

ABSTRACT

**An insurance company as the intervening party
in civil proceedings**

The institution of auxiliary intervention is regulated in the Code of Civil Procedure comprehensively, albeit laconically. The intervening party may be anyone with legal interest in settling the case in favour of one of the parties – the party whom the intervening party wishes to join. The intervening party joining the proceedings being underway, on the one hand, is a means of preventive protection of the rights of the third party: such a person joining the proceedings is supposed to help the party win the trial, since its result may affect the legal situation of this person in a favourable or unfavourable way. On the other hand, the institution of auxiliary intervention protects the party who was joined by the intervening party and towards whom it will consequently be impossible to raise an objection about the proceedings being faulty in the future.

An auxiliary intervention of the insurance company may be encountered during civil proceedings between parties, where the claimant is the aggrieved party and the defendant is the perpetrator of the damage, when the latter has an insurance contract signed with the insurance company. In such a situation, the insurance company has legal interest in joining the proceedings being underway, since its result will affect its legal situation, as the insurance company has granted insurance protection to the party to the proceedings and, should an insurance event rendering the insured party liable for persecution occur – the insurance company will bear warranty liability and, by virtue of the said contract, will be obliged to return the compensation paid from the insured party. The auxiliary intervention of the insurance company may also occur on the claimant's side, when the insurance company acts as an intervening party for the insured party who is simultaneously the aggrieved party in the proceedings against the perpetrator of the damage. The insurance company may also act as the intervening party for another insurance company in proceedings concerning insurance contracts, if it is connected to this insurance company by a co-insurance or re-insurance contract and does not act as a party in the proceedings. The legal interest of the intervening

party in joining the case is then identical – obtaining a favourable adjudication for the party joined by the intervening party.

The party connected with the insurance company through an insurance contract should want the insurance company to join the proceedings being underway. If the party loses the case and lodges a recourse claim against the intervening party, the intervening party who acted alongside this party and performed an auxiliary function towards this party, will be unable to raise a charge against this party about the case having been settled incorrectly or the party having run the trial incorrectly, unless the status of the case when the intervening party joined the proceedings prevented the intervening party from using defence measures which the party utilised or unless the party deliberately or by gross negligence failed to utilise the available defence measures, which were simultaneously unknown to the intervening party.

The issues tackled in the PhD thesis, concerning the status of an insurance company acting in civil proceedings as the intervening party, are desirable and interesting, since the institution of auxiliary intervention of an insurance company structurally differs from both types of auxiliary intervention regulated in the Code of Civil Procedure.

The purpose of the PhD thesis is to analyse the procedural situation of the intervening party being an insurance company from the legal perspective: its rights, obligations, procedural constraints, as well as to comprehensively assess this institution for an insurance company acting as the intervening party. The main argument of the thesis claims that an insurance company, as the intervening party in proceedings, has a stronger position than the dependent intervening party and a weaker position than the independent intervening party.

Implementation of the assumed objectives of the thesis justifies its division into four chapters. Chapter one describes entities running insurance operations. This chapter is intended to present the "protagonist" of the dissertation. Particular subchapters discuss the notion of an insurance company which is an entity running insurance operations, an insurance contract as the basis for the legal interest of the insurance company in joining the proceedings as the intervening party, as well as types of insurance. The second chapter focuses on the institution of auxiliary intervention as the measure of preventive protection of subjective rights of the third party. This chapter discusses the institution of auxiliary intervention in general – its essence and types of auxiliary intervention occurring in valid civil proceedings. It also describes the institution of a joinder, which is an instrument initiating a third party's joining of the proceedings, as well as thoroughly analyses the scope of procedural rights and constraints of the intervening party after joining proceedings being underway. The purpose of the second chapter is to describe the institution of auxiliary intervention as stipulated in the Code, so as to

create a starting point for a detailed discussion on the auxiliary intervention of an insurance company in the context of its typical features.

The third chapter outlines the participation of an insurance company in proceedings, taking account of this insurance company acting as the intervening party. This chapter describes legal grounds for an insurance company acting as the intervening party, and then it discusses proceedings involving participation of an insurance company acting as the intervening party. The purpose of this chapter is to analyse the institution of auxiliary intervention in the context of an insurance company fulfilling this role in the proceedings.

Chapter four discusses the legal character of auxiliary intervention of an insurance company. Particular subchapters focus on detailed legal analysis of features typical of both kinds of auxiliary intervention in the context of an insurance company acting as the intervening party in the proceedings.

The analysis conducted in this dissertation results in the conclusion that an insurance company acting as the intervening party holds a special position in the proceedings. Its scope of rights is broader than the scope of rights of the dependent intervening party and, at the same time, narrower than the scope of rights of the independent intervening party. This means that auxiliary intervention of an insurance company cannot be qualified neither as ordinary nor independent auxiliary intervention. It is a type of intervention unknown to the Code of Civil Procedure, which contains features indicating strengthened procedural position of an insurance company as the intervening party in civil proceedings as compared to ordinary intervention, while at the same time not being classified as independent intervention. It is in the institution of auxiliary intervention that the special procedural position of an insurance company is manifested.

The conclusion of the thesis on the type of auxiliary intervention of an insurance company not included in the Code and which is not directly stipulated in the Polish civil procedure leads to *de lege ferenda* postulates to particularise the currently binding legal regulations by introducing an additional category of auxiliary intervention or by creating a comprehensive regulation devoted to the entire matter of insurance law in one legal act. Development of one legal act covering all provisions concerning insurance would foster transparency and integrity of decisions concerning the insurance law. Such a comprehensive regulation would also cover court proceedings involving parties to an insurance relationship and would be able to thoroughly regulate the issue of an insurance company acting as the intervening party. On the grounds of the present regulations, characterised by multiple legal regimes, a change in this respect seems necessary. The lack of transparent, general and

universal regulations generates needless implications, leading to unnecessary discrepancies in application of the law.