

To insure or not to insure: What role do lawyers play in the insurance industry?

The insurance industry is a dynamic and highly regulated field; yet, in Slovakia, it lacks a unified legal code, relying instead on a patchwork of national laws, European directives, decrees, and informal guidelines. “This is where our expertise comes into play,” says Marek Benko, a partner at the Soukeník-Štrpka law firm. In an interview with *The Slovak Spectator*, he also discusses the sector’s biggest challenges and whether Slovaks rely on insurance to address their needs.

What is the role of lawyers in insurance industry?

Personally, I believe their role is irreplaceable. Insurance is a rapidly evolving sector, and I have been professionally involved in this area of law for over 20 years. I can confirm that over this period, significant legislative changes have occurred, compelling us as lawyers to overhaul individual companies’ operational models from the ground up.

At the same time, it’s a highly regulated industry. The activities of companies operating on the insurance market are strictly governed by law and closely monitored by regulators. A Slovak specificity is the absence of a unified code covering this area. For instance, in the Czech Republic, there is a specific legal act on insurance policy that legislates a broad range of insurance-related matters and insurance policies. On the contrary, Slovakia lacks such a comprehensive legal framework. Our legal regulations are dispersed across various legal acts, European Union directives, decrees, and measures, as well as non-binding recommendations.

This is where our expertise comes into play, enabling us to assist financial market entities—insurance companies, financial advisers, agents, various associations, and interest groups, and many

others. We help them navigate legal complexities with ease, ensuring they are well-informed about all the opportunities within this regulated environment. We are also available for consumers, insurance companies’ clients, who often find themselves at a disadvantage when dealing with insurance matters, particularly in the case of claims.

What is the most common request from clients who come to you?

We provide comprehensive legal services, and the tasks we handle are truly diverse. Personally, I focus mainly on legal matters related to the operation of insurance companies. My colleagues address various consumer (policyholder) needs, represent clients in various professional associations, and, in this capacity, we often review individual draft legal acts and communicate with regulators during the preparation of legislative changes. This means we’re also heavily involved in legislative matters. Frequently, we can prepare clients in advance for changes that are yet to take effect.

Due to the broad scope of daily tasks and assignments, it’s difficult to pinpoint just a few specific areas.

One achievement we’re proud of is that we are one of the few Slovak law firms that provided legal support in the establishment of insurance company, navigating the entire regulatory process. This work requires a high standard of documentation in securing a licence for the entity from the regulator.

Thanks to the dynamic processes within the insurance sector, I can say that I’ve rarely dealt with the same issue twice because we are always responding to specific situations or requirements at any given time.

What are the current trends and challenges in the insurance industry?



Marek Benko (Photo: Courtesy of SOUKENÍK - ŠTRPKA)

In my opinion the biggest challenges in insurance industry lie in establishing the right operational framework and regulation, particularly in areas like digitalisation of services and associated cyber risks (DORA), ESG (Environmental, Social, and Corporate Governance), and potentially artificial intelligence (AI). The recently adopted AI Act is the first legal framework for artificial intelligence, addressing the risks tied to AI and examining its potential impact on the operations of financial market entities. Another challenge is revising liability frameworks, whether in AI operations, online environment, or other modern sales forms. This is why, for instance, EU committees on legal affairs and consumer protection recently approved an update of the 40-year-old directive on liability for defective products, aiming to address these contemporary issues.

How does Slovakia fare in terms of insurance regulation compared to other countries?

Within the European Union, major differences are largely a thing of the past, primarily due to stringent regulation across the board. The National Bank of Slovakia oversees the basic regulatory framework

and its compliance here, while at an international level, institutions like BIPAR (the European Federation of Insurance and Reinsurance Intermediaries) and EIOPA (the European Insurance and Occupational Pensions Authority) play vital roles. EIOPA, in particular, supports key objectives such as enhancing the functioning of the single market and ensuring effective, consistent regulation.

Moreover, any regulatory changes at the European level must be implemented by all member states, with timing and scope left at national discretion.

Differences become more apparent if we compare Europe with regions like Asia or the United States, where possibilities in the insurance industry are often broader. Many insurance companies draw inspiration from the Asian market; however, compliance with EU standards, including data protection (GDPR) and anti-money laundering (AML), tends to be less formalistic and bureaucratic outside Europe. This means that insurance companies face various legislative barriers when trying to adopt these foreign practices in Slovakia or within the EU.

Besides working directly with insurance companies, you also support consumers. What issues do they most often raise with you?

Our support for consumers (in other words, insurance companies' clients) can be divided into two main areas: the first concerns the initiation of insurance itself. It's essential to remember that not all insurance policies are identical, and it's very important for consumers to understand exactly what their policies cover. This includes the scope of coverage as well as various exclusions specifying what is not insured.

The second area of support happens in the event of an insurance claim. Often, there's a discrepancy between what the client expects and the insurance company's stance. Sometimes, clients even struggle to obtain a straightforward explanation as to why a claim's settlement is taking so long. In such a case, the role of an attorney or lawyer is to assess the options of claim settlement. This typically involves a prior audit to confirm whether the claim is indeed covered by the policy or if there are any obstacles. If we're convinced that the claim is valid, we proceed with legal action.

A significant recent amendment to the Civil Code has been particularly helpful in this regard. It now clearly stipulates that insurance companies must justify any denial or reduction of a claim at the time of refusal. They cannot later alter the grounds for their decision. This means that once a denial is issued, the insurance company cannot, say a week later, provide a different reason for their decision. This is a crucial consumer protection measure, which must be interpreted strictly in the client's favour.

How do we fare in Slovakia when it comes to access to insurance? This applies both to our willingness to take out insurance and to financial literacy, so we fully understand what any given policy actually covers.

Compared to Western European countries, far fewer people rely

on insurance to meet their needs. For example, during recent floods, only about 40 percent of affected households were insured, and many of those were under-insured. This means people often had outdated policies that hadn't been updated or that they did not have a well-set sum insured. However, it is the client's responsibility—not the insurance company's.

The same approach also applies to life insurance, where we also lag behind the West. Greater public awareness and improved financial literacy would certainly help bridge these gaps.

And how does financial literacy come into play here? Have you come across situations where people believe they're covered by insurance, only to discover after an incident that their policy doesn't actually cover it?

Yes, we see this quite often, and it partly stems from the complexity of individual insurance policies. The scope of insurance coverage is sometimes defined by legal act, as with compulsory motor third-party liability insurance. In such cases, clients often make their decisions based on price or experience with a particular insurance company. However, with other insurance policies, each insurance company designs its own product to stand out, often offering unique benefits that others don't, but also including specific limitations. In such a case, navigating these products becomes crucial and specialist advisers, such as insurance brokers, who are experts in this field, can help consumers or clients understand their options.

Sometimes even insurance companies themselves have differing views on an insurance claim. Take this simple example: a client's car was damaged when a snowplough collided with it. The incident was reported under the motor third-party liability insurance (MTPL) of the at-fault driver. However, the insurance company responded that the other driver was performing a work-related task, meaning the damage wasn't covered by the

MTPL but by general liability. The claim was then submitted to general liability insurance, but this insurance company sent back a differing response, saying it should be covered under the MTPL. So, we have a client with a damaged car and an at-fault driver who's insured, but the insurance companies are passing the responsibility back and forth. In these cases, we work to resolve the situation off the court with the insurance companies. If an amicable resolution can't be reached, the client's only option may be to file a lawsuit against the at-fault driver or, potentially, the insurance company providing the MTPL cover, and wait for the court's decision. Recently, our colleagues have handled several similar cases.

The recent amendment also addressed MTPL insurance. Has it introduced any major changes?

Primarily, it implemented European Union directives and revised definitions, including terms such as "damage" and "liable party". This is a major shift, as lawyers have long debated whether non-material harm, such as emotional distress, is covered by the MTPL. Insurance companies argued it wasn't, given that non-material harm wasn't clearly defined in the MTPL Act. Over time, however, this stance began to change, and in recent years courts started siding with arguments that such claims were indeed covered by the MTPL. Now, this is explicitly stated in the legal act. Additionally, the amendment introduced mandatory insurance for certain e-scooters and e-bikes, addressed higher insurance coverage limits, and revised insurance companies' right to seek reimbursement of claim payments.

From now on, some electric scooters and electric bicycles will also need to have motor third-party liability insurance. What are your thoughts on this?

I view it very positively. I don't think these insurance policies will be significantly expensive, but when we consider the potentially high damages that can arise from their use—especially since such damages

currently occur with scooters and bicycles—it's certainly a good idea. Interestingly, some people even want to obtain MTPL insurance for their scooters or bicycles, even if they are not required to do so by law. However, there are still unresolved legal questions regarding how insurance companies would handle claims in such cases.

Has it been clarified who is required to have MTPL insurance for e-scooters or e-bikes?

The amendment introducing this requirement came into effect at the beginning of August 2024. Insurance companies offered various interpretations of who falls under this obligation, as there are different restrictions concerning weight and maximum speed. Ultimately, in September, the Finance Ministry and the Transport Ministry provided guidance that unified these interpretations. It states that insurance must be obtained if its maximum speed exceeds 25 km/h or if its weight is over 25 kg and maximum speed exceeds 14 km/h.

Are people even aware of this change? Are Slovaks diligent about their MTPL, or is it something they neglect?

According to estimates from the Slovak Insurance Bureau, around 320,000 motor vehicles in Slovakia are uninsured with their owners essentially facing no consequences. This poses a significant problem. There is currently no relevant data on the insurance of e-scooters, but I assume the situation is even worse.

However, as far as I know, a working group has been established to comprehensively address this pressing issue soon. It aims to streamline and expedite procedures so that administrative actions can be transformed into expedited processes. That is the principle on which fines operate, for example, for not having a vignette when on a motorway. Additionally, a fee should be introduced for the guarantee fund, primarily targeting uninsured drivers rather than those who fulfill their obligations by getting MTPL insurance.

By Peter Kováč