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THE PRINCIPLES OF PROFESSIONAL LIABILITY INSURANCE

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Introduction: In order to correctly understand the nature of professional liability insurance as a civil legal institution and the subject of its special regulation, one needs to formulate the principles being starting point and benchmark for creating the legal base of the certain type of insurance. In general, the principles of law are defined as starting ideas and provisions that express the essence and social significance of law[1]. It is not possible to be limited by the inter-branch principles of the Insurance Institute when distinguishing the basic provisions specific to the subject matter type of insurance, therefore it is necessary to distinguish such a set of principles that will allow to further stipulate the set of legal regulations specific to professional liability insurance only. In this article, we are trying to define general ideas, which professional liability insurance will be based on. The relevance of the issue considered in this article is due to the fact that the professional liability insurance has neither yet been sufficiently separated from other types of insurance (property insurance, health insurance, business risk insurance) as an independent type of insurance at the legislative level, nor emphasized existence in the relatively independent type in civil law. The first step by which we can draw proper attention to the institution under discussion is to define the principles of law and be guided by them.

The research itself:

1.1 General description of the principles. Both physical persons and legal entities are even more interested in managing their own risks and having effective guarantees for the compensation of damages caused and using them in a timely manner, in the course of carrying out professional activities. Any professional activity must be based on legal responsibility. The victims and the insured persons shall have the opportunity to exercise their mutual civil rights and obligations with the help of and within the framework of the professional liability insurance institution, in case of occurrence of such liability. In these terms, professional liability insurance is a relatively independent institution of civil liability insurance and needs special legal regulations. The civil legislation of the Republic of Armenia contains very few provisions regarding the institution in question, which do not even reveal the concept of the institution. We have already defined the concept of professional liability insurance within the framework of another scientific work[2], from the definition of which we can derive the first principle of professional liability insurance.

1.2 Liability should be incurred only for the damage caused by professional activity (first principle). Thus, professional activity is a type of human activity carried out in a

[1] See A. G. Vagharshyan, “Lectures”, YSU, Author's publication, 2011, Yerevan, page 122
[2] See Davit Baklachyan, «The concept and notion of professional liability insurance», Vol. 94 No. 3 (2022): State and Law, https://doi.org/10.46991/S&L/2022.94.063%20 Yerevan, page 66

certain professional field, based on knowledge, skills and a number of abilities, aimed at achieving planned goals, as a rule, is the main source of income of the subject of professional activity and is performed by such persons, who have special competence to carry out such activity[1]. The specified definition more than obviously emphasizes that for the launch of the type of insurance in question, **liability should be incurred only for the damage caused by professional activity**. This principle is the primary starting point that distinguishes this type of insurance from other types of risk insurance and makes it unique. Just like when engaging in entrepreneurial activities, in any other fields of normal life, everyone is exposed to many risks, in the event of which a person may suffer large property losses, and even cease to exist in civil and legal circulation. The mentioned persons get the opportunity to fully or partially share their possible risks with the insurance companies[2] possessing enormous financial resources through insurance for a certain fee.

It is true, that the insured risks may not occur at all, and the insurance companies may not pay compensation for the insurance premiums they receive, however, through insurance, by reducing their possible large losses for small fees people have greater confidence in their future.

As we can see, the daily activities of physical persons and legal entities contain risks, in case of which the damage caused to other persons will become more or less probable, but even the damages caused as a result of not all types of activities of subjects with a certain profession can be significant from the point of view of professional liability insurance. Although liability will accrue in all cases, the crucial point is that such liability will be subject to insurance only to indemnify damage caused as a result of the professional activity of the professional entity. The principle of liability for damage caused only by professional activity finds its expression in insurance policies offered by leading insurers in a number of foreign countries[3]. Thus, according to clause 1.1 of the conditions[4] of the “professional liability insurance of medical workers” of “Alfa Insurance” open joint-stock insurance company registered in the Russian Federation “... the insurer concludes civil liability insurance contracts with individual entrepreneurs and legal entities that carry out medical and/or pharmaceutical activities, hereinafter – policyholders”. In this case, the operation of the insurance institution in question will be incomplete if we limit ourselves to distinguishing the fact that the policyholder engages in a certain professional activity. The insured accident must also occur exclusively in connection with engaging in such activity or carrying it out. According to point 3.1.1 of the above conditions, an insurance accident “… the liability of the Policyholder (Insured Person) voluntarily causing damage to the life and health of third parties (beneficiaries) with the prior consent of the Insurer or by virtue of court decision, as a result of an unintentional professional error made by the Policyholder (Insured Person) and (or) his employees while performing insured activities.” An almost identical regulation is provided for

[1] See Kozachkova D. S. O «Concepts of professional activity» // Proceedings of the Orenburg Institute (branch) of Moscow State Law Academy. 2016. Issue. 24. page 55

[2] See Russell G. Thornton, «Not-so-obvious considerations for professional liability insurance», doi: 10.1080/08998280.2005.11928104, Proc (Bayl Univ Med Cent) v.18(4); 2005 Oct, page 11

[3] Otherwise insurance certificate or contract

[4] See Order of the General Director of AlfaStrakhovanie OJSC dated April 27, 2015 No. 140, art. 3

under clause G of section 6 of the “professional liability - errors and omissions” conditions of the internationally known “Hiscox” insurance company, an insured accident is considered “... only the case of damage caused as a result of the provision of professional services of the insured person”.

The cases and arguments listed above more than justify the importance and key significance of the discussed principle of professional liability insurance in the process of drafting insurance policies and offering them to professionals.

1.3 **The principle of compensating the beneficiary receiving services.** If we claim that the risk of damage caused as a result of professional activity is considered as an element of professional liability insurance, then we must also separate the scope of the persons to whom damage should be caused in order to qualify the case as an insurance accident from the point of view of the discussed type of insurance. Theoretically and practically, as a result of professional activity, it is possible to cause damage to any person related to that activity or beneficiary of the results of the activity in one way or another. The question is, who of them will have the right to receive compensation under the insurance contract? Unlike a number of other types of insurance (property insurance, health insurance, etc.), in the case of professional liability insurance, the Policyholder is never the person who suffered a loss, therefore, the risk of not pursuing an insurance interest[1] within the said contract also increases. In fact, if we do not grant beneficiary status to the third party who has suffered damage as a result of professional error, the latter will be deprived of the rights to submit an application for compensation directly to the insurer and receive insurance compensation in the event of an insurance accident. The policyholder, who does not have an insurable interest in compensating the caused damages to a third party, will be the only initiator of insurance proceedings. Within the framework of another scientific work[2] we were suggested to turn to the institute of “beneficiaries by law”[3] in order to solve this problem, which means that the legislation imperatively defines the range of persons who act as beneficiaries within the framework of the relevant type of insurance contract. , In this case, the professional liability insurance contract will be considered concluded in favor of those persons (for a Beneficiary, the insurance contract is a variety of contracts in favor of third parties[4]) to whom damage may be caused, who are considered beneficiaries within the given contract. The third party who suffered damage within the framework of the insurance contract must be exclusively the party that signed the contract for the provision of professional services with the policyholder (insured person). The principle of **compensating the beneficiary receiving services** can be derived from this. It will mean that as a result of the damage caused as a result of professional activity, compensation should be provided only to the person directly receiving professional services, because from the beginning the insurance contract is concluded by taking into account the risks that can make more or

[1] See Lugovets, V. Ya. Specific features of a professional liability insurance contract, “Jurisprudence”. - 2015. - No. 1 (26), page 159-162

[2] See: Davit Baklachyan, "Subject structure of professional liability insurance", State and Law N 2 (96) 2023, https://doi.org/10.46991/S&L/2023.96.145, Yerevan 2022, p. 148

3 See Khachatryan M. G., "Problems of legal regulation of voluntary property insurance in the Republic of Armenia", PhD thesis, Yerevan, 2017, p. 74

[4] See Goncharov A.A., Maslova A.V., Civil law (parts General and Special), Moscow, Wolters Kluwer, 2010, page 204

less likely the damage to be caused as a result of the professionalism shown by the insured person. After all, the most important condition of an insurance accident is a professional mistake, which will lead to an unfavourable consequence for the user of the service. Another justification for what was said can be found in the economic component taken into account by the insurer to reduce its own risks, such as the profit obtained as a result of concluded insurance contracts. The larger the range of persons who may be directly or indirectly harmed as a result of professional activity, the larger the range of those who have the right to receive insurance compensation, therefore the profitability of the insurer may decrease in that proportion. If the range of beneficiaries of this type of insurance is not narrowed (to only those receiving professional services) insurers will not be interested in servicing this product, or will provide service for significantly higher insurance premiums as a compensation for future claims.

Conclusion: As a result of this research, we found out that basic and starting ideas should be identified for the professional liability insurance institution, which will be a theoretical basis for making a set of legal regulations of the discussed type of insurance and being guided by them. The principles of “liability only for the damage caused by professional activity” and “reimbursing the beneficiary receiving services” were distinguished as such principles. The necessity of directly enshrining it in the legislation was emphasized for at least one of the principles.

Reference list.

1. Lugovets, V. Ya. Specific features of a professional liability insurance contract, “Jurisprudence”. - 2015. - No. 1 (26).

2. Davit Baklachyan, "Subject structure of professional liability insurance", State and Law N 2 (96) 2023, https://doi.org/10.46991/S&L/2023.96.145, Yerevan 2022.

3. Khachatryan M. G., "Problems of legal regulation of voluntary property insurance in the Republic of Armenia", PhD thesis, Yerevan, 2017.

4. Goncharov A.A., Maslova A.V., Civil law (parts General and Special), Moscow, Wolters Kluwer, 2010.

5. Russell G. Thornton, «Not-so-obvious considerations for professional liability insurance», doi: 10.1080/08998280.2005.11928104, Proc (Bayl Univ Med Cent) v.18(4); 2005 Oct

6. Order of the General Director of AlfaStrakhovanie OJSC dated April 27, 2015 No. 140.

7. Davit Baklachyan, «The concept and notion of professional liability insurance», Vol. 94 No. 3 (2022): State and Law, https://doi.org/10.46991/S&L/2022.94.063%20 Yerevan.

8. Kozachkova D. S. O «Concepts of professional activity» // Proceedings of the Orenburg Institute (branch) of Moscow State Law Academy. 2016. Issue. 24.

9. A. G. Vagharshyan, “Lectures”, “State and Law” YSU, Author's publication, 2011, Yerevan.

ՄԱՍՆԱԳԻՏԱԿԱՆ ՊԱՏԱՍԽԱՆԱՏՎՈՒԹՅԱՆ ԱՊԱՀՈՎԱԳՐՈՒԹՅԱՆ ՍԿԶԲՈՒՆՔՆԵՐԸ

Դավիթ Բակլաչյան
ԵՊՀ քաղաքացիական իրավունքի ամբիոնի ասպիրանտ
ՀՀ ՊԵԿ Իրավաբանական վարչության հայցային աշխատանքների և դատական պաշտպանության բաժնի պետ

Քաղաքացիական հարաբերություններում մասնագիտական գործունեության տարաբնույթ տեսակներ (աուդիտորական, փաստաբանական, փորձագիտական, ճգնաժամերի կառավարման և այլն) օրեցօր ավելի մեծ ծավալներով մատուցվում են քաղաքացիական հարաբերությունների սուբյեկտներին, ինչն էլ իր հերթին բերում է ծառայությունների թերի մատուցման արդյունքում պատճառված վնասների: Այդ վնասների հատուցման բեռը կիսելու ամենագործուն միջոցներից մեկը պատասխանատվության ապահովագրությունն է: Վերջինս հիմնավորում է, որ ապահովագրության տեսակների առանձնացումն ու իրավակարգավորումների սահմանումը չափազանց արդիական են մնում: Հոդվածում առաջին անգամ փորձել ենք առանձնացնել մասնագիտական պատասխանատվության ապահովագրության սկզբունքները, սահմանել այնպիսի ելակետային դրույթներ, որոնք կպայմանավորեն քննարկվող ինստիտուտի հետագա իրավական կարգավորումը: Այդ տեսանկյունից առանձնացնում ենք երկու սկզբունքներ՝ «պատասխանատվություն միայն մասնագիտական գործունեությամբ պատճառված վնասի համար» և «ծառայություններ ստացող շահառուին հատուցելը: Շեշտադրել ենք, որ ապահովագրության քննարկվող ինստիտուտի գործարկումը տվյալ դեպքում կլինի թերի, եթե միայն սահմանափակվենք ապահովադրի՝ որոշակի մասնագիտական գործունեությամբ զբաղվելու հանգամանքը առանձնացնելով: Հարկ ենք համարել արձանագրել, որ ապահովագրական պատահարը պետք է տեղի ունենա բացառապես նման գործունեությամբ զբաղվելու կամ այն իրականացնելու կապակցությամբ, ինչը կլինի անհրաժեշտ նախադրյալ ապահովագրական հատուցման գործընթաց սկսելու և հատուցումներ տրամադրելու համար:

ПРИНЦИПЫ СТРАХОВАНИЯ ПРОФЕССИОНАЛЬНОЙ ОТВЕТСТВЕННОСТИ

Давид Баклачян
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В гражданских правоотношениях различные виды профессиональной деятельности (аудиторская, адвокатская, экспертная, антикризисная и др.) с каждым днем предоставляются субъектам гражданских правоотношений в больших объемах, что в свою очередь приводит к убыткам, причиненным в результате неполного оказания услуг. Одним из наиболее эффективных способов разделить бремя возмещения ущерба является страхование ответственности. Последнее обосновывает то, что разделение видов страхования и определение правовых норм остаются крайне актуальными. В статье мы впервые попытались выделить

принципы страхования профессиональной ответственности, определить такие основные положения, которые будут обусловливать дальнейшее правовое регулирование обсуждаемого института. С этой точки зрения мы выделяем два принципа: «ответственность только за вред, причиненный профессиональной деятельностью» и «возмещение выгодоприобретателю, получающему услуги». Подчеркнули, что работа рассматриваемого института страхования в данном случае будет неполной, если ограничиться лишь выделением обстоятельства занятия страхователем определенной профессиональной деятельностью. Мы сочли необходимым отметить, что страховой случай должен произойти исключительно в связи с занятием такой деятельностью или ее осуществлением, что будет необходимой предпосылкой для начала процесса страхового возмещения и предоставления возмещения.

Բանալի բառեր – *սկզբունքներ, մասնագիտական պատասխանատվության ապահովագրություն, պատճառված վնասի համար պատասխանատվության ապահովագրություն, ապահովագրության օբյեկտ, ապահովագրական շահ, ապահովագրական ռիսկ, ապահովագրական պատահար, ապահովագրող, շահառու, ապահովագրված անձ:*

Ключевые слова: *принципы, страхование профессиональной ответственности, страхование ответственности за причинение вреда, объект страхования, страховой интерес, страховой риск, страховой случай, страхователь, бенефициар, застрахованное лицо.*

Key words: *principles, professional liability insurance, liability insurance for injury, insurance object, insurance interest, insurance risk, insurance case, insurer, beneficiary, insured person.*