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## **EXPERIENCE OF FOREIGN COUNTRIES REGARDING THE CIVIL LEGAL REGULATION OF COMPULSORY PROFESSIONAL LIABILITY INSURANCE**

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### **ABSTRACT**

The modern approach to determining liability assumes responsibility for damage caused by a specialist to any third party. Thus, the Law "On Protection of Consumer Rights" provides for the recognition of the right to claim compensation for the damage caused by each injured consumer, regardless of whether or not he has a contractual relationship with the manufacturer (executor, seller). Such a right shall be preserved during the specified period of service (validity period), if no such period is specified - within 10 years from the date of production of goods (acceptance of work, services). The contractor is not responsible for the defects in the work performed or the services provided, if he can prove that they were caused by the consumer's fault or force majeure.

### **KEYWORDS**

Insurance, professional liability insurance, contract, civil liability, foreign experience, insurance article.

### **INTRODUCTION**

It should be noted that for a long time in European practice, liability arose only for damage to persons who had a contractual relationship with the specialist. The 1951 case *Candler v. Crane Christmas & Co.* is a case in point. The plaintiff buys the company based on financial documents prepared by accountants. The documents turn out to be wrong and the claimant suffers. His suit against the accountants was dismissed

on the ground that the accountants were employed by the company and owed no duty to the plaintiff.

In Great Britain, the "Hadley Birney principle" was introduced into case law in 1963, and this principle extended professional liability to third parties. Consequently, if the proceedings had taken place after 1963 rather than in 1951, the accountants would have been held liable. Such an expanded definition of

responsibility has found its place in modern world practice.

### THE MAIN RESULTS AND FINDINGS

Depending on the type of professional activity, health, material (property) or financial damage may be caused. Doctors, truck drivers, pharmacists and other similar professions can harm the health of customers. The possibility of material damage exists as a result of the activities of architects, builders, engineers, constructors, designers. Financial damage is typical of the work of auditors, bankers, brokers, appraisers, etc.

The UK's insurance business has been concentrated in London for many years as a global financial centre. London's largest international insurance market serves the cash flows of a number of countries and companies. The reputation of the London international insurance market is based on the significant human potential of insurance market specialists, the highly developed infrastructure of the market, as well as the presence of Lloyd's Insurance Corporation, which is widely known outside Great Britain. All major insurance companies in the world have offices or branches in London. Central offices of all major international insurance and reinsurance brokers are also concentrated here. The oldest (founded in 1760) and the most influential classification societies - the Lloyd's Register of Shipping. A number of international insurance organizations have their headquarters in London, as well as the activities of some structures of the national insurance market (London Institute of Insurers, Chartered Insurers Institute, etc.).

In the UK, insurance companies are not allowed to carry on any other type of business other than insurance.

The insurance contract provides for the coverage of work performed within the country. When conducting business abroad, the policyholder must additionally inform the insurer to extend the insurance coverage. Until recently, insurers did not limit the amount of compensation for employer's liability insurance operations. Without considering a single catastrophic loss, many insurance companies began to introduce limits of liability. Currently, they are £10-25 million per insured event, including legal costs. One of the reasons for such changes was the disaster on the Piper Alpha offshore platform, where 165 of the 226 workers died as a result of the explosion. Employees working for different employers were exposed to the same accident risk, that is, there was an accumulation of risk. The total amount of paid claims reached 2 billion dollars.

Casualty or Liability Insurance according to international classification is a special type of insurance, which includes:

- public liability (Public Liability);
- product liability (Product Liability);
- employer's liability (Employer's Liability);
- Environmental Impairment Liability;
- Motor Third Party Liability.

In addition, according to the international classification, Carrier's Liability is a marine type of insurance, Professional Indemnity, Directors & Officers Liability are a financial type of insurance.

The following types of liability insurance have developed in foreign countries: "insurance until the presentation of the key"; civil liability insurance of car owners under the "green card" system; insurance for garage owners; intellectual property insurance; insurance in case of breach of trust; unemployment

insurance; insurance in case of receipt of counterfeit products; insurance in case of damage to business reputation, etc. In this case, turnkey insurance provides professional liability coverage for general contractors, architects or engineers who perform their activities in connection with the implementation of a particular project, for example, the professional liability insurance is valid for the contract of construction of the object "until the presentation of the key", according to the contracts for the design (design) or construction works, as well as for the construction works carried out under the leadership of the construction contract team. "Turn-key" insurance protection combines the types of insurance protection against errors and defects in the production of project works and insurance protection after the completion of the work. If the contractor becomes insolvent and cannot complete the work under the contract, the insurer will make a payment equal to the contracted amount. This, in turn, allows you to pay for the services of another contractor and complete the work.

Liability insurance abroad provides coverage for all possible cases. Thus, for example, the insurance of the ground support service of satellites and spaceships (ground support insurance) is provided. In aviation insurance, this is a form of liability insurance related to the use of space technology. Provides insurance protection in case of claims for damages to the life, health or property of third parties as a result of a certain event during the launch of a satellite or spacecraft. However, most liability insurance contracts deal with professional liability insurance. This type of liability insurance protects certain professionals (notaries, doctors, architects, pharmacists, lawyers, etc.) from legal claims arising from the current legislation or from claims against them to clients (patients) provides compensation for material damage caused by negligence committed by these persons in

the course of performing their duties. Insurance coverage, as in our country, only applies to legal liability and not to moral liability. The basis for the emergence of legal responsibility is the violation of contractual obligations by the professional person himself and by persons acting on his behalf. It is a condition of the contract that the professional is obliged to exercise due care and professional skill. In many countries, professional indemnity insurance is required by law. Having an insurance policy is one of the necessary parts of obtaining a license for private practice. This type of insurance does not apply to any specific situation, but is valid for the period specified in the insurance contract, also occurred during the term of the policy, however, it applies to cases identified after a certain period, i.e. after the expiry of the insurance policy.

Physician Professional Liability Insurance is a type of professional liability insurance that was formed in developed countries in the 1960s and 1970s as a form of medical malpractice insurance. Of course, this does not refer to criminal errors, but to errors made by doctors when they demonstrate the highest integrity and use the maximum knowledge and experience. An important impetus for the development of this type of insurance is the precedents set by the courts, which have decided a million or more dollars in favor of the plaintiffs. Anesthesiology and surgeons are often sued. The number of lawsuits against psychiatrists is increasing, especially in situations involving suicide. If earlier it was considered impossible to foresee the suicide of a nervous patient, now, as a rule, this is not the case, and the relatives of the person who committed suicide have filed lawsuits against psychiatrists, accusing them of not foreseeing a preventable misfortune. Due to the large number of insured events, premium rates for professional indemnity insurance for physicians tend to increase.

For example, it is enough to say that some doctors in the USA pay insurance premiums up to 15-20 thousand dollars a year.

Broadcasters' liability insurance is also provided in foreign countries. This insurance is carried out in order to protect the interests of radio and television stations from damages caused by errors and omissions made in the production activities, use and distribution of programs or advertising materials. Insurance coverage is usually provided on a "claims" basis.

Professional liability insurance also includes professional-indemnity insurance. It is a type of liability insurance used by certain professionals (doctors, lawyers, accountants, businessmen, etc.) that deals with the risk of compensation for professional negligence claims. For example, if an entrepreneur shows in his advertisement that he is an expert in this field, we may be talking about wrong advice; or about a doctor who performed a cursory examination that led to an incorrect diagnosis; or about a lawyer who, without understanding the nature of the case, gives wrong advice to his client, as a result of which he worsens the situation of the latter.

Professional liability insurance also includes errors and omissions insurance (E&O). This is insurance that provides compensation for damages caused by negligence, mistakes in behavior made by the insured or failure to perform actions in the performance of his service or professional duties. Insurance is often carried out by the insured's personal provision (in the amount of more than 1 thousand dollars) and, as a rule, unlike professional liability insurance, consent of the insured is not required to settle claims.

Lawyers' professional liability insurance is known worldwide as Errors and Omissions (E&O) insurance. It

is an important mechanism to protect the interests of clients from the risk of lawyer's mistakes made due to failure or improper performance of professional duties by the lawyer, disclosure of information constituting attorney-client privilege by a lawyer, loss of documents related to professional activity by a lawyer, manifested in destruction or damage, etc., and for lawyers-if they commit such professional errors, is considered a way to get rid of excess costs.

Compulsory professional indemnity insurance of lawyers applies in many European countries. At the same time, the legislation of different countries differs significantly in the concept of supervision over lawyers, including the issues of compensation for damages caused by receiving unqualified legal aid. The US has a voluntary system of professional indemnity insurance for lawyers. At the same time, it is important to note that there are a large number of lawyers and law firms that have insured their property interests in connection with their professional liability to clients.

Professional liability insurance of a lawyer is one of the international legal standards published in the Code of General Rules for Lawyers of the European Community dated 01.10.1988. In accordance with clause 3.9.1 of this Code, lawyers must always be insured against claims related to lack of professional qualifications. The amount of the insurance sum is determined within reasonable limits according to the risk of errors that may be committed by lawyers in the course of their professional activities.

In European countries (Germany, Austria, Liechtenstein, France, Italy, Portugal, Netherlands, Luxembourg, Belgium, Great Britain, Iceland, Ireland, Sweden, Denmark, Norway, Finland, Lithuania, Estonia, Hungary, Slovakia, Slovenia, Croatia,



Romania and Cyprus) professional indemnity insurance is mandatory for lawyers.

In Germany, the lawyer's professional liability insurance is part of a well-established mechanism for sharing the risks of the lawyer's professional mistakes between the lawyer, the insurance company and the client. All lawyers must carry professional indemnity insurance. Lawyers are professionally liable for damages caused by negligence to their principals and other persons in the course of their professional duties. It is not possible to obtain a lawyer's license in Germany without an insurance contract with a specific lawyer and not with the law firm where the person may work.

A lawyer assumes unlimited liability, including liability with his personal property. It is allowed to limit the scope of this liability in agreement with the customer, but in this case the scope of liability remains high. Limitation of liability is desirable because full compensation for damages, especially when the matter concerns commercial legal relations, may completely deprive the lawyer of further opportunities for practice.

The minimum amount of compensation for possible damage is 250,000 euros per insured event. Payments of the insurer in all cases of damage caused within one year may be limited to four times the minimum sum insured. Given the high formality of the German court system, even a minor professional error by a lawyer can result in the recovery of large sums of money from the lawyer. According to statistics from German insurers, about 20% of clients' mistakes do not forgive lawyers and turn to insurance companies for compensation.

Professional indemnity insurance is also mandatory for lawyers in France. However, the mechanism of

operation of such insurance is slightly different from that of Germany. A warrant of attorneys enters into a general insurance contract with a commercial insurance company on behalf of and for the benefit of the entire legal community entered into the register.

French law provides for a minimum insurance amount of 1.5 million euros per year, which is an average annual insurance premium of 1,000 euros per lawyer. Meanwhile, unlike in Canada, where the amount of insurance premium increases as the lawyer's professionalism and experience increases, in France, the insurance premium is the same for all lawyers, regardless of experience. This is because a novice lawyer does not have practical skills and often makes mistakes, but every mistake of an experienced lawyer can be "worth its weight in gold".

In France, the regulation of the lawyer's liability insurance is distinguished by the fact that the insurance payment to the injured client is paid only by a court decision, that is, every insurance event related to the lawyer's professional liability is the subject of a trial in a specialized chamber of the Court of Appeal. During the trial, the court determines whether the lawyer really made a professional mistake, how the lawyer caused damage to the client, establishes a causal relationship between the mistake and the damage and the amount of insurance compensation.

However, French law has an exception to the general rule of compulsory insurance for lawyers: instead of an insurance contract, a lawyer may have financial guarantees, lawyers are also entitled to use lawyers employed by unions, agencies, employers or civil law contracts.

Professional liability insurance for Italian lawyers and law firms has become mandatory since 2017. The

minimum amount of insurance for professional liability insurance of a lawyer is 350,000 euros per year. The insurance policy must be renewed annually by paying the current rate. Lawyers are obliged to send a copy of the insurance contract to the Chambers of Advocates (lawyers' orders), as well as to provide the insurance policy at the request of clients when contacting lawyers. The terms and amount of compulsory insurance coverage are determined every 5 years.

Professional liability insurance for lawyers in Lithuania is set at 30,000 euros. If the client is dissatisfied with the lawyer's work and goes to court, this fee must be reimbursed. In such cases, the insurance company that defends the rights of the lawyer as a third party before the client is the defendant.

Professional indemnity insurance is also mandatory for lawyers in Romania. A lawyer must insure the risk of professional mistakes in the amount of 6,000 euros per year, for a trainee lawyer this amount is 3,000 euros per year. Each attorney must submit a copy of their professional indemnity insurance policy for the following year to their respective regional bar association each year by the end of the calendar year.

Romanian law allows legal entities to conclude a single general professional liability insurance contract, whereby all lawyers, also all technical and administrative staff are insured. The absence of a professional liability insurance policy is the basis for removing a lawyer from the register of lawyers who have the right to practice.

In Canada, as in many European countries, there is mandatory professional liability insurance for lawyers. In Canada, the minimum coverage is \$1 million, with rates starting at \$1,000 per year.

The law requires all members of the bar association (not just those in private practice) to certify their status and pay insurance premiums every year. In each province and territory, the competent authority administers the liability insurance program. All mandatory attorney liability insurance programs provide coverage of at least \$1 million per client claim. Attorneys and law firms are often interested in increasing their insurance coverage for additional protection.

Professional indemnity insurance is not mandatory for attorneys in most states. However, at least 26 state laws require uninsured lawyers to notify their clients that their practice is uninsured. In some states (such as South Dakota and Alaska), lawyers are required to sign a written consent form to inform their clients of the lawyer's insurance status (disclosure rule). Providing false information to a client about his or her insurance status can result in a lawyer losing his or her law license.

According to statistics, every fifth lawyer in the United States is sued for malpractice during the year, prompting lawyers to voluntarily enter into contracts with insurance companies. That is, when choosing a lawyer in the United States, it is free to choose a professional liability insurance that ensures his credibility in front of clients, or save money and thereby increase the risk of losing clients.

Thus, although there is a voluntary liability insurance system for lawyers in the US, but because there are many lawsuits from clients complaining about the actions of lawyers, this encourages law firms and attorneys to insure their work. Lawyer's professional indemnity insurance costs excluding rent, exceeds all his other running costs. For bar associations, this cost item is the third largest after staff salary costs.

The prices of this type of insurance are somewhat paradoxical. Insurance premiums are lowest for entry-level attorneys, but then increase significantly over 5-10 years, leveling off with prices for experienced attorneys. This is because lawyers do not practice long enough to develop a certain image.

According to the American Bar Association, attorneys who have been in private practice for less than 5 years account for only 3.5% of personal injury claims. 37% for lawyers working for 11-20 years. In addition, it should be remembered that experienced lawyers deal with more complex cases, and also observe the work of other lawyers.

Insurance fees start at \$500 per year for entry-level attorneys and can go up to \$1,500-\$3,000 for experienced attorneys. In addition, the cost of insurance depends on the area of law that the lawyer deals with.

In world practice, there are various systems of professional liability insurance, which can be reduced to four main types:

- 1) individual insurance of a certain lawyer in a private insurance company (Germany, Finland, Netherlands, Japan, Brazil);
- 2) self-insurance, that is, insurance through a bar association in mutual insurance societies (Canada, Great Britain, South Africa, Australia);
- 3) collective insurance, a lawyer's association with an insurance company represents the interests of all its members when concluding an insurance contract (Denmark, Belgium, Sweden, Israel);
- 4) a mixed system that includes elements of several of the listed types, for example, while participating in a

mutual insurance company, a lawyer can additionally insure his risk in a private insurance company.

The legal systems of different countries have different procedures for confirming an insurance event and receiving an insurance payment. It seems that in our country, a dispute between a person who has entrusted his defense to a lawyer and a lawyer arises when the lawyer does not fulfill his duties honestly, and if the lawyer does not admit this mistake, the dispute must be resolved in court. In the event of a dispute being resolved in the Bar Association, members of the Bar Association are obliged to analyze the activities of their colleagues for "mistakes". This undoubtedly affects the moral and spiritual climate in the legal community. Lawyers risk being caught between client and corporate interests, and themselves in a similar situation. A court decision, for example, on recognition of the right of a client to compensation for damages caused to a lawyer due to the poor quality of his services, will also be binding for insurers. Such a mechanism works in many countries (for example, France, USA).

## **CONCLUSION**

In our opinion, it is necessary to create an institute of professional responsibility of lawyers in our country. The right to choose lawyers, as well as the obligation to inform the client about the availability of insurance, which is accepted in almost all states of the United States, is finally democratic. However, the current European version requires lawyers everywhere to carry professional indemnity insurance, it is a difficult tool in protecting the property interests of both consumers of lawyers' services and lawyers. In our opinion, in the conditions of modern economic development of Uzbekistan, this way will be the most acceptable and reasonable.

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