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Summary of the doctoral dissertation

**Ex gratia payment in Polish insurance law**

This dissertation presents the institution of ex gratia understood as voluntary payment made by an insurer without any legal obligation. Furthermore, this type of payment does not result directly from the contractual obligation. The author analyzes mainly the regulation of statute on insurance and reinsurance business as well as civil code. The dissertation is based on the formal-dogmatic and legal-theoretical methods. Numerous conclusions refer to doctrine and jurisprudence.

This dissertation consists of five chapters which are designed to comprehensively illustrate the various aspects of ex gratia payment.

Chapter I is divided into the comparative part and the part that presents the basics of ex gratia payment in Poland. Firstly, there is an introduction to the Poland doctrine. This part also shows the doctrinal division of legal basis ex gratia payment.

Secondly, the author describes institution ex gratia payment in American, English, and German legal systems . According to the common law system, general information about a reinsurance contract with regard to reinsurance cover revealed the issues payments of an insurer made voluntarily. In pursuance of the basic principles related to the reinsurance cover, an reinsurer returns only damages and other payments resulting from the primary insurance contract binding the insurer and a policyholder. In this point the dissertation contains court rulings from American and English legal systems. Disputes between parties of this contract defined the ex gratia payments made by the insurer. The doctrine of American and English law specifying the principles of reinsurance cover and the exceptions that depart from these principles presents the current vision of ex gratia payments. Under the civil law system, the theories expressed in the literature of German law concerning the voluntary payments made by the insurer are presented in the comparative part. In relation to this issue, the German doctrine presented “kulanz” as unjust enrichment. This payment is made in accordance with economic and market interest, the

reputation of the insurer at the market as well as to help the policyholder in disaster and others purposes.

Thirdly, there is a native legislator's point of view— a special payment based on Law on retirement and other pensions provided by the Social Security Fund. Article 83 defines the discretionary payment made by the competent authorities. Such an interpretation is exception to the general rule referred to Law on retirement and other pensions provided by the Social Security Fund, thus specifies an example of a normative regulation voluntary payments in social security law.

Chapter II is divided into six parts. At first, the focus was on the unjust enrichment and its specific form - undue performance. A lot of authors have presented theories that ex gratia payment has a legal basis in article 411 point 2 civil code. The present dissertation contains a reference to those theories. In general this legal basis (and article 405 civil code containing the unjust enrichment provision), concerns only an restitution claim. Next topic refers to insurance damages in line with the equitable principle. In this respect, numerous court rulings were used in order to demonstrate that there are no general principles considered by the courts. A lot of rulings underlined the extraordinariness of damages paid by the insurer based on article 827 paragraph 1 civil code. In view of the similarity of the ex gratia payment and donation, the provisions of civil code referring to this institution have been analyzed. What is more, the attention has been drawn to the special place of ex gratia payment in structure of civil law relations. In this respect, the relationship between morality and law has been demonstrated from the point of view of the doctrine. General clauses in civil law - e.g. the principles of community life, in respect of special purposes they perform in the civil code have been comprehensively presented under the general provisions of the law of obligations. The special role is a natural obligation because it is also performed without any legal obligation. For this reason, there are many common points with ex gratia payments made by insurers. The author also shows the essence of these payments. Law on insurance and reinsurance business provides that basis for insurance payments are - inter alia – settlement and recognition of a claim, which appears in civil law. In this context, attention has been paid to the legal basis for the insurer payments on the basis of the insurance contract.

Chapter III entitled “Special issues on the background of ex gratia” covers four main issues. The dissertation presents a relation between an insurance recourse and cession and provides comments on the possibility of claiming recourse ex gratia payments. According to the tax ordinance act, there is a possibility to enter interpretations of tax law provisions by the insurer.

In numerous cases tax authorities stated no tax obligation of the ex gratia payments (and also other payment made by the insurer). Pursuant to the reinsurer contract, there are no general legal obligations to cover voluntary payments made by the insurer. Under the civil liability insurance, issue ex gratia payments are disputable because an injured person is not a party to the insurance contract.

Chapter IV concerns practical issues of ex gratia payments. In this context the author describes in general, among others, the principle of cleanliness and transparency of insurance trade and universal, social trust for the insurance cover. Ex gratia payments made by the insurer in respect of economic and marketing interests have an influence on the unfair commercial practices. The author also describes Suppression of Unfair Competition Act in respect of insurance business and Protection of Competition and Consumers Act. The above mentioned principle is also influenced by the consumer aspect which was discussed in this Chapter.

Chapter V was dedicated to insurance purposes and relation with ex gratia payments. the compensatory function of these voluntarily payments made by the insurer has been questioned.

The presented analysis leads to the conclusion that ex gratia payment does not have a precise legal basis. Due to the numerous forms it takes and as a result of its various purposes for which it is paid, it is not possible to generalize, referring to each case, the qualification of the concept of ex gratia payment. Ex gratia payment has no legal definition and is a result of doctrine closely related to the insurance practice. In most cases ex gratia payments have an extraordinary character. For the above reasons there are no possibilities to settle ex gratia payment by the law. The author of this paper is opposed to a definition of the principle of paying this consideration. The author also proposes to consider the affiliation of ex gratia payment to the direct insurance business or closely related to it in order to eliminate the pathological forms.