

## Obligatory Insurance as a Form of Social Engineering: A Comparison Paper Between the United States, Italy, Aruba and Poland

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**Abstract** Insurance has been around for centuries. Traditionally, it has been purchased to protect the purchaser, namely, the insured. Over time, the insurance industry has developed an increasing number of products, so that at present one can purchase insurance to cover nearly every risk imaginable. The concept of mandatory or obligatory insurance is a fairly recent development. It traces its origins to the widespread use of the motor vehicle and also employment. Obligatory insurance is designed to protect certain classes of persons, such as workers and those who sustain injury and damage at the hands of others. In this article, the authors compare the current state of obligatory insurance in four democratic countries: the United States, Italy, Aruba and Poland. The aim of the article is to catalogue the similarities and differences in obligatory insurance in those four countries. The countries studied all have obligatory insurance designed to offer some degree of protection to workers injured on the job, and in the course and scope of their work, and to those involved in vehicular collisions. The other primary takeaway from our research is that, predictably, there is less obligatory insurance in the United States than in the other countries studied.

**Keywords:** • obligatory insurance • obligatory motor vehicle insurance • obligatory health insurance • obligatory professional liability insurance • workers' compensation insurance • social insurance •

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## 1 Introduction

Insurance, it has been said, “has been around as long as human existence” (Beattie, 2018). According to some authors, the first insurance policies date back to ancient times, and were written “on a Babylonian obelisk monument with the code of King Hammurabi carved into it.”<sup>1</sup> Insurance has long been popular in Europe, especially with rapid advancements in industry brought about by the Industrial Revolution.<sup>2</sup> Insurance was slower to develop in the fledgling United States of the 1800s, but as we shall see, today the United States far and away is the leading consumer of insurance products. Everyone is, of course, familiar with insurance. We all purchase it, for our vehicles, our homes or apartments, for our businesses, for our pets, and for a myriad of other reasons. Life is fraught with peril. Accidents and various catastrophes occur with regularity. Insurance is meant to provide a hedge against risks and perils. It provides peace of mind. It makes it easier for the doctor, the lawyer, the driver, the homeowner, the renter, the farmer, the business owner and many other individuals and business owners to sleep easier at night knowing that when something goes awry the insurance company will be there to respond.

The first thought most of us probably have is that the main purpose of insurance is to protect the purchaser/owner of that insurance, that is, the insured. And in fact, that generally is the case. And for many millennia that was, in fact, the case. However, increasingly, legislators throughout Europe, to a much lesser extent the United States and elsewhere have decided, as a matter of public policy, that certain groups of persons must, as a matter of law, purchase insurance as a condition precedent to engaging in certain proscribed activities. Such insurance is therefore called mandatory or obligatory insurance. Obligatory insurance, therefore, is a form of social engineering designed to protect the harmed party from the possibility that the party causing the harm will not have the assets to compensate those he or she injures. While space limitations prevent the authors from tracing the complete history of obligatory insurance, or the pros and cons of obligatory insurance, the aim of this paper is to discuss the current status of obligatory insurance in a comparative fashion, by examining such legislation in four countries: the United States, Italy, Aruba and Poland. Each

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<sup>1</sup> Id.

<sup>2</sup> Id.

country's primary obligatory insurance legislation will be considered in that order.<sup>3</sup> The paper will conclude, in Section VI, with some remarks on both common denominators and differences.

## **2 Obligatory insurance in the United States**

### **2.1 Introduction**

The topic of obligatory insurance is complicated because the United States, when it enacted its constitution, created a system of federalism, which divides powers between the national (federal) government and the various state and territorial governments. Under the doctrine of federalism, the two levels of government have roughly equal status. The United States Constitution gives certain powers to the federal government, other powers to the state governments, and certain other powers to both. The states are empowered to pass, enforce, and interpret laws, as long as they do not violate the federal constitution. The Tenth Amendment of the United States Constitution provides that “all powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” The Tenth Amendment, therefore, assigns most of the basic responsibilities of governing to the states and local governments. The area of insurance is one that, as a general proposition, has been left to the states, and therefore, there are many variations from state to state. There are, of course, fifty states, and they have, for the most part, autonomy to govern as they deem fit. Former Supreme Court Justice Louis Brandeis, in the case *New State Ice Co. v. Liebman*,<sup>4</sup> popularized the concept of “laboratories of democracy” to describe how a “state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.” Therefore, sometimes laws are passed in one state; they turn out to be successful; and, many other states then follow that lead. Of course, the converse is also true.

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<sup>3</sup> Due to space limitations, it is not possible to cover every single law imposing obligatory insurance in the countries studied in this paper. However, the authors have strived to discuss the most salient obligatory insurance.

<sup>4</sup> 285 U.S. 262 (1932).

Most states have insurance offices headed by a state insurance commissioner. And the vast majority of insurance matters are in fact regulated and administered at the state level. However, there are numerous federal offices and agencies that play some role in the United States insurance industry such as the Federal Trade Commission and Federal Insurance Office (FIO), which is part of the Department of Treasury. The FIO is authorized, for example, to monitor all of the insurance industry and identify any gaps in the state-based regulatory system. Further, the Dodd-Frank Wall Street Reform and Consumer Protection Act, passed by Congress in 2010 in response to the market collapse in 2008, also established the Financial Stability Oversight Council, which is charged with monitoring the financial services markets, including the insurance industry, to identify potential risks to the financial stability of the United States.

The insurance industry in the United States is vast. In 2013, \$4.640 trillion of gross insurance premiums were written worldwide. Of that, \$1.274 trillion, or 27 percent, were written in the United States.<sup>5</sup> For much of its history, the individual states regulated the insurance industry. Typically, each state has an insurance department headed by an insurance commissioner. In *United States v. South-Eastern Underwriters Association*,<sup>6</sup> the Supreme Court held that the Commerce Clause of the U.S. Constitution empowered the federal government to regulate the insurance market. However, the McCarran-Ferguson Act of 1945 imposed rather severe limitations on the federal government's ability to interfere with laws and regulations enacted by state governments for the purpose of regulating the insurance industry.

Although the United States commands a disproportionate amount of the overall global insurance market, unlike the situation in many European states, obligatory insurance in the United States is the exception rather than the rule. The two major departures are vehicular insurance and industrial insurance (worker's compensation) laws, both of which largely are regulated at the state level. Since the individual states have the autonomy to decide through their own laws and regulations how insurance should work, it is not possible in this short article to describe all of the differences in obligatory insurance across all fifty states. We can, however, trace the history of some of the most salient aspects of

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<sup>5</sup> Federal Insurance Office (2014). Annual Report on the Insurance Industry. Washington, D.C.: U.S. Department of the Treasury, at p. 45.

<sup>6</sup> 322 U.S. 533 (1944).

obligatory insurance in the United States and that history follows in the following sections.

## **2.2 Obligatory vehicular insurance**

With the proliferation of vehicular traffic came, predictably, a high number of collisions, resulting in both bodily injury and property damage. The states decided, as a matter of public policy, that unlike other torts, where the justice system relied solely upon the tortfeasor to personally satisfy judgments, the sheer number of vehicular accidents mandated the imposition of financial responsibility and obligatory insurance laws to ensure that victims of vehicular collisions would be able to collect, or at least partially collect, on judgments entered against the tortfeasor drivers. In the mid-1920s, Massachusetts and Connecticut became the first states to legislatively create financial responsibility and obligatory insurance laws.<sup>7</sup> Over time, the other states followed suit. Today, most states require the owner of a motor vehicle to carry some minimum level of liability insurance. Only a handful of states do not require vehicle owners to purchase insurance. But even those states have legislation requiring owners of vehicles to take other steps to ensure that there is a fund available to help ensure that accident victims will be able to at least partially recover their damages. In Arizona, for example, while insurance is not obligatory, the vehicle owner must either deposit \$40,000 in cash, bonds, or certificate of deposits with the State Treasurer or purchase insurance.<sup>8</sup> Similarly, in Mississippi, the owner is required to either post a bond equal to the state minimum limits required for those that do purchase insurance or make a cash or security deposit equal to those limits.<sup>9</sup> In Texas, there is a financial responsibility law in place mandating that the vehicle owner must establish personal financial responsibility through a surety bond or a deposit of \$55,000 with the comptroller or the county judge.<sup>10</sup> In Virginia, owners are required to pay \$500 a year to drive an uninsured vehicle. However, owners remain responsible for injuries or damages caused in an accident.<sup>11</sup> New Hampshire is a personal responsibility only state. While New Hampshire does not require its citizens to purchase vehicular insurance or

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<sup>7</sup> Ct. Public Acts, ch. 183 (1925); Mass. Acts 1925, ch. 346.

<sup>8</sup> <http://www.insurance.az.gov/consumers/help-auto-insurance>.

<sup>9</sup> <http://www.mid.ms.gov/consumers/auto-insurance.aspx>.

<sup>10</sup> <https://statutes.capitol.texas.gov/Docs/TN/htm/TN.601.htm>.

<sup>11</sup> [https://www.dmv.virginia.gov/vehicles/#uninsured\\_fee.asp](https://www.dmv.virginia.gov/vehicles/#uninsured_fee.asp).

to post bonds or otherwise takes steps to ensure (at least partial) financial responsibility, its laws mandate that owners involved in accidents are fully responsible to pay for any bodily injuries or property damage in the event of an accident.<sup>12</sup>

The remaining states require vehicle owners to carry minimum levels of liability insurance. The common thread is that each state has a minimum bodily injury limit per individual; a minimum bodily injury limit per accident; and, a minimum property damage limit per accident. South Carolina's<sup>13</sup> minimum limits of 25/50/25 are common (11 states have these minimum requirements.) Using this as an example, after "an accident each person injured would receive a maximum of up to \$25,000 with only \$50,000 allowed per accident (ex. 2 people needing \$25,000, if the need it more such as 3 people needing \$25,000 then whoever files first gets access to the \$50,000 limit and you may be sued for the rest if the accident was your fault. The last number refers to the total coverage per accident for property damage."

As can be seen, obligatory vehicular insurance, while providing some minimum levels of insurance, often does not fully protect either the victim(s) of accidents or the owner(s), especially in this day of often high judgments. For instance, in the state of Indiana,<sup>14</sup> the minimum liability limits are \$25,000/\$50,000/\$10,000, and accordingly there is a greater property damage exposure to an owner in Indiana compared to South Carolina for carrying only the minimum limits. To protect oneself, the owner can pay a higher premium in exchange for higher liability/property damage limits. Despite these obligatory insurance laws, many Americans risk driving without insurance. In 5 states, approximately 20 percent of persons operating motor vehicles lack insurance coverage.<sup>15</sup> To protect against the risk of being injured by an uninsured or underinsured tortfeasor driver, many states mandate the purchase of (or at least required insurance companies to offer) what is known as uninsured/underinsured motorist coverage. This insurance provides coverage in the event an at-fault party either does not have any insurance or is underinsured.

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<sup>12</sup> <https://www.nh.gov/safety/divisions/dmv/financial-responsibility/faq-crashes.htm>.

<sup>13</sup> <https://www.doi.sc.gov>.

<sup>14</sup> <https://www.in.gov>.

<sup>15</sup> See, Insurance Journal (March 15, 2018). Available at: <https://www.insurancejournal.com>.

### 2.3 Obligatory Insurance for Medical Professionals

As is the case with obligatory insurance for those owning or operating vehicles, the states, not the federal government, have determined whether health care professionals are obliged to carry liability insurance. In fact, no federal law requires physicians to carry medical malpractice insurance. As of 2018, approximately 32 states have no requirements that physicians carry medical malpractice insurance (Weger, 2018). Over the last fifty years or so, most states have passed so-called tort reform legislation in order to help shield the medical profession (and their insurers) against the onslaught of tort cases brought against the profession for medical malpractice. The so-called medical malpractice “crises<sup>16</sup>” led to newer physicians opting out of practicing in high-risk areas of medicine such as OB-GYN, orthopedic surgery among other areas. Additionally, some physicians decided to leave risky parts of the country such as New York City and other urban areas. Some medical malpractice carriers decided not to write malpractice insurance or, if they continued to do so, raised premiums drastically. All of these developments were unhealthy and undesirable not only for the profession but for the American public at large. Tort reform at the state level attempted to alleviate these problems by, for example, imposing caps on damages; modifying the usual rules regarding joint and several liability; mandating pre-suit arbitration or other forms of ADR, etc. The results of tort reform have been described as mixed and uncertain, although in many parts of the country malpractice premiums have, in fact, been reduced (Heller, 2017: 139–163).

Eighteen states do require physicians to take some steps regarding the purchase of malpractice insurance. Some states require minimum levels of malpractice insurance while others require medical professionals to have some insurance in order to qualify for the liability tort reforms that have been legislatively enacted in the state(s) where they practice. Alabama, Alaska, Arizona, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont,

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<sup>16</sup> The plural of crisis is used here intentionally, as over the last fifty years or so there were several distinct periods of ‘crisis’. See, Heller, 2017.

Virginia, Washington and West Virginia all do not require medical malpractice insurance nor do they have minimum carrying requirements.

On the other hand, seven states do require doctors to maintain a minimum level of malpractice insurance. These states are: Colorado, Connecticut, Kansas, Massachusetts, New Jersey, Rhode Island and Wisconsin. The amounts of minimum insurance these states require vary from state to state. In Kansas, for example, physicians must maintain a medical malpractice insurance policy with a per limit claim of \$200,000 and a \$600,000 aggregate limit. Other states, including Indiana, Nebraska, New Mexico, New York, Pennsylvania and Wyoming have enacted laws that require doctors practicing in those states to maintain minimal levels of malpractice insurance if they want to avail themselves in programs operated by the state that are designed to help them deal with claims, that is, tort reform legislation. Some of these states provide patient compensation funds which are, in essence, extra malpractice insurance for doctors. When a claim is made against a physician, the physician's malpractice insurance will cover the claim up to the limit of available policy limits while the state compensation fund satisfies any unpaid amount.

While many states do not require doctors to maintain medical malpractice insurance as a matter of law, in reality, even in those states, many doctors, in fact, maintain such insurance. Over the last 50 years or so, in response to the vast number of medical malpractice claims, and other economic pressures, the profession has become consolidated into ever increasing numbers of doctors practicing through hospitals and large clinics (Heller, 2017). Typically, in those settings, the institution where the doctor practices will have malpractice insurance in place. Further, most hospitals and clinics require doctors practicing in those facilities to obtain and maintain malpractice insurance as a condition to practice there. Some healthcare plans also require any doctor who participates in their coverage plan to maintain malpractice insurance. A significant number of doctors practice medicine without having malpractice insurance.<sup>17</sup> These doctors might conclude they are less of a litigation target by not having such insurance. However, it is fair to say that whether doctors technically have to maintain malpractice insurance, whether by state law, employer requirement, health plan

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<sup>17</sup> One researcher noted, for example, that as of 2016 in Florida more than 5 percent of the state's approximately 47,700 active medical doctors did not carry medical malpractice insurance (Silverman, 2016).

requirements or otherwise, most physicians, in fact, maintain such insurance for peace of mind in the event they are sued or claims are made against them. This is due to the fact that more than 65 percent of doctors over the age of 55 report having been sued at least once. This figure is even higher for doctors practicing in high-risk areas.

## 2.4 Obligatory insurance for other professionals

Oregon and Idaho currently are the only states requiring attorneys to maintain legal malpractice insurance coverage as a condition for practicing law. Other states, while not requiring attorneys licensed in those states to carry insurance, do require them to disclose to clients if they are not insured. Other states, including Indiana and Washington, among others,<sup>18</sup> are considering whether to require attorneys to carry legal malpractice insurance coverage. In reality, however, many attorneys do carry legal malpractice insurance on a voluntary basis.<sup>19</sup>

Dentists are not legally required to carry malpractice insurance, but, as is the case with attorneys, most of them do nevertheless. Some states offer programs that put a limit on the awards given to patients, often called a State Fund. If a dentist participated in their state's State Fund, they pay a yearly fee to that fund, and any lawsuits brought against them have a limit on the amount of money that can be awarded to the claimant. The limit is set by each state's laws.

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<sup>18</sup> Washington State is considering whether lawyers licensed to practice law in that state should be required to maintain obligatory attorney malpractice insurance. For a good discussion about the status of the debate, including both the pros and cons of such a requirement, the reader is referred to a recent podcast discussion involving the Chief Disciplinary Counsel at the Washington State Bar Association, Doug Ende, entitled: "ALPS in Brief Podcast - Why is mandatory malpractice insurance gaining ground?" (<https://blog.alpsnet.com/alps-in-brief-podcast-episode-10-why-is-mandatory-malpractice-insurance-gaining-ground>). As is pointed out in the podcast transcript, Washington, as is the case in other states, and as is true in non-legal professions, when considering whether to impose obligatory insurance has to balance both interests of the public in trying to protect persons harmed from the risk they may not have recourse against a judgment proof lawyer against the burdens (cost and administrative) to the lawyer.

<sup>19</sup> On the other hand, many lawyers choose to "go bare." Some researchers found that in a survey of Texas lawyers, for example, "36 percent of private practitioners and 63 percent of solo practitioners did not carry malpractice insurance" even though lawyers face a substantial risk of malpractice claims (see, *When the Lawyer Screws Law* Scholarship Repository. June 29, 2015; accessed at: <https://www.scholarship.law.duke.edu>).

## 2.5 Obligatory workers' compensation insurance

Workers' compensation is another extremely common form of obligatory insurance in the United States. Designed to protect employees (workers) injured and/or disabled during and in the course of employment, these laws provide that in most cases the employer must have insurance as a means to pay for the injured employee's medical care and lost wages. In some cases, these laws also provide that the state (using funds paid jointly by the employer and employee) will pay the injured worker a lump sum for any permanent, partial disability, such as for the partial loss of a limb. If a worker dies as a result of their employment, workers' compensation also makes payments to the deceased's family members or other dependents. Workers' compensation schemes are no-fault, meaning that in situations where the worker sustains injuries while in the course of employment, he or she does not (as in the litigation setting) have to prove fault on behalf of the employer or someone else. Rather, the injured worker is automatically entitled to the statutory benefits upon a showing of injury that occurred during the course and scope of usual employment.

All states have workers' compensation laws and workers' compensation policy most often is handled by the individual states. However, the United States Department of Labor has an Office of Worker's Compensation Program that administers compensation policies for federal employees, coal miners and longshoremen. Some very small businesses, such as ones with four or fewer employees, are exempt from these laws in some states. In most states, workers' compensation claims are handled by administrative law judges, who often act as triers of fact. It should further be noted that regardless of obligatory requirements, many businesses (as is the case with doctors/lawyers for example) may purchase such insurance voluntarily. It should also be noted, that in some instances, workers injured on the job might have tort remedies available in addition to statutory workers' compensation benefits. For instance, the injured worker might have a tort remedy against a third party entity (non-employer/non-co-worker) who contributed to the accident; for example, a product liability claim against a manufacturer of some equipment that worker was injured by during employment.

## 2.6 Obligatory health insurance

Traditionally, it has not been obligatory for Americans to purchase health insurance. Furthermore, health insurance in America is not a legally protected right. Practically speaking, however, the majority of Americans have had some form of health insurance. Many Americans have purchased their own health insurance through the private, for-profit market. Others have received health insurance through their employers as part of their compensation scheme. Yet other Americans have received health care through the public system offered by the government to certain persons that qualify under specific statutory requirements. Such persons, often military or former military personnel; the partially or totally disabled; and, the elderly, receive health care either for free or at a highly reduced rate. This patchwork scheme has always meant, unfortunately, that there have been many Americans left “in the gaps” that have been unable to have health care plans. Such persons have been in dire straits and have been a burden on society in the sense that they must usually resort to receiving care at hospitals and emergency care facilities.

In 2010, under the Barack Obama administration, the United States Congress passed the Patient Protection and Affordable Care Act (hereinafter “ACA”<sup>20</sup>). One of the signature provisions of the ACA was that it mandated all US citizens and legal residents to maintain qualifying health care coverage. Unfortunately, the ACA was passed under party lines, and when President Donald Trump took office he vowed, along with a Republican majority in Congress, to completely repeal the ACA. Although to date that has not happened, President Trump was able to take steps to weaken this legislation and Congress removed the penalty for not having health insurance, essentially removing the mandate requiring all citizens and residents to have health insurance. Accordingly, the future of the ACA remains in doubt and only time will tell whether health insurance will be, in fact, compulsory for all Americans.

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<sup>20</sup> 42 U.S.C. § 18001 (2010).

### 3 Obligatory insurance in Italy

#### 3.1 Introduction

Obligatory general insurance (in acronym AGO<sup>21</sup>), in the Italian legal system, is a legal scheme that provides for its subscribers multiple forms of social protection through social insurance for the elderly, those suffering with disabilities, as well as those employees saddled with involuntary unemployment including craftsmen, traders, agriculture workers and other atypical workers, even workers of the Show (see more at Velliscig, 2019: 539–561). This insurance was established by Royal Decree Law.<sup>22</sup> It is the main institution of assistance and social security that implements Art. 38 of the Constitution. In Italy, the INPS is the social security institution that implements this insurance. Obligatory general insurance managed by INPS is also defined as a general scheme. Other entities manage obligatory social insurance on the basis of special laws, as provided for in article 1886 of the Civil Code, and are defined as substitute regimes (e.g. INPGI<sup>23</sup> or exclusive INPDAP<sup>24</sup> schemes).

#### 3.2 Social insurance

Article 38 of the Italian Constitution establishes the foundation of obligatory social insurance: “Workers have the right to be assured adequate means for their needs and necessities in the case of accidents, illness, disability, old age and involuntary unemployment.” The Social Insurance System is financed by the contributions that are largely borne by employers and, to a lesser degree, by the workers themselves, whose share is retained by the employer, who then pays the employee’s share in the Treasury’s coffer as a substitute tax. The system of social insurance is managed by two institutes: the INPS<sup>25</sup> (National Institute of Social Security) and the INAIL<sup>26</sup> (National Institute of Occupational Insurance).<sup>27</sup>

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<sup>21</sup> Assicurazione Generale Obbligatoria.

<sup>22</sup> No. 636 of 14 April 1939 (OJ, No 105 of 3 May 1939). AGO was confirmed by the “Law 9/2009 and by successive laws of amendment and integration”.

<sup>23</sup> Istituto Nazionale di Previdenza dei Giornalisti Italiani.

<sup>24</sup> Istituto Nazionale di Previdenza e assistenza per i Dipendenti dell’Amministrazione Pubblica.

<sup>25</sup> Istituto Nazionale della Previdenza Sociale.

<sup>26</sup> Istituzione Nazionale Assicurazione Infortuni sul Lavoro.

<sup>27</sup> [Http://www.itctosi.va.it/orientagiovani/Capitolo%205.4.htm](http://www.itctosi.va.it/orientagiovani/Capitolo%205.4.htm).

The INPS was created in 1935 as an entity under public law in compliance with the insurance regulations for which insurance companies cannot be constituted except in the legal form of a mutual insurance company or institutes under public law. The main types of insurance provided by INPS are:

- Obligatory insurance due to disability and old age and for survivors. It guarantees three different types of pensions for workers and survivors: firstly, it guarantees a pension for workers who leave their jobs for age; secondly, to the workers who face reduction of work and hence income because of physical or mental infirmities; and, thirdly, assures those who survived the worker a pension in the event of the said worker's death;
- Social insurance against involuntary unemployment which allows the worker to maintain decent living conditions for himself and his family (see more at Franasti, 2018);
- The Guarantee Fund of the TFR<sup>28</sup> (End-of-Relationship Treatment) which assures the worker the payment of the TFR in the event of the employer's insolvency;
- The Cashier Checks for the household which consists of a cheque paid to the worker in order to supplement his or her salary in order to substantially guarantee to both the worker and his or her family a dignified existence as enshrined in the Italian Constitution;
- The Profit and Loss Fund, the purpose of which is to guarantee the worker a part of the salary in case of the interruption of the employment relationship either by the employer or by the will of the worker. The interventions are, essentially, of two fundamental types: the first consists of an ordinary intervention in case of temporary crises production failures of work or sudden declines of the demand. The second type of interventions is more articulated and complex, as it is addressed in particular to workers who have lost their jobs permanently due to company restructuring or similar interventions;
- Insurance to assist a worker suffering from disease, which allows the worker to receive a certain proportion of the daily wage in a manner inversely proportional to the time when the worker is suffering from a non-occupational disease;

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<sup>28</sup> Trattamento di Fine Rapporto.

- Maternity and paternity insurances that guarantee to the mother in particular or to the father some months of suspension paid by the employer immediately before (only for the mother) or immediately after the birth of the child (for both parents) so that the child is guaranteed the necessary care and assistance.

The National Institute of Accident Insurance at Work (INAIL) administers insurance resulting from accidents at work and occupational illness. In the case of accidents at work or occupational illness, the INAIL grants workers:

- Health Care that is provided by the ASL<sup>29</sup> with territorial competence;
- Daily Allowance for incapacity to work commensurate with the remuneration received before the occurrence of the accident or occupational illness;
- An annuity commensurate with any permanent inability to work due to physical impairments suffered by the worker;
- A monthly allowance for the duration of any assistance at home; and
- A monthly annuity and a "one-off" cheque for survivors in the event of a worker's death due to occupational disease or accident at work.

### 3.3 Obligatory insurance for lawyers

The rules on obligatory insurance for lawyers (see more at Dosi, 2016) under professional law are set forth in article 12 of the Law no 247/2012. The Decree of the Ministry of Justice of 22 September 2016 establishes the essential conditions and minimum ceilings for insurance policies to cover civil liability and accidents arising from the exercise of the activity (O.J. N. 238 of 11 November 2016). The entry into force of the decree, initially set at 11 October 2017, was extended by one month (D. M. Giustizia 10/10/2017), coinciding with the news circulated by the CNF<sup>30</sup> of the conclusion of the national convention on the insurance of professional civil liability of the lawyer and of the liability and injuries “*ex lege*”.

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<sup>29</sup> Azienda Sanitaria Locale.

<sup>30</sup> Consiglio Nazionale Forense.

Here are the main innovations provided by the decree:<sup>31</sup>

- The insurance must cover the civil liability of the lawyer for all damages that the lawyer may cause, due to serious negligence, to customers and to third parties in the course of the professional activity.
- Any type of damage must be insured: patrimonial, non-patrimonial, indirect, permanent, temporary, future.
- The employees and family members of the insured are not considered to be third parties covered by the insurance.

In the case of the lawyer's joint liability with other persons, insured or not, the insurance must provide for the liability of the lawyer for the whole, except for the right of recourse against the solidarity debtors. Other provisions concern:

- the temporal effectiveness of the policy and the right of withdrawal: it must be envisaged, also in favour of the heirs, the obligatory unlimited retroactivity and the ultra-activity at least ten years for the lawyers that cease activity in the period of the policy's validity;
- the policy must exclude the insurer's right of withdrawal over a claim or its compensation, during the duration of the contract or the period of ultra-activity;
- the decree also identified the minimum ceilings for coverage, separated by a risk range depending on the individual or associated form of the activity and the turnover of the last closed year.
- In the case of deductibles and uncovered claims, however, the insurer shall indemnify the third party for the entire amount due, except in the scope of the right to recover the amount of the deductible or the uncovered claims by the insured who has kept free from the claim for compensation of third parties.

The parties may also provide for premium adjustment clauses in the event of an increase in the current contract turnover. The insurance must be provided in favour of lawyers and their employees, practitioners and employees for whom INAIL compulsory insurance coverage is not operating. The coverage is extended to accidents during the course of the professional activity, especially

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<sup>31</sup> <https://www.altalex.com/documents/news/2016/10/12/>.

when the accident causes death, permanent disability or temporary disability, as well as medical expenses.

The Minimum insured sums are:

- Death: Euro 100,000.00;
- Capital permanent disability case: Euro 100,000.00;
- Daily allowance for temporary disability: Euro 50.00.

The conditions of obligatory insurance policies must be made available to third parties without any formalities at the membership order and at the CNF, and published on their respective websites.

### **3.4 Health insurance**

Health insurance (more at Caso, 1953: 132–134), also called sickness policy, has the function of covering costs and expenses related to health. Although it is not compulsory in Italy, the accident insurance policy is complementary and often an alternative to the National Public Health Service. With health insurance, Italian citizens can obtain a policy providing either total or partial coverage for incurred medical expenses and, in case of accidents or damage to health, they can choose between three types of health insurance:

- The indemnity insurances that guarantee payment for the charges incurred during the hospitalization and for the days of convalescence consequent to a hospital stay
- Reimbursement insurances that recognise a partial or total indemnity for medical expenses arising from an accident or illness
- Policies for permanent disability where compensation is proportional to the degree of invalidity of the insured person.

In case of illness, the National Health Care System protects Italian citizens for all care. The sickness insurances, therefore, have a different purpose. Firstly, they compensate the insured for the loss of income which is caused by the disease. A second function is to compensate for expenses in case of admission to a private clinic or if specialist care is needed. When securing a sickness policy,

the insured fills out a questionnaire and, responding to it, provides all the information related to the insured's health status that the insurance company considers necessary to make an informed evaluation of whether to conclude insurance with the subject in question. It is not advisable to give false answers, because if their non-authenticity is proven, this entails the loss of the right to any kind of compensation from the insurance company.

There are three types of health insurance policies available, each providing various types of compensation:

- The first possibility is compensation if the disease causes permanent disability. Generally, the percentage of permanent disability that is protected by the health insurance policies of Italian insurances is that for damages of more than 26 percent, as calculated from the tables of the Ministry of Health.
- The second type of compensation is on a daily basis, for hospitalization and also, in some cases, for the post-hospitalization convalescence.
- The third type of compensation that may be provided by the sickness policy is the reimbursement for medical expenses at private facilities, which can cover both hospitalization and surgery, or even just the latter.

Like civil liability insurance, sickness policies also provide for exclusion clauses, which allow the insurance company not to pay compensation to the insured under certain defined circumstances, including the following: malformation (at birth), voluntary abortions that are not therapeutic (abortions are considered therapeutic if they safeguard the health of the mother), dental care, illnesses of the psychic sphere, interventions of cosmetic surgery. Some optional clauses that are advisable not to be included in the policy are that of termination of the cover after the liquidation of the amount of the insurance for the first cause of illness, which allows the company to cancel the contract after the first opportunity in which a state of illness has been compensated. To obtain compensation for the illness, the insured must send all documentation to the insurance company in a registered parcel with a return receipt, enclosing copies of all available medical documentation including: certificates, medical records from clinics attended and receipts for which the compensations is sought.

Another type of clause that can be included into the accident insurance policy is one that allows the insurance company to disclaim coverage in circumstances in which the injury-causing incident was a result of negligence or gross negligence on the part of the insured. As regards the possible consequences of an accident, these may belong, according to insurance policies, in one of the three broad categories: temporary disability, permanent disability and death. Permanent disability occurs when the damage sustained due to the accident is not reversible and will indeed affect the entire future life of the insured, in particular by preventing the insured from being able to work. Temporary disability, on the other hand, is the loss of working capacity for a limited amount of time. Compensation generally provided for temporary disability is a daily allowance covering the days of work lost by the insured. This is, therefore, a particularly advisable compensation for those who carry out autonomous work activities, which do not provide for indemnification. Permanent disability is calculated with a percentage value corresponding to the type of physical or sensory impairment to which the damage corresponds, which in turn is based on special tables, prepared and constantly updated by Ania and Inail. In the case of partial impairments not explicitly provided in the tables, the insurance company may arrange for an appropriate medical examination to assess them. The case of death by accident instead provides for compensation or an annuity for the beneficiary indicated in the accident insurance by the insured. In cases where the policyholder does not specify a beneficiary (in case of death) then the insurance carrier will divide the death benefits equally among the heirs.

### 3.5 Vehicles

Rail-free motor vehicles, including motorcycles and trailers, may not be placed in circulation on roads of public use or on areas comparable to them if they are not covered by the liability insurance (Cocci, 1960: 497–530) towards third parties provided in Article 2054 of the Civil Code and Article 91, paragraph 2, of the Road Code. The Regulation, adopted by the Minister for Productive Activities, upon a proposal by the IVABS,<sup>32</sup> identifies the type of vehicles excluded from the insurance obligation and the areas comparable to those of public use. The insurance shall include liability for damage caused to the transported person, irrespective of the title under which the transport is carried

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<sup>32</sup> Institute of Veterinary Animal and Biomedical Sciences.

out. The insurance shall have no effect in the case of movement against the will of the owner, the usufructuary, the purchaser with a covenant of private domain or the lessee in the event of a financial lease, in accordance with Article 283, Paragraph 1(d)), starting from the day following the complaint lodged with the Public Security Authority. By way of derogation from the second subparagraph of Article 1896 of the Civil Code, the insured shall be entitled to reimbursement of the premium rate for the remainder of the insurance period, net of the tax paid and the contribution provided for in Article 334. The insurance shall also cover liability for damage caused in the territory of other Member States under the conditions and within the limits laid down in the national laws of each of those States concerning compulsory insurance of civil liability arising from the movement of motor vehicles.<sup>33</sup>

### **3.6 Medical insurance**

Currently, there is no compulsory liability for medical (see more at Pagni, 2018: 174–189) or ordinary negligence. Therefore, the need arises – even if there is no specific legal obligation – to contract insurance to cover injuries/damage stemming from acts of serious medical negligence. In theory, the obligation to take out insurance for civil liability would already be applicable to doctors who operate as free professionals by virtue of the so-called "Decree Balduzzi", which was originally set to enter into force in August 2013, but was then postponed to August 14, 2014. The aforementioned decree stipulates that while the criminal liability of physicians is limited to cases of gross negligence, they are still liable to compensate the victim for any physical and/or psychological damage caused to the victim. On the other hand, as regards the foundation of the obligation of insurance for the sanitary structures in which the medical professionals are to operate, the responsibility for any accidents arises from the rules of Civil Code regulating the fulfilment of contractual obligations.

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<sup>33</sup> <https://www.altalex.com/documents/news/2014/10/20/assicurazione-obbligatoria-per-i-veicoli-a-motore-e-i-natanti#titolo>.

The Gelli-Bianco Law (2017) provides:

- The physician is not liable if he or she has complied with the guidelines established by scientific societies or research institutes accredited with the Ministry of Health. This exception was added in an attempt to prevent the practices of "defensive medicine" which is a concern when physicians are faced with the threat of civil and/or criminal sanctions due to their negligence.
- With regard to civil liability, a differentiation is established between the type of premises responsibility (contractual) and that of the professional (non-contractual).
- The patient's legal claim may be addressed to the hospital for any type of damage and guilt, irrespective of its severity, but the action may only be filed against the professional in the case of gross negligence or, of course, intent.
- Compensation actions are extended to the obligation – currently foreseen for the reasons of Social Security benefits – to have a preventive technical assessment beforehand.
- It is foreseen that all public and private health facilities as well as the professionals shall be obliged to conclude insurance policy, the characteristics of which must be governed by implementing decrees and which must nevertheless establish a very broad temporal coverage: the health benefits will have to be covered by insurance for ten years, also in the case of death of the professional (in the latter case with civil responsibility of the heirs).
- A guarantee fund shall be established, as is the case for road-traffic compensation, which will cover damages exceeding the policy ceilings or those in respect of insuring companies in state of insolvency or forced liquidation.

## 4 Obligatory insurance in Aruba

### 4.1 Introduction

The reader may not be familiar with the small country of Aruba, and so here is a little background. As tiny as it can get, just 29 kilometres off the north coast of Venezuela, lies a 32 kilometres long and 10 kilometres wide island called Aruba. Aruba is located in the southern Caribbean Sea and is a constituent country of the Kingdom of the Netherlands. Aruba is not officially part of the European Union, but it is designated as a member of the Overseas Countries and Territories (OCT). This is important, as it means that Aruba receives support from the European Development Fund.<sup>34</sup>

As a constituent of the Kingdom of the Netherlands and autonomous country, Aruba enjoys the power to elect its own Parliament and Cabinet. However, Aruba is not a sovereign country in certain political aspects. Some of these aspects are defence and foreign affairs, which are handled by the Netherlands (Borman, 2012). This does not affect the fact that Aruba creates its own legislation, while adopting and adapting many laws of the Netherlands.<sup>35</sup> Obligatory insurance in Aruba is a very common topic, as in many other countries. It regulates security and harmonization among citizens with formal rules to protect the well-being of individuals. The main obligatory insurances discussed in this section are health insurance, vehicle and motor insurance, workers compensation insurance and company insurance.<sup>36</sup>

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<sup>34</sup> *Aruba Department of Foreign Affairs* (2011), Political Stability, 7 June 2011, available at: <http://www.arubaforeignaffairs.com>.

<sup>35</sup> Aruba (2014) *Encyclopedia Britannica*, 10 August 2014, available at: <https://www.britannica.com/place/Aruba>.

<sup>36</sup> European Union (2011) *Overseas Countries and Territories (OCT)*, 6 June 2011, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:1105\\_1](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:1105_1).

## 4.2 Obligatory vehicular insurance

To maintain the security amongst citizens that make use of public roads, the obligatory vehicular insurance was introduced in the country regulation of December 22, 2016 amending the Motor Vehicle and Motor Boat Tax Regulation (AB 1988 no. GT 23).<sup>37</sup> Motor vehicles must be registered at the Tax Authorities (*Departamento di Impuesto*). This registration allows anyone who owns a motor vehicle to use it on public roads. For second-hand motor vehicles, citizens need to submit a valid inspection card and receive a motor vehicle registration certificate. This registration certificate is needed as proof in order to be able to pay the motor vehicle tax. The motor vehicle tax must be paid annually to the tax authorities. It can be fully paid at the beginning of the year or in multiple payments, namely half-yearly or quarterly. Making this payment allows the vehicle owner to receive the license plate with the first down payment and the check plate with the last down payment. Other obligatory documents need to be submitted along with the payments. One of these is the vehicle insurance certificate. If the owner of a vehicle is stopped for control and is not able to prove that the vehicle is insured, there is a high possibility of getting a fine. The fines for driving a vehicle without insurance consist of amounts from a minimum of 50 afl (+/- 25 euro) to a maximum of 800 afl (+/- 400 euro).<sup>38</sup>

## 4.3 Obligatory health insurance

Aruba has a basic health insurance scheme that is valid for each citizen of Aruba, the “*Algemene Ziektekosten Verzekering*” (AZV) (Hamilton, 2001: 129–139). The National Ordinance of AZV was implemented by the AZV Implementing Body. This National Ordinance regulates the reimbursement of medical expenses from the general practitioner, specialist, physiotherapy, dentist, pharmacies and domestic hospitalization as well as for possible hospitalization abroad if the medical procedure that the patient requires cannot be undertaken in Aruba. Every resident of Aruba has the obligation to be registered at the Civil Registry Office (Hamilton, 2005). By completing this registration, the resident is also obligated to register at AZV. The citizen who is

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<http://www.impuesto.aw/Portals/0/Wetten/MRB/AB%202016%20no%2077%20MB%20wijzigingen.pdf?ver=2017-01-12-154013-323>.

<sup>38</sup> [Http://www.omaruba.aw/boetes/overzicht-van-boetes/](http://www.omaruba.aw/boetes/overzicht-van-boetes/).

registered at AZV will be completely covered for medical expenses in Aruba. A small fee of approximately 5 euros must be paid to receive the AZV insurance card.<sup>39</sup>

In 1990 the draft National Ordinance on General Health Insurance was submitted by the Oduber cabinet, which was the political party in office at the time. This draft was accepted in 1992 and opened the door to replacing a variety of statutory health insurance regulations through the AZV. These health insurance regulations benefit public employees, employees working for the government, government pensioners, and disabled people. The AZV entered into full force on 1 January 2001, after years of developing a social health insurance program that would benefit all citizens of Aruba. After the National Ordinance General Health Insurance entered into full force, Aruba became the first country, within the Kingdom of the Netherlands, to introduce a basic health insurance policy for the entire population.<sup>40</sup>

In 2006 a Health Insurance Act followed in the Netherlands. This law obligated citizens to take out health insurance with a private party, but they were not automatically and legally insured (Sens, de Pijper, Wildenburg (2007).

Citizens who are employed by the government, or a company that provides this additional insurance, enjoy the so-called AZV+ (AZV Plus). It functions in a manner similar to travel insurance. It covers the residual of what travel insurance does not cover, generally around 20 percent to 30 percent. This insurance is valid both for the employer and the employee's direct family, which means their husband or wife and children. This is not automatic insurance, because the traveling citizen must declare this before departure. If the citizen fails to declare this, then the additional coverage will not be valid. Besides working as additional insurance, the AZV + also covers extra costs and benefits for the dentist, specialist, psychologist and others, compared to the general basic insurance.<sup>41</sup> AZV insurance plays an important role in Aruba because it is obligatory to be insured in order to be employed or to attend school. Indeed,

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<sup>39</sup> History of AZV, available at: <http://www.azv.aw/pap/tocante-azv/historia>.

<sup>40</sup> History of AZV, available at: <http://www.azv.aw/pap/tocante-azv/historia>.

<sup>41</sup> Types of AZV Packages, available at: <http://www.azv.aw/pap/pakete-azv>.

being insured is the most important requirement in order to be accepted as a student at any school.<sup>42</sup>

AZV works in cooperation with all the care providers mentioned above. There are contracts between AZV and these care providers that regulate the reimbursement of fees associated with the procedures they perform for their patients. AZV collects the money to provide for this social service through the tax authorities, who are responsible for collecting the premium, the amount of which is tied to the employee's annual income. This premium is collected every month from the employee's salary and before the 15<sup>th</sup> of the month, this amount is then transferred to the tax collector's office. This premium is called the 'AZV premium'. The employer pays 8.9 percent and the employee contributes 1.6 percent of his salary. The total amount of the AZV premium amounts to 10.5 percent of the employee's annual income and reaches a maximum annual income of awg. 85,000 (+/- 42.500 euro's). A pensioner, on the other hand, is responsible for the complete premium payment. AZV also covers its costs through a government contribution and the direction levy BAZV (*Bestemmingsheffing AZV*). BAZV is a health tax of 1 percent, which is collected on every item or product that is bought in Aruba. This is a tax introduced by the government to decrease the government contribution to the AZV.<sup>43</sup> The AZV basic insurance is a social plan that has worked in a perfect way for Aruba and its citizens. This social plan advances the ideal of citizens' human rights as set forth in Article 25 of the United Nation's 1948 Universal Declaration of Human Rights. This makes Aruba a positive example for other countries.<sup>44</sup>

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<sup>42</sup> <https://www.skoa.aw/wp-content/uploads/2018/12/PREPARATORIO-2019-2020.xls-A-1.pdf>.

<sup>43</sup> Information services about Costs care and health insurance in Aruba, available at: [https://www.overheid.aw/informatie-dienstverlening/kosten-zorg-en-zorgverzekering\\_3265/item/ziektekosten-op-aruba\\_815.html](https://www.overheid.aw/informatie-dienstverlening/kosten-zorg-en-zorgverzekering_3265/item/ziektekosten-op-aruba_815.html).

<sup>44</sup> [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf).

#### **4.4 Obligatory workers' compensation insurance**

The Social Security Bank, *Banco di Seguro Social (SVB)*, has played an important role in Aruba since January 1986. This bank oversees a big part of the Aruban community. The bank makes sure that employees who are unable to work because of sickness receive a monthly payment for the days that the employee misses. The social bank also covers the pension of the pensioner, the widower's pension and orphans.

This insurance is obligatory for all those who are employed. It is also the duty of the employer to make sure that the employees are registered at SVB. Since July 2016 every employer must give the new employee a new form of SVB registration, giving the new employee the proper time and opportunity to complete it before starting work. The new employee is not allowed to work until the registration can be proven. If the employee does not comply with this obligation, SVB could fine the employer in an amount up to awg. 500.000 (+/- 250.000 euro's). The employee's right to compensation terminates when the employee is no longer in service. Aruban Law stipulates that the employee needs to be registered at SVB in order to have the right to the benefit of a health and accident insurance of SVB. If the employer has more than one employee, he or she will need to register each employee (van Dijk, Nikkels-Agema, Winters, 2006).

#### **4.5 SVB health insurance**

SVB health insurance guarantees that the employee receives compensation for time missed from work due to sickness. This health insurance is not, however, available for all Aruban employees. Only employees that earn awg. 5.850 (+/- 2.925 euro's) or less per month are entitled to this health insurance. The insured employee has a right to compensation equal to 80 percent starting on the fourth day after the first day of sickness notification. SVB does not pay for the first three days. This right to compensation for the insured employee lasts for up to two years. After two years the employee no longer has the right to any further payment.

Female employees who are pregnant have the right to compensation before and after giving birth. During this maternity leave, the female employee has the right to compensation of 100 percent of the monthly salary. SVB compensates the maternity leave for up to 12 weeks. These 12 weeks can be divided between 4 to 6 weeks before giving birth and the rest of the 12 weeks after giving birth. SVB must be notified by the female employee three months before giving birth in order to receive this compensation. The employer must pay SVB a total of 2.65 percent of the employee's salary. It is against the law for the employer to take this amount out of the employee's salary.<sup>45</sup>

#### **4.6 SVB accident insurance**

SVB accident insurance is an insurance of the Social Bank, which guarantees that an employee receives part of the monthly wage in case of not being able to work due to an accident that happened at work. If the employee passes away due to an accident at work, the Social Bank health insurance will manage all the rights of the spouse, children or another person who directly depended on the deceased for their living expenses. An accident at work can be considered an accident that happens during the working hours of the employee. The accident must be related to the execution of job duties, with the consequence that the employee becomes unable to work. This also applies in the case of an accident that happens when an employee is on the way to or from the workplace. The compensation for this situation starts from the second day that the employee notifies the employer of being unable to work and it compensates the employee with 100 percent of the salary for the first year. After the first year, the compensation is reduced to 80 percent of the worker's salary. In case the employee becomes permanently incapable to work, SVB will determine the level of incapacity of the employee, who will receive a certain percentage of his or her monthly salary after the second year. In order to receive this compensation, the employee must fill out an industrial accident form and deliver it to SVB within one year after the accident occurs. The premium of the accident insurance is between 0.25 percent and 2.5 percent of the employee's gross salary. This percentage varies based on the level of danger for the job. SVB will

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<sup>45</sup> SVB Health Insurance. Available at: [www.svb.org](http://www.svb.org).

evaluate the level of danger and the percentage that must be paid by the employer.<sup>46</sup>

#### **4.7 Compulsory insurance for medical professionals**

In Aruba, it is not obligatory for medical professionals to have insurance. Medical professionals in Aruba provide medical services through the basic social health system of AZV. Medical professionals have a contract with AZV in order to work in Aruba. In the case of complaints about service or malpractices of these medical professionals, the patient must officially file their complaint with AZV. AZV will then deal with medical professionals internally. The patient will be covered by either getting paid by AZV or being sent abroad for further medical treatment to hopefully resolve any condition caused by the negligent medical care that was provided in Aruba.<sup>47</sup>

### **5 Obligatory insurance in Poland**

#### **5.1 Introduction**

Presently, insurance can be purchased to insure against almost every adverse occurrence imaginable. Common examples include insurance to protect against falling from a bicycle, damage stemming from an ice storm and damage to household appliances caused by adverse weather events (such as lightning), to name but a few. It is no different in Poland, where the insurance sector is very dynamic (Serwach, 2010; Kowalewski, 2004). It would not be hyperbole to say that in present-day Poland insurance can be purchased to insure nearly everything and everyone (Orlicki 2011). However, the purpose of this article is not to follow the growing tendency to insure people and objects, but to pay attention to those insurances which, after meeting certain conditions, various sectors of the Polish population are obliged to have. It must be mentioned at the outset that Poland, like Italy and the Kingdom of the Netherlands, is (unlike the United States) a unitary state and all obligatory insurance is valid in the entire territory of the Republic of Poland. The catalogue of compulsory insurance can

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<sup>46</sup> [https://www.overheid.aw/informatie-dienstverlening/ziekte-en-ongevallenverzekering\\_43175/](https://www.overheid.aw/informatie-dienstverlening/ziekte-en-ongevallenverzekering_43175/).

<sup>47</sup> <http://www.azv.aw/en/about-azv/governance>.

be found in Art. 4 of the Act on Compulsory Insurance, Insurance Guarantee Fund and Polish Motor Insurers' Bureau:

*"Compulsory insurances:*

- 1) civil liability insurance for motor vehicle owners for damages arising in connection with the movement of these vehicles, hereinafter referred to as "civil liability insurance of motor vehicle owners";*
- 2) civil liability insurance of farmers in respect of owning a farm, hereinafter referred to as "farmers' civil liability insurance";*
- 3) insurance of buildings belonging to the farm from fire and other fortuitous events, hereinafter referred to as "insurance of farm buildings";*
- 4) insurance resulting from the provisions of separate acts or international agreements ratified by the Republic of Poland, imposing on specific entities an obligation to conclude an insurance contract.<sup>48</sup>"*

As we can see, the above catalogue is an open catalogue and the real number of compulsory insurance reaches even over one hundred (Kowalewski, 2013). Article 5 of the above- mentioned act is also very important, because it is binding for every type of obligatory insurance:

*Art. 5 [Conclusion of a compulsory insurance contract]*

- 1. The insurer concludes a compulsory insurance contract with a selected insurance company that carries out insurance activities in the scope of this insurance.*
- 2. An insurance undertaking authorized to carry out insurance activity in groups including compulsory insurance may not refuse to conclude a compulsory insurance contract if, as part of its insurance business, it concludes such insurance contracts.*

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<sup>48</sup> Act of 22 May 2003 on Compulsory Insurance, Insurance Guarantee Fund and Polish Motor Insurers' Bureau, Journal of Laws No 473.

## 5.2 Civil liability insurance of motor vehicle owners

### 5.2.1 Most important facts about civil liability insurance of motor vehicle owners in Poland.

The first compulsory insurance to be discussed is the civil liability insurance of motor vehicle owners. This is the starting point because this is the most common insurance for many people and it impacts the majority of Polish citizens, because this compulsory insurance should cover 28,678,674 vehicles (data from 2017).<sup>49</sup> The *ratio legis* of this insurance is universal practically all over the world, and it is designed to foster the goal of protecting the economic interests of both the perpetrator and the injured party. This section will focus on the most important issues regarding this insurance.

First of all, this insurance is, in principle, concluded for 12 months (in some cases it is possible to conclude this insurance for a period shorter than 12 months e.g. for owners of the historical cars). Motor vehicle insurance has the same scope regardless of the insurer (Krajewski, 2011). At present, guarantee sums amount to EUR 5 210 000 and EUR 1 050 000, respectively, in the case of damage to persons and property. The above amounts are guaranteed by law and no insurer who has them in its offer may reduce the value of individual benefits. Interestingly, insurance prices (even though this insurance always has the same minimal scope) very often differ drastically, often by several dozen percent.

Importantly, the insurance is renewed automatically, if for some reason the original agreement is not terminated in advance. In other words, the existing agreement is simply extended *ex lege* (Żółtko, 2018). In addition to this, it is also important to note that in the event of the transfer of ownership of a motor vehicle, whose holder has entered into an insurance contract for motor vehicle owners (civil liability insurance of motor vehicle), the holder of the vehicle onto which ownership was transferred, acquires the rights and obligations of the previous holder under this contract. As we can see, the transfer of ownership of a vehicle does not affect the validity of the contract. It is also important to note, especially for people traveling by car abroad, that Polish insurance is also valid

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<http://www.sejm.gov.pl/Sejm8.nsf/interpelacja.xsp?documentId=53DF1C3928200208C125812B004ABB4E>.

in some foreign countries by virtue of the Multilateral Agreement, included in the Green Card system.<sup>50</sup>

### **5.2.2 Insurance Guarantee Fund and Polish Motor Insurers' Bureau**

In the case of civil liability insurance of motor vehicle owners, it is worth mentioning two important authorities:

a) The Insurance Guarantee Fund (UFG) deals with the payment of compensation and benefits to parties injured in road accidents and collisions, caused by uninsured vehicle owners and uninsured farmers. UFG also pays compensations to people injured in road accidents when the perpetrator of the damage has not been determined. UFG also controls the fulfilment of the insurance obligation and punishes the uninsured who did not fulfil this obligation. Their mission is to ensure the integrity of the mandatory civil liability insurance system and to limit the number of uninsured vehicle owners traveling on Polish roads.

b) Polish Motor Insurers' Bureau (PBUK) is the organization of insurance companies, which offers civil liability insurance of motor vehicle owners in the territory of Poland for damages arising in connection with the movement of these vehicles. As part of its operations, PBUK deals with the organization of liquidation or direct liquidation of damages caused in Poland by owners of motor vehicles registered abroad. PBUK also deals with issuing insurance documents valid in other countries of the Green Card System, including border insurance valid in the EEA countries.

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<sup>50</sup><https://www.pbuk.pl/system-zielonej-karty/o-systemie>.

### 5.3 Health insurance

In Poland, health insurance is in principle obligatory and it covers the majority of citizens, including employees, farmers, people running a business and students. The basis for obtaining health care services is the premium paid to the National Health Fund (NFZ) in an appropriate amount and so, for example, the employer pays premiums for their employees and the self-employed persons must do so on their own. Being covered by compulsory health insurance entitles the insured to such services as, for example:

- primary health care;
- out-patient specialized health care;
- inpatient care;
- psychiatric care and addiction treatment;
- medical rehabilitation;
- nursing and care-related services as part of long-term care;
- dental treatment;
- health resort care;
- supply, at the request of an authorized person, and repair of medical devices referred to in Act on Reimbursement;
- emergency medical services.<sup>51</sup>

The number of people who are not covered by health insurance is 2.5 million on the basis of data from several years ago, which is a high number given that more than 38 million people reside in Poland, and further in light of the fact that health insurance is, in principle, compulsory. In fact, the Polish Constitution in Article 68 states that:

- Everyone shall have the right to have his or her health protected.
- Equal access to health care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective of their material situation. The conditions for, and scope of, the provision of services shall be established by a statute.

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<sup>51</sup> Act of 27 August 2004 on Publicly Financed Health Care Services, Journal of Laws No. 752.

- Public authorities shall ensure special health care to children, pregnant women, handicapped people and persons of advanced age.<sup>52</sup>

However, if a Polish citizen does not belong to a group covered by compulsory health insurance,<sup>53</sup> he or she can voluntarily insure on the basis of an application submitted to the National Health Fund.

#### 5.4 Obligatory insurance for legal professionals

This section will describe the compulsory insurance for legal professionals. This is one of the insurances hidden in Art. 4 section 4 of the above-mentioned Act on Compulsory Insurance, Insurance Guarantee Fund and Polish Motor Insurers' Bureau: 4) insurance resulting from the provisions of separate acts or international agreements ratified by the Republic of Poland, imposing on specific entities an obligation to conclude an insurance contract. In Poland, this kind of insurance includes not only advocates and attorneys-at-law (in Poland these two professions, although very similar to each other, are still separate), but also tax advisors and bailiffs. However, in this section, we shall focus solely on the profession of advocate.

According to Art. 4 section 1 of the Act on the Advocates the profession of advocate consists in providing legal assistance, in particular in providing legal advice, drawing up legal opinions, preparing legal acts and appearing before courts and offices. The advocate is responsible for damages caused in connection with the activities referred to above. The minimum warranty period is specified in the regulation of the Minister of Justice and currently is 50,000 euros,<sup>54</sup> but there is no obstacle to the advocate voluntarily increasing the minimum sum of his or her insurance (Nowakowski, 2006). In the case of this insurance, it is worth noting that failure to contract insurance may result in a warning, a financial penalty or even expulsion from the bar. The *ratio legis* of

<sup>52</sup> The Constitution of the Republic of Poland of 2nd April, 1997. Journal of Laws No. 78 item 483.

<sup>53</sup> There are three primary reasons accounting for the majority of Polish citizens that are not covered by health insurance: (1) they are working illegally; (2) they are working on the basis of a contract to perform specified tasks and (3) they are unemployed and they are not registered in the Employment Office. In all three instances these persons do not have any other legal basis to qualify for insurance.

<sup>54</sup> Regulation of 11 December 2003 of the Minister of Finance on compulsory civil liability insurance for advocates, Journal of Laws No. 217, item 2134.

the establishment of such insurance is, among others, increasing the credibility of the insured for his or her clients, providing a sense of security through the possibility of paying the injured person due compensation and minimizing the risk associated with the professional activity.

## **5.5 Obligatory insurance for medical professions**

The last obligatory insurance we would like to describe is compulsory insurance for medical professions. This insurance applies to: physiotherapists, nurses and doctors performing an activity in the form of individual medical practice. As mentioned earlier, compulsory insurance covers the above-mentioned professions, if they perform medical activities as an individual medical practice. People employed in hospitals are also covered, because their insurance is paid by the employer. The insurance covers damage resulting from the provision of health services or unlawful failure to provide health services. The amount of the guarantee sum varies from 30.000 euro to as much as 500.000 euro.<sup>55</sup>

In addition to compulsory insurance, there is also the possibility of voluntary insurance, which covers the majority of events that will not be included in compulsory insurance. Among them, we can find damages that may occur as a result of ad hoc assistance on the street or even when providing medical services outside of Poland, for example during a holiday trip. Among the additional insurance addressed to doctors we can also find HIV insurance; this insurance includes the reimbursement of medical expenses incurred as a result of contact with an infected person.

## **6 Conclusion**

Insurance is a concept that has been around for centuries. As the world population has increased, and especially with the dawn of the Industrial Revolution, insurance has become increasingly popular so that, at present, insurance is available to protect nearly everyone from nearly every possible risk imaginable. A much more recent development, however, is the concept of mandatory or obligatory insurance. Whereas the purchase of insurance typically

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<sup>55</sup> Regulation of 22 December 2011 of the Minister of Finance on compulsory civil liability insurance for entities leading medical activities, Journal of Laws No. 293, item 1729.

has been voluntary, and designed largely to protect the insured, increasingly some legislatures have required certain classes of persons or businesses to purchase insurance coverage as a condition precedent to engaging in certain defined activities. The authors have tried to discern any patterns, from country to country, regarding the situations in which legislators have seen fit to mandate insurance coverage.

The countries studied all have obligatory insurance designed to offer some degree of protection to workers injured on the job, and in the course and scope of their work, and to those involved in vehicular collisions. Given the sheer volume of injury-causing incidents incurred both by workers and by those operating or passengers in vehicles, these laws make eminent sense. Many drivers causing accidents will lack the financial resources to pay the injured person(s) for damages incurred in the accident. From a public policy standpoint this is a very undesirable situation and so legislating obligatory insurance is a form of social engineering. They help insure against the risk that the injured person will go uncompensated by providing a fund (i.e., insurance) that will be available to help make the injured person whole.

The other primary takeaway from our research is that, predictably, there is less obligatory insurance in the United States than in the other countries studied. We use the term “predictably” because, while the United States and Europe share much in common (democratic states, open markets, free elections etc.) there are still significant differences. On the one hand, European countries (in this study Poland and Italy) and Aruba (which is greatly influenced by the Netherlands) mainly adhere to strong socialist tendencies, which usually are enshrined in their state constitutions and EU laws and regulations. These socialist policies are seen most clearly in laws that provide free education, free and universal health care, strong family benefits, for example, generous time off and pay for those giving birth to children, etc. Citizens of these European countries see these benefits as being part of their contract with the state, and as rights. Obligatory insurance laws tend to advance these norms, by helping to insure that aggrieved persons have insurance available to pay for, or at least partially pay for, the injuries/damages they incur. Without such insurance, there will be many injured persons that are left uncompensated due to the wrongdoers being uninsured.

The United States, on the other hand, historically has had a much less socialistic approach. From its beginnings, the United States has set a course, framed in the Constitution, that limits governmental actions. Based on its colonial experience with the British Crown, Americans have always distrusted government. Americans believe power and decision-making should largely reside with the people. As former President Ronald Reagan<sup>56</sup> once professed, when talking about a crisis he presided over, government is often the problem, not the solution. Many Americans hold fast to this mindset, and believe that it is incumbent on each individual, not the state or federal government, to care for themselves. Many Americans believe, for example, that health care is not a “right” bestowed by the government, but a matter each person needs to deal with on his or her own terms. This is clear from the debate over the Affordable Care Act. Also, along these same lines, many Americans despise governmental regulations of any kind, and so it follows they do not want the government telling them they need to purchase insurance in order to, for example, be a lawyer, a doctor, a farmer, etc. Accordingly, we have seen in our research that only a couple of American states require lawyers to carry malpractice insurance and less than half the states require physicians to either carry insurance or take steps to avail themselves of tort reform measures that inure to their benefit. In addition to a distaste for regulations generally, those opposed to obligatory insurance also point to the added cost and administrative burdens associated with having to purchase insurance in order to carry out business.

The purpose of this article was not to critique legislation requiring obligatory insurance, and it is obvious there are advantages and disadvantages to the government mandating that certain persons or businesses be insured. As with most legislation, there are winners and losers. Time will tell whether the trends we have seen in America and Europe regarding obligatory insurance will continue on the present path.

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<sup>56</sup> President Reagan also famously said, “Socialism only works in two places: Heaven where they don’t need it and hell where they already have it.” Reagan is still a disciple of the Republican Party and conservatives. He was beloved by many non-Republicans as well; it should be pointed out.

## Notes

Ms. Rigoldi, Ms. Burgos and Mr. Sasinowski attended the University of Maribor, Faculty of Law, through the Erasmus+ program Summer semester (2019).

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