

THE DISEASE CONCEALMENT AS A PREMISE OF REFUSING THE LIFE INSURANCE POLICY PAYMENT IN THE INTERWAR INSURANCE SYSTEM

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Abstract. In the difficult times of reconstruction of Polish statehood, having a life insurance policy that actually secured the existence of the family after the death of its breadwinner was a luxury that few citizens could afford. The burden of paying premiums was too heavy for the vast majority of society, hence the decision to take out the policy was sometimes made too late – at a time when the person concerned already knew about a deadly disease that was consuming his body. In order to obtain an insurance policy, he hid information about the disease, which in turn exposed the insurance companies to losses. They fought this practice by refusing payments to people who, by signing the contract, concealed information important from the insurer's point of view.

Keywords: insurance policy, insurance company, insurer

INTRODUCTION

The insurance market in interwar Poland was struggling with numerous problems that had a huge impact on the mutual relations between insurance companies and their clients. The intertwining of historical events has led to a significant part of society approaching the idea of securing all goods with distrust or even hostility, treating insurers as opponents whose outsmarting can be a reason for glory. This attitude had an impact on the behavior of policyholders to recover funds paid in the form of contributions.

In Poland, insurance did not have a long tradition. Contrary to the great trading powers such as England or the Netherlands, Poland did not participate in the colonial expansion, and international trade did not constitute a significant branch of the domestic economy.¹ Due to these circumstances, apart from a few exceptions before the fall of the First Republic, the custom of protecting themselves against the consequences of unfortunate and unexpected events among its citizens did not spread. On a larger scale, property insurance was first encouraged, and then forced during the partitions.

The first compulsion to insure property was introduced by the Prussian invader, who in 1803 ordered that municipal property be insured against fire, and a year later extended this obligation to rural buildings. The people living in the

¹ On the relationship of insurance with geographical discoveries and with the conquest and exploitation of new continents see Bednaruk 2018b, 19.

areas subject to compulsion treated the new burdens as another way of the hostile authorities to extract money from the pockets of the inhabitants of the Prussian partition. It took many years to convince her of the sensibility of the introduced solutions [Szczęśniak 2003, 75].

Compulsory insurance was adopted in a similar scope in the territory of the Duchy of Warsaw, and after its collapse in the Kingdom of Poland, while in the Austrian partition, despite attempts made, it was not possible to introduce it and the protection of goods remained a voluntary decision of citizens. At the end of the 19th century and in the first years of the 20th century, the insurance industry in Poland, taking advantage of the gained trust of customers, expanded its activities to an unprecedented size. Millions in profits attracted the biggest players in the insurance market from all over the world. The number of products offered was constantly growing, and the number of policies signed was multiplied with it [Biskupski 1925, 22].

The outbreak of World War I introduced some turmoil on the insurance market, but after temporary problems, the industry continued to develop. The catastrophe happened only after the end of hostilities. Virtually all establishments with foreign capital withdrew from the territory of the nascent Polish state the contributions of Polish citizens accumulated over the years, leaving them without the possibility of applying for compensation in a situation where events occurred that entitle them to claim the benefit specified in the contract. To this day, it is impossible to fully estimate the amounts lost as a result of unfair actions of insurers, but we are talking about gigantic amounts of contributions paid by successive generations of inhabitants of Polish lands [ibid., 22ff].² Many millions of Polish citizens have been injured.³

It is true that the Versailles treaty required the defeated states to settle the collected premiums and pay fair compensation to insurance company customers,⁴ but

² I. Biskupski lists that the Russians took away insurance funds worth 19 million 300 thousand. Rubles. See also: *Sprawozdanie rachunkowe Polskiej Dyrekcji Ubezpieczeń Wzajemnych za rok 1923-1924*, Warsaw 1925, p. 37, where the table shows that the Russians took away the amounts of almost 13.5 million accumulated as supplementary capital from the largest insurer. rubles in gold; *Zabezpieczenie mienia poddanych Państwa Polskiego w Rosji 01.03-14.11.1918*. *Zbiór dokumentów AAN. Zespół Gabinet Cywilny Rady Regencyjnej*, ref. 169, p. 7, where calculations of the sums exported to Russia from other financial institutions of the Kingdom of Poland amount to almost half a billion rubles. Only in the area of the former Congress Poland, German plants gathered reserves of 3 million from the contributions of the local population. 800 thousand brands, 300 thousand. crowns and 400 thousand rubles [Kozłowski 1922, 1ff].

³ *Korespondencja w sprawie zabezpieczenia mienia poddanych Państwa Polskiego w Rosji*. *AAN. Zespół Gabinet Cywilny Rady Regencyjnej*, ref. 169, p. 2ff; *Korespondencja Komisji Rejestracji Strat Wojennych z czerwca 1918 r. w sprawie zwrotu należnych Polsce sum*, ibid., ref. 171, p. 1ff; *Rewindykacja i reewakuacja z Rosji*, ibid., ref. 310, p. 1ff; *Korespondencja w sprawie rewindykacji zabytków polskich z Rosji*. *AAN. Zespół Delegacja Polska w Komisjach Mieszanych w Moskwie*, ref. 6, p. 1.

⁴ *Traktat pokoju między mocarstwami sprzymierzonymi i skojarzonymi i Niemcami, podpisany w Wersalu dnia 28 czerwca 1919 roku*, *Journal of Laws of 1920*, No. 35, item 200, Articles 77, 238–239.

both Germany and Austria dragged out the negotiations for several years. When finally the payment of insurance claims was made, they turned out to be so symbolic that a Polish citizen in return for long-term premiums received the equivalent of the weekly earnings of a worker in industry.⁵ Customers who had policies in Russian, American or Italian plants had to deal with slightly less problems, they also had to fight for a long time and the results achieved were far from satisfactory.

The indicated circumstances, combined with the generally difficult living conditions in interwar Poland, created a specific atmosphere of consent to dishonesty towards insurance companies. With the passage of time, the acceptance of such behavior grew, especially when it turned out that after the loss of the fight for the insurance market by Polish entities, foreign capital, dominating an increasing part of the industry, returns to the game. Often these were the same players who had used Polish clients once, but under a changed banner, and when it was impossible to infer honest intentions of foreign capital from the negotiations for the return of receivables, frustration in society grew to enormous size [Piątkiewicz 1928, 3ff; Gnatowski 1937, 32ff; Geppert 1979, 210ff].

1. UNFAIR CUSTOMER PRACTICES

The vast majority of life insurance policies in the analyzed period were bought by men who thus secured the existence of their family after their own death. Contracts with women were few and in the entire interwar period they constituted a small percentage of all documents of this type [Kozłowski 1927, 17; Michalak 1979, 188ff].⁶ According to some analysts at the time, the reluctance of women to insure against death was supposed to result from superstitions that were easier for the fair sex to succumb. Belaying was allegedly treated as provoking fate to the occurrence of a given event. Thus, life insurance could, according to the superstitious part of society, hasten the death of the policy holder [Kozłowski 1928, 38].

However, more importance should be attributed to the role of the man in the family of that period. The burden of earning money, and thus the financial security of the family, rested primarily on the male part of society. Thus, the death of a man drastically worsened the property status of his wife and children. Hence the need to secure the life of the sole breadwinner.

Life policies concluded after a medical examination were available on the market, treated as safer for the insurer, hence the conditions proposed in this type of contracts were more favorable for customers and without the obligation to test. In the latter case, as the more risky one, the proportions of the premiums paid to the sum insured were less favorable for the life policyholder [Idem 1926, 29ff].

⁵ For more detailed calculations see Bednaruk 2018a, 141ff.

⁶ See *Sprawozdanie Dyrekcji Krajowego Ubezpieczenia na Życie w Poznaniu z działalności za rok 1931*, Poznań 1931, p. 3ff.

Naturally, people who knew their poor health tried to avoid contact with a doctor at the insurer's services and sign a contract without having to be examined. The costs of such a policy, however, were high and in the long run difficult to bear for a less wealthy person, and as a consequence it could have turned out that in the event of a long-term illness, the company compensated itself with higher premiums for the amount of compensation due. Therefore, people who were not able to precisely determine the length of their further life often decided to join insurance with a compulsory medical examination, hoping that they would be able to slip through the insurer's security network.

Even if the doctor employed by the insurer diagnosed the disease, considering that the risk of death of the potential client is high, it did not mean that he would be left without the protection provided by the life policy. The insurance services market in our country was relatively large and the competition was fierce, so it was always possible to give up the services of one plant and try your luck in another. The insurance industry did not yet develop coherent rules for the exchange of information, hence the chance of concealing information about the disease and about applying for a policy in a competitive company was large.

2. DEFENSE OF INSURANCE COMPANIES AGAINST ATTEMPTS TO EXTORT UNDUE BENEFITS

In the analyzed period, the insurance industry no longer operated on the basis of assumptions and assumptions as to the possible occurrence of events provided for in the policy. Particularly in life insurance, intensive research was carried out on the statistical life expectancy broken down by sex, occupation, age and living conditions. Scientific research on the so-called The "law of mortality" began in the 17th century, but the development of detailed tables for the needs of the insurance market took place much later, and it was not until the end of the 19th century that the probability of human death in a specific age category was quite precisely calculated [Eichstaedt 1928, 5ff; Idem 1934, 10ff].

Apart from extraordinary situations such as war or epidemic, it was possible to calculate the amount of the premium in proportion to the sum insured in such a way as to ensure protection to the client and an appropriate profit for the insurer without greater risk. However, the condition of the correctness of the calculations was the appropriate base reflecting the state of health of the society, unadulterated by one or the other party to the contract.⁷ On the one hand, insurers would like to have young and healthy people among their clients, guaranteeing constant and long-term income from premiums, and on the other hand, life insurance policies were of interest to those who predicted that they would have little life left.

⁷ See *Tablice śmiertelności z liczbami komutacyjnymi obliczonymi przy stopie 4% i 4 1/2%*, "Rocznik Państwowego Urzędu Kontroli Ubezpieczeń za rok 1929", Warsaw 1930, p. 149ff, in which, on the basis of data from insurance companies from other countries, the statistics of mortality in particular years at the turn of the 19th and 20th centuries are shown.

The establishments defended themselves against such situations, employing the best doctors and forcing applicants to fill out more and more detailed questionnaires, in which they asked about their health status and previous illnesses. There were also demands to submit health declarations under the threat of losing the right to a benefit in the event of a lie being discovered. The questionnaires took into account the most common diseases that lead to a reduction in the statistical life expectancy of the client and asked directly whether the person applying for the policy was sick.

Interestingly, however, insurers with time less and less often resigned from signing the contract in the event of a lie being discovered by a potential client. They discovered that among the competition there will always be an entity ready to accept a rejected customer, provided that they agree to pay higher premiums. Not wanting to lose the expected profits, often, having knowledge of the disease, they agreed to issue the policy, collected premiums and only when attempting to exercise the rights under the contract refused to fulfill their part of the obligations, pointing out that the policy owner had deliberately and intentionally misled the insurer.⁸

There were many such cases of refusal to provide the benefit with reference to concealment of illness by the client in the analyzed period, but it can be assumed that only some of them saw the light of day. Investigators are mainly aware of those cases that ended up in court. However, there is a reasonable suspicion that what went to court is only the tip of the iceberg. It was not in the insurer's best interest that clients go to court with any such case. Indeed, a number of judgments rejecting undue claims could show the determination of the companies in the fight against fraud attempts, but too large a scale of the phenomenon could lead to deterring potential customers.

Therefore, the insurance market sought to maintain a reasonable balance between refusals to pay benefits in the most glaring cases, and consent to bend the rules in a situation where the company had already earned enough on a given client to turn a blind eye to some inaccuracies in his sickness card. Somewhere between these types of situations there was a whole bunch of unknown to us examples of secret agreements leading to partial satisfaction of claims in return for resignation from the court, concluded when both parties decided that there was room for reaching a compromise.

3. JURISPRUDENCE OF POLISH COURTS

In the first years of the existence of the independent Polish state, disputes between companies and their clients under insurance contracts were submitted to various courts, depending on the regulations inherited from the invaders in a gi-

⁸ See *Orzeczenie Sądu Najwyższego C.III. 81/33 w sprawie odstąpienia przez zakład ubezpieczeń od umowy ubezpieczenia na życie z powodu zatajenia choroby przez ubezpieczonego*, "Rocznik Państwowego Urzędu Kontroli Ubezpieczeń za rok 1935", Warsaw 1936, p. 186ff.

ven area. Only the Code of Civil Procedure adopted in 1930 introduced the exclusive jurisdiction of regional courts in disputes over payment of the sum insured to clients.⁹

The first decade of the interwar period was also characterized by great freedom in shaping the content of contracts between entities in the insurance industry and their clients. The lack of effective supervision over the insurance market in Poland resulted in an unequal position of the parties to this type of agreement, and as a consequence often detriment to the policy holder. The establishments, taking advantage of their advantage, included clauses in the content of the documents allowing for release from liability in a convenient situation.¹⁰

As long as this type of solution was not explicitly banned, the courts ruled against the policyholders. With time, however, an obligation was introduced to prepare a document called “General insurance conditions” in each society. They were subject to approval by the State Insurance Control Office and could not be arbitrarily changed by the insurer. The regulation of the President of the Republic of Poland on the control of insurance from 1928 clarified that they cannot be changed, especially to the detriment of the insured.¹¹

For some time, some plants tried to circumvent the applicable regulations by introducing annexes to contracts in the form of the so-called specific insurance conditions, contrary to the general conditions. However, the strong reaction of the supervisory authority combined with the jurisprudence of the competent courts prevented the use of prohibited clauses.¹²

The change consisted, *inter alia*, in the introduction of time limitations as regards the termination of the contract by the company in the event of receiving information about the misleading of the insurance company by the customer. The point was that the insurer could not freely use the benefits of the concluded contract as long as it was favorable to him. Collect a premium despite the knowledge that the other party was not honest in completing the documents, and withdraw from the contract at the time of the client’s death to free himself from obligations.

In line with the adopted jurisprudence, the company could withdraw from the contract if it was misled as to the health of its client, as long as the underlying disease directly contributed to death.¹³ An important objection that should be made

⁹ Article 13(2)(6) of the Code of Civil Procedure of November 29, 1930, Journal of Laws No. 83, item 651; see also *Orzeczenie Sądu Apelacyjnego we Lwowie I.C.Z. 155/34 w sprawie wyłącznej właściwości sądów okręgowych w sporach o zapłatę sumy ubezpieczenia*, “Rocznik Państwowego Urzędu Kontroli Ubezpieczeń za rok 1935”, Warsaw 1936, p. 190.

¹⁰ See *Okólnik PUKU nr 94 z dnia 21 lutego 1930 r. w sprawie interpretacji art. 33 ust. 2 rozporządzenia o kontroli ubezpieczeń*, “Rocznik Państwowego Urzędu Kontroli Ubezpieczeń za rok 1930”, Warsaw 1931, p. 200ff.

¹¹ Article 33(2) of the regulation of the President of the Republic of Poland of January 26, 1928 on insurance control, Journal of Laws No. 9, item 64.

¹² See *Okólnik PUKU nr 94; Okólnik PUKU nr 113 z dnia 23 lutego 1931 r. w sprawie ogólnych warunków ubezpieczenia*, “Rocznik Państwowego Urzędu Kontroli Ubezpieczeń za rok 1931”, Warsaw 1932, p. 184ff.

¹³ See *Orzeczenie Sądu Okręgowego we Lwowie* [no file ref. – W.B.] *w sprawie stwierdzenia, iż*

is the fact emphasized by the courts that the misrepresentation must have been conscious, because if the client declared that he was healthy, but he was not healthy, but was not aware of his illness, it was not possible to infer on this basis of the will to mislead the insurer and refuse to cover the policy.¹⁴ However, the time for withdrawing from the contract was limited to one year from the issuance of the policy and to one month from the moment the insurer became aware of the existence of the condition in the form of confusion.¹⁵

CONCLUSIONS

In the analyzed period, concealment of the illness by the client at the time of signing the contract with the insurance company remained one of the main reasons for refusing to pay compensation after the death of the insured person. The first years after Poland regained independence were characterized by considerable freedom of insurance companies in terms of shaping the content of contracts, which often resulted in abuse and harm to the families of customers who took out life insurance policies. It was only the change of regulations in conjunction with the active policy of the State Office for Insurance Control that forced a significant change in the approach to the rights of the insured.

udzielenie odpowiedzi niezgodnych z prawdą na pytania postawione przez lekarza, dotyczące istotnych okoliczności i jako takie zamieszczone we wniosku ubezpieczeniowym, powoduje utratę prawa do świadczenia, "Rocznik Państwowego Urzędu Kontroli Ubezpieczeń za rok 1930", Warsaw 1931, p. 236ff; Orzeczenie Sądu Okręgowego w Cieszynie III.12/31 w sprawie stwierdzenia, iż zatajenie przez ubezpieczającego przy zawieraniu ubezpieczenia na życie, że jest lub był chory na syfilis uprawnia zakład ubezpieczeń do odstąpienia od umowy ubezpieczenia, "Rocznik Państwowego Urzędu Kontroli Ubezpieczeń za rok 1932", Warsaw 1932, p. 191ff.

¹⁴ See *Orzeczenie Sądu Okręgowego we Lwowie II. Cg. 122/30.*

¹⁵ See *Orzeczenie Sądu Najwyższego C.III. 81/33 w sprawie stwierdzenia, iż odstąpienie przez zakład ubezpieczeń od umowy ubezpieczenia na życie z powodu zatajenia choroby przez ubezpieczonego dopuszczalne jest z zachowaniem umówionego terminu również po śmierci ubezpieczającego, "Rocznik Państwowego Urzędu Kontroli Ubezpieczeń za rok 1935", Warsaw 1936, p. 186ff; Orzeczenie Sądu Najwyższego C. I. 622/31 w sprawie stwierdzenia, iż zastrzeżone w polisie prawo zakładu zaczeplenia umowy ubezpieczenia w ciągu 1 roku od doręczenia polisy z powodu zapłacenia pierwszej składki w chwili, gdy ubezpieczony był już ciężko chory, może zakład skutecznie przez oświadczenie wobec przeciwnika, a nie koniecznie w drodze skargi powodowej, "Rocznik Państwowego Urzędu Kontroli Ubezpieczeń za rok 1933", Warsaw 1934, p. 175ff; Orzeczenie Sądu Najwyższego C. III. 358/32 w sprawie stwierdzenia, iż zakład ubezpieczeń nie może, odmawiając wypłaty odszkodowania z powodu podania we wniosku ubezpieczeniowym ważnej okoliczności niezgodnie z rzeczywistością, powoływać się na przepisy §§ 17, 18 i 21 ustawy z dnia 30. V. 1908 r. o umowie ubezpieczenia, o ile nie odstąpił od umowy w terminie miesięcznym, "Rocznik Państwowego Urzędu Kontroli Ubezpieczeń za rok 1934", vol. I, Warsaw 1935, p. 158ff; Orzeczenie Sądu Apelacyjnego w Krakowie C.A. II. 1065/36 w sprawie stwierdzenia, iż termin miesięczny w § 6 ustawy z dn. 23. XII. 1917 r. o kontrakcie ubezpieczenia biegnie dla zakładu ubezpieczenia nie od daty, w której zakład zebrał wszelkie dowody co do wadliwości zeznań, lecz od daty, w której zakład uzyskał takie dane, z których według wszelkiego prawdopodobieństwa mógł i powinien był wnosić o wadliwości zeznań, "Rocznik Państwowego Urzędu Kontroli Ubezpieczeń za rok 1937", Warsaw 1938, p. 188ff.*

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