

БОРОТЬБА ЗІ ЗЛОЧИННІСТЮ: ПРОБЛЕМИ ТЕОРІЇ ТА ПРАКТИКИ

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INSURANCE FRAUD IN UKRAINE: CURRENT STATUS AND TRENDS OF COUNTERMEASURES

The current issues of insurance fraud prevention referring to the provisions of criminal law and criminology are examined in this article. The notion of insurance fraud is defined and specified with its place in the economic crime structure using the relevant foreign experience. Recommendations aimed at improvement of the law enforcement activity concerning the insurance.

Keywords: nebankovskyye finansovyye Uchrezhdeniye; insurance; Insurance moshennychestvo; predotvrascheniye crimes; Identify crimes; Interaction pravoohranytelnykh bodies; safety of the market.

На основі положень кримінального права та кримінології розглянуто актуальні проблеми запобігання шахрайству у сфері страхування. Розкрито сутність і характеристику видів страхового шахрайства, визначено місце цього явища в структурі економічної злочинності, проаналізовано відповідний зарубіжний досвід. Надано рекомендації, спрямовані на покращання правозастосовної діяльності правоохоронних органів і суб'єктів страхового бізнесу.

Ключові слова: небанківські фінансові установи; страхування; страхове шахрайство; запобігання злочинам;

виявлення злочинів; взаємодія правоохоронних органів; безпека фінансового ринку.

На основе положений уголовного права и криминологии рассмотрены актуальные проблемы предотвращения мошенничества в сфере страхования. Раскрыта сущность и охарактеризованы виды страхового мошенничества, определено место этого явления в структуре экономической преступности, проанализирован соответствующий зарубежный опыт. Даны рекомендации, направленные на усовершенствование правоприменительной деятельности правоохранительных органов и субъектов страхового бизнеса.

Ключевые слова: небанковские финансовые учреждения; страхование; страховое мошенничество; предотвращение преступлений; выявление преступлений; взаимодействие правоохранительных органов; безопасность финансового рынка.

Social and economic development of the state leads to the necessity to ensure the safety in the sphere of non-bank financial institutions (NFI) which includes credit unions, trust institutions, investment business firms, pension accruals institutions, insurance companies and other finance brokers providing wide range of services for economic entities and individuals (as of year – beginning 2014 the assets non-bank financial sector of Ukraine accounted for over 100 billion hryvnias). Although the proportion of detected annually offenses in the sphere of NFI in general structure of economic criminality was less than 2,5 % in the same period. It is caused especially by their consequences the criminal schemes of appropriation of individuals' finances by organized gangs and criminal organizations that were exposed by law enforcement agencies [1, c. 1].

Historically, the insurance sector of the former USSR was strictly centralized in one insurance agency and it was State Insurance Agency. Insurance wasn't got feet under the nation's mind as a mandatory component of life and it wasn't necessity for citizens pondered over insurance of their own life or property in case of misfortune or distress caused by the elements. Profession of insurance agent was not attractive and profitable. In independent Ukraine the development of insurance market has become an important factor for the domestic economy. However, available insurance conditions together with unsettled appropriate financial activity served as the

foundation for committing crimes with intent to illegal obtaining of insurance benefits and it makes the market segment of non-bank financial services one the most profitable for fraudsters.

The situation was changed sharply because of demonopolization of insurance industry, legalization of business enterprises and it increased the number of alternative non-commercial insurance companies. The activity of these companies covered not only traditional classes of insurance but also insured of commercial financial economic risk, responsibility for aggrieving in other states, export credits and foreign investments which have become a daily reality for thousands of people.

Taking into account the legalistic point of view the insurance is a legal relationship (insurance relationship) between insurer and the insured consisting in the obligation to make payment of insured amount in case of accident insured. The legal substance of insurance is defined in article 1 the Law of Ukraine «About insurance» and according to it insurance is a type of civil law relations for the protection of the property interests of individuals and artificial bodies in instances attachment of certain events (accident insured) that are defined by the insurance agreement or prevailing legislation using funds formed through payment of insurance premiums of citizens and artificial bodies [2]. Mentioned Law covers the rights and duties of insurance market participants and they are insurers, policyholders and other individuals and entities such as recipient of insurance, insurance agents, state controllers and others.

Insurance market is a system of economic relations at the local (regional), national (internal) and international (external) levels (as of year – beginning 2014 there were 2,9 thousand of insurance companies, the total assets of their activity were about 56 billion hryvnias and the total payments of claims were about 5,1 billion hryvnias).

It is emphasized market of personal and market of property insurance according to the industry basis. Each of these links has its own structure (segmentation) [3].

The form of insurance is optional and mandatory insurance. Varieties of optional insurance are personal insurance (life assurance, casualty insurance, health insurance); motor insurance (land transport equipment, air vehicle, waterborne craft); cargo and luggage insurance (cargo) other property; credits, investments, financial risks and more.

The main segment of the insurance market in Ukraine occupies insurance of property today. It is insurance industry and its objects are valuable interests related to possession, disposal and using of property and also cases associated with risk of inventory losses (90,5 % of gross income from paid insurance premiums [4, с. 12].

In the structure of insurance delinquency the particular position is occupied by the different types of fraud through appropriation funds (property) insurance companies both by the professional insurance market participants (insurers) and insurance customers (policyholders). Overwhelming majority of frauds is committed in the segment of automobile insurance (up to 70 %). The specificity of committing frauds in the field of automobile insurance consists in staging of insurance events in the way of preplanned creation of the certain situation; perform certain actions with roles and misrepresentation of data to cause false picture of the event insured in order to obtain insurance indemnity [5, с. 22]. Revealing of staging signs always totals the considerable difficulty for the security services of insurance companies and law enforcement officials during the investigation the facts of misappropriation vehicles, damage or destruction of property and motor vehicle accident and others.

The high level of latency in the sphere of insurance frauds confirms by the results of our content analysis of references contained in the global network of the Internet. According appropriate request we have found hundreds of different announcements from most regions of Ukraine and other countries about numerous facts exposing of fraudsters groups, the high latency of these crimes and the difficulties in identifying insurance fraud. In addition to the above this information was placed by insurance companies and law enforcement agencies.

The interviewed employees of the Ministry of Internal Affairs confirmed that cases of fraud that obtain insurance payments were recorded only in some cases (24 %) or not registered (69 %). According to the respondents the high level of latency crimes are affected by the objective factors such as negligence or personal interest representatives of insurance companies (24 %); attempts of insurance companies discovered the signs of fraud to resolve the issue in the pretrial order without going to the police (20 %); absence of the proper cooperation between the insurers and law enforcement agencies (12 %); the availability of insurance conditions and the ease

of insurance benefit (9 %); inefficient of the supervisory authorities (9 %); inappropriate criminal prosecution of crimes (7 %).

The problem of insurance fraud appeared much earlier in the countries with developed market economies and become threatened danger. Through the radical actions of governments especially the government of the United States and Canada the fraudulent cases (from underwriter and insurant) are carefully tracked.

Crimes in the insurance industry abroad have their peculiarities that are associated with degree of development of the insurance market and also with traditional fraud schemes specified for some country. There are two main models used by insurance fraud. The first model is typical for the United States of America and Canada because the fraud dominates in medical and personal insurance. The second model was formed in Europe where illegal acts committed mostly in property insurance including vehicle insurance.

According to the research conducted in the US, the share of insurance fraud is one quarter of all payments (in Western Europe it is about 10–15 %). Annual losses incurred by the US insurers in result of these fraud is estimated about 20 billion dollars. It is established seven specialized organizations that resist abuses in the insurance industry in this country. In Canada the annual losses from fraud of property insurance is estimated at about 1,3 billion dollars. According to the European Committee for insurance losses incurred by «insurance crime» in economically developed countries, is ranging on average about 30 % of the payments. It is affected by subjective factor too. According to sociological research conducted in Western Europe and the United States the majority of average citizens personally not see any crime in the fact of gaining at the expense of insurance companies [6, p. 188]. Anonymous survey conducted in Germany and commissioned by the insurance company «Gothaer Versicherungen» was revealed that about 15% of Germans not consider the insurance industry fraud for offense. According to the data of the newspaper «Rheinische Post» about a quarter of the citizens of this country misleads criminally the insurers at least once in their life [7, c. 130].

There was no official research in Ukraine but according to local underwriters about quarter of benefits insurance for property gets in the pocket of scams [8, c. 335]. Significant proportion these encroachments constitute crimes against property and in the structure of which the first place belongs to themisappropriation committed by fraud.

According to the League of Insurance Organizations in Ukraine the 70–75 % of fraudulent transactions are committed on the market of auto insurance and civil liability of owners for vehicles. Interviewed employees of insurance companies consider that the most criminalized sectors are the auto insurance (69,4 %); other types of property insurance (17,2 %); liability insurance (13,3 %) [9].

In particular, interviewed workers of several powerful insurance companies among the most popular forms of fraud called overstating the cost of repairs by arrangement with the service centers, re-receipt of funds for the same damage, forgery terms of insurance events in the documents and the staging of events.

In the legal literature the term «insurance fraud» is understood ambiguous. The supporters of broad interpretation include for crime of insurance fraud all types of illegal acts in the relevant field of relationships. The insurance fraud is unlawful conduct of insurance business relations aimed at obtaining insurance indemnity insurer by fraud or abuse of trust; making less than it is necessary for the correct risk of insurance premiums (insurance contribution); concealment of important information at the conclusion of the contract or during insurance; refusal of the underwriter from insurance indemnity payment without sufficient grounds [10, с. 6–7].

Other words, insurance fraud is considered all types of illegal actions regardless of the subjects of the offense, establish of corpus delicti and so on. In our opinion, the main disadvantage of this position is the covering by the authors of all possible offenses regardless of their legal assessment. We consider this approach is not entirely reasonable at least in the penal aspect. Moreover, according to research for enumerating in one determination all ways of committing insurance fraud it is perceived impossible due to the variety of expressions and distribution levels.

Other scientists considered that the insurance fraud is the deliberate crime intended to deceive an insurance company that insured committed for the purpose of illegal enrichment at the expense of the insurer by distortion of information about the object of insurance, staging of an insurance case, the artificial increase the amount of insurance, and also any other illegal activities [11, p. 4–5]. In our opinion, this definition is more admirable.

There is the third approach and concerning it to insurance fraud consists of any fraud relating to insurance business in

juridical science [12, с. 82]. In our opinion, it is also not quite correct because this way are groundlessly to the insurance fraud included fictitious entrepreneurship cases and creating «financial pyramids» because it not directly related with insurance legal relationship.

In juridical literature insurance fraud sometimes is considered manifestation of «economic crimes», «commercial fraud», «corporate fraud», «fraud in business» and others. However, domestic and foreign jurisprudence not formulated a clear distinction between these categories, which, in our opinion, have both scientific and practical importance.

Peculiarities of the insurance fraud in compared with fraud in other spheres of financial relations are as follows: object of insurance fraud is the insurance fund that is administered by the underwriters; insurance fraud associated with the use of the specific insurance business (criminal acts within the legal framework regulated by the civil and economic law); guilty person in insurance fraud penalized the relationship to protect the property interests of individuals and legal entities when certain events (insurance cases) that artificially creates (fakes, triggers) or unlawfully uses; generally, insurance fraud includes the range of other (subordinated) crimes and offenses.

Through the classification of fraudulent acts in the insurance industry all totality criminal attacks are distributed to interconnected circuits that are in hierarchical subordination. The basic classification rows are:

1. Depending on the purpose of fraudulent acts, it is committed with aim to obtain insurance benefits in greater extent than is appropriate for this insurance event and also damage caused to the object of insurance that was not under the insurance coverage.

2. Depending on the subject of fraud (the degree of participation of interested personnel in insurance companies) it is committed by policyholders, insurers together with employees of insurance companies, representatives of the same insurance companies.

3. Depending on the stage of insurance relationships it is committed at the stage of insurance contract, during the validity of insurance agreement and at the stage of applying for insurance payments.

The efficiency for prevention of insurance fraud largely depends on the implementation of the interaction at the level of law enforcement agencies and other state regulatory agencies (particularly from the National Committee of Finance SERVICES) and insurance organizations too. Association the efforts of this services and

organizations allows to concentrate their forces, facilities, technical capabilities, reach most of the objects, improving the use of each entity for detecting and exposing criminals against offenses and crimes of the insurance market.

The key lines of such cooperation are considered following activity: information (organization of mutual information exchange, creating common databanks, etc.); advice and technical assistance (increase of general and vocational training of insurance companies, promoting of use modern means working with clients); common preventive measures and others.

The priority measures against fraud of vehicles insurance according to the interviewed personnel of the criminal investigation the Ministry of Internal Affairs and insurance companies are:

development of interagency Instruction about the order of exchange information between insurers (Security Service, departments of losses, payment departments) law enforcement agencies (detective departments, criminal investigation departments, state traffic inspections, the departments of public safety, expert services and others), and other agencies at the stage of the insurance contract and verify information about the insured, while investigating the circumstances of the insured event and in case of establish of *corpus delicti*;

Implementation of the mechanism operative information exchange between insurance companies (the automated information system «Bureau of insurance history») and MIA (computerized database of stolen cars, base Ukrainian Bureau of Interpol, etc.) (The first specialized bureau of insurance history commercially earned in Ukraine. It is agency of the Russian company «Bureau of insurance history», which provides services in the market through consulting group «Business guarantor»);

Establish cooperation between insurance companies and customs and border protection in order to obtain information about the availability of vehicle insurance of foreigners who cross the border;

Implementation of the control over the use of license forms of insurance policies and special characters through the establishment on the basis of the Ministry of Internal Affairs of Ukraine (or state regulator of insurance market) of the centralized database;

Liabilities of insurance and leasing companies to inform territorial law enforcement agencies about granting insurance for

expensive and prestigious brands of automobiles of citizens living on the service area;

Before conclusion of the agreement about vehicle insurance mare verification of identification numbers nodes and aggregates of the car with their digital picture, in case of necessary to involvethe personnel of expert department of Law Enforcement of Ukraine;

Based on the Department of information and analytical supportingof MIA in Ukraine to create a separate database about the circumstances of the stealing cars that are leased, insured and pledged;

In case of victims request about misappropriation of insured vehicles thorough inspections involving representatives of the insurance companies regarding the truthfulness of information provided by citizens and detect insurance fraud;

Together with representatives of the insurance companies discussing the prospects of introducing «hidden labeling» of parts and assemblies of prestigious car brands in order to further identification in case of theft of the car and its tearing down;

Development and introduction in the activities of insurance companies methodical recommendations on detection features of insurance fraud and other offenses in the stages of conclusion and implementation of insurance-specific national security;

Conduct common training and practical seminars and training sessions with the participation of law enforcement officers and insurance companies discussingthe technologies of insurance fraud, means and methods of appropriate countermeasures. Analysis of the national insurance companies testifies that leaders of the insurance market in Ukraine is largely complied with international, in particular European, standards and uniting with financial groups are able to compete with foreign insurance companies in the internal market. But for bringing the national insurance system in line with international standards of quality it is necessary to require the qualitative changes.

It is needs to take the comprehensive interrelated activities according to the respondentspersonnel of insurance companies. In particular:

Establish single requirements and standards of conducting insurance business,create an effective mechanism of state regulation by developing of the unified code of laws about insurance with international experience;

Encourage the capitalization of the insurance market by further increasing of the minimum capital of insurance companies (at least 5 million euros) and increase the requirements for of their solvency;

Establish the guarantee fund for performing obligations for policyholders in case of bankruptcy of the insurance company;

Establish new forms of the statistical and financial statements in accordance with international standards, especially with the aim of simplifying, enhance control of the movement of insurance policies within the insurance companies, establish clear terms of delivery financial statements by insurance brokers;

Activate the development of market infrastructure (insurance brokers, emergency commissioners and others) and encourage the creation and development of new independent organizations of the insurance market (for example, Ukrainian Union of emergency commissioners, the Association of Independent experts of the insurance market).

Almost all countries on the national level established the specialized organizations that opposing to the insurance fraud. The United States of America in 1993 for this purpose established the Association against insurance fraud (called Coalition against Insurance Fraud). The main goal of the Association is to use the forces and capabilities of insurance companies, government agencies and insurers in counteraction to all manifestations of fraud. At the same time the special unit called the National Insurance Crime Bureau (NICB) was established in the State Insurance Supervision Service. Branches of the Bureau are almost in all states. In 2002 only in New York were investigated by the Bureau 900 fraud. There are special units of investigation (Special Investigation Units, SIUs) in many companies. They assist in identification and investigation of suspicious claims. The structure of SIUs could include as ordinary employees of the insurance company and also police officers, bookkeepers and experts in various fields. At least four of five American companies conduct regular staff training for effectively counteract against fraudsters.

In Canada the struggle against the insurance fraud is carried out under the auspices of the Insurance Bureau of Canada (IBC), which includes the majority of insurance companies and insurance agents. Official estimates show that every detective of the Insurance Bureau checks over ten claims every month. When the losses are more than

25 thousand Canadian dollars the investigation is conducted necessarily, but with fewer amounts it is conducted only in case of exhibition signs of the fraud by the employees of insurance company. In 1995 the specialists of Insurance Bureau developed and implemented the special instructions in which described all types of fraudulent acts: from completely fabricated claims to the impairment or increase the legitimate claims, from false statements to internal fraud.

In Europe the official confirmation of understanding the threat of rising crime rates in the insurance sector is the decision of General Meeting of the European Insurance Committee (ComitEuropen des Assurances, SER) for creating programs combating insurance fraud, it was adopted in 1993. For example, in Germany, according to the German Confederation of policyholders (Gesamtverband der Deutschen Versicherungswirtschaft, GDV), experts of this organization having the authority of detective, they examine applications for damages in suspicious cases, check the validity of the insurance indemnity and exhibit signs of fraud. A case of insurance fraud was uncovered in Germany by the common action of police and insurance companies. It was the activity of the criminal group in a small district of Spear on the north from Bonn. During the year the band consisting of over a thousand people organized the 7740 road traffic accident and received huge benefits according to the conditions of insurance contracts.

The audit provides important role in the prevention of insurance delinquency. The majority of insurance companies having branch of network, established departments of internal control (audit office), and their task is to ensure preservation of the insurance company, in particular through the inspections of the validity of payment insurers, correctness, accuracy and timeliness of the determination and payment of insurance compensation and taking measures to identify and eliminate facts of illegal use of funds and property.

Taking into account this issue, the system approach for the research of the fundamental problem against insurance fraud must be based on the exploring of foreign experience, available national scientific research of criminologists and summarizes the practice of law enforcement agencies and underwriters.

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