Review of Views on the Role of the Preventive Fund in Securing the Interest of the Insurance Undertaking, Policyholders and the Insured

Abstract

The article presents potential benefits for insurance companies, policyholders and the insured from proper use of monies from preventive funds, i.e. reducing the number of accidents resulting in claims and mitigating their effects. In the analysis of literature the aim of preventive actions and preventive funds established in insurance companies was shown. The article also draws attention to the interpretation of legal provisions in the area of financing policyholders’ activities from preventive funds. Next, main advantages of effective use of monies from preventive funds were presented from the perspective of insurance companies, the insured and the policyholders. The analysis of literature allowed to determine positive aspects of undertaking activities aimed at reducing the number of accidents resulting in claims and their negative effects.

Keywords: prevention fund, insurance company, insurance for someone else’s account, random event
Introduction

In everyday life, everyone is exposed to some kind of risk, i.e. the possibility of events that cause negative consequences. Their materialisation, which should be understood as the actual occurrence of a given risk, leads to various types of damage, which may be e.g. damage to health or material loss. Trying to protect against specific risks, we use, among others from the possibilities that insurance gives us.

The essence of the existence of insurance is to provide the insured by the insurer an appropriate benefit due in the event of materialisation of a fortuitous event, as long as it is in accordance with the provisions of the insurance conditions. This is to compensate the insured for the negative effects of the occurrence. This means that for both parties, the occurrence of a random event has certain consequences. In the case of the insured person, it is a material loss or, in a more negative scenario, damage to health or loss of life. However, in the case of an insurance company, the occurrence of a fortuitous event is associated with the need to provide a benefit that is to adequately repair the material damage that has occurred, or to compensate for the negative impact on the health or life of the insured. Insurance accidents, as random events, cannot be fully eliminated, but as a result of appropriate preventive measures, their number as well as the scale of negative consequences can be reduced.

The purpose of this article is to review the literature on the nature, correctness and purposefulness of the prevention fund’s operation and its impact on insurance companies, policyholders and insureds.

The essence of preventive actions

Essentially, preventive actions are to reduce the frequency of random events, as well as the scale of losses resulting from their occurrence. The implementation of preventive measures cannot guarantee the complete elimination of materialization of risks to which the insured are exposed, but it can to some extent remedy their occurrence, as well as minimize the resulting damage as a result of insurance accidents.

Bogusław Hadyniak (2000, p. 66) pointed out that as part of preventive measures:
• technical preventive measures – i.e. measures aimed at implementing technical security measures aimed at protecting against insurance accidents, e.g. the development of flood protection infrastructure;

• economic prevention measures – that is, solutions aimed at encouraging insured persons to reduce the number of insurance accidents as well as their negative consequences, including by making the insurance premium dependent on the current history of accidents or collateral held to counteract the risk of accidents and limiting their extent;

• legal preventive measures – legal norms obliging to use appropriate protection measures which aim at counteracting the threat to life, health and property, e.g. health and safety rules.

As noted by Eugeniusz Stroiński (2003, p. 65), the preventive function of insurance consists not only in the implementation of own preventive economic activities, but also in the introduction of appropriate provisions of contracts that require or encourage non-risky activities.

Responsibility for implementing preventive measures lies not only with public institutions, branches of government institutions and local governments, but also with insurance companies that implement them to reduce the level of risk associated with concluded insurance contracts (Hadyniak 2000, pp. 66-67). Effective implementation of preventive measures financed from the resources of insurance companies not only benefits insurers by reducing the value of insurance benefits paid, but also primarily reduces the number of insurance accidents and their scale. Thus, this not only reduces the losses of the insured, but most importantly, leads to a lower risk to the life and health of the insured or people using the infrastructure covered by activities financed under preventive measures.

As Jan Rzepecki pointed out in relation to activities related to accident prevention, its effective implementation not only reduces the expenses of insurance entities, but also leads to a lower cost for the state budget, employers, as well as persons injured as a result of accidents at work or occupational diseases (2016, p. 5).

Jadwiga Wawer-Bernat indicates that the nature of the preventive activity of an insurance company is part of the present and future improvement of the quality of life, but mainly its protection (2016, p. 402).
In order to reduce the risk of random events, as well as the amount of damage caused by them, the insurance company may finance preventive measures by using funds from the preventive fund that is part of the special funds of the insurance company.

Implementation of activities using funds from the preventive fund

In accordance with art. 4 paragraph 9 point 4 of the Act on insurance and reinsurance (Ustawa o działalności ubezpieczeniowej i reasekuracyjnej 2015) [hereinafter: Ustawa 2015], the insurance activities carried out by the insurance company include “preventing the occurrence or reducing the effects of fortuitous events and financing these activities from the preventive fund”.

The concept of a preventive fund has no statutory definition, but the Act defines the method of its creation. An insurance company charged with costs may create a preventive fund, but its value may not be higher than 1% of the premium written net of reinsurance in the completed financial year (Ustawa 2015, Article 278 (1) and (2)). The written premium is the value of the gross written premium less the reinsurers’ share in this premium, therefore the value of the preventive fund cannot be higher than 1% of this difference. How indicates Beata Baluta, in order to properly manage the resources of the preventive fund it should be recorded separately from other special funds (2017, p. 933).

The Ustawa defines the method of creating a preventive fund, however, as indicated above, it does not specify what the fund is exactly. It also does not specify the list of activities that can be financed from it or the entities that can use these funds in the implementation of preventive measures. The lack of direct indication of entities that may implement preventive measures based on the resources of the preventive fund suggests that they can be not only insured persons who insure themselves, but also those insuring for someone else’s account.

In this context, however, attention should be paid to the provisions contained in art. 18 clause 1 and 2 of the Ustawa 2015. According to art. 18 clause 1 in the case of insurance concluded “on someone else’s account, in particular in group insurance, the policyholder may not receive remuneration or other benefits in connection with offering the possibility of using insurance cover or activities related to the performance of the
insurance contract”. This restriction also applies to persons who act for or on behalf of the policyholder (Ustawa 2015, Article 18 paragraph 2).

The indicated provisions of law raise the question whether the same policyholders on someone else’s account can use the funds from the preventive fund of the insurance company. According to Marcin Krajewski, the prohibition referred to in art. 18 clause 1 of the Ustawa 2015, the policyholder may not benefit from the funds of the preventive fund (2017, p. 149).

A little different opinion in this regard was provided by Marcin Orlicki, indicating that the insurance undertaking will not infringe Art. 18 clause 1 of Ustawa 2015 by transferring funds from the preventive fund to the policyholder, provided that they are used in the implementation of activities that have a direct impact on reducing the risk of random events or their effects, and these activities cannot have only an indirect, hypothetical or uncertain connection with risk of the aforementioned insurance accidents as well as their consequences (2016, p. 17).

In the context of a different approach of both authors to this issue, it is also justified to present the position of the supervisory body in this regard.

According to the position of the Polish Financial Supervision Authority of 13 July 2017, funds from the preventive fund may not be a donation transferred by the insurance company as a gratification for choosing its accident insurance offer, but they should be intended only for financing tasks related to preventive activities, and the possible marketing effect of the financing may only indirectly result from the insurer's expenses.

In the opinion of the Polish Financial Supervision Authority, the insurance undertaking may use the funds from the preventive fund without being accused of violating art. 18 clause 1 of the Ustawa 2015, provided that their use will directly reduce the risk of fortuitous events or their consequences, and at the same time benefits from the preventive fund may not be part of the offer that may affect the choice of insurance of a given insurance company (Komisja Nadzoru Finansowego 2017, pp. 4-5).

As presented in the above position, in the interpretation of art. 18 clause 1 and 2 of the Ustawa 2015, the provisions of law do not prohibit financing from the preventive fund of preventive tasks carried out by policyholders for someone else’s account, but such financing is subject to the need to meet the conditions indicated by the Polish Financial Supervision Authority.
Thus, the key when using funds from the preventive fund in the event that they are transferred to the account of others, including group contracts, is the desirability of using them. The funds must be used for actions that actually improve safety and reduce the risk of negative phenomena and their effects, and not be a bonus for the policyholder in exchange for choosing the offer of the given insurance undertaking. The transfer of funds from the preventive fund for expenses not in accordance with its intended purpose or the promise of their transfer as part of the offer, which is to make it more attractive in the eyes of the policyholder and encourage its selection, means that the insurance undertaking conducts its activities in breach of the law.

The Polish Financial Supervision Authority also drew attention to the obligation for the insurance undertaking to identify the type of activities that can be financed from resources from the preventive fund, as well as the topic of having internal control mechanisms that would ensure proper spending of these resources (Ibidem, pp. 5-6).

The transfer of funds from the prevention fund by the insurance company to the policyholder in a way that does not violate the provisions of Art. 18 clause 1 and 2 of the Ustawa 2015 does not mean that at the time the funds are transferred, the liability of the insurance company regarding the actual use of these funds ends. It may happen that, despite the funds being transferred by the insurance company in accordance with the assumptions for the existence of a preventive fund, they will be used in a manner inconsistent with their purpose. Thus, the insurance undertaking also has the responsibility of controlling the actual use of the preventive fund by the policyholder, as any misuse of entrusted funds could raise doubts in the context of compliance with the provisions of law contained in art. 4 paragraph 9 point 4 and art. 18 clause 1 and 2 of the Ustawa 2015.

Assuming that the insurance undertaking uses the resources accumulated in the preventive fund in accordance with their legal purpose, the question arises about the benefits of the provision of these benefits by insurance companies.

As Janusz Szpunar notes, preventive actions of insurance companies can be caused mainly to reduce current and future benefits from the insurance fund, and not to reduce the amount of future insurance premiums, and thus increase the portfolio of insurance policies held by the insurance undertaking (1973, p. 209).

According to Beata Wieteski-Rosiak, insurance companies are aware of preventive measures that make the society aware of the threats that occur in their environment,
losses that may be related to their materialization, and ways of securing themselves, as well as educational activities in the general field of safety, they implement socially responsible activities (2012, p 134).

The intentions underlying the creation of a preventive fund in individual insurance companies may differ from each other, but the undoubted benefit for insurers in the event of effective use of funds for preventive measures is the reduction in the number of insurance accidents and related consequences. As a result, insurance companies are obliged to incur lower expenses related to the payment of damages caused by the materialization of insurance risks, and thus they achieve a higher profit from their operations.

In the author's opinion, the main stakeholders in the effective use of the preventive fund are insured, since they are to be directly protected against the occurrence of fortuitous events, as well as against any significant consequences of these accidents. Through proper awareness of the insured in terms of their own activities that they can implement to reduce the risk of accidents or through actions to improve the infrastructure used by the insured, there may be a reduction in the number of accidents and their consequences for the insured. Insured thanks to insurance want to ensure protection against the materialization of various risks, therefore effective preventive activity reducing the number and scale of insurance accidents is in their best interest.

In contracts concluded on someone else’s account, apart from the insurer and the insured, there is also a third entity, i.e. the policyholder. Also he should be interested in the effective use of funds from the preventive fund, because despite the fact that the tasks financed from these funds should be carried out with the insured in mind, this does not preclude improving safety for persons other than the insured.

One example is group insurance, in which a school, represented e.g. by its headmaster, insures its students against the consequences of accidents. She can use the preventive fund funds received from the insurance company to improve safety at school. In this case, such activity should be implemented with a view to improving the safety of students, but it does not exclude the fact that other people will also use the same infrastructure (e.g. non-insured persons participating in activities outside of school hours). In this case, the improvement of safety within the school premises is associated with a reduction of the risk of accidents occurring within the school premises, which
in turn reduces the risk of school liability towards persons who use its infrastructure as agreed with the school management.

Of course, as has already been mentioned, it is important that the tasks carried out by policyholders have a real dimension of direct preventive activity, and not financing of activities improving policyholders’ conditions without any direct preventive influence for the insured.

Conclusions

In the author’s opinion, the proper use of resources from the preventive fund, by financing activities aimed at preventing the occurrence of insurance accidents, as well as minimizing the consequences of these events, and thus directly improving the safety of the insured is a key goal of the preventive fund. Such actions may not only have a positive impact on the safety of the insured, increase in the profit of insurance companies due to the payment of smaller amounts of benefits, but also by improving the security of the facilities belonging to the policyholders on someone else’s account. It should be emphasized that the benefits for policyholders should be only an indirect consequence of the implementation of preventive tasks in accordance with the statutory purpose of the preventive fund, and not the gratification resulting from the choice of insurance offer presented by a given insurance company.

The article drew attention to the impact of the use of resources from the preventive fund from the perspective of insurance companies, policyholders on behalf of others and the insured. This work can be developed, e.g. by analyzing the purposefulness of insurance companies using funds from the preventive fund, which may allow, e.g. to determine which areas are covered by the largest support from the preventive fund in order to minimize the number of random events and their consequences.

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