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Insurance Litigation 2022

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Poland: Trends & Developments

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Trends and Developments

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Key Aspects of Poland's Insurance Litigation System

Enforcement against insurance companies in the event of double insurance

In some instances, the same property is subject to double or multiple cases of insurance coverage against the same risk, taken out in two or more insurance companies.

Such situations are governed by Article 8241 Section 2 of the Polish Civil Code, which makes it easier for policyholders and the insured to enforce claims against the insurance companies in cases of double insurance, as well as setting out the principles of liability of insurance companies and their mutual settlements once the insurance proceeds are paid.

What is overcollateralisation?

Double insurance of property is not a common phenomenon because, regardless of the number of insurance contracts and the total value of the sums insured, the general rule is that, if damage is inflicted, the total compensation that can be claimed would not exceed the value of the damage suffered. In other words, double insurance does not mean double compensation. This principle is in line with the compensatory function of property insurance and aims to prevent the policyholder from profiting as a result of the occurrence of an insured event causing damage. This means that having double or multiple insurance would have the same consequences as a contract of insurance under which the sum

insured exceeds the insurance value of the property, resulting in what is known as overcollateralisation.

So why does double insurance happen?

Double or multiple insurance occurs most often when a risk is insured under an insurance contract entered into by a policyholder who also has the status of an insured against the same risk under an insurance contract entered into by a third party. Such situations can take place where there is complicated overlapping insurance coverage against multiple risks. Hence, when a specific insured event occurs, it may turn out that compensation (partial or full) may be claimed from two or more insurance companies and based on two or more insurance relationships. Such situations are governed by the aforementioned Article 8241 Section 2 of the Polish Civil Code.

Exceptions to the rule that compensation should not exceed the value of the damage

As is often the case with rules, there are certain exceptions. First of all, this principle does not apply to personal insurance, in particular to life insurance. If a policyholder executes more than one life insurance contract for the same or different sums insured with different insurance companies, this does not lead to a case of double insurance. Quite the contrary, the policyholder may then request that each insurance company pays compensation in the full amount specified in the relevant insurance contract. Even with

property insurance, the general rule expressed in Article 8241 Section 1 of the Civil Code that the total compensation paid out by insurers should not exceed the value of the damage does not apply if the parties have agreed otherwise.

This means that, whenever property is to be subject to double insurance, the policyholder should always first check whether the relevant insurance contracts contain exceptions allowing the policyholder to claim total compensation in an amount exceeding the value of the damage, since it has a material influence on the way the claims are formulated against specific insurance companies.

The relative nature of Article 8241 Section 1 of the Civil Code is generally accepted both in the doctrine of law and in the jurisprudence. This and other things were confirmed by the Supreme Court judgment of 29 November 2012 in case file number V CSK 573/11, in which the Supreme Court emphasised that, even though compensation paid out under an insurance contract in excess of the value of the damage would be against the principle expressed in Article 8241 Section 1 of the Civil Code, the parties to the insurance contract are authorised to waive this rule in the insurance contract and can agree that the compensation may be higher than the value of the damage. That case involved the value of the destroyed building and a claim for an amount that would be necessary to replace it, which was much higher. However, such a possibility must be reserved in the contract.

Liability of insurance companies

Although not expressly mentioned in Article 8241 Section 2 and 3 of the Civil Code, it is generally accepted that where the rule mentioned above applies, the liability of insurance companies in the event of double or multiple property

insurance is joint and several, meaning that the policyholder may bring a claim for all or part of the compensation against all the insurance companies jointly or against only a selection of those companies.

Therefore, if one of the insurance companies pays all or part of the compensation, it releases the others from having to pay the policyholder compensation up to the amount already paid. However, one should bear in mind that the joint and several liability of insurance companies in the event of double insurance is specified by the value of the damage, the wording of the contract of insurance and the sum insured as individually agreed with a given insurance company. If it has been agreed in one of the contracts of insurance that the sum insured to be paid out by the insurance company may be higher than the value of the damage, the part of the claim that exceeds the value of the damage can only be enforced against the insurance company that concluded that contract.

In practice, if the policyholder makes different arrangements as regards the sum of the benefit to be paid by the insurance companies, regardless of the value of the damage, then the enforcement of claims may be subject to restrictions and the parties are not allowed full freedom. This concept was emphasised by the Court of Appeals in Gdańsk in its judgment of 26 May 2021 in case file number V Aga 38/21, which pointed out that full freedom to determine the value of the benefit to be paid out by the insurance company would transform the contract of insurance into a gambling agreement, making it closer to a game of chance, which would then be contrary to the nature of insurance.

Insurable interest

When several property insurance contracts are executed, it might sometimes be difficult to determine whether the case concerns two or more insurance contracts against various risks or with double/multiple insurance against the same risk. The consequences of this distinction may be crucial, since they determine the amount of the compensation that may be received. The distinction is made based on the insurable interest criterion.

When assessing insurable interest in a situation where there is more than one contract of property insurance and the total sum insured exceeds the value of the property, the non-specific criterion of insurable interest is used both in the doctrine and the jurisprudence. Insurable interest essentially means a financial interest that the policyholder might lose if the event specified in the contract occurs, or a relationship between the insurance beneficiary and the event triggering damage. This issue was considered by the Supreme Court, which in its resolution of 30 November 2005 in case file number III CZP 96/05 pointed out that the insurable interests of policyholders may be different, even if they concern the same property. This implies that in the event of different insurable interests, the policyholder's claim is not subject to the restrictions arising from Article 8241 Section 2 of the Civil Code, whereby the benefit paid by two insurance companies must not be higher than the value of the damage suffered.

Moreover, the rules on the enforcement of claims arising from double or multiple insurance are applied not only in a situation in which the policyholder is a party to several insurance contracts against the same risk with different insurance companies, but also when the same entity acts as a policyholder and the insured in one contract and as an insured in another contract entered into for its benefit.

Therefore, the effective enforcement of claims arising from double insurance requires first determining whether the circumstances involve double insurance against the same risk or two independent cases of insurance. In the first of these situations, enforcing the claims in court takes place through suits to be filed against some or all of the insurance companies, all of which are liable to the policyholder jointly and severally, while in the latter case it is necessary to bring a claim against each of the insurance companies separately.

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