

Iwona Gredka

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Iwona Gredka¹

INSURANCE PROTECTION OF MUSEUM COLLECTIONS HIRED FOR TEMPORARY EXHIBITIONS

INTRODUCTION

The mobility of museum collections is inevitably connected with higher risk to their damage or even loss. Full protection of museum collections hired for temporary exhibitions requires exhibits proper protection from the very moment of taking them from the permanent display place or a storehouse and then during the process of the packaging, transport, storage, installation and display at a temporary exhibition, until the moment when they return to the base museum. One of the elements of the protection is also the museum loaned collections insurance.

The alternative for commercial insurances might be State Treasury sureties. The rigorous criteria for sureties obtaining – and here mainly the requirement of the exhibits overall worth to be more than 500,000 euros – result in it being rarely used. Therefore we

¹ dr; adiunkt w Instytucie Administracji i Prawa Wyższej Szkoły Humanitas w Sosnowcu.

should remember that the State Treasury sureties according to the act dated 08.05.1997 about sureties and guarantees provided by State Treasury and some legal persons², concern only international loaning, in which the exhibition organizer e.g. a Polish museum, receives museum collections from abroad for the exhibition organized on the Republic of Poland territory. According to art. 23 act 1 STSGu, the compensation payment surety for the destruction, damages and theft of the uninsured exhibits which are part of the artistic exhibition organized on the territory of Poland is provided only to non-residents³. The surety is provided by the Council of Ministers in the name of the State Treasury, upon the motion of the Minister of Culture and National Heritage (art.23 act 1 STSGu).

The insurance of the hired museum collections is usually the only possible form of legal protection against the random incident resulting in the historic object damage, destruction or loss. Taking into consideration high cost of commercial insurance, we should therefore notice that insuring museum collections is justified only when the insurance protection is effective.

The optimal and effective insurance protection of hired collections may take place when the insurance conditions fit the insurance object specificity. Meanwhile, the national insurers perceive movable cultural goods in fact as things not significantly different from everyday items. The result is the lack of the permanent specialist insurance offer concerning only movable, cultural goods. The insurances of museum collections hired for temporary exhibitions have one more specific feature, they are a compilation of transport and display exhibits insurance. It should be emphasized that in contrast to other kinds of insurance, the movable cultural goods insurance is not common.

PROCEDURE FOR CONCLUDING INSURANCE AGREEMENT

The analysis of the concluded insurance contracts for collections hired for temporary, foreign and domestic exhibitions and also insurance contracts for collections from abroad for temporary exhibitions organized in Poland, shows that as for legal transactions there are adhesion contracts as well as contracts concluded through parties negotiation. Meanwhile the procedure applied for insurance contract is not indifferent to its contents. The procedure which is recommended is a contract based on parties negotiation, regardless of whether the insurers have general terms and conditions of insurance for collections hired for temporary exhibitions or they do not have a model contract. Negotiating the contract content is necessary as we take into consideration collections proper insurance protection, that is because

² "Journal of Laws" 1997, No 79, item 484 with further changes, The act referred further as: STSGu (PGuSP).

³ Non-residents as described in art. 2 par. 1 clause 2) in act dated 27.07.2002, Foreign Exchange Law ("Journal of Laws" 2002, No 141, item 1178), to which refers art. 2 par. 1 clause 6) STSGu, are:

^{a)} natural persons with residence places abroad and legal persons of premises abroad and also other entities of premises abroad, with the ability of incurring liabilities and acquiring rights on their own behalf; non-residents are also based abroad branches, agencies and corporations set up by residents,

^{b)} foreign diplomatic representations, consular offices and other foreign representations and special missions and international organizations, enjoying immunities and diplomatic or consular privileges.

a typical, adhesion insurance contract includes disadvantageous contractual clauses, such as e.g. a recovered possessions clause⁴. In case of the adhesion contract, the insurant has no influence on the contract content⁵, and the contractual provisions prepared by the insurer do not guarantee the effective protection of insured museum collections.

Thus we may conclude, that the optimal insurance protection of the hired collections may only be guaranteed by the insurance contract with provisions arranged individually.

INSURANCE CONTRACT CONCLUDED ON SOMEBODY`S BEHALF

Insurance contract for museum collections hired for temporary exhibitions has specific elements that make it different from not only movable things insurance contracts concluded within the property insurance but also those concerning cultural goods insurance, insurance contracts for movable historic objects displayed in permanent expositions and the insurance contracts for works of art and historic objects in private collections. In fact, insurance contracts for collections hired for temporary exhibitions are contracts on another party behalf. The parties of the contract are: the insurer and the insurant/insuring who always is the museum borrowing historic objects. Moreover in the contract there is also mentioned the insured, that means the museum lending historic objects. The insured though is not the party of the insurance contract and definitely is a different subject than the insurant.

It`s important to remember that we have two kinds of insurance on another party behalf, that is, a direct insurance on somebody`s behalf and an indirect insurance on somebody`s behalf. In case of the direct insurance, the insured is entitled to the insurance liability. However, in case of the indirect insurance on another party behalf, the insurant is entitled to the insurance liability⁶. The hired collections insurance belongs to a category of the direct insurance on another party behalf.

In case of the insurance contract concluded on somebody`s behalf, what we actually use and are obliged to according to article 808 § 2 act dated 23.04.1964, Civil Code⁷, is the rule of paying the insurance fee/premium by the museum borrowing the historic objects, that means the insurant. The exception from the rule of covering insurance cost by the borrowing museum, are loans occurring between museums on a basis of reciprocity rule, when collections loaned for an exhibitions is the result of the exchange of their own exhibits for others, also precious historic objects from a different museum. In this case each party of the loaning contract lends and borrows museum objects at the same time and insures its own historic objects for the time of hiring and pays the insurance fee. What should be emphasized, is the fact that in the above mentioned case of bilateral hiring, we can`t talk about the museum collections insurance contract concluded on another party behalf. So it is not

⁴ I. Gredka, *Recovered property clause in the insurance contract for cultural goods*, [in:] *Art market. Legal aspects*, W. Kowalski, K. Zalańska (ed.), Warszawa 2011, p. 260 and further.

⁵ W. Uruszczak, *Insurance contracts*, [in:] *Economic and Commercial Law. Business transactions contracts law*, S. Włodyka (ed.), vol. 5, Kraków – Bydgoszcz 2001, p.1036.

⁶ E. Kowalewski, *Insurance Agreement*, Bydgoszcz – Toruń 2002, p. 65 and further.

⁷ "The Journal of Laws" 1964, No 16, item 93 with further changes The Act referred to as CC.

the collections insurance contract concluded by the insurant (borrowing museum) but it is passing on the costs of the insurance fee to the insured (lending museum).

Article 808 § 1 regulation of CC does not require the insured to be appointed by name in the insurance contract. To guarantee the loaned collections proper protection it is justified though to name the insured (lending museum) while concluding the insurance contract between the insurant (borrowing museum) and the insurer. The result of the above mentioned the insurance protection is not provided for the anonymous insured, and the concluded contract is also not a framework agreement on the account of the subject that will be defined in future, but it is a complete contract. Defining the lending museum by naming it the insured is also a consequence of not accepting anonymous risk⁸. When it comes to the insurance contract on another party behalf, it is necessary to appoint the interest of the insurance, the contract refers to by defining the insurance object. As for the insurance contract for the loaned collections, the insurance object are therefore concrete museum collections which are the loan object. The owner of those historic objects is the lending museum, in consequence only this museum can be the insured. The insured should categorically be the subject of the contract whose financial and non-financial interests it refers to. The subject of the insurance interest is a museum lending historic objects, i.e. a present owner of the movable insured objects (museum collections).

As a result of the above mentioned rule the insurant has a restricted choice as for appointing a person entitled to compensation. The subject entitled to compensation is only the person who might suffer losses, that means the museum which lends historic objects. Otherwise, the rule that compensation is guaranteed only to those suffering losses, would be violated⁹.

The drawback of the collections insurance contract concluded on somebody behalf is the fact that the lending museum has no direct influence on the content of the insurance contract, because as it is the insured it is not the party of the contract. In the meantime, it is in the interest of the lending museum to guarantee a proper insurance protection for the hired museum collections. Taking into consideration the object interest – both financial and non-financial – the lending museum should provide the borrowing museum (insurant) with detailed information necessary for proper liability insurance conditions. It seems especially important for the lending museum to define the insurance coverage and the sum insured in accordance with the value of insured historic objects.

‘NAIL TO NAIL’ CLAUSE

In case of the insurance contract for objects loaned for temporary exhibitions we should remember to include in it the clause from nail to nail aka from wall to wall. The object clause defines the beginning and end of insurance protection. It says that the insurer bears the responsibility arising from the concluded insurance contract from the moment

⁸ M. Krajewski, *Insurance Agreement, Commentary art. 805-834 CC*, Warszawa 2004, p. 83.

⁹ *Ibidem*, p. 84.

of taking the objects from its permanent place of storage to another place, in order to prepare it to be loaned until the moment they return, after the loan period to the place they had been taken from or another place appointed by the lending museum. For instance in case of a painting, the insurance protection includes the whole period of loan from the very moment of removing the painting from the wall in the lending museum until the moment of hanging it back in the place of its permanent exposition in the base museum.

The above described clause is not always understood word for word. Not in every insurance contract for loaned museum collections, the beginning of the insurance protection is defined in the same way and it is not always the moment of removing the exhibits – in order to prepare them for transportation – from the place they are in. It is defined in different ways in insurance contracts. According to art. 814 § 1 CC, if not agreed another way, the insurer responsibility begins from the day after concluding the contract, but no sooner than a day after paying the fee or its first installment. Due to the dispositive nature of that regulation, the parties of the loaned objects insurance contract are entitled to the contractual definition of the material beginning of the insurance. What should be particularly emphasized though is the fact that it is in the lending museum interest not to shorten the insurance protection period. It is not justified when the insurer responsibility begins only the moment when the loaned objects transport to the borrowing museum starts. We should remember that the collections transport must be preceded by removing them from the place of optimal conditions as for the temperature, light, humidity etc.

The process of collections removing, packing and securing may be the source of accidents causing minor or even major exhibit damages. These random incidents are obviously connected with loaning and we claim it is also necessary in this case to provide the collections with insurance protection. Taking into consideration collections optimal protection, the best solution would be a nail-to-nail clause, understood word for word. In each insurance contract for loaned collections, there should be the insurance protection from the moment of removing the object from the current place until the object is placed here again or in another location appointed by a lending museum after the loan is over.

The other aspect of the nail-to-nail clause is, no matter when exactly the insurance protection starts, the fact the insurance contract for collections loaned for temporary exhibition is a contract guaranteeing a complex insurance. That means, the insurance protection is continual and starts from the loaning moment, through the transport time, objects storing before and after the exhibition, the exhibition or exhibitions time and terminates only when the return transport to the lending museum is finished.

Museum loaned collections insurance is a compilation of transported items insurance covering losses/damages of transported items, regardless of using different means of transport each time and the insurance of the displayed exhibits. Thus it is possible to conclude one insurance contract for the whole insurance period, instead of separate possessions insurances for property in transport and then contracts for collections storage before and after the exhibition and further the insurance in the place and for the exhibition time and again for the collection returning transport. Come to think about the

museum collections best protection, the insurance contract for loaned historic objects concluded for the whole loaning period is the optimal solution.

THE INSURING COMPANY LIABILITY

Defining the insurer liability through appointing insurance risks covered by the protection is the *essentialia negotii* of the insurance contract. The vital element of the contract is appointing which incident (or incidents) in a given insurance condition will be the insurance incident. It should be emphasized that the insurance risk is an ambiguous term. In the insurance terminology it usually means the danger of the random incident occurrence against which a given party is insured¹⁰. To put it simply, the insurance risk is e.g. the risk of committing theft and the insurance incident is the theft of the insured object.

The insurance contract for museum collections loaned for temporary, foreign exhibitions concluded according to the nail-to-nail clause is a contract including not one but many risks. To provide the optimal insurance protection for the loaned objects it is justified to include in the contract especially the risks from group 7,8 and 9 chapter II, the annex to the Act of 22.05.2003 on insurance activities¹¹, identical with risks from group 7,8 and 9 from art.5 lit d) of the directive 73/239¹².

Group 7 risk is always qualified as considerable, and defined as : „insurance of objects in transport, including the damages of transported objects, nonetheless different means of transport used each time”. Group 8 includes: „insurances against losses/damages caused by natural forces, including material damages not mentioned in groups 3-7, and caused by:

1. fire;
2. explosion;
3. storm;
4. other natural forces;
5. nuclear energy;
6. landslide or rockburst”.

And group 9 includes „insurance against other material damages (if not included in group 3, 4, 5, 6 or 7), caused by hail or frost or other reasons (such as e.g. theft), if reasons were not included in group 8”.

Insurance contracts for museum collections loaned for temporary exhibitions can be divided into two categories. One is a property insurance contract against all risks, and the other one is the insurance contracts encompassing so called named risks. The all risks contracts name only excluded risks, thus all others are covered by insurance protection. Whereas in case of contracts concluded according to named risks standard – typical for property insurances – the risks covered by insurance protection are enumerated in a con-

¹⁰ A. Wąsiewicz, Z.K. Nowakowski, *Business Insurance Law*, Warszawa – Poznań 1989, p. 42 and further.

¹¹ “The Journal of Laws” 2003, No 124, item 1151.

¹² The First Directive of the Council of 24.07.1973, ref. to coordination of act, executory and administrative provisions connected with undertaking and conducting insurance activities direct ones but other than life insurance, Journ. of Laws EEC 1973 L 228, p. 3 and further.

tract itself in a form of list. The insurance risks are defined in the contract or – which happens more often – in the content of general terms and conditions of insurance¹³. In the insurance contract there are e.g. provisions, according to which the insurer is responsible for the following damages: loss, destruction or damage of the insured property, caused in the insurance period and a result of a sudden, unexpected and independent of the insurer/insured will occurrence, under the scope of the insurance defined in GTCI.

On the basis of analysis of insurance contracts for loaned collections, concluded on the named risks, we can say that the defined in contract the scope of insurance is too limited if we consider the insured collections protection. And it is particularly important to include in the insurance contracts for loaned objects apart from commonly known insurance incidents such as e.g. fire, lightning stike, explosion, hurricane, storm, flood, violent rainstorm, object falling on the means of transport, earthquake, loss, theft and also the followings:

1. mechanical damage of delicate objects,
2. theft during visitors traffic,
3. theft in the time when the exhibition is closed for public, even if the enter was not done by force or duplicated keys,
4. theft committed by the insurant workers (borrowing museum)
5. damage which is the result of the damage of packaging used for transporting collections
6. damage caused by glue solutions and scratches on French polish, fibres folding and oxidation, as a result of one of the insured risks
7. damage caused by improper light intensity, radiation, temperature too high or too low, temperature fluctuations, pressure fluctuations, improper humidity
8. damage caused by rodents (e.g. rats, mice),
9. damage brought about through intentional guilt or gross negligence on the insurant workers' part (borrowing museum) as well as the insured part workers (lending museum).

The collections insurance contract against all risk, not a contract based on named risks, seems to be the optimal agreement to guarantee the loaned objects real insurance protection. It is important, though, to negotiate with the insurer so the list of risks excluded from the insurance is the shortest possible. Only then will the insurance protection of loaned collections be as complete as possible.

Referring to insurance contracts against all risks concluded for collections loaned for temporary, foreign exhibitions, it is worth mentioning that as for the scope of risks excluded from insurance, the said contracts very often refer to so called institute clauses. In the analyzed contracts we find a provision according to which the insurance covers losses, damages and destruction of insured objects including all risks the insured property is endangered to during the transport, storage and display at the exhibition/exhibitions with some exclusions described in the Institute Cargo Clauses (A) 1/1/82. That means so called Institute Clauses prepared by Institute of London Underwriters, used in property international insurance contracts, originating from insurance conditions prepared by Lloyd's – English insurer of long, many centuries tradition. Set up Institute Cargo Clauses – which are conditions of property insurance in international, sea, land and air transport, include the scope of insurance protection and risks excluded from protection. They are a model for insurers in other countries, and are the basis for preparing suitable GTCI.

¹³ Further as GTCI.

INSURANCE ACCORDING TO THE ASSESSED VALUE

Next recommendation necessary for proper insurance conditions in order to guarantee museum collections in the optimal protection, is the contract based on the assessed value (established), not on the market value. The assessed value is mentioned in the contract and established on the parties agreement, the approximate value of insurance object, at the same time reliable when establishing compensation. It is presumed that the insurance of assessed value, besides the insurance of new value, seems to be a special case of counting the insurer compensation, which is an exception to the compensation rule. At the same time in the doctrine there are direct references to art. 301 of act dated 18.09.2001 Maritime Code¹⁴, emphasizing that despite the fact that there is no identical legal norm as for land insurance, the assessed value insurance is also accepted in those insurances¹⁵. Article 301 MC says: „If parties in the contract mentioned insurance value (assessed value), it is reliable for establishing insurance compensation”. The insurance based on the assessed value, that is agreed on with the insurer (the value of each exhibit is set individually) results in the consequence that in case of insurance incident – and complete damage – to calculate the loss amount, the expert opinion is not necessary but the reliable is the object assessed value. It is the basis for establishing the insurance compensation amount.

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Summary: It is important to emphasize that the insurance contract for museum collections loaned for temporary exhibitions does not need to be the adhesion contract, that means the contract

¹⁴ “Journal of Laws”, No 138, item 1545 with further changes in Act, further ref. to as MC.

¹⁵ M. Krajewski, *Insurance Contract...*, p. 219 and further.

agreed on the imposed by the insurer, general terms and conditions of insurance. The insurer has a right to form the contract model but is not obliged to do so, nonetheless, the museum lending the objects as the insured party and the museum borrowing the museum collections – a insurer – do not have to accept the contract with the content imposed by the insurer company. Museum collections are a special protection object, they require individually agreed insurance contract content. Thus, it is important to remember the insurance protection makes sense only when it is effective.

Keywords: Institution of a guarantee, insurance contract, insurance protection, exhibits, compensation, protection of museum exhibits.

OCHRONA UBEZPIECZENIOWA MUZEALIÓW WYPOŻYCZANYCH NA WYSTAWY CZASOWE

Streszczenie: Umowa ubezpieczenia muzealiów wypożyczanych na wystawy czasowe nie musi być umową adhezyjną, czyli umową zawartą poprzez przystąpienie na podstawie narzuconych przez ubezpieczyciela ogólnych warunków ubezpieczenia. Sformułowanie wzorca umowy jest bowiem uprawnieniem ubezpieczyciela, a nie jego obowiązkiem, natomiast muzeum, wypożyczające zabytki, występujące jako ubezpieczony, ani też muzeum biorące muzealia – będące ubezpieczającym – nie musi się godzić na zawarcie umowy o treści z góry narzuconej przez zakład ubezpieczeń. Muzealia stanowią bowiem szczególny przedmiot ochrony, wymagający indywidualnego uzgodnienia treści umowy ubezpieczenia tychże zabytków. W związku z tym warto pamiętać, że ochrona ubezpieczeniowa tylko wtedy ma sens, gdy jest to ochrona skuteczna.

Słowa kluczowe: instytucja ubezpieczenia, umowa ubezpieczenia, ochrona ubezpieczeniowa, ekspozycje wystawowe, odszkodowanie, ochrona muzealiów