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Civil liability insurance – evolution and directions of changes

The author presents the evolution of civil liability and civil liability insurances connected therewith. The author argues that the faster civil liability develops, the more dynamically civil liability insurances develop. Increasing risk of liability for damage means for many perpetrators difficulties in bearing financial burdens of its remedying. In order to avoid this, prospective perpetrators of damage conclude civil liability agreements, and insurers develop general terms and conditions of further types of insurance. Currently, there is a fundamental question who should bear the burden of damage suffered by an entity: the injured party itself, the perpetrator of the damage or the society.

On the other hand, injured parties have much greater awareness, and the amounts of the compensation claimed are on the increase. However, judicial civil proceedings are becoming excessively lengthy and further difficulties related to evidence arise. All of this leads to a situation in which various concepts are being elaborated: so-called vicious circle, psychological effect of civil liability, or even the twilight of civil liability. Some authors argue that civil liability will be replaced with the mutual insurance liability of the insurer.

Keywords: civil liability, civil liability insurance, no-fault insurance, twilight of civil liability, psychological effect of civil liability insurances.

1. The origins of civil liability insurances

Civil liability insurances belong to the most dynamically developing insurances. However, their evolution has not yet been completed. On the contrary, civil liability insurances attract ever increasing interest of the professionals practising in the insurance industry, of the prospective insured parties as well as of the scholarship.

In the context of the origins of the civil liability insurances, one factor should be considered as being of major importance – the creation of civil liability arising from tort as an independent legal institution under private law. Neither civil liability nor its insurance played any significant role as long as criminal and civil effects of an event that caused damage had been identified and, above all, as long as only penal consequences of the perpetrator's actions, thus focusing on administering appropriate punishment, had been considered¹. Civil liability insurances could develop only when it was acknowledged that two factors were crucial for the injured party: not only the punishment of the perpetrator, but also the restoration of such situation in which the injured party was or could have been had it not been for the damage. Therefore, the first reason behind the creation of civil liability insurances was a change in the

¹ T. Dybowski, in: "System prawa cywilnego, T. III, część 1, Prawo zobowiązań – część ogólna", Ossolineum 1981, p. 168.

assessment of the civil liability itself². In order for the indicated phenomena to be noticed, not only a statement that civil liability insurance may play a compensatory or even preventive function, but also the creation of a clear need of protection against consequences of one's own carelessness proved to be necessary.

2. Objectivization of civil liability

The development of science in various areas of life has resulted in depriving human beings of a real possibility of a secure co-existence with its products or works such as vehicles or nuclear power. A wide use of natural forces by the humans became a primary source of new types of damage, so far unknown to the society, affecting mainly employees of companies that use such forces. This usually concerned injuries to an individual, the scope of which could not have been predicted in advance. In any case, an increase in accidents became directly proportional to the extensive use of new technologies and the distribution of devices driven by electricity as well as by nuclear power in the subsequent period.

On the other hand, no-fault damage or damage for which it was impossible to determine the perpetrator occurred increasingly more often. There were cases where an entrepreneur could not be put under an obligation to remedy damage which was caused at the time when he/she was residing outside of the country and was not aware that an accident took place. It was difficult to accept that the injured party who was unable to indicate a person responsible for damage had to bear its negative effects on his or her own. Development of technique and sciences (professionalisation of life)³ led to the objectivization of civil liability. This liability became liability for "damage", not liability for "being at fault"⁴.

The process of so-called objectivization of civil liability has not yet been completed⁵. Difficulties related to evidence have had considerable influence on its further development. Inability to prove the fault of an entity responsible for the damage, or lacking possibilities to establish a causal link between its action or failure to act and the damage leads to further cases of liability departing from fault. In the majority of factual cases, to submit a conclusive evidence, the

² E. Kowalewski, "Prawo ubezpieczeń gospodarczych", Bydgoszcz – Toruń 2002, p. 40 and following.; E. Kowalewski, "Ubezpieczenie odpowiedzialności cywilnej. Funkcje i przemiany", Toruń 1981. The development of insurances in Poland is also presented by S. Dmochowski, "Ubezpieczenia majątkowe i osobowe ludności", Warszawa 1975, p. 16 and following.

³ Such term is used by P. Groniecki, "Obiektywizacja odpowiedzialności deliktowej (uwagi systemowe na tle odpowiedzialności za szkody medyczne)", *Prawo i Medycyna* 2005, no. 1, p. 45.

⁴ Objectivization of civil liability is characteristic not only for relations between entities of civil law (consumers, and professionals), but also in relation to liability towards public authority (Article 417 and following of the Polish Civil Code).

⁵ See A. Śmieja, "O dopuszczalnych granicach umownej modyfikacji zasad przesłanek odpowiedzialności odszkodowawczej", in: "Czynić postęp w prawie. Księga jubileuszowa dedykowana prof. B. Lewaszewicz-Petrykowskiej", Łódź 2017, p. 383 and following.

injured party is not required to demonstrate a causal link between the perpetrator's action or failure to act and the damage incurred. A sufficient degree of probability is enough⁶.

3. Vicious circle effect

Undoubtedly, the process of objectivization was closely connected with civilisation progress. In order to prevent adverse effects of accidents and at the same time to avoid difficulties related to evidence, almost all European legislators started to introduce cases of liability based on the assessment of risk or on the principles of community life⁷. This tendency is expressed in strict liability of persons running an enterprise or an establishment powered by natural forces, or of owners of motor vehicles where the very fact of using dangerous devices or tools justifies no-fault liability⁸.

A broad definition of liability gave rise to compensation obligation in a number of situations which so far were not protected under civil law. However, as it soon turned out, entities responsible for their occurrence did not want to and could not bear financial consequences of damage caused to a third party. For some entities put under an obligation to remedy damage a necessity to pay compensation to an injured employee or a third party led to the bankruptcy of their enterprise. In order to avoid financial effects of liability for damage, prospective perpetrators of damage started to conclude adequate civil liability insurance agreements. Consequently, the process of passing new legislation which made provisions for objective liability resulted in the creation of new types of civil liability insurance covering that liability. This correlation facilitated the decision-making process on the part of specific legislators as to the justifiability of introducing further cases of no-fault liability⁹. Since the entity bearing the liability for damage caused "transferred" the obligation to remedy damage to an insurance enterprise, the existence of such strict liability no longer directly affected the parties which were most concerned albeit irrespective

⁶ This tendency is clearly visible in the case of so-called nosocomial infections and medical damage. They result from the fact that in case of damage caused in the course of medical treatment, biological processes are involved, which are hardly perceptible and not subject to external observation. Sometimes it is difficult to demonstrate whether specific damage was caused by malpractice on the part of a doctor or whether additional elements occurred, the influence of which on the occurrence or increase of the extent of damage cannot be precisely determined (for instance unhygienic lifestyle of a patient).

⁷ For evolution of civil liability in legal systems of some foreign countries see in J. Rajski "Rozprawy z prawa cywilnego, Księga pamiątkowa ku czci prof. W. Czachórskiego", Warszawa 1985, p. 217 i n.

⁸ Accidents involving motor vehicles and humans most often result in bodily injury or health impairment, the effects of which are felt throughout the entire life and frequently lead to permanent disability or even death. Using a motor vehicle always entails certain danger of causing such type of damage. Therefore, it is justified to introduce strict liability for a person who decides to use such mode of transport. For civil liability for road accidents see monograph by G. Bieńko with the same title, Warszawa 2006.

⁹ See comparative comment: A. Szpunar, "Wynagrodzenie szkody wynikłej wskutek wypadku komunikacyjnego", Warszawa 1976, p. 16 and following.

of their fault, i.e. the perpetrators of damage¹⁰. This correlation is called the vicious circle effect¹¹.

4. Dynamic development of civil liability insurances

Characteristic for civil liability insurances is that during the first period of their application negative effects of such insurance were primarily noted¹². Only practice proved that there were numerous advantages of having appropriate policy. In order to properly assess directions of development of the insurances in question, it is necessary, above all, to analyse opinions of scholarship, which fully reflect the changing tendencies.

Initially, it was argued that an entity possessing civil liability insurance ceases to be interested in his/her own affairs, becomes less careful and even does not feel obliged to remedy damage caused. This weakens the functions attributed to liability for damage and consequently decreases the importance of being at fault as the prerequisite for such liability. By paying a certain amount of premium, the insured person evades (or even “buys himself/herself up from”) liability for the damage caused¹³. In the initial period, probably due to aforementioned arguments, civil liability insurances were connected with personal accident insurances and pertained to civil liability for injuries to an individual caused by such random event. Providing coverage for property damage gave rise to the development of legislation and judicial decisions in the scope of civil liability¹⁴.

Legal literature concerning insurance also mentions a theory of “the twilight of civil liability”. Supporters of this concept have argued that civil liability will be soon replaced with an objective insurance, without providing reasons and circumstances of each specific event and primarily irrespective of the fault of the perpetrator of damage. To support this thesis, *no-fault* insurance guaranteeing the payment of compensation to all participants of an event was invoked, regardless of who is liable. Such types of obligation to pay claims regardless of the occurrence of civil liability for damage are stipulated in various legal systems. In Scandinavian legislations, injured persons are offered protection also in cases where the insured party does not have civil liability but “feels mo-

¹⁰ Opponents of strict liability based on risk argued that such type of cases are unfair from the point of view of the obliged entity which should bear liability only for the effects caused by them and not for their occurrence.

¹¹ Therefore, the existence of civil liability insurances leads to the introduction of new cases of no-fault civil liability, and the introduction of strict forms of liability for damage induce prospective perpetrators to conclude further civil liability insurance agreements. See A. Szpunar, “Czynny niedozwolone w kodeksie cywilnym”, *Studia Cywilistyczne* 1970, p. 36.

¹² Even though these insurances were “forced” by changes in compensation law and needs of practice, they were reluctantly accepted or even criticised by many authors. See E. Kowalewski, “Wpływ ubezpieczenia odpowiedzialności cywilnej na odpowiedzialność z tytułu czynów niedozwolonych”, *AUNC* 1988, *Prawo XXVI*, z. 181, p. 77.

¹³ According to Z. Szymański, there were even attempts to associate civil liability insurance with some immoral activity; Z. Szymański, “Ubezpieczenie od odpowiedzialności cywilnej”, *Warszawa* 1977, p. 27.

¹⁴ Z. Szymański, “Ubezpieczenie...”, p. 28.

rally responsible towards the injured party”¹⁵. In the United States and Canada, a special compensation payment system was created called “*no-fault insurance*.” It guarantees coverage for all participants of road accidents as well as remediation of personal injuries regardless of the fault level of the perpetrator and even regardless of the perpetrator’s civil liability¹⁶. Similarly, in the Scandinavian countries there is so-called “*first – party*” insurance – compulsory personal and property insurance concluded directly for the benefit of a prospective injured party¹⁷. Some representatives of insurance scholarship undertook various attempts of to justify the importance of civil liability insurances. Attention was drawn to “economic superiority of insurance compensation” consisting in “greater effectiveness of indemnity of the injured party” or “socialisation in the scope of damage compensation”.

Greater effectiveness of insurance indemnity was supposed to demonstrate itself – according to W. Warkalło – in the certainty of indemnity benefit, “the automation of indemnity process and minimalization of social cost of indemnity”¹⁸. Formally speaking, such liability burdens an insurance enterprise, but in fact it is distributed among policyholders, who pay premiums for a specific coverage. According to the aforementioned author, in civil liability insurances, we deal at the same time with one of the manifestations of so-called *channeling of liability*, which is defined as a localisation of payment obligations with the units which can more easily and with more certainty fulfil such obligations than a person directly assuming liability (so-called individual liability)¹⁹.

The aforementioned “socialisation” consists in the fact that the risk of causing damage does not result from an action by one individual but is rather a consequence of collective activity (e.g. anonymous damage)²⁰. Since society generates products that are dangerous for itself, it has to assume liability therefor and participate in the remediation of damage (in the form of a premium), although the direct perpetrator is a specific member of this society²¹. Similarly, the effects of occurrence of specific damage no longer refer only to the injured party, but also to the entire society as such. Loss of working capacity, necessity to bear costs of medical treatment or rehabilitation, and, in particular, of pro-

¹⁵ E. Kowalewski, “Ubezpieczenie ...”, p. 144.

¹⁶ E. Kowalewski, “Prawo...”, p. 227.

¹⁷ For civil liability for road accidents in various legal systems see K. Ludwichowska, “Odpowiedzialność cywilna i ubezpieczeniowa za wypadki samochodowe”, Toruń 2008, p. 17 i and following.

¹⁸ W. Warkalło, “Odpowiedzialność odszkodowawcza – funkcje, rodzaje, granice”, Warszawa 1972, p. 315.

¹⁹ W. Warkalło, “Ubezpieczenie a odpowiedzialność odszkodowawcza”, *Studia Cywilistyczne* 1970, p. 133 and following. Compare with the same author: “Klauzule wyłączające odpowiedzialność za szkodę a ubezpieczenie odpowiedzialności cywilnej”, *RPEiS* 1974, z. 3, p. 327.

²⁰ For this subject see E. Kowalewski, “Prawo ubezpieczeń gospodarczych, ewolucja i kierunki przemian”, Bydgoszcz 1992, p. 216.

²¹ B. Lewaszkiwicz-Petrykowska poses a question: who should presently bear liability: a specific perpetrator or the society? B. Lewaszkiwicz Petrykowska, “Czy reforma odpowiedzialności cywilnej jest potrzebna”, in: “Problemy odpowiedzialności cywilnej we Francji i w Polsce”, Z. Hajn (red.), Łódź 2016, p. 33 and following.

viding for the closest members of a family of such entity is no longer a private issue. Damage of such kind constitute a general loss, affecting society as a certain group and thereby is increasingly “taking on a social dimension”²².

The aforementioned attempts of justifying civil liability insurances were accepted very carefully. While insurance itself met with the reluctance of the majority of scholars, proposals of its justification referring to the theory of socialisation or channelling of responsibility intensified such unwillingness²³.

The approach of law and jurisprudence – with development of this institution – was subject to successive, yet substantial changes. Currently, positive aspects of civil liability insurance are being predominantly emphasised.

It remains undisputed that civil liability insurances eliminate adverse effects for the insured person connected with strict liability based on risk. Such insurances allow a person to perform an activity (practice a profession) without creating an additional burden of financial consequences of possible damage caused to third parties.

At the same time, civil liability insurances eliminate negative effects of human’s activity, the functioning of its inventions, of using hazardous products or of causing environmental pollution. They fill the gap which was inevitably created in the mechanism of liability for damage: they ensure compensation of damage created as a result of event or *vis maior*, damage caused by unknown perpetrator and by such persons against whom possible enforcement would be ineffective²⁴. Apart from that, it should be borne in mind that the occurrence of a particular accident may adversely affect not only the personal circumstances of the injured party or his or her family, who are frequently deprived of sufficient means of support, but also of an entity obliged to remedy damage towards third party and its family, who would have been otherwise burdened with an obligation to bear consequences of the damage caused for a couple or a dozen of years (payment of disability pension or other benefit). The existence of civil liability insurance ensures that the occurrence of an event resulting in damage will not undermine the financial standing of the insured perpetrator of damage, or that an enterprise will not have to pay any compensation using its own assets.

According to the latest scholarship concerning insurance, it is also emphasised that civil liability insurance plays a significant role from the injured party’s point of view²⁵. It provides such party with another debtor – apart from the insured perpetrator of the damage – whose solvency ratio is frequently

²² E. Kowalewski indicates direct and indirect methods of socialisation of liability. To the first group belong special funds created for compensation of damage, property and personal insurance, and to the second group belong civil liability insurance and separation of liability of legal entities. For this subject see: E. Kowalewski, “Prawo...”, p. 218.

²³ Even considering terminology as such. One can say that prospective supporters of civil insurance liability and undecided persons definitely stopped placing confidence in this type of insurance.

²⁴ T. Dybowski, in: “System...”, p. 170, draws attention to this mechanism.

²⁵ See M. Serwach, in: E. Kowalewski, D. Fuchs, M. Mogilski, M. Serwach, “Prawo ubezpieczeń gospodarczych”, Branta, Bydgoszcz 2006, pp. 381–382.

much better than that of the insured party. Therefore, civil liability insurances policy constitutes an additional guarantee of obtaining due compensation, and also significantly supplements the operation of the mechanism of liability for damage²⁶.

5. Functions of civil liability insurances

The presented evolution of the positions adopted by the scholarship pertains not only to the assessment of civil liability insurances, but also to the functions attributed to these insurances²⁷. Civil liability insurances supplement and reflect the principle according to which civil liability mainly performs a compensatory and not repressive function²⁸. They aim at remedying the damage caused to the injured party and restoring the condition as if the damage never happened. Additionally, civil liability insurances perform the aforementioned mutual function, transferring the burden of remedying damage from individual persons to a certain group of insured persons. Their preventive function allows to influence other entities, including the insured persons themselves, in order to prevent damage from being caused in the future²⁹. Repressive function exists in symbolic terms and is expressed in the act of putting the perpetrator of the damage under an inconvenient obligation to suffer negative effects of an accident despite the existence of civil liability insurance (so called specific recourse)³⁰.

6. The goals of civil liability insurances

While in the first period of applying civil liability insurances the emphasis was put on their usefulness from the policyholder's point of view, preventing his/her assets from being depleted, currently, the major emphasis is put on justified interest of the injured party. The idea of special protection of the injured party is manifested in a number of different areas, from granting such person a separate right to seek compensation directly from the insurer (so-called *actio directa*) to the advocated detachment of the injured party's own right from the policyholder's right with regard to the insurer. That idea is so strong that not

²⁶ W. Warkalło, "Zbieg uprawnień do świadczeń z ubezpieczenia i z tytułu odpowiedzialności za wyrządzenie szkody", RPEiS 1968, z. 3, p. 113 i n.; Por. A. Wąsiewicz, "Odpowiedzialność odszkodowawcza z tytułu obowiązkowego ubezpieczenia odpowiedzialności cywilnej i autocasco a ogólne zasady prawa odszkodowawczego", in: "Studia z prawa zobowiązań", Warszawa-Poznań 1979.

²⁷ For functions attributed to civil liability insurance see in more detail M. Serwach, in: "Prawo...", p. 382. From older literature see J. Szpunar, "Economic insurance", Poznań 1972, p. 60 and following.

²⁸ A compensative function of insurances is characterised by S. Dmochowski, "Odszkodowania i świadczenia z ubezpieczeń gospodarczych", Warszawa 1983, pp. 24–29.

²⁹ Preventive function against prospective perpetrators of damage consists in the fact that the insurer may raise recourse claims against these entities or even refuse to pay claims in a situation where the insured party has already satisfied claims of the injured party. Prevention plays a crucial role in relation to the insured party itself, whom an insurance enterprise is obliged to reimburse for reasonable costs suffered in order to prevent the increase in the extent of damage.

³⁰ T. Sangowski, "Regres ubezpieczeniowy", Poznań 1977.

only the interest of the policyholder in his/her capacity of the other party to the relationship arising from civil liability insurance, but also of the insurer as the entity granting insurance coverage are becoming of secondary importance³¹. This tendency is particularly visible in compulsory civil liability insurances, the number of which is increasingly growing.

A change in the functions performed by civil liability insurance refers also to the policyholder himself/herself (the insured person). Initially, it was recognized that the insurer was obliged to reimburse the compensation which the insured party had previously paid to the injured party. In that classical model – in English terminology called *indemnity contract* – an insurance institution exempted itself from the obligation by making the payment of a specific pecuniary amount corresponding to the amount of damage caused to the insured person. Presently, it is assumed that the goal of such insurance is not only to offer protection against debt, but also (and maybe above all) against any disputes with the injured party. An active position of the insurer in the course of determining the existence and scope of damage is crucial for the insured person, who, by paying a premium, wants to have a full coverage against claims of third parties guaranteed, with the protection being widely understood not only as a coverage against financial consequences of the damage caused, but also against action to claim compensation itself. It is indicated more and more frequently that the concept of insurance policy also covers the necessity to provide defence for business partners and to bear costs thereof³².

7. Civil liability insurances – perspectives of development

The evolution of civil liability insurances presented herein justifies a conclusion that civil liability insurance agreement will soon become the obligation relationship which is most frequently entered into with respect to insurance. The insurance in question is obviously independent, but it is increasingly more often a part of other insurance agreements. By charging additional premiums, a majority of insurance enterprises, offer a possibility of including civil liability insurances in a specific insurance of property (enterprise, flat) or insurance of a mixed nature connected for instance with staying abroad, travel, or with any other particular undertaking. Thus, their clients are granted comprehensive coverage. It is undisputed that civil liability insurances, by providing the policyholder with coverage against negative effects of the damage caused to third parties, provide him/her with a sense of security in private and professional life. Therefore, this type of insurance constitutes an obvious element of the tran-

³¹ For more on this subject see: M. Serwach, "Dług ubezpieczyciela a zakres *actio directa*", in: "Umowa ubezpieczenia – aktualne problemy prawne" edited by A. Kocha, Branta, Bydgoszcz 2005, p. 120 and following.

³² Article 15 of the Act on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau. Within the guaranteed sum of compulsory civil liability insurance, the insurer is obliged to reimburse the insured for attorney fees borne in criminal and civil proceedings where the insurance enterprise has requested or provided its consent that the insured be represented by an attorney.

sactions which are performed nowadays. More and more people opt for the protection against uncertain but probably large losses at the cost of having to make a certain and at the same time modest contribution in form of the insurance premium.

Additionally, civil liability insurances perform essential functions for the prospective injured party, who may, at its discretion, bring an action against the perpetrator of the damage, against the perpetrator's insurer or against both entities at the same time (liability *in solidum*). Nevertheless, mutual insurance has not replaced individual liability (as it was feared), but is supplementing it.

To sum up the evolution of civil liability insurances, new tendencies relating to the insurances in question have to be emphasised.

8. Psychological effect of civil liability insurances

The latest scholarship concerning insurance refers to so called psychological effect of civil liability insurances, which consists in the fact that the existence of a policy has a major impact on the number and amount of submitted claims for compensation. An injured party who is aware of the fact that the perpetrator has civil liability insurance far more often decides to seek the remedy of the damage suffered. Similarly, courts usually award higher compensation in cases where the defendant is liable *in solidum* with an insurance enterprise, and this happens regardless of the fact whether the insurance enterprise acts together with the insured perpetrator or on its own. Scholars who deal with these issues also mention that the courts are willing to award claims even where the prerequisites for establishing civil liability are not sufficient³³.

Therefore, in some legal systems, the insurers forbid their business partners (the policyholder, the insured party) to disclose their civil liability insurances policy until the claims of the injured party have been fully satisfied. Such practices are commonly allowed only in voluntary civil liability insurances and lead to a situation in which an insurance enterprise conducts compensation proceedings initiated by a third party against insured perpetrator of the damage somehow "behind the scenes". Relevant provisions, commonly called the clause of being in charge of the proceedings, enable the insurer to determine the line of defence of the insured party in a civil court action, without necessity of acting formally as a party or an auxiliary defendant in the case³⁴.

9. Development of compulsory civil liability insurances

The importance of the aforementioned insurances, which are indispensable for a majority of people running a business or practising a profession has been recognised by the legislator, who expanded the catalogue of compulsory

³³ E.. Kowalewski, "Ubezpieczenia...", p. 143; M. Orlicki, "Ubezpieczenia obowiązkowe", Warszawa 2011; T. Sangowski, "Roszczenie regresowe ubezpieczyciela w obowiązkowych ubezpieczeniach komunikacyjnych", A. Wąsiewicz (red.), Poznań 1979; J. Pokrzywniak, "Kilka uwag o regresie nietypowym w ubezpieczeniu OC posiadaczy pojazdów mechanicznych", in: "Aktualne problemy ubezpieczeń komunikacyjnych", A. Koch (red.), Warszawa 2008.

³⁴ So-called can be found in French and German law as well as in *common law* system.

civil liability insurances³⁵. The importance of some of them is determined by the fact that they have been regulated separately by virtue of a statute.

Civil liability insurances cover increasingly more areas of human's life: from activities in private life or economic and professional activity, to liability for animals, items and single events (for instance, for the organisation of a large-scale event). They become compulsory insurances if they pertain to such areas of life which carry a high risk of accident or in which the damage caused might have massive repercussions due to its size and extent³⁶. The number of civil liability insurance agreements tends to be on a constant increase and this type of insurance is treated in a special way by the legislator. This special approach is expressed mainly by making provisions for extended protection on the part of the parties concerned³⁷. Here, I am referring to the validation of an insurance agreement executed in contravention of law, the principle of continuity of insurance coverage despite failing to pay next instalment of premium, influence of a settlement reached directly between the insured person and the injured party on the existence of insurance coverage, or deadlines for final adjustment of claims and payment of compensation, as well as information obligations of the insurance enterprise connected therewith. Furthermore, please note the scope of the insurances in question. Not only damage resulting from tort, but also damage resulting from failure to meet an obligation or undue performance of an obligation are included in the insurance coverage. Similarly, the insurer is basically liable for damage caused by a wilful act and damages resulting from a gross negligence of the policyholder or persons for whom the policyholder is liable (Article 9 par. 2 of the Act on Compulsory Insurances)³⁸.

10. The idea of protection of the injured party

The idea of protection of the injured party as referred to in the above-mentioned deliberations is of the utmost importance for the contemporary civil liability insurances. The protection of interests of the injured party, i.e. of the third party being outside of a contractual relationship, was initiated by granting such person a direct claim against the insurer of the perpetrator of the damage, so-called *actio directa*. This solution meant that the injured party was able to

³⁵ Whether a given insurance is a compulsory insurance is established by the obligation to conclude an agreement which imposed by a statute or an international agreement. Article 4 point 4 of the Act of 22 May 2003 of the Act on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau (uniform text Journal of Laws of 2016, item 2060, with further amendments) contains a collective category of compulsory insurances. It is an open catalogue.

³⁶ W. Uruszczak, in: "Umowy w obrocie gospodarczym", C.H. Beck, Warszawa 2001, p. 1030.

³⁷ For reasons justifying the introduction of compulsory insurances and for functions of such insurances see M. Orlicki, "Ubezpieczenia...", p. 194 and following.; M. Orlicki, "Obowiązek ubezpieczenia. Rozważania na tle obowiązkowego ubezpieczenia OC posiadaczy pojazdów", in: "Aktualne problemy ubezpieczeń komunikacyjnych", red. A. Koch, Warszawa 2008.

³⁸ In accordance with the tendency prevailing in the majority of the EU Member States, it was also the intention of Polish legislator to cover, as fully as possible, the interdependent nature of the obligation of insurance enterprises through gradual elimination of reasons justifying the limitation or exclusion of its liability.

have the damage remedied by one of the two obligors (the perpetrator of the damage and its insurer). It took some time until *actio directa* procedure became established in the Polish legislation, having been initially accepted only for compulsory insurances and introduced much later for the voluntary civil liability insurance. Currently, direct claims may be raised not only against a specific insurer, but also against the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau, which supplements the system for comprehensive coverage of the injured party.

The principle of protection of a third party, to whom the insured person caused damage, has been recently significantly enhanced³⁹. In particular, the primacy of the interests of the injured party resulted in the introduction of an exception of the interdependence nature of *actio directa*. This entity obtains more rights against the insurer than the policyholder has in his/her capacity as the other party to the contractual relationship⁴⁰. Until recently, that trend was clearly visible only in compulsory insurances. As an example, one may refer to Article 43 of the Act on Compulsory Insurances, which provides for several situations in which the insurer is entitled to seek reimbursement of compensation paid to the injured party from the person driving a vehicle. A parallel solution is stipulated in Article 58 of the Act on Compulsory Insurances in relation to civil liability insurances of farmers. An insurance enterprise may not rely on the defense stipulated in the quoted provisions with regard to the injured party resorting to *actio directa*. Additionally, Article 822 § 5 of the Civil Code stipulates that the insurer has a limited possibility of raising, against the injured party, a defense of breach by the insured or the policyholder of obligations if the breach occurred after the event, even though the insurer may do so in relation to the policyholder who has raised a claim for the performance of civil liability insurance agreement⁴¹.

11. Conclusions

Civil liability insurances are bound to continue to develop together with the development of science, technique and new technologies. New areas which carry a risk of causing damage are emerging. Prospective perpetrators of damage will therefore be interested in concluding appropriate civil liability insurance agreements, and the growing demand in such agreements will contribute to the fact that the insurers will continue to expand the scope of the insurance offer. However, a question arises whether over time strict civil liability based on risk will develop or whether *no-fault insurances* will start to develop. Experience shows that not only civil liability is developing, but also injured

³⁹ M. Krajewski, "Ubezpieczenie odpowiedzialności cywilnej według kodeksu cywilnego", Warszawa 2011 and source literature referred therein.

⁴⁰ M. Serwach, "Dług ubezpieczyciela...", p. 120 i n.; A. Raczyński, "Sytuacja prawna poszkodowanego w ubezpieczeniu OC", Warszawa 2010.

⁴¹ M. Serwach, "Ubezpieczenia odpowiedzialności cywilnej w świetle proponowanych zmian przepisów kodeksu cywilnego o umowie ubezpieczenia", Prawo Asekuracyjne 2006, no. 2, p. 3 and following.

parties now have much greater awareness and the amounts of compensation claimed are on the increase. At the same time, further difficulties related to evidence emerge, which results in the creation of simplified damage compensation models in a number of legislations. Their goal is to provide the injured parties with as extensive coverage as possible.

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Ubezpieczenia odpowiedzialności cywilnej – ewolucja i kierunki przemian

Autorka przedstawia ewolucję odpowiedzialności cywilnej oraz powiązanych z nią ubezpieczeń odpowiedzialności cywilnej (OC). Dowodzi, że im szybciej rozwija się odpowiedzialność cywilna, tym dynamiczniej rozwijają się ubezpieczenia OC. Rosnące ryzyko powstania odpowiedzialności odszkodowawczej oznacza bowiem dla wielu sprawców trudności w udźwignięciu materialnego ciężaru jej naprawienia. Aby tego uniknąć, podmioty narażone na ryzyko jej powstania zawierają umowy ubezpieczenia OC, a ubezpieczyciele opracowują ogólne warunki kolejnych typów ubezpieczeń. Obecnie istnieje też zasadnicze pytanie, kto powinien ponieść ciężar szkody doznanej przez jednostkę: sam poszkodowany, sprawca szkody czy też społeczeństwo.

Z drugiej strony, rośnie świadomość poszkodowanych oraz wysokość zgłaszanych przez nich roszczeń odszkodowawczych. Wydłuża się jednak droga postępowania cywilnego, powstają kolejne trudności dowodowe. Wszystko to powoduje, że zgłaszane są różne koncepcje: tzw. błędnego koła, psychologicznego efektu OC czy też w końcu zmierzchu klasycznej odpowiedzialności cywilnej. Niektórzy autorzy dowodzą bowiem, że odpowiedzialność cywilna zostanie zastąpiona gwarancyjno-repartycyjną odpowiedzialnością ubezpieczyciela.

Słowa kluczowe: odpowiedzialność cywilna, ubezpieczenie OC, *no fault insurance*, zmierzchu klasycznej odpowiedzialności cywilnej, psychologiczny efekt ubezpieczeń OC.