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REVIEW OF THE BOOK

HANDBOOK ON INSURANCE LAW AND PRACTICE

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Authors of "Handbook on Insurance Law and Practice" specify that the book is intended for employees of insurance companies and insurance agencies and/or the individual agents, including the employees in the insurance industry other than the law school graduates. The Handbook is classified into six parts, divided into chapters and subdivided into sections and/or subsections.

Part I

The first part of the book is composed of two thematic units. The first unit includes the Introduction and the second comprises the Status Insurance Law. The Introduction comprises three chapters and the Statutory Insurance Law comprises nine chapters.

1.1. The beginning of the Introduction covers the discussion on the concept of insurance practice and insurance contract. It starts with an explanation of the insurance business. At the current level of development, the insurance activities are carried out by insurance companies based on the license issued by the competent state authority, in order to provide for the material protection of individuals and entities against the consequences of insured occurrences, following the principle of reciprocity and solidarity and applying the special legal rules and insurance techniques developed upon the statistics and mathematics. In practice, an interested party, an individual or entity, concludes an insurance contract with an insurance

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company in order to protect against a particular risk. A brief historical review includes the statement that the origins of the insurance industry date back to the 18th century. After the Second World War, insurance activity was regulated by a series of laws. During that time, it underwent several reforms, only to have the Insurance Law of 2014 (ZO) improve the legal rules on the establishment and supervision of insurance companies.

1.2. The sources of insurance law are presented in the Introduction. At the top of the ladder is the law. Among the sources of insurance law in the Republic of Serbia, the most significant laws are the Law on Insurance (ZO) and the Law on Contracts and Torts (ZOO). The next step below in the hierarchy of sources of insurance regulations is occupied by the by-laws, followed by general and special terms and conditions of insurance. Customs, i.e. customs in civil law and customs in trade (commercial) law, occupy yet the next step in the hierarchy of sources of insurance law. After the customs, the next step in the ladder of sources for insurance law belongs to the general rules of civil and commercial law and thereafter the general deeds and acts of business policy of insurance companies, judicial practice, and insurance jurisprudence.

1.3. Entities included in the insurance business are indicated in the third chapter of the Introduction. The concepts of insurer, policyholder and insured are specified. This Chapter details the conditions to be fulfilled by an individual insured, as a subject included in the insurance business.

1.4. A part of the book on Statutory Insurance Law is dedicated to the types of companies that effectively operate in our insurance industry, such as a joint-stock insurance company and the assets of the company, a mutual insurance company and a reinsurance company. Mediation jobs are explained. Legal and statutory agents, agency based on the decision of a state authority and agency based on the declaration of will of the represented person are shown separately from the jobs of insurance agency companies and individual entrepreneurs' agents and/or from the other insurance agents (banks, etc.). Moreover, legal issues related to authorizations for carrying out the insurance agency are discussed.

1.5. One modern institute of comparative and local insurance law – the insurance consumer protection – has been named. The authors started from the establishment of concept of insurance consumer and mandatory application of the law that regulated consumer protection. The standard entitlements of the Insured as a consumer are specified, as well as the acts of the Insurer and their relationship with the consumer. It has been discussed about the insurance contract. Finally, the regulations on the protection of the common interest of consumers as well as the procedure for the protection of the common interest are analysed.

1.6. Ethics in insurance business, as a current issue in insurance development activities, was also dealt with in the Status Law of Insurance. The authors explained

what constitutes the ethics in general and investigated the ethics of insurance business. Research on business ethics was conducted through instruments such as: (1) code of business ethics, (2) code of corporate governance, (3) code of conduct in mandatory insurance.

1.7. The most actual topic, not only for insurers but more widely, is the handling of individual confidential data. The Insurance Status Law faced the obligations of the insurer to keep confidential data of the insured and third-party beneficiaries. Such obligations were first specified in general terms and thereafter through legal sources, that is, through the specific protection of data on insured persons and third-party beneficiaries.

1.8. Within the framework of the thematic unit of the Insurance Status Law, the issues of termination of business of an insurance company, an insurance intermediary company, a reinsurance intermediary company and an insurance agency company, as well as an individual entrepreneur who performs insurance agency activities are dealt with.

1.9. The status changes of particular entities from the insurance industry are referred to in the final lines of the Insurance Status Law. The basics of supervision over the performance of insurance activities are presented. In short, the issue of auditing the financial statements of entities in the insurance industry, as well as the taxation of entities, is highlighted. The first part of the book is rounded off with these institutes.

Part II

The second part of the book, which contains two chapters, is titled Basic subjects of insurance and insurance classification.

2.1. The following are classified as insurance subjects: risk, premium and insured event. Risk is defined in the first chapter as a natural peril (storm, earthquake, flood) or as an event caused by human action or omission that may occur. Also, the risk implies an event that is not expected under regular circumstances. The premium is explained as a source of funds for the fulfilment of obligations under the insurance contract and for the funds needed to cover the business of an insurance company. Such a definition of the premium is completed by the following: in order for the calculation of the premium to be correct, its amount under a specific insurance contract should correspond to the estimated risk. Finally, it is underlined that the insured occurrence is an event that represents the realization of the risk covered by a specific insurance contract. It is emphasized that, before any risk occurrence, the obligation of the Insurer is a mere possibility that actualizes after the risk occurs. It is specified that a certain event represents an insured event if it has occurred during the insurance period as a consequence of the risk insured against.

2.2. An insurance classification list is presented, as well as the criteria for each class. The most important insurance classification is deemed to comprise the division into property and personal insurance lines. The criterion for such a division is the nature of the standard liability of the Insured under the insurance contract. More recent classification is the division into life and non-life insurance. Such division originates from the EU insurance law. In the Republic of Serbia, this division was introduced under the 2004 Insurance Law. It is underlined that this division has a technical and administrative significance, that is, it refers to obtaining a license for the performance of insurance activities and the supervision of such performance. The next insurance classification relies upon the difference between voluntary and mandatory insurance. According to the author, the division into voluntary and mandatory insurance is based on the requirements of special insurance regulation and study. Mandatory insurances are a legally regulated obligation and have an exceptional significance, not only in terms of the economy but also socially. The division into individual and group insurance is inspired by the insurance contract, which can be concluded either individually or collectively. An insurance contract, that is signed with the Insurer, can be concluded by an individual, a natural person, for his or her own benefit or for a benefit of a third party. A group insurance contract is concluded with the Insurer by one person for the benefit of a number of other persons, in the interest of all participants in the insurance business. The authors further commented that the group insurance is more favourable than individual insurance and presented the reasons for such an attitude. The division into the road and marine insurance is made considering the place or a possible risk occurrence. The final insurance classification is the division into direct insurance and reinsurance. The direct insurer has an immediate contractual relationship with the insured, who has no right to contact the reinsurer. The author emphasises that through the reinsurance, the vertical distribution of risks exceeding the insurer's retention is carried out. The reinsurance contract is concluded by the insurer, that is, the reinsured and the reinsurer and it specifies in greater detail how much of the risk is transferred to the reinsurer and what the obligations of the contracting parties are.

Part III

The third part, which contains six chapters, is titled General Subjects of Insurance and Insurance Classification.

3.1. The opening lines of this part of the book introduce the assumptions for the conclusion of an insurance contract. It is stated that the insurance contract presents an obligations contract to which general principles and rules of contract law apply as well as special rules contained in several laws. The chapter includes a detailed analysis of the contract, the subject and basis (cause) and explains the specifics of each of them.

3.2. The contract conclusion is observed from several angles. The concept of the contract proposal includes, in addition to the definition of proposal in general, a public proposal, a proposal to a person present and absent. The proposal acceptance describes, in addition to the general conceptual definition, the active and passive acceptance. The place and moment of concluding the contract, as well as the pre-contract, are studied. The conclusion of contracts pursuant to the general terms and conditions, as well as judicial control of general terms and conditions are analysed.

3.3. The form of the contract is investigated as a separate subject. It is established that the contract is formal if the contracting parties are obliged by law or by agreement to give a declaration of will in a certain form. The insurance policy has the form of a private document, which the insurer draws up, signs and delivers to the policyholder for signature. The rule according to which contracts are not subject to form is assessed as getting narrower, so that business contracts must be concluded in writing, in any case. At the end of the research on the form of contract, the authors presented the conclusion of the contract in electronic form and a form of public hearing.

3.4. Invalid contracts were separately considered. The attention is first placed on the null and void contracts and then on voidable contracts.

3.5. The topic of the third part of the book comprises the general effects of the contract and the contract termination, as thematic features. First of all, the effect of mutually binding contracts is discussed. The authors explicate the laity for material and legal deficiencies in fulfilment and unilateral termination of the contract due to non-fulfilment and, finally, present mutual termination of contract and complaint for non-fulfilment. Further on, it is discussed about the dilemma of whether to terminate or amend the contract due to changed circumstances. Moreover, the prerequisites for termination of the contract and the duty to notify, as well as the court's decision, are analysed. In addition to the fulfilment of the contract as a way of its termination, other ways of terminating the contract are highlighted in more than 20 pages of the book: (1) set-off (compensation); (2) debt relief; (3) novation (renewal); (4) union (confusion); (5) extorted debts.

3.6. The final chapter of the third part of the book is dedicated to the lien, that is, real means of securing and fulfilling a contract. On that occasion, mortgage, manual pledge and registered lien (mortgage on movable property) are interpreted.

Part IV

The fourth part of the book is entitled Special Rules on the Insurance Contract. That part of the book includes no division into chapters.

4.1. At the beginning of this part of the book, the concept of interest is discussed. The starting point in the presentation of the concept of interest consists

of defining the attitude of the Insured towards the preservation of the value that the subject insurance has for him. The subject-matter of insurance can be a particular property i.e., an asset or survival to particular years of life, i.e. the pure life of the Insured or the beneficiary under such coverage. If the Insured or the policyholder had no interest in the insured event not occurring, there would be a danger that the insurance could be used to achieve legally impermissible goals. The specificity of the insurance contract is pointed out here and the fact that legislator paid greater attention to such a contract than to other contracts, as was emphasized in the book. The interest was considered with regard to different types of insurance business.

4.2. The procedure for concluding the insurance contract is reviewed by the Institute. Each of the institutes in that procedure is presented as a single entity, and those entities are the proposal, insurance policy and the cover note. For the proposal, it was stated that it can be oral, and if it is not oral, in practice it comes down to a questionnaire drafted by the Insurer. Regarding the insurance policy, it is underlined that modern policy form is prescribed only in the mandatory MTPL insurance, while in all other insurance lines the policy form is not a priori regulated. Concluding that the policy is the most important document in the process of effecting an insurance contract, the types of policies used in practice are listed, and the essential elements that the policy should contain are also explained. As for the cover note, it was stressed as being issued when the Insurer is not capable of issuing a policy for the coverage required by the policyholder.

4.3. At the end of the fourth part of the book, the standard liabilities of the contracting parties are dealt with, all together. The Insurer's liabilities in the case of over insurance, underinsurance and double insurance are specially considered and the grounds for termination of the insurance contract are also dealt with.

Part V

The fifth, most extensive part of the book titled Civil Liability for Damage contains eight chapters, with numerous sections and subsections.

5.1. The fifth part of the book begins with a general presentation of civic liability. The author has posed the question what the general relationship between liability and legal liability was. Liability is defined as bearing negative consequences for a particular behaviour (doing or not doing) that violates a social norm. Legal liability is equal to civil liability, and it arose as a result of a violation of the civil law norm. This was the answer to the question posed. The following features of civil liability are pointed out: (1) civil liability arises from the illegal behaviour of an individual or an entity; (2) illegal behaviour has to lead to a consequential damage; (3) the damage has to be indemnified by the party causing the damage, but in certain legal situations also by a liable party that did not cause the damage (parents of minor

children, etc.); (4) the content of civil liability is compensation for damages that always affects the property of the person liable for the damage; (5) civil liability is, as a rule, transferable, so it also applies to universal legal successors, while the right to compensation for non-material damage is, as a rule, non-transferable.

5.2. Negotiation and pre-contractual liability are important institutes of law of contracts and torts and are considered in this book from the point of view of insurance. It is deemed that a person who takes out civil liability insurance is also covered against damages caused in connection with negotiations for the conclusion of a contract against torts if purely property damages are insured. In practice, large commercial companies in their activity conclude contracts of high value after long negotiations that incur significant costs. The pre-contractual liability insurance contract can exclude or limit coverage, the book highlights. The coverage is adapted to the needs of the Insured exposed to this liability risk by means of supplementary insurance terms and conditions.

5.3. The relationship between civil and criminal liability, i.e., the relationship between civil and criminal courts, is also dealt with, all from the aspect of insurance. The authors underlined that it was not uncommon in the practice of Insurers to conduct criminal proceedings against the Insured in respect of the event covered by the insurance. If, due to a traffic accident caused by the Insured, a criminal proceeding was initiated in which an acquittal was rendered and the injured party filed a claim for damages against the Insured and the Insurer, the civil court may determine that the liability of the Insured attached with regard to the inflicted damage, even though the criminal court rendered an acquittal.

5.4. The topic of limitation periods for claims when the damage was caused by a criminal act is treated in particular. With reference to the Law on Contracts and Torts, it is indicated that the obligation of the insured and his insurer towards the damaged party expires within three years from the date of gaining knowledge of the damage and who the perpetrator is and, in the case, where the damage was caused by a criminal act, the limitation period for claims can be significantly longer.

5.5. Tort liability has had a long history. Intent is the most serious form of guilt. It is stated that an insured event that was caused intentionally cannot be covered. When the Insured's act or omission is intentional, there is no uncertainty, which is the basic risk feature. As for gross negligence, the book emphasizes that the law did not stipulate that it could not be insured. In the case of property insurance, gross negligence is generally excluded, but can be negotiated separately. According to the provisions of the contract on insurance exclusions, gross negligence is indirectly excluded from insurance, if its coverage would affect the increase of negligence, which is socially unacceptable and morally reprehensible, the author noted. This would be the case in civil liability insurance, which generally does not exclude gross negligence, but limits coverage to socially acceptable cases, as specified in the book.

5.6. Discussed were special forms of negligence, including negligence of a good expert. Violation of the attention of a good expert result in liability for the damage caused. Regarding the carelessness of experts, it is pointed out that it is necessary to define the rules of professional activity (deontological rules). The rules of professional activity are the technical rules of the relevant activity according to which the activity should be performed, and customs include systematized and published trade customs. The rules are most often established by professional associations, chambers, societies (doctors, lawyers, architects, insurance brokers, engineers and other professions), whose members are obliged to comply with these rules. The rules are of particular significance for professional liability insurance, which is mandatory for a large number of professions, as was underlined in the book. Liability for damages due to professional malpractice cannot be properly determined without insight into the rules established at the level of professional associations. These rules are used in court proceedings for damages, and the experts chosen are renowned and prominent members of the Association.

5.7. The institute of inattention in supervision is also discussed. The starting point is that the person who is obliged to take care of particular categories of individuals is responsible for failing to exercise the necessary supervision over the actions of such individuals. The book gives the following example: if a child is injured at school or on an excursion, the school is responsible. That example is viewed from the point of view of insurance. The liability insurance concluded by the school covers damages suffered by students while they are under supervision in or outside the school (on an excursion, during participation in events, sports and other competitions, organized visits to the museum etc.). In the mentioned situations, it is specified in the book, those who are obliged to supervise the minors are liable to the injured party for the damage caused by the minors because it is considered that there was a lack of required supervision over them.

5.8. Within the framework of liability for damage, the liability for a dangerous thing or dangerous activity is also considered and , which is defined as objective responsibility for damage caused by things or activities from which the increased risk of damage to the environment originates, regardless of fault. Things that by their properties, position or use create an increased risk or danger of harm to human life or health, as well as activities that threaten the danger of harm that exceeds the usual limits, are dangerous things or dangerous activities. Liability for damage caused by someone else's property can be covered by liability insurance, either as a part of the standard coverage or a specially contracted one. Liability insurance against an activity as a source of peril covers the liability of the Insured in case a third party's property is in the Insured's possession in connection with the performance of the activity. Outside of performing the activity, this liability can be covered by liability insurance of a private person in the case of performing a non-business activity as a source of peril (cultural, sports, etc.).

5.9. Special attention is dedicated to liability for third parties and the role of insurance. Third party liability covers the cases for which the actual tortfeasor shall not be liable but another person who is in a legally relevant relationship with the tortfeasor. Liability for a third party, as stated in the book, is derived from the relationship that exists between the injured and liable person and is established in favor of the injured party. In relation to liability for a third party, the following is underlined: if the employer maintains liability insurance against an activity as a source of peril, the Insurer shall also compensate for the damage caused by the employee at work or in connection with work. If the employee caused the damage intentionally, the Insurer is entitled to a recourse. The employer is also liable for the damage sustained by the employee. As a rule, liability insurance covers liability for damages sustained by the employee and liability for damages sustained by third parties.

5.10. The liability for mentally ill and mentally retarded persons is also investigated, as well as the attitude towards insuring them. The author starts from the norm that a person who, due to mental illness or mental retardation or for some other reason, is not capable of reasoning, shall not be liable for the damage he has caused to a third party. The general civil liability insurance of institutions for accommodation, supervision and treatment of such individuals covers the damages caused by them.

5.11. If the damage is caused by a minor under the age of seven, the book specifies, his parents are liable for the damage regardless of his fault. For the damage caused by a minor child who has reached the age of seven but not the age of 14, his parents are liable according to the principle of fault, unless they prove that the damage occurred through no fault of theirs. The aspects of insurance are presented in such a way that the general civil liability insurance taken out by a parent to protect against these risks in everyday activities (source of peril and individual property) covers his liability for damages caused by a tortious incompetent child. In addition, the insurance of schools and other institutions entrusted with the care of children covers this liability.

5.12. Liability for damage caused by certain dangerous items, especially the liability of manufacturers of defective items, as well as aspects of its insurance, are further presented in the book. It is a basic precondition of this insurance that, due to a defect of the purchased item, the buyer or members of his household may sustain damage to their personal property (or bodily injury, death), or that such a damage may be caused to the buyer's other belongings, to the extent that exceeds the value of the item purchased. Liability insurance against damages caused by defective products is subject to the general civil liability insurance terms and conditions and special terms and conditions that adjust the scope of insurance coverage to these sources of peril. The rules on the liability of producers, importers and traders are important for the attachment of Insurer's obligation, which can be

determined if the risk that is the subject of the insurance is well known and in the interest of the Insured.

5.13. The book examines special cases of liability for damage, including the liability for the terrorist acts, public demonstrations and manifestations. It is underlined that liability insurance concluded by the government provides coverage for damages that individuals sustain as a result of public demonstrations and manifestations. The terms and conditions for general civil liability insurance do not contain a provision excluding this risk from insurance or a provision that stipulates that coverage must be contracted separately. The government has the right and obligation to demand compensation of the amount paid from the person who caused the damage, and in the event that it has liability insurance, the Insurer is also entitled to a recourse based on subrogation. Liability due to acts of violence or terror is excluded from the insurance.

5.14. Certain cases of liability for damage also refer to the liability of the event organizer. The author starts from the fact that the organizer of the event, which gathers a large number of people in a closed or open space, is responsible for the damage caused by death or bodily injury due to extraordinary circumstances that can arise on such occasions as crowd surges, general disorder, etc. The organizer of the event is exposed to the risk of liability for damage that may be sustained by a large number of people. Insurers take this fact into account and condition the coverage on special obligations of the policyholder, which aim to ensure that the event is held safely.

5.15. Special cases of liability for damage refer to the liability of the guardian, as well as the guardian's insurance. With the decision on placing the ward under guardianship, the guardianship authority also appoints a guardian who is obliged to take care of him conscientiously. The liability of the insured as a guardian may be covered by insurance related to the properties of the insured as a source of peril. An individual, a guardian who takes out liability insurance in the capacity of a private person includes his daily life activities, which are not performed for the purpose of earning money (household chores, taking care of family members, practicing recreational sports, etc.). Basic and special provisions of the terms and conditions for general civil liability insurance do not exclude the liability of the insured as a legal representative of minor children or a guardian. If a separate agreement is made, pure property damage is also covered.

Part VI

The sixth part of the book deals with Liability Insurance and comprises six sections.

6.1. In the first half of the sixth part of the book, general issues of liability insurance, general civil liability insurance and its specifics, direct action and damages excluded from general civil liability insurance are considered.

6.2. The second half of the sixth part of the book is devoted to motor liability, the international insurance card and the obligations of the guarantee fund to compensate the damages inflicted upon motor vehicles.

Appendices, Bibliography and Actual Register

7.1. After the six parts of the book, appendices are printed that make the book practical and useful. The appendices include: (1) proposal; (2) insurance policy; (3) cover note; (4) a copy of the European traffic accident report; (5) green card; (6) an example of the reduction of the sum insured in case of non-payment of the insurance premium in case of survival; (7) example of allocation of the insurer's liability in case of double insurance; (8) application of proportionality rules; (9) allowance (malus) and discount (bonus) in view of the technical result; (10) example of premium adjustment for the insurance period under one year; (11) example of the insured's share in the loss (deductible) of 10%; (12) calculation of average claim, average premium and average premium rate in non-life insurance.

7.2. At the end of the book, there is an extensive list of used domestic and comparative law literature and a highly reviewed real register comprising eight pages.

About the Authors

After the publication of the book, and before the publication of this report, one of the authors of the book, prof. dr. Jasna Pak, left us forever. Her journey in the insurance industry began with employment at a leading insurance company, where she mastered the art of insurance, and in the 80s of the XX century she sailed independently into the waters of the theory of insurance law. At that time, her superior at work at the leading insurer was none other than the first theoretician of civil liability insurance law in the Republic of Serbia, Dr Vojislav Sokal. In her professional and scientific works, she dealt with the typical topic of the time - civil liability insurance for nuclear energy risks. As a master of legal sciences, she published works in the journal *Osiguranje udruženog rada*, the then leading journal in the field of insurance in the Republic of Serbia. From the Insurance Institute, she moved to the Institute of Comparative Law in Belgrade, where she continued to study insurance. She spoke at consultations and other scientific and professional conferences at the topics referring to the insurance law. She edited *the Insurance Law Review* and published contributions and translations of articles from foreign insurance literature. She was a university employee, full professor, in which capacity she published a textbook on insurance law and, as the lead author, a textbook on the basics of insurance. She was a contributor to the *Insurance Trends* journal. This book on insurance law, the presentation of which is before the reader, is only a small part of the opus that

remained in Serbian insurance law as a legacy of prof. dr. Jasna Pak. In the production of this book, in the capacity of co-author, great contribution was made by prof. dr. Ilija Babić, who was a judge of the Supreme Court of the former Bosnia and Herzegovina and the Federal Court of the FRY, and today is a professor of Law on Contracts and Torts, a member of the Editorial Board for State Organization, Law and Political Science of the *Serbian Encyclopedia*, author of *the Lexicon of Law on Contracts and Torts* and a number of legal publications. This book is the result of a joint venture of the two leading legal writers, one on the subject of insurance law and the other on the subject of civil law and law of contracts and torts. Therefore, we highly recommend it to the reading public and the professional public in the field of insurance law.

*Translated by: **Bojana Papović***