiguravača i osiguranika ne menja, a može se ali i ne mora zaustaviti kod jednog reosiguravača. Iz navedenog proizlazi da je reosiguranje indirektna ili sekundarna raspodela iz osiguranja, to jest osiguranje samog osiguravača za deo obaveze koji ne može samostalno pokriti.[10]

Isto tako, reosiguranje nije samo pravni već i ekonomski institut, a sa ekonomskog stanovišta, najvažnija karakteristika reosiguranja je prostorna disperzija rizika kojom se otklanjaju ili ublažuju ogromna opterećanja fondova osiguranja.[11] Opšte pravilo je da pravnoekonomski odnos između reosiguravača i osiguravača nije ni u kakvoj vezi sa odnosom između osiguravača i osiguranika, iako je deo rizika iz ugovora o osiguranju ustupljen u pokriće od strane reosiguravača.[12]

Reosiguranje velikog broja osiguravača omogućava reosiguravačima da diverzifikuje rizik na način na koji nijedan osiguravač ne može. To se, naime, postiže tako što se osiguravačima dozvoljava da osiguraju veći broj velikih rizika, s tim što se

8 Reinsurance Uncovered: Spreading Risk and Safeguarding Solvency, https://accelerant.ai/resources/reinsurance-uncovered-spreading-risk-and-safeguarding-solvency/, 15. 7. 2025.

9 Matea Spajić, „Modeli rizika u neživotnom osiguranju i reosiguranju", *Hrvatski časopis za osiguranje,* br. 2/2019, 172.

10 Ratko Zelenika, „Relevantna obilježja reosiguranja", *Naše more*, *znanstveni časopis za more i pomorstvo*, vol. 43 br. 3-4/96, Dubrovnik 1996, 119.

11 *Ibidem*.

12 *Ibid*., 125.

mora voditi računa o geografskoj raspodeli rizika, kad je to moguće, kao i o smanjenju efektivne veličine izloženosti rizicima. Isto tako, reosiguranje doprinosi izmenama u strukturi portfelja osiguranja.[13]

2. Reosiguranje u zakonodavstvu Republike Srbije

Zakon o obligacionim odnosima Republike Srbije (dalje: ZOO)[14] institut reosiguranja nije regulisao. S druge strane, u Zakonu o osiguranju Republike Srbije (dalje: ZOS),[15] definiše se da se osigurani višak rizika iznad samopridržaja osiguravača prenosi u reosiguranje, to jest da osiguravač reosigurava onaj deo koji sam ne bi mogao da pokrije ako se desi osigurani slučaj. ZOS propisuje i izuzetak koji se odnosi na mogućnost reosiguranja celog iznosa rizika ako se radi o osiguranju imovine od katastrofalnih rizika, dakle od elementarnih nepogoda, kao i ako se radi o osiguranju finansijskih gubitaka zbog lošeg vremena. ZOS se ne bavi odnosom osiguranika i osiguravača i direktnim osiguranjem. Isto tako, ZOS ne govori ni o odnosu osiguranika i reosiguravača, tj. o slučajevima kada se osiguranik može direktno obratiti reosiguravaču za naknadu, to jest isplatu sume osiguranja.[16] Naravno, zadatak ZOS kao „statusnog" zakona nije da reguliše reosiguranje kao ugovorni odnos između reosiguravača i reosiguranika. Nažalost, u Republici Srbiji nije donesen zakonski akt koji bi regulisao ugovorno pravo osiguranja, pa samim tim i reosiguranja.

III Odnos reosiguravača i osiguravača, kao reosiguranika

Naročito moramo razlikovati odnos osiguravača i reosiguravača od odnosa osiguravača i osiguranika. No iako ne postoji pravna veza između osiguranika iz osnovnog ugovora o osiguranju i reosiguravača, ona je od značaja za opredeljenje osiguranika, koji će se, po pravilu, pre odlučiti za osiguranje sa reosiguranjem.[17] Ukoliko je osiguranik upoznat sa činjenicom da će osiguravač, sa kojim je on zaključio ugovor o osiguranju, reosigurati predmet tog ugovora, tada će i njegova zaštita biti sveobuhvatnija, imajući u vidu da i reosiguravač garantuje za obaveze osiguravača ako nastane osigurani slučaj. Mora se istaći da je reosiguravač obavezan samo prema osiguravaču, odnosno reosiguraniku koji je cedirao ugovor o osiguranju na njega.

[13] Jean François Outreville, „Introduction to Insurance and Reinsurance", *Social Re-Insurance A New Approach to Sustainable Community Health Financing* (eds. David M. Dror, Alexander Preker), The International Bank for Reconstruction and Development, Washington-Geneva 2002, 12.

[14] Zakon o obligacionim odnosima, *Sl. list SFRJ* br. 29/78, 39/85, 45/89 i 57/89, *Sl. list SRJ* br. 31/93, *Sl. list SCG* br. 1/2003 – Ustavna povelja.

[15] Zakon o osiguranju, *Sl. glasnik RS,* br. 55/2004, 70/2004 – ispr., 61/2005, 61/2005 – dr. zakon, 85/2005 – dr. zakon, 101/2007, 63/2009 – odluka US, 107/2009, 99/2011, 119/2012, 116/2013 i 139/2014 – dr. zakon.

[16] Vladimir Čolović, „Reosiguranje kao instrument zaštite osiguravača", *Pravna riječ*, br. 55/2018, 160.

[17] *Ibid*., 16.

Osiguranici osiguravača nemaju pravo podnošenja zahteva prema reosiguravaču, iako je osiguranik lice koje će imati koristi od reosiguranja.[18]

Postoji dilema da li je ugovor o reosiguranju za osiguravača, u stvari, ugovor kojim se pruža obeštećenje od strane reosiguravača ili se radi o pokrivanju odgovornosti osiguravača (reosiguranika). U vezi s tim, postavlja se pitanje da li osiguravač (reosiguranik) plaća premiju za eventualni gubitak, tako da, kad se desi osigurani slučaj, dobija naknadu za taj gubitak, tj. sumu osiguranja. Sigurno je da možemo reći da osiguravač plaća premiju kako ne bi pretrpeo eventualni gubitak, ali sa stanovišta same prirode ugovora o reosiguranju, osiguravač ugovor zaključuje kad proceni da bi eventualna šteta bila viša od samopridržaja kojim on raspolaže. To znači da osiguravač neće biti u opasnosti da pretrpi gubitak kod svih osiguranih slučajeva, već samo onda kada taj iznos prelazi njegov samopridržaj. Isto tako, ovde ne možemo govoriti o proširenju osiguranja, osim ako se ne radi o uključenju više osiguravača koji će zaštiti jedan rizik ili više rizika u određenom vremenskom intervalu.[19]

Za definisanje odnosa osiguravača i reosiguravača bitno je to što ugovor o reosiguranju mora da egzistira uporedo sa ugovorom o direktnom osiguranju,[20] on, naime, predstavlja deo skupa ugovora (i jedan i drugi ugovor) sa istom kauzom. Ugovor o reosiguranju se može odnositi na pokriće koje je predviđeno i ugovorom o osiguranju u celini, a može da pokriva i deo te obaveze osiguravača. Reosiguravač nikako ne mora da pruži šire pokriće od onog koje je predviđeno ugovorom o osiguranju. Takođe, reosiguranje se mora odnositi na isti rizik kao i ugovor o osiguranju.[21]

Najzad, ugovor o osiguranju može samostalno egzistirati, dok ugovor o reosiguranju ne može.[22] Upravo navedeno može objasniti definisanje klauzula u ugovoru o reosiguranju, koje smo već pomenuli, a kojima ćemo kasnije posvetiti značajnu pažnju. Naime, ako ugovor o reosiguranju ne može samostalno da egzistira, odnosno ako je on zavisan od ugovora o osiguranju, onda se mora postaviti pitanje uticaja reosiguravača na rešenje osiguranog slučaja.

Dakle, reosiguravač preuzima originalni rizik koji je na njega prenesen od strane cedenta, odnosno reosiguranika. No, po osnovnim pravilima, reosiguravač je obavezan da prihvati odluke osiguravača kao reosiguranika u dobroj veri, a koje se tiču opštih uslova osiguranja, ali i drugih elemenata koje čine osnovno osiguranje. Odluke mogu da uključe pokriće osiguranja, kompromis osiguravača i osiguranika,

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[18] J. F. Outreville, 1.

[19] Larry Schiffer, Reinsurance Matters, https://www.irmi.com/articles/expert-commentary/reinsurance-matters, 20. 7. 2025.

[20] Mora se koristiti termin „direktno" osiguranje, kako bi se razlikovala ta dva ugovora, imajući u vidu da i reosiguranje predstavlja osiguranje.

[21] Nataša Petrović Tomić, „Reosiguranje – suština, domašaj, značaj", *Anali Pravnog fakulteta u Beogradu*, br. 2/2015, 79.

[22] *Ibid.*, 80.

pregovore između njih, kao i prihvatanje zahteva postavljenog od strane osiguranika odnosno oštećenog. Upravo zbog toga što su reosiguravači dužni da prihvate navedene odluke, oni su i odgovorni za isplatu po originalnoj polisi, ali u smislu onoga što je obuhvaćeno ugovorom o reosiguranju. No reosiguravač nije dužan da prihvati poravnanje ili priznanje odgovornosti koji su van onoga što je predviđeno u polisi.[23]

IV Klauzula o saradnji i klauzula o kontroli u ugovoru o reosiguranju

I klauzula o saradnji i klauzula o kontroli su, danas, česte i uobičajene u ugovorima o reosiguranju. Razlika između njih je sledeća. U skladu s klauzulom o kontroli, koja se odnosi na kontrolu zahteva za naknadu, reosiguravač može zahtevati od reosiguranika tj. osiguravača da prenese odgovornost za rešavanje navedenog zahteva na reosiguravača. S druge strane, u skladu s klauzulom o saradnji, osiguravač (reosiguranik) je dužan samo da obavesti reosiguravača o zahtevu i da zatraži njegovu saglasnost pre konačnog rešavanja zahteva, to jest pre isplate iznosa štete.[24]

U nekim slučajevima su, prema praksi, morale da se pojasne navedene klauzule koje su se odnosile na slučajeve kada na jednoj strani imamo više osiguravača, kao i kada se radi o poravnanju između osiguravača i osiguranika. Zbog toga se te klauzule mogu detaljnije definisati obavezama kako reosiguranika, tako i reosiguravača. Naime, reosiguranik bi bio obavezan da o svim okolnostima koje mogu dovesti do podnošenja zahteva za naknadu obavesti reosiguravača, a u svakom slučaju je dobro odrediti rok u kome se to mora učiniti. Zatim, reosiguranik mora da sarađuje s reosiguravačem u istrazi i proceni bilo kakvog gubitka ili okolnosti koje mogu dovesti do gubitka. Najzad, ne sme se postići nikakvo poravnanje, kao ni priznanje odgovornosti bez prethodnog odobrenja reosiguravača.[25] Samim tim, te klauzule, kao i navedene obaveze koje prate njihovu realizaciju, moraju se razumeti kao prethodni uslov za definisanje pokrića ugovorom o reosiguranju.

Teret dokazivanja kršenja tih klauzula je na reosiguravaču. Osiguravači to jest reosiguranici moraju pažljivo postupati kada se protiv njih podnese zahtev za naknadu, budući da svako kršenje klauzula može dovesti do gubitka prava prema reosiguravaču, čak i kada se može dokazati obaveza reosiguravača po polisi. Ovde se postavlja pitanje da li će se navedeno primenjivati samo ako su ove klauzule definisane kao prethodni uslov za pokriće ugovora o reosiguranju ili uopšte. Prema

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[23] James A. Johnson, „Reinsurance – Follow the Settlements, What Practitioners Need to Know About Reinsurance", *The Journal of Insurance & Indemnity Law* 2023, 5.

[24] DLA Piper's Practical Guide for Claims Managers in 2022 – Part 10 https://www.dlapiper.com/en/insights/publications/practical-guide-for-claims-managers/2022/dla-pipers-practical-guide-for-claims-managers-in-2022-part-10, 16. 7. 2025.

[25] *Ibidem*.

ovom shvatanju, ako taj uslov nije jasno definisan, tada reosiguranik može zahtevati isplatu od strane reosiguravača ako dokaže svoj gubitak po osiguranom slučaju.

Inače, dužnost je reosiguranika da učestvuje zajedno sa reosiguravačem u ispitivanju svih okolnosti koje su dovele do osiguranog slučaja, tj. štete, gubitka. Ta dužnost je trajna, tako da se saradnja ne vezuje za vremenska ograničenja. Ako se vode pregovori o zahtevu za naknadu, o čemu su, uopšte, reosiguravači obavešteni, oni ipak mogu podneti konkretan zahtev za pružanje informacija, na koji će reosiguranici morati da odgovore. No dužnost reosiguranika ne mora biti apsolutna, s obzirom na to da postoje ograničenja u pogledu onoga što reosiguravač može zahtevati. Kod priznanja odgovornosti, odnosno postizanja poravnanja, reosiguranik mora da dobije odobrenje reosiguravača. No moramo reći da reosiguranik treba da dobije navedeno odobrenje samo u situaciji kad se radi o iznosu koji je definisan u ugovoru o reosiguranju. A ako se radi o nižem iznosu, onda odobrenje nije potrebno.

Ugovori o reosiguranju, vrlo često, u sebi sadrže element inostranosti, kada ih osiguravači sklapaju sa reosiguravačima sa sedištem u inostranstvu. Tada je pitanje definisanja navedenih klauzula takođe veoma značajno. Naime, reosiguravač će često biti izložen stranom pravu, odnosno pravu reosiguranika (osiguravača), budući da se ugovori zaključuju u skladu sa zakonom zemlje sedišta osiguravača, koji je, s druge strane, u potpuno drugačijoj situaciji jer zaključuje ugovore o reosiguranju u skladu sa „svojim" pravom. No to ne znači da osiguravač ima potpunu pravnu sigurnost. To važi za pravne sisteme u kojima nije u potpunosti regulisano reosiguranje, kao i u kojima je sudska praksa u ovoj oblasti siromašna. Naravno, navedeno stvara neizvesnost i za reosiguravača. Isto tako, kada se konsultuje strana sudska praksa, tada nije uvek sigurno šta treba primeniti u datom slučaju. Tada su sudije ili arbitri, ako se radi o arbitražnom rešavanju tih sporova, prepušteni sami sebi u tumačenju formulacija sadržanih u ugovoru. Sigurno je da bi navedeno moglo biti rešeno definisanjem jedinstvenih pravila u oblasti ugovornog prava o reosiguranju, uspostavljanjem jedinstvenog sistema i standardizovane terminologije u doslednom tumačenju ugovora o reosiguranju. No takva pravila još uvek ne postoje na prekograničnom nivou.[26]

1. Uticaj klauzula o saradnji i kontroli, kao i drugih sličnih klauzula na izvršenje obaveza po ugovoru o reosiguranju

Klauzule o kontroli i saradnji koje doprinose efikasnom izvršenju obaveza po ugovoru o reosiguranju od izuzetnog su značaja. S jedne strane, reosiguravač će imati pravo da zahteva dostavljanje informacija o osiguranom slučaju, a s druge, imaće pravo da bude konsultovan o namirenju zahteva za naknadu štete, tj. da

[26] Helmut Heiss, „From Contract Certainty to Legal Certainty for Reinsurance Transactions: The Principles of Reinsurance Contract Law (PRICL)", *Scandinavian Studies in Law*, vol. 64, 2018, 99.

odobri ili ne odobri isplatu. Naravno, to će, naročito, biti slučaj ako se radi o visokim iznosima štete ili kada je reosigurani deo rizika veliki. Naime, ako iznos zahteva prelazi određeni prag, reosiguravač ima pravo da preuzme njegovo rešavanje. S druge strane, preuzimanje rešavanja zahteva za naknadu od strane reosiguravača znači i da će reosiguranik imati njegovu podršku. Preuzimanjem rešavanja sporova od strane reosiguravača izbegavaju se budući sporovi i nesuglasice između reosiguranika i reosiguravača. Ti sporovi mogu nastati po različitim pitanjima, kao što su pokriće, trajanje pokrića, rokovi predviđeni u polisi itd.[27]

Ugovor o reosiguranju zasniva se na dobroj veri, ali klauzule o saradnji, kontroli, kao i druge koje proizlaze iz navedene dve, poput klauzule o praćenju poravnanja i sličnih, omogućavaju da se reosiguravač upozna s tačnim obimom rizika koje prima u reosiguravajuće pokriće. Upravo te klauzule omogućavaju da reosiguravač može raskinuti ugovor, ako mu određeni rizici nisu bili poznati u trenutku zaključenja ugovora o reosiguranju, kao i da utiče na sam postupak naknade štete, to jest na postupanje reosiguranika nakon nastanka osiguranog slučaja.[28]

Ako smatra da klauzula o saradnji ne pruža dovoljnu zaštitu kako reosiguravaču tako i reosiguraniku, reosiguravač može zahtevati da se u ugovor unese i klauzula o kontroli, koja mora sadržati elemente o obavezi reosiguranika da pruži obaveštenje reosiguravaču o svemu što se tiče nastale štete, zatim, o pravu reosiguravača da kontroliše sve pregovore u vezi s naknadom štete, a što se odnosi na imenovanje stručnjaka koji će veštačiti štetu i odrediti njen iznos. Najzad, klauzula mora sadržati i obavezu davanja izjave kojom će se utvrditi poštovanje svih navedenih obaveza.[29] Ako ugovor o reosiguranju ne sadrži klauzulu o saradnji, reosiguravač neće imati pravo da zahteva da bude obaveštavan i konsultovan o osiguranom slučaju.[30]

Kad ugovor sadrži obe klauzule, postavlja se pitanje može li doći do sukoba između njih, odnosno do mogućnosti da reosiguravač odbije isplatu i time osiguranik bude oštećen. Naime, po jednom mišljenju, ako su obe klauzule prisutne u ugovoru, reosiguravač će biti obavezan samo po zahtevu za naknadu koji je odobrio. Ovde je bitno pomenuti klauzulu o praćenju poravnanja, koja se naslanja na klauzulu o saradnji, odnosno sadrži neke njene elemente i koja, takođe, može biti uneta u ugovor i čije dejstvo može biti ugroženo postojanjem klauzule o kontroli. Naime, u takvom slučaju, reosiguravač ne mora da odobri poravnanje koje je dogovorio reosiguranik. Ali iako ono ne bi bilo odobreno od strane reosiguravača, on neće moći,

[27] Thiago Moutinho Ramos, *Reinsurance contracts and back to back presumption, A comparative study between English and Norwegian law,* Faculty of law, University of Oslo, Oslo 2013, 46.

[28] Larry Schiffer, Underwriting and Claims Clauses in Reinsurance Agreements, September 1, 2012 https://www.irmi.com/articles/expert-commentary/underwriting-and-claims-clauses-in-reinsurance-agreements, 11. 7. 2025.

[29] T. M. Ramos, 47.

[30] *Ibidem.*

s druge strane, da odbije isplatu po zahtevu za naknadu. Glavni razlog je upravo prisustvo klauzule o saradnji, odnosno klauzule o praćenju poravnanja. Međutim, postoje i suprotna mišljenja u kojima se ističe da je reosiguravač obavezan samo po poravnanjima koja je odobrio i da klauzule uopšte nisu u suprotnosti.[31]

Dakle, jedno od pitanja koje se postavlja u ovakvom slučaju jeste istovremeno egzistiranje ovih klauzula i mogućnost njihovog međusobnog poništenja. Inače, teret dokazivanja prebacuje se na reosiguranika ako ugovor o reosiguranju sadrži obe klauzule, jer će reosiguranik, kao osiguravač, morati da dokaže da je odgovoran po osnovnoj polisi osiguranja. Generalno, klauzule o saradnji u vezi sa štetama i kontroli šteta nameću obavezu saglasnosti reosiguravača. Međutim, ako iz bilo kog razloga klauzula utvrđena u ugovoru o reosiguranju ne nameće nikakvu obavezu saglasnosti, onda obim klauzule o praćenju poravnanja neće biti ugrožen postojanjem drugih klauzula.[32]

Moramo istaći da klauzula o kontroli daje reosiguravaču pravo da, u bilo kom trenutku, imenuje procenitelje štete ili bilo koje druge stručnjake ili veštake, kako bi u njegovo ime kontrolisali postupak procene štete, kao i rešavanja zahteva za naknadu. Ukoliko reosiguravač ne iskoristi svoje pravo po toj klauzuli, i pod uslovom da je reosiguranik dostavio sva obaveštenja o osiguranom slučaju, može se zaključiti da se reosiguravač odrekao svojih prava u postupku poravnanja. Tada reosiguranik neće biti odgovoran ako započne pregovore po svojim uslovima, nakon što reosiguravač nije odgovorio na njegova obaveštenja o šteti. Može se postaviti pitanje da li klauzula o kontroli dozvoljava reosiguravaču pravo učešća u eventualnoj parnici po zahtevu za naknadu, kao i u drugim vrstama sporova.[33]

S druge strane, ponovićemo da klauzula o saradnji podrazumeva potpunu saradnju reosiguravača i reosiguranika. Iako ta klauzula daje pravo reosiguravaču da se pridruži odbrani od zahteva za naknadu štete, on to čini o svom trošku. Klauzule o saradnji redovno se kombinuju s klauzulama o poravnanju (praćenju poravnanja), ali se mogu kombinovati i s drugim klauzulama, kao što je klauzula o obaveštenju – iako imaju širi obim od njih, s obzirom na činjenicu da kasno obaveštenje učinjeno reosiguravaču može sprečiti da se on uključi u postupak. Tada reosiguravač može zahtevati naknadu štete. Klauzula o saradnji sadrži najznačajniju obavezu koja se odnosi na potpunu saradnju u odbrani od osnovnih potraživanja. Klauzula o obaveštenju i klauzula o saradnji imaju mnoge sličnosti, ali klauzula o saradnji u vezi s postupanjem po zahtevu za naknadu može biti suprotna klauzuli o praćenju poravnanja.[34]

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[31] *Ibid*., 51.

[32] *Ibid*., 52.

[33] William Sturge, Samantha Zaozirny, Claims Control Clauses – how much control do they give?, https://www.cpblaw.com/publications/2018/claims-control-clauses-%E2%80%93-how-much-control-do-they-give.pdf, 10. 7. 2025.

[34] Louis Torch, „An Examination of Reinsurers' Associations in Underlying Claims: The Iron Fist in the V on Fist in the Velvet Glove?" *The University of New Hampshire Law Review*, Vol. 3, No. 2/2005, 341–342.

Osim toga, moramo razlikovati i klauzulu o praćenju slučaja ili predmeta u odnosu na klauzulu o praćenju poravnanja. Naime, klauzula o praćenju predmeta opisuje osnovni odnos između reosiguranika i reosiguravača. Kod primene tih klauzula, veoma je bitno ponovo pomenuti da se one oslanjaju na dobru veru osiguravača kod rešavanja zahteva za naknadu.[35]

Osim toga, klauzula o saradnji javlja se i u osnovnim ugovorima o osiguranju. Naročito je značajna uloga te klauzule kod osiguranja od odgovornosti. Ona ima svrhu zaštite osiguravača, ali i sprečavanja posebnog dogovora osiguranika i oštećenog, bez znanja osiguravača. Kod tih ugovora, dotična klauzula se oslanja na pretnju ličnom odgovornošću osiguranika, kako bi se obezbedilo njegovo puno i aktivno učešće u postupku naknade štete. Osiguranik mora da doprinese da se interesi osiguravača ostvare tako što će obezbediti da sve relevantne činjenice, vezane za osigurani slučaj, budu dostupne. Ali da bi se saradnja osiguranika sa osiguravačem obezbedila u navedenom smislu, potrebano je ispuniti i ekonomski interes osiguranika.[36] Sigurno je da opšti uslovi osiguranja navedenu klauzulu moraju definisati detaljno. Klauzula o saradnji u navedenim ugovorima o osiguranju ima drugačiju funkciju i odnosi se na obavezu osiguranika, odnosno oštećenog. U svakom slučaju, značajna je sa stanovišta tačnog utvrđivanja okolnosti i iznosa štete i odgovornosti kako osiguranika tako i osiguravača.

2. Principi ugovornog prava reosiguranja

U ovom delu ćemo samo predstaviti pojedine odredbe Principa ugovornog prava reosiguranja iz 2019. godine (dalje: Principi),[37] koje regulišu pitanja vezana za odnos između reosiguravača i reosiguranika. Navedene odredbe imaju svoj osnov u pravilima koje definišu klauzule u ugovoru o reosiguranju, a koje smo, napred, naveli. Inače, grupa profesora sa fakulteta u Cirihu, Beču i Frankfurtu pokrenula je projekat izrade Principa sa ciljem objavljivanja i objašnjavanja običaja i već postojećih principa ugovornog prava reosiguranja.[38] U pitanju je Projektna grupa za principe ugovornog

[35] *Ibid*., 342–343.

[36] Nicholas J. Giles, „Rethinking the cooperation clause in standard liability insurance contracts“, *University of Pennsylvania Law Review*, vol. 161, No. 2/2013, 594.

[37] Principi su objavljeni nakon odobrenja Upravnog saveta UNIDROIT na 98.sednici koja je održana u maju 2019. Istovremeno, Upravni savet je preporučio nastavak projekta u Radnom programu 2020–2022. kako bi se obezbedilo pokrivanje dodatnih tema koje su se smatrale relevantnim za ovaj akt. Preporuku je usvojila Generalna skupština na svojoj 78. sednici, a obnovila ju je Generalna skupština na svojoj 81. sednici u decembru 2022. godine na osnovu preporuke Upravnog saveta da se projekat zadrži u Radnom programu Instituta 2023–2025. do njegovog završetka do kraja 2024. godine, pošto je završetak instrumenta usporen tokom pandemije kada sastanci uživo nisu bili mogući. Sekretarijat UNIDROIT je nastavio aktivno da učestvuje u projektu; Principles of Reinsurance Contracts: Authorisation to proceed with publication, Governing Council, 105th session, UNIDROIT, Rome, 20–23 May 2025, 2.

[38] Mirjana Glintić, „Ograničenja izbora načela ugovornog prava reosiguranja kao merodavnog prava“, *Pravni život,* br. 11/2019, 174.

prava reosiguranja koja je definisala Principe u saradnji s Međunarodnim institutom za unifikaciju privatnog prava (UNIDROIT).[39] Principi uključuju i jedinstvena pravila o opštem ugovornom pravu, koja se pozivaju na Principe međunarodnih komercijalnih ugovora, takođe donetih u okviru UNIDROIT.[40] Sadržina Principa oslikava koncept ugovornog prava reosiguranja koji se može izvući kao zajednički za većinu država. Očekuje se finalizacija ovog akta tokom 2025. godine.[41] Principi predstavljaju novi koncept definisanja ugovornog prava.[42] Principi sadrže 27 članova u pet glava: 1. Opšte odredbe; 2. Obaveze reosiguravača i reosiguranika; 3. Prava ugovornih strana; 4. Alokacija šteta; i 5. Akumulacija šteta.[43] Posvetićemo pažnju samo odredbama koje regulišu odnos reosiguravača i reosiguranika, odnosno u okviru tog dela, obavezama u vezi sa upravljanjem odštetnim zahtevima.

Pre svega, reosiguranik ima obavezu da reosiguravaču pošalje obaveštenje o verovatnim budućim zahtevima za isplatu štete. Navedeno omogućava reosiguravaču da napravi plan finansiranja i rezervisanja štete te da razmotri da li će i sa kojom pažnjom pratiti postupanje reosiguranika po navedenom zahtevu, a u skladu sa bilo kojom klauzulom o kontroli ovog procesa od strane reosiguravača.[44] Reosiguranik nije dužan da obavesti reosiguravača o svakom zahtevu u kome je navedeno potraživanje većeg iznosa, odnosno o svakoj kategoriji potraživanja koja u sebi sadrži mali rizik od podnošenja tužbe od strane više oštećenih. Ali reosiguranik je dužan da obavesti reosiguravača kada zna da postoji velika verovatnoća da će reosiguravač biti u obavezi da plati potraživanje.[45]

Principi definišu obavezu reosiguranika da postupa razumno i obazrivo prilikom rešavanja po zahtevima koji mogu da dovedu do aktiviranja ugovora o reosiguranju.[46] Već je rečeno da priroda reosiguranja stavlja u zavisni položaj reosiguravača u odnosu na reosiguranika. Čak i ako ugovor o reosiguranju sadrži odredbu o postupanju s potraživanjima koja daju prava reosiguravaču, činjenica je da reosiguranik odlučuje o tim zahtevima i da ima efektivnu kontrolu nad njima. Postupanje reosiguranika može da bude sankcionisano samo ako je prevarno, odnosno ako je

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[39] *Principles of Reinsurance Contract Law (Principles),* Project Group on Principles of Reinsurance Contract Law, International Institute for the Unification of Private Law (UNIDROIT), Zurich, Vienna, Frankfurt am Main, 2019.

[40] Međunarodni institut za unifikaciju privatnog prava (UNIDROIT), https://www.unidroit.org/, 22. 7. 2025; *Principles*, III.

[41] „Principles of Reinsurance Contracts: Authorisation to proceed with publication", Governing Council, 105th session, UNIDROIT, Rome, 20–23 May 2025, 2.

[42] M. Glintić, 183.

[43] Slobodan Jovanović, Ozren Uzelac, „Fakultativna međunarodna pravila u oblasti ugovornog prava reosiguranja", *Evropska revija za pravo osiguranja*, br. 1/2021, 40.

[44] Principles, 52; art. 2.4.1.

[45] Principles, 52–53; S. Jovanović, O. Uzelac, 44.

[46] Principles, 2.4.2.

reosiguranik grubo prekršio pravila u postupku rešavanja po zahtevima za naknadu.[47] Osim toga, reosiguranik ima obavezu da uloži razumne napore da preduzme postupke za smanjenje štete, kao i da, ako se ispune uslovi, zahteva naknadu od trećih lica koja su činjenjem ili nečinjenjem doprinela nastanku osiguranog slučaja.[48]

Po odredbama Principa, reosiguranik je dužan da poštuje sva ograničenja koja su predviđena ugovorom o reosiguranju, što znači da se moraju poštovati klauzule o kontroli zahteva i saradnji u vezi s potraživanjima. Osim toga, reosiguranik je dužan da deli informacije sa reosiguravačem, koje su relevatne za rešavanje zahteva ili za tumačenje ugovora o reosiguranju. Te informacije se mogu odnositi na: iznos potraživanja, rezervisane iznose, iznose troškova rešavanja šteta, podatke o licima koja su ovlašćena za donošenje odluka u ovim situacijama, tumačenje polisa i drugih dokumenata, izveštaje stručnjaka, ispunjavanje dužnosti reosiguranika u dobroj veri, dokumente o pokretanju postupka pred sudom, sporazumima o poravnanju itd.[49] Reosiguranici moraju biti svesni da će, veoma često, njihove odluke uticati na pokriće reosiguranja. Ako reosiguranik izabere jedan od dva ili više metoda raspodele koja povećava raspoloživo pokriće reosiguranja, to, samo po sebi, ne krši njegove dužnosti, ali ako izabrana metoda nije opravdana ili se pokaže da je, pre svega, izabrana kako bi se maksimiziralo reosiguranje, tada će doći do povrede dužnosti od strane reosiguranika.[50]

Po Principima, reosiguravač ima pravo da se redovno informiše o postupanju reosiguranika, nakon nastupanja osiguranog slučaja, a u slučaju očekivanih gubitaka.[51] Ukoliko dođe do dogovora između reosiguranika, kao osiguravača i njegovog osiguranika, odnosno do mogućnosti zaključenja poravnanja, koncept koji je predviđen u principima predviđa da je reosiguravač dužan da prihvati poravnanje koje je zaključio reosiguranik. S druge strane, Principi predviđaju i koncept praćenja sreće, koji definiše da će reosiguravač biti „vezan“ okolnostima koje su van kontrole reosiguranika.[52] No kod poravnanja moraju biti ispunjena dva zahteva. Prvi se odnosi na to da poravnanje mora biti pokriveno osnovnim ugovorom o osiguranju, a drugi na to da je ono pokriveno i u okviru pokrića ugovora o reosiguranju. Mora se voditi računa o tome da poravnanje nije zaključeno usled prevarnog postupanja reosiguranika,

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47 Principles, 54.

48 Principles, 56.

49 Principles, 57.

50 Principles, 57.

51 Principles, art. 2.4.3.

52 Ovaj koncept je predviđen u članu 2.4.3. Principa, a odnosi se na reosiguranika i na njegovu sreću ili sudbinu u situacijama na koje ne može utiče. U SAD se koristi taj termin, kao i termin praćenja poravnanja, koji i mi pominjemo u radu. Ovaj termin se odnosi i na dobru veru reosiguranika, ali smatramo da ovaj termin ne možemo koristiti.
L. Schiffer, Understanding Reinsurance Terminology—Follow-the-Fortunes, https://www.irmi.com/articles/expert-commentary/understanding-reinsurance-terminology-follow-the-fortunes, 25. 7. 2025.

odnosno da nije došlo do njegove grube nepažnje. Ovde treba obratiti pažnju na rizike s kojima se reosiguranik može suočiti ako ne izvrši poravnanje, odnosno na postupanje reosiguranika, a koje mora biti pošteno i uz preduzimanje svih potrebnih koraka. Takođe, kod obaveze praćenja zaključenja poravnanja, relevantan zahtev je onaj koji je priznat zaključenjem poravnanja, i reosiguranik ne mora da dokazuje da zahtev spada u rizike koji su pokriveni reosiguranjem.[53]

Pomenuli smo koncept praćenja sreće. To se odnosi na situacije na koje reosiguranik ne može da utiče. Naime, odluka suda ili arbitraže su van njegove kontrole. To se primenjuje čak i kada se reosiguravač ne slaže sa strategijom odbrane reosiguranika u postupku. Ali ako reosiguranik nije izneo očigledne razloge koji idu njemu u korist (a samim tim i reosiguravaču), tada će se smatrati da je odluka doneta pod kontrolom reosiguranika. Tada se navedeni koncept ne primenjuje i prihvatanje zahteva od strane reosiguranika biće definisano u skladu s konceptom praćenja poravnanja. Ista je situacija i kada se odluka donese zbog izostanka. Koncept praćenja sreće se primenjuje i kod velikih promena deviznih kurseva. Ako se vrednost sume osiguranja koja treba da bude isplaćena uveća zbog tih promena, tada suma koju treba da isplati reosiguravač uključuje i povećane troškove koji su izazvani navedenim promenama. Ista je situacija i u slučaju promene zakona koji reguliše ugovor o osiguranju.[54] Npr. ako zakon ne definiše obavezu pokrića iznosa koji predstavlja kaznu, pa kasnije ta zabrana bude ukinuta promenom zakona, takva promena proširuje obavezu reosiguranika, pa time i reosiguravača.[55] Principi predviđaju da stranke u ugovoru o reosiguranju ne moraju predvideti ta dva principa, odnosno koncepta.[56]

Najzad, osvrnućemo se i na odredbu Principa koja se odnosi na dužnost reosiguranika da na pravilan način podnese reosiguravaču zahtev za isplatu, kao i na dužnost reosiguravača da isplati iznos po zahtevu, a koji je u skladu sa ugovorom o reosiguranju.[57] Strane mogu slobodno precizno da odrede uslove i vreme plaćanja.[58] Reosiguranik mora, osim zahteva, da podnese i odgovarajuću dokumentaciju kojom dokazuje da je potraživanje pokriveno. Kod primene pravila poravnanja, reosiguranik treba samo da dokaže da je postupao razumno i na način predviđen ugovorom. Reosiguravač ima obavezu da, u dobroj veri, isplati potraživanje što pre, ukoliko nema sporova u vezi s tom obavezom. Ukoliko reosiguravač i reosiguranik, u tom smislu, nemaju već postojeći konkretan sporazum, oni mogu da se pozovu na ustaljeni tok poslovanja između njih ili na odgovarajući običaj ili pravilo na tržištu reosiguranja.[59]

53 Principles, 58.
54 S. Jovanović, O. Uzelac, 45.
55 Principles, 60.
56 Principles, 61.
57 S. Jovanović, O. Uzelac, 45.
58 Principles, art. 2.4.4.
59 Principles, 62.

U slučaju kašnjenja isplate potraživanja po zahtevu, reosiguranik ima pravo na razumnu i pravičnu kamatu koja se primenjuje od trenutka dospelosti plaćanja.[60]

V Zaključak

Definisanje klauzula o saradnji i klauzula o kontroli, kao i ostalih klauzula u ugovorima o reosiguranju, ima za cilj zaštitu ne samo reosiguravača i reosiguranika, odnosno samog ugovora o reosiguranju, već i osnovnog ugovora o osiguranju, kao i osiguranika čije će obeštećenje, veoma često, zavisiti kako od obima pokrića definisanog u ugovoru o reosiguranju tako i od same sadržine tog ugovora. Činjenica da reosiguravač može da bude obavešten o postupanju sa zahtevom za naknadu nakon nastanka osiguranog slučaja, kao i da može učestvovati u rešavanju tog zahteva, bez obzira na to da li se radi o postizanju sporazuma odnosno poravnanja, ili postupku pred sudom ili arbitražom, predstavlja mogućnost da zahtev za naknadu postavljen od strane osiguranika bude dvostruko kontrolisan. Time se ne umanjuju prava osiguranika, kao ni osiguravača, kao reosiguranika, već se štiti sam ugovorni odnos osiguranja. Sigurno je da, definisanjem navedenih klauzula, reosiguravač pre svega štiti svoj interes, ali se time štiti i sam odnos reosiguranja i poverenje između reosiguravača i reosiguranika. Takođe, definisanjem pojedinih navedenih klauzula, reosiguravač se pretvara u aktivnog subjekta u rešavanju zahteva za naknadu štete.

U Republici Srbiji se, osim u pojedinim odredbama ZO, ne reguliše reosiguranje. Sigurno je da bi u budućim odredbama koje bi regulisale ovaj institut morale da nađu mesto i navedene klauzule koje jasno definišu odnos reosiguravača i reosiguranika. Naravno, odredbe Principa bi trebalo da budu osnov za definisanje navedenih pravila. Njihovo detaljno regulisanje trebalo bi prepustiti opštim uslovima osiguranja odnosno reosiguranja, ali je sigurno da bi, na opšti način, morale biti regulisane i u zakonskom aktu.

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[60] Principles, 63; S. Jovanović, O. Uzelac, 45.

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***Professor Vladimir Čolović, PhD*[1]**

THE REINSURER'S IMPACT ON THE INSURER'S DECISIONS FOLLOWING THE OCCURRENCE OF THE INSURED EVENT

REVIEW SCIENTIFIC PAPER

Summary

The function of the reinsurance contract is to provide coverage for excess risk, namely for losses that exceed the insurer's retention. Following the occurrence of an insured event, the reinsurer indemnifies the sum defined in the reinsurance contract. However, the question arises as to whether the reinsurer may influence the settlement of claims submitted by the insured, either through direct control and influence over such proceedings, or by having the right to be notified of the claim settlement process. Reinsurance contracts may incorporate clauses that define such rights of the reinsurer. One clause concerns cooperation (*Claims Cooperation Clause*), while the other addresses control (*Claims Control Clause*). The claims control clause grants broader authority upon the reinsurer. Practice demonstrates that other similar clauses are also used to specify the reinsurer's rights. This paper examines both the characteristics of these clauses and the Principles of Reinsurance Contract Law, which specifically regulate the relationship between the reinsurer and the insurer (the reinsured) following the occurrence of an insured event.

Keywords: reinsurance, reinsurer, reinsured, risk, retention, insured event, claims cooperation clause, claims control clause.

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I. Introduction

When an insurance company (the insurer) underwrites large risks, it often becomes necessary to enter into reinsurance contract. Such situations arise when the insurer determines that the occurrence of a potential loss, or more precisely, the occurrence of an insured event, may pose a threat to its financial stability. The conclusion of a reinsurance contract establishes a distinct contractual relationship between the insurer, as the reinsured, and the reinsurer, alongside the existing insurance relationship between the insurer and the insured, that is, in addition to the underlying insurance contract. The primary purpose of concluding an insurance contract is to provide insurance coverage against risks threatening the insured, while the objective of entering into a reinsurance contract is to ensure effective protection of the insurer by the reinsurer following the occurrence of an insured event. Consequently, reinsurance is referred to as insurance of the insurer, although this concept should be understood in a broader sense. The insurance contract and the reinsurance contract are independent; they constitute separate contracts. The insurer has obligations under the insurance contract, while the reinsurer has obligations under the reinsurance contract. Should an insured event occur, the insurer indemnifies the sum insured pursuant to the concluded insurance contract, and subsequently, under the reinsurance contract, the insurer, as the reinsured, seeks indemnification from the reinsurer. In practice, however, the situation differs. Many reinsurance contracts contain provisions enabling the reinsurer to influence the settlement of claims under the insurance policy, even during the insurer's claims handling process. Specifically, under such provisions, the insurer must notify the reinsurer of the insured event and may not adopt a final position on indemnification without coordinating with the reinsurer. This may result in delayed payment by the insurer and non-compliance with agreed timeframes, raising questions regarding the compatibility of such conduct with fundamental principles of insurance contract law.[2] However, as noted, for such obligations of the insurer as reinsured to exist, and for the reinsurer to be involved in claims settlement submitted by the insured, certain clauses must be contractually agreed upon, granting the reinsurer varying degrees of authority to intervene in the settlement of a claim arising from an insured event. The nature of the reinsurer's influence on claims settlement depends upon the type of clause negotiated. Two clauses are most commonly used to achieve this purpose. The first is the *Claims cooperation clause*, typically utilized in facultative reinsurance contracts. This clause requires the insurer to involve the reinsurer in settling the portion of the loss that exceeds the insurer's retention, while preserving the insurer's

[2] Marijan Ćurković, Claims Cooperation Clause: Utjecaj reosiguratelja na odnos „osiguratelj–osiguranik" kod rješavanja osiguranog slučaja (June 2, 2025), available at: *https://www.osiguranje.hr/ClanakDetalji.aspx?23319*, accessed on July 19, 2025.

autonomy to independently determine indemnification for the retained portion. The second is the *Claims control clause*. This clause is more restrictive for the insurer, as it prohibits the adoption of a position on indemnification without the reinsurer's prior consent. Moreover, it contradicts insurance contract law provisions that prescribe timeframes within which the insurer must either settle the claim or notify the insured that the claim is unfounded.[3]

II. Reinsurance as protection for the insurance contract

1. Reinsurance in general

Both natural and legal persons are increasingly exposed to numerous risks and pressures, which affect their demands as policyholders upon insurers, and through insurers upon reinsurers. These demands concern improved services from insurers and reinsurers, encompassing both the diversity of insurance offerings and higher standards of insurance coverage. This implies that the insurance sector must be prepared to respond to emerging challenges, as well as to assess its own expectations in conducting business operations. Insurers must continuously evaluate their business strategies.[4] The insurance market demonstrates a degree of inertia, despite mounting pressures from competition stemming from new insurers and reinsurers, as well as growing demands from policyholders. The insurance market cannot afford sluggishness in inevitable changes in its business operations.[5]

The insurer is obligated to reinsure liabilities under the insurance contract exceeding its retention. Retention represents the amount of underwritten risk that the insurer retains in its own coverage and that can be covered with its own funds. The insurer must always retain a portion of the risk in its retention.[6]

Reinsurance operates in a straightforward manner. The reinsured pays a premium to the reinsurer, and in return, the reinsurer covers a portion of the reinsured's liabilities as insurer toward the policyholder. The reinsured and reinsurer freely determine the contract terms, without the need to define provisions specifically protecting the interests of one contracting party, as is the case with insurance contracts, where the interests of the policyholder, as a natural person, are primarily protected.[7]

Two principal forms of reinsurance are distinguished. The first is facultative reinsurance, wherein the reinsurer individually makes a decision regarding the

[3] *Ibidem.*

[4] Robert Stude, "Promjena izgleda rizika u osiguranju/reosiguranju", *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 58, Nos. 1–2/2008, 678.

[5] *Ibid*., 679.

[6] Vladimir Čolović, *Osiguravajuća društva – zakonodavstvo Srbije, pravo EU, uporedno pravo*, Institut za uporedno pravo, Belgrade 2010, 21.

[7] Jasna Pak, *Pravo osiguranja*, Belgrade 2011, 41.

insurance policy for which coverage is to be provided. This form is less flexible, but provides greater protection to the reinsurer. The second is treaty reinsurance, wherein an agreement is reached whereby the reinsurer accepts coverage of a specified type of risks. Under this form, the reinsurer accepts all policies within the designated risk categories. Treaty reinsurance is less flexible, but more efficient from the standpoint of insurance operations in general.[8]

Insurers must frequently underwrite individual risks that exceed their capacity in magnitude, as well as risks where the possibility exists for mass losses, accumulation of losses, and catastrophic losses, situations in which a single insurer cannot fulfill its obligations toward policyholders. However, through the conclusion of reinsurance contracts, insurers increase their capacity, thereby protecting both their solvency and the interests of the insured. Certain large risks exceed the insurer's retention, necessitating additional security in such cases. Conversely, reinsurance enables insurers to homogenize their portfolios, resulting in reduced volatility arising from significant deviations between incurred losses and earned premiums.[9]

Furthermore, the institution of reinsurance itself represents an indirect transfer of a portion of liabilities under the insurance contract without the involvement of the insured. Insurance constitutes a vertical division of risk, which in the relationship between insurer and insured remains unchanged, and may, but need not, terminate with a single reinsurer. It follows that reinsurance represents an indirect or secondary risk distribution from insurance; in other words, insurance of the insurer itself for the portion of liability it cannot cover independently.[10]

Likewise, reinsurance is not merely a legal but also an economic institution, and from an economic perspective, the most significant characteristic of reinsurance is the spatial dispersion of risk, which eliminates or mitigates enormous burdens on insurance funds.[11] The general rule is that the legal-economic relationship between the reinsurer and the insurer is entirely separate from the relationship between the insurer and the insured, notwithstanding that a portion of the risk under the insurance contract is ceded by the reinsurer.[12]

The reinsurance of a large number of insurers enables reinsurers to diversify risk in a manner unattainable by any individual insurer. This is achieved by permitting insurers to underwrite a greater number of large risks, while maintaining consideration for the geographical distribution of risks where feasible, as well as

[8] Reinsurance Uncovered: Spreading Risk and Safeguarding Solvency, available at; *https://accelerant.ai/resources/reinsurance-uncovered-spreading-risk-and-safeguarding-solvency*, accessed on July 15, 2025.

[9] Matea Spajić, "Modeli rizika u neživotnom osiguranju i reosiguranju", *Hrvatski časopis za osiguranje*, No. 2/2019, 172.

[10] Ratko Zelenika, "Relevantna obilježja reosiguranja", *Naše more, Scientific Journal for Sea and Maritime Affairs*, Vol. 43, Nos. 3–4/1996, 119.

[11] *Ibidem*.

[12] *Ibid*., 125.

reducing the effective magnitude of risk exposure. Similarly, reinsurance contributes to modifications in the structure of insurance portfolios.[13]

2. Reinsurance in the legislation of the Republic of Serbia

The Law of Contract and Torts (hereinafter: LCT)[14] does not regulate the institution of reinsurance. On the other hand, the Insurance Law of the Republic of Serbia (hereinafter: Insurance Law)[15] provides that the portion of risk exceeding the insurer's retention shall be transferred to reinsurance, that is, the insurer reinsures the portion of the risk which it would be unable to cover should an insured event occur. The Insurance Law also prescribes an exception pertaining to the possibility of reinsuring the entire risk amount in cases of property insurance against catastrophic risks, such as natural disasters, or insurance against financial losses resulting from adverse weather conditions. The Insurance Law does not address the relationship between the insured and the insurer, nor direct insurance. Likewise, the Insurance Law does not address the relationship between the insured and the reinsurer, i.e. circumstances under which the insured may approach the reinsurer directly for indemnification or payment of the sum insured.[16] Naturally, the function of the Insurance Law as a "status" law is not to regulate reinsurance as a contractual relationship between the reinsurer and the reinsured. Unfortunately, the Republic of Serbia has not enacted legislation governing insurance contract law, and consequently, reinsurance contract law.

III. The relationship between reinsurer and insurer as reinsured

It is essential to distinguish the relationship between the insurer and the reinsurer from that between the insurer and the insured. However, although no legal relationship exists between the policyholder under the underlying insurance contract and the reinsurer. Such relationship is significant for the policyholder's decision, as the policyholder will generally prefer insurance arrangements supported by reinsurance.[17] When the policyholder is aware that the insurer, with whom the

[13] Jean François Outreville, „Introduction to Insurance and Reinsurance", *Social Re-Insurance A New Approach to Sustainable Community Health Financing* (eds. David M. Dror, Alexander Preker), The International Bank for Reconstruction and Development, Washington-Geneva 2002, 12.

[14] The Law of Contract and Torts, *Official Gazette of the SFRY,* Nos. 29/78, 39/85, 45/89, and 57/89; *Official Gazette of the FRY,* No. 31/93; *Official Gazette of SCG,* No. 1/2003 – Constitutional Charter.

[15] Insurance Law, *Official Gazette of the Republic of Serbia,* Nos. 55/2004, 70/2004 – corr., 61/2005, 61/2005 – other law, 85/2005 – other law, 101/2007, 63/2009 – Constitutional Court Decision, 107/2009, 99/2011, 119/2012, 116/2013, and 139/2014 – other law.

[16] Vladimir Čolović, "Reosiguranje kao instrument zaštite osiguravača," *Pravna riječ*, No. 55/2018, 160.

[17] *Ibid.*, 16.

insurance contract has been concluded, will reinsure the subject matter of that contract, the policyholder's protection will be more comprehensive, given that the reinsurer also guarantees the insurer's obligations in the event of an insured event. It must be emphasized that the reinsurer is obligated solely to the insurer, i.e. the reinsured, who has ceded the insurance contract to it. Policyholders of the insurer possess no right to submit claims to the reinsurer, even though the policyholder is the party who will benefit from the reinsurance.[18]

There is a dilemma as to whether a reinsurance contract, from the insurer's perspective, constitutes a contract providing indemnity from the reinsurer or one covering the insurer's (reinsured's) liability. In this regard, the question arises as to whether the insurer (reinsured) pays a premium for potential loss, such that upon occurrence of an insured event, it receives indemnification for that loss, i.e. the sum insured. Certainly, it may be stated that the insurer pays premium to avoid sustaining potential loss; however, by its very nature, the reinsurance contract is concluded upon determining that a potential loss may exceed its retention. This means that the insurer will not face the risk of loss upon all insured events, but only when the amount exceeds its retention. Moreover, this cannot be characterized as an extension of insurance coverage, unless multiple insurers are engaged to cover a single risk or multiple risks within a specified time interval.[19]

For defining the relationship between insurer and reinsurer, it is essential that the reinsurance contract must exist concurrently with the direct insurance contract;[20] it represents, in fact, part of a set of contracts (both contracts) with the same causa. The reinsurance contract may relate to coverage provided under the insurance contract in its entirety, or may cover only a portion of the insurer's liability. The reinsurer is under no obligation to provide broader coverage than that stipulated in the insurance contract. Moreover, the reinsurance must relate to the same risk as the insurance contract.[21]

Finally, while the insurance contract may exist independently, the reinsurance contract cannot.[22] This very point explains the definition of clauses in the reinsurance contract previously mentioned, to which considerable attention will be devoted in the following sections. Namely, if the reinsurance contract cannot exist independently, that is, if it is dependent upon the insurance contract, then the question of the reinsurer's influence on loss settlement must be addressed.

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[18] J. F. Outreville, 1.

[19] Larry Schiffer, Reinsurance Matters, available at: *https://www.irmi.com/articles/expert-commentary/reinsurance-matters*, accessed on July 20, 2025.

[20] The term "direct" insurance must be employed to distinguish between these two contracts, given that reinsurance also constitutes insurance.

[21] Nataša Petrović Tomić,. "Reosiguranje – suština, domašaj, značaj", *Anali Pravnog fakulteta u Beogradu,* No. 2/2015, 79.

[22] *Ibid.*, 80.

Thus, the reinsurer assumes the original risk transferred to it by the cedant, that is, the reinsured. However, according to general principles, the reinsurer is obligated to accept in good faith the decisions of the insurer as the reinsured concerning the general terms and conditions of insurance, as well as other elements constituting the underlying insurance. Such decisions may include insurance coverage, settlements between the insurer and the policyholder, negotiations between them, and acceptance of claims submitted by the policyholder or the injured party. Precisely because reinsurers are obligated to accept such decisions, they are liable for payment under the original policy, albeit within the scope of coverage provided under the reinsurance contract. However, the reinsurer is not obligated to accept settlements or admissions of liability falling outside policy provisions.[23]

IV. Claims cooperation clause and Claims control clause in reinsurance contracts

Both the claims cooperation clause and the claims control clause are today common and customary provisions in reinsurance contracts. The distinction between them is as follows. Pursuant to the claims control clause, which governs claims control, the reinsurer may require the reinsured, i.e. the insurer, to transfer liability for settling the claim to the reinsurer. Conversely, pursuant to the claims cooperation clause, the insurer (reinsured) is obligated merely to notify the reinsurer of the claim and to obtain its consent prior to final settlement, i.e. before any settlement or payment of indemnity is made.[24]

In certain cases, according to practice, these clauses required clarification in cases involving multiple insurers on one side, as well as settlements between the insurer and the policyholder. Consequently, these clauses may be defined in greater detail through obligations of both the reinsured and the reinsurer. Specifically, the reinsured would be obligated to notify the reinsurer of all circumstances that may give rise to submission of a claim, and it is advisable in any event to specify the timeframe within which such notice must be given. Furthermore, the reinsured must cooperate with the reinsurer in investigating and assessing any loss or circumstances that may lead to loss. Finally, no settlement may be reached, nor admission of liability made, without the reinsurer's prior approval.[25] Accordingly, these clauses, together with the obligations accompanying their implementation, must be understood as conditions precedent to defining coverage under the reinsurance contract.

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[23] James A. Johnson, „Reinsurance – Follow the Settlements, What Practitioners Need to Know About Reinsurance", *The Journal of Insurance & Indemnity Law* 2023, 5.

[24] DLA Piper's Practical Guide for Claims Managers in 2022 – Part 10, available at; *https://www.dlapiper.com/en/insights/publications/practical-guide-for-claims-managers/2022/dla-pipers-practical-guide-for-claims-managers-in-2022-part-10*, accessed on July 16, 2025.

[25] *Ibidem*.

The burden of proof for breach of these clauses rests with the reinsurer. Insurers, that is, reinsureds, must proceed with care when claims are submitted against them, given that any breach of these clauses may result in forfeiture of rights against the reinsurer, even where the reinsurer's liability under the policy can be established. The question arises whether this will apply only when these clauses are defined as conditions precedent to reinsurance coverage, or generally. According to this interpretation, if such a condition is not clearly defined, the reinsured may then seek payment from the reinsurer upon proving its loss under the insured event.

In any event, the reinsured bears the duty to participate jointly with the reinsurer in examining all circumstances that led to the insured event, i.e. damage or loss. This duty is ongoing, such that cooperation is not subject to temporal limitations. When negotiations concerning a claim are conducted, of which reinsurers have been generally notified, they may, nevertheless, submit specific requests for information, to which the reinsured must respond. However, the reinsured's duty need not be absolute, as there are limitations on what the reinsurer may demand. Upon admission of liability or settlement agreements, the reinsured must obtain the reinsurer's approval. However, it must be noted that the reinsured should obtain such approval only in situations involving amounts defined in the reinsurance contract. Where lower amounts are involved, approval is not required.

Reinsurance contracts frequently contain a foreign element when insurers conclude them with reinsurers domiciled abroad. The definition of these clauses is then equally significant. Specifically, the reinsurer will often be subject to foreign law, that is, the law governing the reinsured (insurer), given that contracts are concluded in accordance with the law of the country where the insurer is domiciled. The insurer, on the other hand, is in a completely different position, as it concludes reinsurance contracts in accordance with its "own" law. However, this does not signify that the insurer enjoys complete legal certainty. This applies to legal systems in which reinsurance is not comprehensively regulated, as well as those in which case law in this area is limited. Naturally, this creates uncertainty for the reinsurer as well. Similarly, when foreign case law is consulted, it is not always certain what should be applied in the given situation. Judges or arbitrators, in cases where disputes are resolved through arbitration, are then left to their own devices in interpreting formulations contained in the contract. Certainly, this could be resolved through the definition of uniform rules in the field of reinsurance contract law, the establishment of a unified system and standardized terminology for consistent interpretation of reinsurance contracts. However, such rules do not yet exist at the cross-border level.[26]

[26] Helmut Heiss, „From Contract Certainty to Legal Certainty for Reinsurance Transactions: The Principles of Reinsurance Contract Law (PRICL)", *Scandinavian Studies in Law*, Vol. 64, 2018, 99.

1. The impact of claims cooperation and control clauses, and other similar clauses, on the performance of obligations under the reinsurance contract

Claims control and claims cooperation clauses, which contribute to efficient performance of obligations under reinsurance agreements, are of exceptional significance. On the one hand, the reinsurer will have the right to request the submission of information concerning the insured event, and on the other, will have the right to be consulted regarding the settlement of claims and to approve or disapprove payment. Naturally, this will be particularly relevant in cases involving high loss amounts or where the reinsured portion of the risk is significant. Specifically, if the claim amount exceeds a certain threshold, the reinsurer has the right to assume its settlement. Conversely, the reinsurer's assumption of claims handling signifies that the reinsured will have its support. The reinsurer's assumption of claim handling serves to prevent subsequent disputes between the reinsurer and the reinsured. Such disputes may arise concerning various matters, including coverage, duration of coverage, or policy deadlines etc.[27]

The reinsurance contract is founded on the principle of good faith, but claims cooperation and control clauses, along with others deriving from these two, such as follow the settlements clauses and similar provisions, enable the reinsurer to ascertain the precise scope of risks it assumes under reinsurance coverage. Precisely these clauses permit the reinsurer to rescind the contract if certain risks were not disclosed at the time of reinsurance contract conclusion, as well as to influence the loss adjustment process itself, i.e. the reinsured's conduct following occurrence of the insured event.[28]

If the reinsurer considers that the claims cooperation clause fails to provide adequate protection for both the reinsurer and the reinsured, the reinsurer may require incorporation of a claims control clause into the contract, which must contain elements concerning the reinsured's obligation to notify the reinsurer regarding all matters pertaining to the loss incurred, the reinsurer's right to control all negotiations concerning loss adjustment, which extends to appointment of experts who will assess the loss and determine its amount. Finally, the clause must contain the obligation to provide a declaration confirming compliance with all stated obligations.[29] If the reinsurance contract does not contain a claims cooperation clause, the reinsurer will have no right to demand notification of and consultation concerning the insured event.[30]

[27] Thiago Moutinho Ramos, *Reinsurance contracts and back to back presumption, A comparative study between English and Norwegian law,* Faculty of law, University of Oslo, Oslo 2013, 46.

[28] Larry Schiffer, Underwriting and Claims Clauses in Reinsurance Agreements, September 1, 2012, available at: *https://www.irmi.com/articles/expert-commentary/underwriting-and-claims-clauses-in-reinsurance-agreements*, accessed on July 11, 2025.

[29] T. M. Ramos, 47.

[30] *Ibidem.*

When the contract contains both clauses, the question arises whether a conflict may occur between them, or whether the reinsurer may refuse payment, thereby potentially leaving the policyholder uncompensated. According to one view, if both clauses are present in the contract, the reinsurer will be liable only for claims it has approved. Here it is important to mention the follow the settlements clause, which is grounded in the claims cooperation clause, and includes certain of its elements. This clause may also be included in the contract, whose effect may be compromised by the presence of a claims control clause. Specifically, in such circumstances, the reinsurer is not obliged to approve a settlement arranged by the reinsured. However, even if such a settlement is not approved by the reinsurer, it will not, conversely, be entitled to refuse payment of the claim. The principal reason is precisely the presence of the claims cooperation clause, or the follow the settlements clause. Nevertheless, contrary opinions hold that the reinsurer is liable only for settlements it has approved and that the clauses are not contradictory whatsoever.[31]

Thus, one question arising in such circumstances concerns the simultaneous existence of these clauses and the possibility of their mutual nullification. In any event, the burden of proof shifts to the reinsured where the reinsurance contract contains both clauses, as the reinsured, in its capacity as insurer, must prove its liability under the underlying insurance policy. Generally, claims cooperation and claims control clauses impose an obligation of reinsurer consent. However, if for any reason the clause established in the reinsurance contract imposes no consent requirement, then the scope of the follow the settlements clause will not be compromised by the existence of other clauses.[32]

It must be emphasized that the claims control clause grants the reinsurer the right, at any time, to appoint loss adjusters or any other experts to oversee the loss assessment process and claims settlement on its behalf. Should the reinsurer fail to exercise its rights under this clause, and provided the reinsured has delivered all notifications concerning the insured event, it may be concluded that the reinsurer has waived its rights in the settlement process. The reinsured will then bear no liability if it commences negotiations on its own terms after the reinsurer has failed to respond to notifications regarding the loss. The question may arise as to whether the claims control clause grants the reinsurer the right of participation in potential litigation concerning a claim, as well as in other types of disputes.[33]

On the other hand, we reiterate that the claims cooperation clause implies complete cooperation between the reinsurer and the reinsured. Although this clause grants the reinsurer the right to join the defense against claims, it does so at its own

[31] *Ibid.*, 51.
[32] *Ibid.*, 52.
[33] William Sturge, Samantha Zaozirny, Claims Control Clauses – how much control do they give?, available at: *https://www.cpblaw.com/publications/2018/claims-control-clauses-%E2%80%93-how-much-control-do-they-give.pdf*, accessed on July 10, 2025.

expense. Claims cooperation clauses are customarily combined with the follow the settlements clauses, but may be combined with other clauses as well, such as notice clauses. Although they have a broader scope, given that late notification to the reinsurer may prevent the reinsurer from participating in the claims process, in which case it may claim indemnity. The claims cooperation clause contains the most significant obligation concerning complete cooperation in defense against underlying claims. Notice clauses and claims cooperation clauses share numerous similarities, but the claims cooperation clause concerning claims handling may contradict the follow the settlements clause.[34] Moreover, we must distinguish between the follow the case clause and the follow the settlements clause. Specifically, the follow the case clause describes the fundamental relationship between the reinsured and the reinsurer. In applying these clauses, it is essential to reiterate that they rely upon the insurer's good faith in claims settlement.[35]

Furthermore, the claims cooperation clause also appears in underlying insurance contracts. The role of this clause is particularly significant in liability insurance. It serves to protect the insurer, while also preventing special arrangements between the policyholder and the injured party without the insurer's knowledge. Under such contracts, the clause in question relies upon the threat of personal liability to the policyholder to ensure full and active participation in the loss adjustment process. The policyholder must contribute to realization of the insurer's interests by ensuring that all relevant facts pertaining to the insured event are accessible. However, to secure the policyholder's cooperation with the insurer in this sense, the policyholder's economic interest must also be considered.[36] Certainly, the general terms and conditions of insurance must define this clause in detail. The claims cooperation clause in such insurance contracts serves a different function and relates to the obligation of the policyholder or injured party. In any event, it is significant from the standpoint of accurate determination of circumstances and loss amount and liability of both the policyholder and the insurer.

2. Principles of Reinsurance Contract law

In this section, we will present selected provisions of the Principles of Reinsurance Contract Law from 2019 (hereinafter: the Principles)[37] that regulate matters

[34] Louis Torch, „An Examination of Reinsurers' Associations in Underlying Claims: The Iron Fist in the V on Fist in the Velvet Glove?" *The University of New Hampshire Law Review*, Vol. 3, No. 2/2005, 341–342.

[35] *Ibidem*.

[36] Nicholas J. Giles, „Rethinking the cooperation clause in standard liability insurance contracts", *University of Pennsylvania Law Review*, Vol. 161, No. 2/2013, 594.

[37] The Principles were published following approval by the UNIDROIT Governing Council at its 98th session held in May 2019. Simultaneously, the Governing Council recommended continuation of the project in the 2020–2022 Work Program to cover additional topics deemed relevant to this instrument.

concerning the relationship between the reinsurer and the reinsured. These provisions are based on rules defining clauses in the reinsurance contract, as previously discussed. A group of professors from universities in Zurich, Vienna, and Frankfurt initiated the project to draft the Principles with the aim of publishing and explaining customs and existing principles of reinsurance contract law.[38] This initiative, the Project Group on the Principles of Reinsurance Contract Law, defined the Principles in collaboration with the International Institute for the Unification of Private Law (UNIDROIT).[39] The Principles incorporate uniform rules on general contract law, referencing the UNIDROIT Principles of International Commercial Contracts.[40] The content of the Principles reflects a concept of reinsurance contract law that may be extracted as common to most jurisdictions. Finalization of this instrument is expected in 2025.[41] The Principles represent a novel concept for defining contract law.[42] The Principles consist of 27 articles organized into five chapters: 1. General Provisions; 2. Obligations of the Reinsurer and the Reinsured; 3. Rights of the Contracting Parties; 4. Loss Allocation; and 5. Loss Accumulation.[43] Here, we will focus specifically on provisions regulating the relationship between the reinsurer and the reinsured, particularly those concerning obligations related to claims handling.

First and foremost, the reinsured is obligated to notify the reinsurer of anticipated future claims. This enables the reinsurer to develop a financing and reserving plan for losses and to consider whether and to what extent it will monitor the reinsured's claims handling, in accordance with any claims control clause of this process.[44] The reinsured is not obligated to notify the reinsurer of every claim asserting a higher amount, nor of every category of claims that involves a minimal risk of litigation by multiple injured parties. However, the reinsured is obligated

This recommendation was adopted by the General Assembly at its 78th session and reaffirmed at its 81st session in December 2022, based on the Governing Council's advice to maintain the project in UNIDROIT's 2023–2025 Work Program until its completion by the end of 2024, as progress had been delayed during the pandemic when in-person meetings were not feasible. The UNIDROIT Secretariat continued to actively participate in the project; Principles of Reinsurance Contracts: Authorisation to proceed with publication, Governing Council, 105th session, UNIDROIT, Rome, 20–23 May 2025, 2.

38 Mirjana Glintić, "Ograničenja izbora načela ugovornog prava reosiguranja kao merodavnog prava," *Pravni život*, No. 11/2019, 174.

39 *Principles of Reinsurance Contract Law (Principles),* Project Group on Principles of Reinsurance Contract Law, International Institute for the Unification of Private Law (UNIDROIT), Zurich, Vienna, Frankfurt am Main 2019.

40 International Institute for the Unification of Private Law (UNIDROIT), available at: *https://www.unidroit.org/*, accessed on July 22, 2025; Principles, III.

41 „Principles of Reinsurance Contracts: Authorisation to proceed with publication", Governing Council, 105th session, UNIDROIT, Rome, 20–23 May 2025, 2.

42 M. Glintić,183.

43 Slobodan Jovanović, Ozren Uzelac, „Fakultativna međunarodna pravila u oblasti ugovornog prava reosiguranja", *Evropska revija za pravo osiguranja*, No. 1/2021, 40.

44 Principles, 52; Article 2.4.1.

to notify the reinsurer when there exists a substantial probability that the reinsurer will be obligated to indemnify the claim.[45]

The Principles define the reinsured's obligation to act reasonably and prudently when settling claims that may trigger the reinsurance contract.[46] As previously stated, the nature of reinsurance places the reinsurer in a dependent position relative to the reinsured. Even where the reinsurance contract contains provisions concerning claims handling, granting rights to the reinsurer, the fact remains that the reinsured decides such claims and maintains effective control over them. The reinsured's conduct may be sanctioned only if it is fraudulent, or if the reinsured has committed a gross breach of rules in the claims settlement process.[47] Furthermore, the reinsured is obliged to undertake reasonable efforts to take loss mitigation measures, as well as to seek recovery from third parties whose acts or omissions contributed to the occurrence of the insured event, where the conditions are met.[48]

Pursuant to the Principles, the reinsured is obligated to comply with all limitations stipulated in the reinsurance contract, meaning that claims control and cooperation clauses must be respected. Additionally, the reinsured is obligated to share with the reinsurer information relevant to claims settlement or interpretation of the reinsurance contract. Such information may concern: claim amounts, reserved amounts, claims handling expense amounts, information regarding persons authorized to render decisions in such situations, interpretation of policies and other documents, expert reports, fulfillment of the reinsured's duties in good faith, documents concerning the institution of court proceedings, settlement agreements, and more.[49] Reinsureds must be aware that their decisions will often affect reinsurance coverage. If the reinsured selects one of two or more allocation methods, that increase available reinsurance coverage, this alone does not violate its duties; however, if the selected method is unjustified or proves to have been selected primarily to maximize reinsurance, a breach of duty by the reinsured will arise.[50]

According to the Principles, the reinsurer is entitled to be regularly informed of the reinsured's conduct following the occurrence of the insured event and in cases of expected losses.[51] Where an agreement is reached between the reinsured, as insurer, and its policyholder, where settlement may be concluded, the concept provided in the Principles stipulates that the reinsurer is obligated to accept the settlement concluded by the reinsured. On the other hand, the Principles also provide

45 Principles, 52–53; S. Jovanović, O. Uzelac, 44.
46 Principles, Article 2.4.2.
47 Principles, 54.
48 Principles, 56.
49 Principles, 57.
50 Principles, 57.
51 Principles, Article 2.4.3.

for the follow the fortunes concept, which defines that the reinsurer will be "bound" by circumstances beyond the reinsured's control.[52] However, two requirements must be satisfied for a settlement. The first concerns the settlement being covered by the underlying insurance contract, and the second concerns its coverage within the scope of reinsurance coverage. Consideration must be given to ensuring the settlement was not concluded as a result of fraudulent conduct by the reinsured or that it did not result from gross negligence. Attention must be paid here to risks the reinsured may face if settlement is not concluded, as well as to the reinsured's conduct, which must be fair and undertaken with all necessary steps. Additionally, under the obligation to follow settlements, the relevant claim is the one recognized by settlement conclusion, and the reinsured does not need to prove that the claim falls within risks covered by the reinsurance.[53]

We have mentioned the follow the fortunes concept. This relates to situations the reinsured cannot control. Specifically, court or arbitral decisions fall outside its control. This applies even where the reinsurer disagrees with the reinsured's defense strategy in proceedings. However, if the reinsured failed to present obvious arguments in its favour (and thereby in favour of the reinsurer), the decision will be deemed rendered under the reinsured's control. The concept then does not apply, and acceptance of the claim by the reinsured will be defined in accordance with the follow the settlements concept. The same applies when a decision is rendered by default. The follow the fortunes concept also applies to substantial changes in exchange rates. If the value of the sum insured to be paid increases due to such changes, the reinsurer's liability also includes the additional costs arising from these changes. The situation is identical in cases of amendments to legislation governing the insurance contract.[54] For instance, if the law does not define an obligation to cover punitive amounts, and this prohibition is later repealed by legislative amendment, such a change extends the reinsured's obligation, and thereby the reinsurer's.[55] The Principles provide that the parties to the reinsurance contract are not required to include these two concepts.[56]

Finally, reference will be made to the Principle provision concerning the reinsured's duty to properly submit a claim for payment to the reinsurer, as well as

[52] This concept is set out in Article 2.4.3 of the Principles and relates to the reinsured and to its "fortunes" or "fate" in situations over which it has no control. In the USA, this term is used, as well as the term *follow-the-settlements*, which we also refer to in this paper. The term is likewise connected with the reinsured's duty of utmost good faith; however, we consider that the term itself cannot be used in our context. See L. Schiffer, "Understanding Reinsurance Terminology – Follow-the-Fortunes", available at: *https://www.irmi.com/articles/expert-commentary/understanding-reinsurance-terminology-follow-the-fortunes*.

[53] Principles, 58.

[54] S. Jovanović, O. Uzelac, 45.

[55] Principles, 60.

[56] Principles, 61.

the reinsurer's duty to indemnify the claim amount in accordance with the reinsurance contract.[57] The parties may freely specify the precise conditions and timing of payment.[58] In addition to the claim, the reinsured must submit appropriate documentation proving the claim is covered. When applying settlement rules, the reinsured is required only to prove that it acted reasonably and in accordance with the contract. The reinsurer bears an obligation to indemnify the claim in good faith as promptly as possible, if there is no dispute regarding the obligation. If the reinsurer and the reinsured do not have an existing, specific agreement in this regard, they may invoke established course of dealing between them or relevant custom or rule in the reinsurance market.[59] In cases of delayed payment of claims, the reinsured is entitled to reasonable and equitable interest applicable from the payment due date.[60]

V. Conclusion

The definition of claims cooperation and control clauses, together with other clauses in reinsurance contracts, serves to protect not only the reinsurer and the reinsured, that is, the reinsurance contract itself, but also the underlying insurance contract and the policyholder, whose indemnification often depends on both the scope of coverage defined in the reinsurance contract and the terms of that agreement. The fact that the reinsurer may be notified of claims handling following the occurrence of the insured event, as well as participate in settlement of such claims, whether involving achievement of agreement or settlement, or proceedings before a court or arbitral tribunal, represents an opportunity for dual control of claims submitted by the policyholder. This does not diminish the rights of the policyholder, nor those of the insurer as reinsured, but rather protects the insurance contractual relationship itself. Certainly, through the definition of these clauses, the reinsurer primarily protects its own interests, but this simultaneously protects the reinsurance relationship and the trust between the reinsurer and the reinsured. Additionally, through the definition of certain specified clauses, the reinsurer is transformed into an active participant in claims settlement.

In the Republic of Serbia, apart from certain provisions of the Insurance Law, reinsurance is not regulated. Certainly, future provisions regulating this institution should incorporate these clauses that clearly define the relationship between the reinsurer and the reinsured. Naturally, the provisions of the Principles should constitute the foundation for defining such rules. Their detailed regulation should be entrusted to general insurance or reinsurance conditions; however, they should certainly be regulated in general terms within statutory legislation.

57 S. Jovanović, O. Uzelac, 45.
58 Principles, Article 2.4.4.
59 Principles, 62.
60 Principles, 63; S. Jovanović, O. Uzelac, 45.

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