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CONTEMPORARY TRENDS IN INSURANCE UNDER MARTIAL LAW

The article attempts to provide insights into contemporary issues, risks and challenges faced by insurance companies in the wartime settings. It is observed that the Russian military aggression against Ukraine has caused huge losses and large-scale destruction to infrastructure, property and the national economy overall. Thus, the natural desire to protect property to prevent loss or damage that may occur due to military actions of the invaders is quite understandable. It is argued that insurance is a universal tool to mitigate risks. However, the war and hostilities have had drastic effects to the insurance market operation. It is noted that in each insurance company, the structure of insurance contracts is of an individual character as to the occurrence based insurance events resulting from military operations differ in each specific case and therefore, each such contract requires careful consideration of all its provisions. In the context of this study, a focus is put that in case of a natural disaster (any cataclysm) when property is damaged, the insurance contract will not cease to apply and will act as before the war. It is argued that the fact of imposition of martial law is not to be a reason to refuse customers in their insurance claims. The findings demonstrate that cause-and-effect relationship between the war / military actions and the losses incurred is the fundamental factor, therefore the occurrence of an insurance event on the temporarily occupied areas since February 24, 2022 cannot be the ground for denying a customer's insurance claim for compensation. The study suggests that the government insurance policy should be focused towards effective implementation of a range of various actions that will help support the industry growth (tax burden reduction, improving regulations, etc.). Apart from the above, a conclusion is made that insurance contracts remain legally valid regardless of whether military operations are being conducted in Ukraine or not. The study has revealed that some insurance companies refuse to provide indemnity for military / war risks, and also exclude hostile zones from insurance coverage, which in turn might translate in lawsuits against insurance companies. It is also observed that currently, if an insurance company's customer has a valid insurance contract, the imposition of martial law and active hostilities in Ukraine cannot be a barrier to respond to insurance claims and insurance payments. According to the results of the research, it is concluded that insurance companies should continue to operate effectively and enhance insurance products, simplify the procedures for concluding contracts as well as offer the opportunity to customers to sign insurance contracts online.

Keywords: *insurance; martial law; military actions; insurance companies; insurance contract; compensation for damage and loss; conclusion of contracts; cause and effect relationships; force majeure.*

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АКТУАЛЬНІ АСПЕКТИ СТРАХУВАННЯ В УМОВАХ ВОЄННОГО СТАНУ

Статтю присвячено аналізу сучасних проблем, ризиків і викликів, з якими зіткнулися страхові компанії в умовах воєнного стану. Доведено, що військова агресія, яка й досі триває на території нашої країни, завдає величезних збитків та масштабних руйнувань інфраструктурі, майну та національній економіці загалом. Відповідно, цілком природним є бажання людей захистити своє майно, аби запобігти втратам та збиткам, що можуть виникнути через військові дії окупантів. Встановлено, що універсальним способом мінімізації ризиків є страхування, проте війна та бойові дії вкрай негативно позначились на

функціонуванні ринку страхування. Визначено, що структура договорів страхування кожної страхової компанії носить індивідуальний характер щодо настання страхових подій внаслідок військових дій, які різняться за кожним конкретним випадком, і тому кожний такий договір потребує ретельного вивчення всіх його положень. Наголошується, що в разі настання стихійного лиха (будь-якого катаклізму), коли майно зазнає шкоди, договір страхування не втрачає юридичної сили і діятиме як до війни. Аргументовано, що конкретний факт введення воєнного стану не є підставою для відмови клієнту у відшкодуванні за його договором страхування. Визначено, що базовим чинником є саме виникнення причинно-наслідкового зв'язку, що існує між війною / воєнними діями та понесеними втратами, отже, факт виникнення страхової події на території, яка тимчасово була окупована вже після 24.02.2022 року, не може бути підставою для відмови клієнту у виплаті йому страхового відшкодування. Підкреслюється, що у сфері страхування держава має приділити більшій увазі ефективній імплементації різноманітних заходів, які допоможуть підтримати галузь на належному рівні (зменшення податкового навантаження, вдосконалення регуляторних вимог тощо). Крім того, зазначається, що договори страхування є юридично чинними незалежно від того, чи ведуться в Україні воєнні дії чи ні. Встановлено, що страхові компанії відмовляються від відшкодування військових / воєнних ризиків, а також виключають зони бойових дій із територій страхування, що своєю чергою, може бути підставою для судових позовів проти страхових компаній. Визначено, що в сучасних умовах, якщо клієнт страхової компанії має чинний договір страхування, то факт введення воєнного стану та активних бойових дій на території України не є перешкодою для виплат за його страховою подією. За результатами дослідження, робиться висновок про те, що страхові компанії мають продовжувати ефективно функціонувати і виробляти страхові продукти, спрощувати процедури укладання договорів, а також надавати змогу клієнтам укладати договори страхування дистанційно.

Ключові слова: страхування; воєнний стан; військові дії; страхові компанії; договір страхування; відшкодування збитків; укладання договорів; причинно-наслідковий зв'язок; форс-мажорні обставини.

Introduction. The war started by the Russian Federation against Ukraine affected all spheres of mutual relations and made adjustments to the legal regulation that we have been accustomed to until now. Thus, by the Decree of the President of Ukraine "On the introduction of martial law" No. 64/2022 of February 24, 2022, martial law was introduced in Ukraine, which, as a result of its extension, is in effect until now. The ongoing military aggression in Ukraine causes significant destruction, damages property and infrastructure, and causes crisis phenomena in the economy. It is natural for individuals and legal entities to seek to avoid losses caused by external circumstances, including war, in advance. Insurance is traditionally one of the universal methods of risk minimization. At the same time, war and hostilities make fundamental adjustments to the state of affairs in the insurance sector. Therefore, the question of the validity and effectiveness of insurance contracts during martial law becomes quite relevant [2].

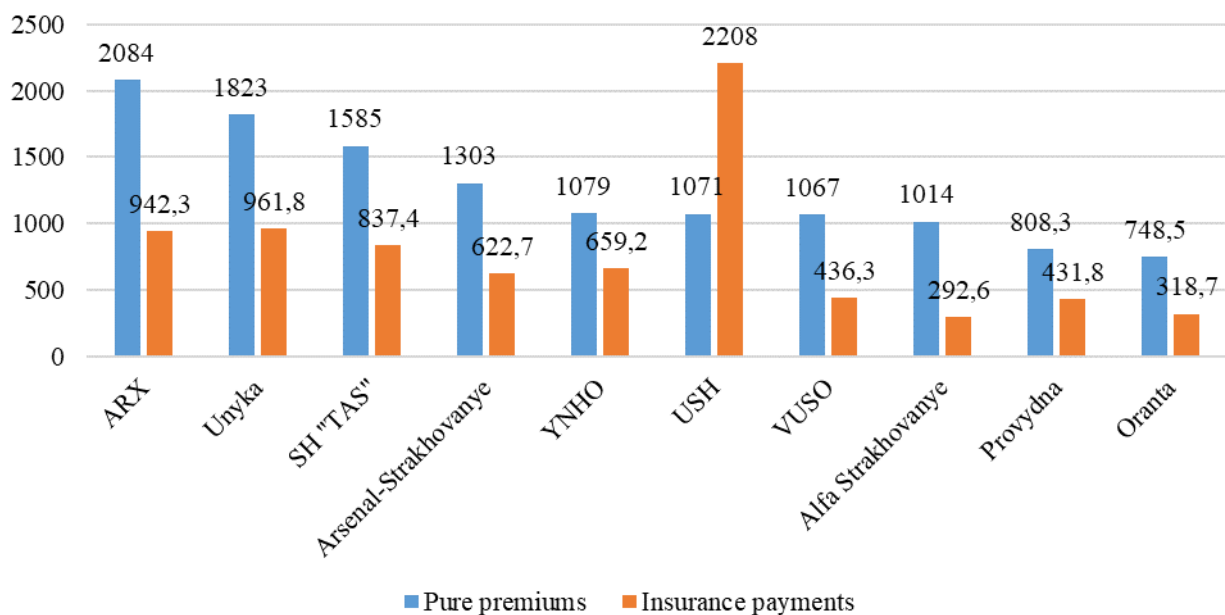
At present, there is hardly any reason to be optimistic about the near future in the insurance market. It should be recognized that insurance is not one of the key sectors of the economy. Rather, insurance can be considered as an additional tool that allows you to minimize risks. Therefore, it is obvious that financial resources will be directed to the reconstruction of infrastructure, housing, transport, and not to their insurance. To insure any property, it must first be rebuilt or purchased. In conditions of limited financial resources, funds will be directed to meet priority needs, and therefore the issue of insurance will take a back seat [1].

Materials and methods. When writing the article, general scientific and special research methods of economic phenomena and processes were used to determine insurance activity during the wartime period in Ukraine.

Results and discussion. With the beginning of a full-scale war in Ukraine, all spheres of life in the country faced the need to solve problems related to overcoming the consequences of military aggression, especially this problem affected the insurance market in Ukraine. Yes, the inevitable consequences of military aggression in Ukraine are full-scale destruction and damage. Insurance, in turn, is the same unique mechanism that compensates and compensates for the losses incurred, however, in the languages of war, insurance can be ineffective or even powerless [1; 8–14].

According to Art. 1 of the Law of Ukraine 85/96-BP as amended on 05/26/2022 "On Insurance", insurance is a type of civil law relationship regarding the protection of the property interests of individuals and legal entities in the event of the occurrence of certain events (insured events) specified in the insurance contract or by current legislation, at the expense of monetary funds formed by payment of insurance payments (insurance premiums, insurance premiums) by individuals and legal entities and income from the placement of funds of these funds [1; 15–19].

Before the beginning of the full-scale invasion of the territory of Ukraine (almost two years ago), it was very difficult, if not impossible, to get realistic data on the efficiency of the Ukrainian insurance market, since not all insurance companies covered them. But thanks to the National Bank of Ukraine, which became the regulator of the entire insurance market of Ukraine, these data became universal. So, by the end of 2021, you can see the TOP-10 main leaders among insurance companies by indicators of insurance premiums (payments) and payments (Fig. 1.)

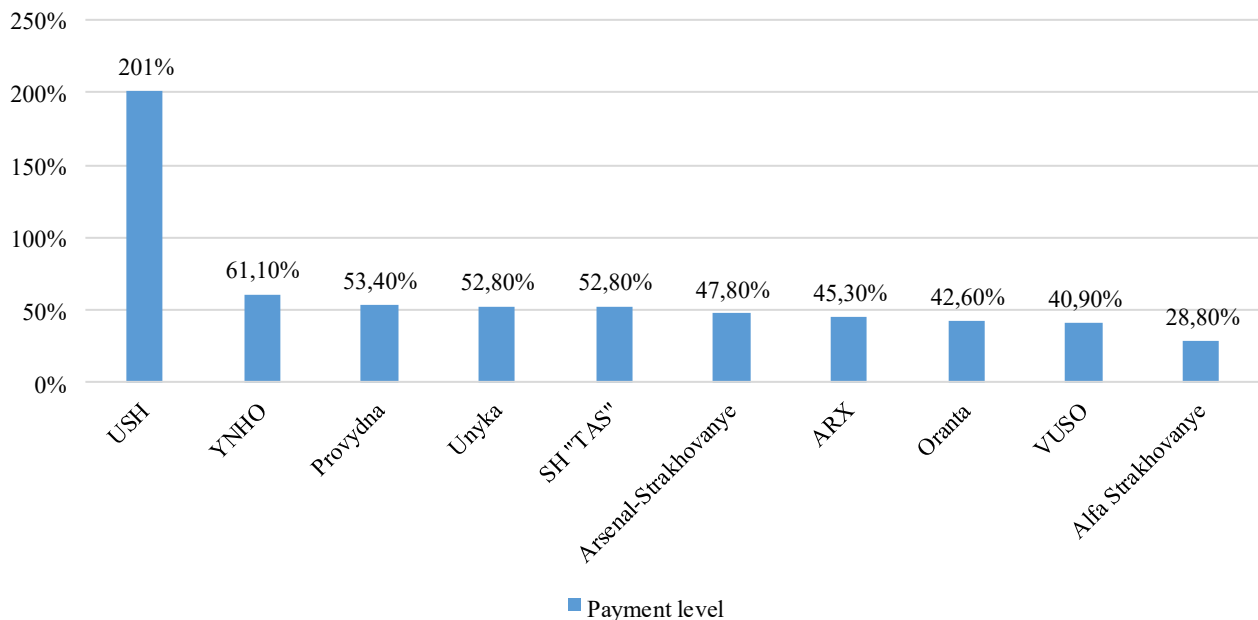


Source: [1].

Fig. 1. TOP-10 insurance companies for 2021 by net premiums and insurance payments [1]

The indicator of the level of payments requires special attention (Fig. 2). The indicator determined by the ratio of insurance payments to insurance payments and reflects the real role of insurance companies in the market. The level of payouts over 40% indicates a huge share of real cash payouts to its clients if an insurance event occurred. At the same time, the scale of insurance premiums is a decisive criterion for this assessment [1; 19].

In general, the structure of insurance contracts of each insurance company has an individual character. In different insurance companies, questions regarding the occurrence of insured events as a result of military operations differ in each specific case, and therefore each such contract requires careful study of all its clauses. For example, if there was a natural disaster or natural cataclysm, and the property was damaged, then the contract was valid before the war, and it will be valid now. In itself, the fact of the introduction of martial law cannot be a reason for refusing compensation under the insurance contract. At the same time, it is necessary to clearly imagine that the basic factor is precisely the existence of a cause-and-effect relationship between military actions and specified losses [1; 18]. Therefore, the occurrence of an insured event on the territory that was temporarily occupied after February 24, 2022 should not be a reason for refusing to pay insurance compensation. Similarly, the temporary occupation of new territories should not affect the validity of the insurance contract for objects located in such territory [1].



Source: [1].

Fig. 2. TOP-10 insurance companies for 2021 by the level of payments, %

In case of destruction / damage to property (for example, in Mariupol, Kharkiv or Kyiv, or any other city), the mere fact of the territorial location of such property is not enough to refuse insurance compensation. In order to refuse insurance compensation, the fact of destruction / damage to property as a result of hostilities must be established. In the current conditions, it may be quite difficult to investigate such circumstances, since active hostilities will not always make it possible to inspect the property and establish the reasons for its destruction (damage) [1; 20].

If the nature of the losses unequivocally indicates that they were received as a result of hostilities, then the usual insurance contract will not allow to receive compensation. For this case, there is a separate type of insurance against military risks, which after 2014 became somewhat widespread in the regions bordering the ORDLO. However, due to its high price, this type of insurance did not gain much popularity and was used in exceptional cases [1; 9; 13; 16].

Since the war led to a significant decrease in the amount of money received by insurance companies in the form of insurance premiums, some insurance companies noted a sharp drop in income by more than half. At the same time, sales of certain types of insurance in the first weeks of

the war, on the contrary, were marked by growth. First of all, we are talking about travel insurance (which, if necessary, would allow you to receive medical care abroad) and the international "Green Card" automobile insurance system, which is due to the mass departure of the population abroad. Even though the National Bank of Ukraine announced on February 28, 2022 that it was possible to cross the border without a Green Card policy, it was almost impossible to get such a policy in the border towns, given the fact that the insurance companies were running out of the corresponding forms. Currently, the number of citizens traveling abroad has decreased, and therefore, accordingly, sales of such types of insurance are returning to their usual levels [1; 17]. Probably, only some types of compulsory insurance can be an exception, for example, as compulsory civil liability insurance for owners of land vehicles. Given the mandatory nature of such insurance, if the level of sales will decrease, it will not be as much as under voluntary types of insurance [1].

The war in Ukraine belongs to force majeure circumstances (circumstances of force majeure), which was separately certified by the Chamber of Commerce and Industry [5; 14]. Insurance does not constitute any exception in the context of force majeure circumstances – the parties to the insurance contract can refer to the effect of such circumstances as a basis for exempting them from responsibility for non-fulfillment of the terms of the contract (relevant force majeure clauses with reference to war are in practice always included in insurance contracts) [2].

However, it should be emphasized that:

- the effect of force majeure circumstances does not release the party from the obligation under the contract, but is only a legitimate reason to postpone the fulfillment of such an obligation until the end of their validity and not bear responsibility for such delay (in the form of fines);
- the mere fact of hostilities or the introduction of wartime restrictions does not release a party from responsibility, if such circumstances do not directly prevent a person from physically or legally fulfilling a specific obligation under the contract (for example, paying funds).

It is under such circumstances that the insurer can delay the insurance payment (following the procedure for notification of force majeure and its confirmation), but will have to make it when the effect of force majeure circumstances on him ceases [2].

Part 1 of Art. 991 of the Civil Code and part 1 of Art. 26 of the Law "On Insurance" provides for a number of cases when the insurer has the right to refuse to make an insurance payment. At the same time, this list is not exhaustive, and the contract may provide for other reasons for refusing to make an insurance payment, if it does not contradict the law. In practice, insurers include in the insurance rules additional grounds for refusing insurance payments, in particular, those related to war [2]. Thus, since 2014, insurers have included a "war" clause in their contracts - insurance contracts are generally not valid on the territory of hostilities and on the occupied territories of Ukraine. This means that no incidents (whether caused by hostilities or independent of them) are recognized as insurable if they occurred in a hostilities zone or in non-government-controlled territory [2].

However, it should be understood that in case of refusal by the insurer to indemnify due to the occurrence of force majeure circumstances, the latter must also substantiate the cause-and-effect relationship between military actions and the consequences that make it impossible to pay indemnification. For example, if, as a result of military aggression, the central office of the insurer was destroyed and together with it, all physical carriers of information about clients and concluded contracts were damaged, then such a case can be recognized as a force majeure circumstance [3]. The occurrence of force majeure circumstances does not automatically exempt from the fulfillment of obligations, but can only be the basis for exemption from responsibility for non-fulfillment or improper fulfillment of obligations (for example, exemption from fines, penalties). That is, if the insurer, in accordance with the procedure established by the contract, notified the occurrence of force majeure circumstances, then it is possible to agree with the insurer, or to object and demand

the fulfillment of obligations. In this case, the client can go to court, and already during the case review, the insurer must prove a cause-and-effect relationship between events and consequences [3]. This rule is general for all force majeure circumstances, and it is valid in peacetime as well. In the same way, the insured can be released from liability, for example, for non-payment of payments under the contract, if he proves that he was affected by force majeure circumstances, and there is a causal relationship between the event and the reasons for non-payment. Whether to release a person from responsibility and whether there really is a cause-and-effect relationship will be decided by the court during the trial.

If we are talking about insured events provided for in the insurance contract and which occurred in the territories of hostilities or occupied territories of Ukraine after February 24, 2022, then in these cases, the insurer cannot refuse to pay compensation either. This also applies to property that was damaged in the territories of hostilities or occupied territories. Undoubtedly, there will be difficulties with the departure and inspection of the damaged property by representatives of the insurer, but there are no legal grounds to refuse compensation. Unfortunately, isolated cases of such controversial issues and refusals to compensate are already known in current practice. Some policyholders of their cars under OSCPV contracts have already faced refusal or delay in the reimbursement procedure [14–16].

Until February 24, 2022, to determine the relevant territories, insurers were guided by the order of the Cabinet of Ministers [6], which approved the list of settlements on the territory of which state authorities temporarily do not exercise their powers, and the list of settlements located on the contact line [2]. On the other hand, in the context of full-scale Russian aggression against Ukraine from February 24, 2022, such "territorial" exceptions in insurance contracts are quite controversial, since hostilities are not localized, and a clear regulatory list of administrative-territorial units where hostilities continue is currently missing [2].

Thus, on March 13, 2022, the Cabinet of Ministers Resolution No. 269 amended the Procedure for issuing and issuing a certificate of registration of an internally displaced person. This resolution regulates the issue of registering internally displaced persons and defines the list of territories where hostilities are taking place. At the same time, before a clear regulatory definition of the territory of hostilities, the issue of the validity of insurance contracts on certain areas may be the subject of a dispute with insurers [2].

Since the beginning of the Russian invasion, the largest insurance companies of Ukraine have confirmed the validity of insurance contracts and their obligations to compensate for insured events, which, however, does not cancel the above-mentioned exceptions. Insurance companies followed a similar position in 2018, when martial law was introduced for the first time in some regions of Ukraine [2].

On February 27, 2022, the National Bank, as a regulator of the insurance services market, recommended that insurers simplify the procedure for settling cases that have insurance features by making the maximum use of electronic documents and copies of the necessary documents in the event that it is impossible or difficult to obtain their originals, as well as apply other means of remote settlement of insurance cases. One of such simplified procedures has been available to citizens for a long time - the drawing up of a "European protocol" using the so-called "autocivilka". In addition, the regulator will not carry out inspections of participants in the insurance services market and will extend the deadlines for their submission of annual financial statements [2]. In addition, the National Bank of Ukraine promised to additionally communicate with the State Fiscal Service regarding the non-application of fines to insurers for the period of the introduction of martial law in Ukraine when using copies of documents (in paper or electronic form) that confirm the fact of the occurrence of an insured event (clause 4 of clarification of the NBU dated February 27, 2022) [3].

Conclusion. Thus, insurance is the area of support for which the state will have to pay special attention and introduce measures that will allow to support the industry, for example, by reducing the tax burden or revising regulatory requirements. Also, insurance contracts are valid regardless of the introduction of martial law in Ukraine, with standard force majeure clauses that apply to other types of contracts. Instead, as a rule, insurers do not cover "war" risks and exclude war zones and territories not controlled by the government from the insurance territory. The uncertainty of such zones and territories can be the basis for disputes with insurers, which now requires early communication between the parties to contracts on this issue.

Summarizing the above, it can be concluded that if a person has concluded a life, health or private property insurance contract, the fact of the introduction of martial law on the territory of Ukraine does not in any way affect the realization of his rights under this contract. Similarly, it does not matter whether the person was harmed in the occupied territory or the territory of hostilities. If an insured event occurred within the borders of Ukraine, and it is not related to military actions, the insured has full right to compensation for damages under the contract. That is why insurance companies must continue to work and provide citizens with insurance products, simplify the procedure for concluding contracts and submitting applications for their changes, and also enable clients to do this remotely.

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