



## **LOW DOWN PAYMENT INSURANCE – IS IT WORTH TO SUE A BANK?**

Recently, a special interest of costumers raises the issue of a low down payment insurance, primarily incurred in Swiss francs, but also in Euros and US dollars. Borrowers who wonder whether it makes sense to sue the bank for reimbursement of paid insurance premiums on low down payment should refer to the information below.

### **What is a low down payment insurance (PL: UNWW)?**

UNWW is a security for the banks in case of problems with the repayment of the bank loan. Its purpose is to protect the risk of default by the borrower on the loan and is calculated from the amount of the difference between the value of the property at the time of the loan, and own low down payment required by the bank on that date. This insurance relates primarily to people who took a loan for (usually) more than 80% of the value of the real estate. The only beneficiaries in this respect is a bank, and insurance costs shall be borne by the borrower.

### **Low down payment insurance as unlawful provision?**

In its judgment of 6 August 2009 the Court of Competition and Consumer Protection considered illegal contract clause, for low down payment, according to which: "The borrower is obliged to establish the following collateral / security: accession to the General Low Insurance Contribution on housing loans Agreement in TU Europa SA. Term of insurance is (36/60) months. The insurance premium in the amount of ... zł payable in advance for the entire period of insurance and is non-refundable." According to the justification the court considered the issue of impossibility to return the insurance premiums as illegal, however, consumers with exactly the same provision, are found in a comfortable situation because, as an illegal contract provision it is not binding for them, and so the bank has no grounds to charge them such contributions.

### **Does other form of the provision may be deemed as illegal contract provision?**

It may. If the consumer proves that in her/his case there is a provision which has not been individually negotiated with her/him (and the credit agreement are of those kinds that there is little possibility of any negotiation), and in addition the court must decide that it creates its rights and obligations in a manner contrary to good morals and grossly violated her/his interests. It should be emphasized that it is on the consumer to prove those conditions.

Consumers are also increasingly turning attention to the lack of equivalence of benefits - because the only insured is a bank, not the consumer, and the latter has only an obligation to "fund" the insurance not having any control over either the choice of an insurance company, or the content of the contract with the insurer or the amount of the premium . What's more - in the case of an insured event the insurer shall repay a loan, but will have a recourse to the consumer, so his situation will not change at all – she/he will still have to pay "credit", only to the insurer. So the consumer does not have any interest in that but only can finance the bank's risk protection. Banks are on the position that this benefit is simply a credit despite not having a required down payment.

### **Is there a chance to win a trial?**

There first judgments taken in this case admitted consumers right, eg. the judgment of the District Court for Wroclaw - Downtown of 6 March 2012., Ref. act IC 494 / 11, judgment of the

District Court for Warsaw - Mokotow issued on 7 April 2014 by ref. I C 2565/13, or the judgment of the District Court in Wroclaw, II Appeal Civil Division on 13 August 2012 by ref. act: II Ca 723/12. However, it should be borne in mind that the dismissing judgment or judgment which does not share above opinion are issued. E.g. in the final judgment of the District Court for Warsaw-Mokotow in Warsaw on 10 December 2014, by ref. I C 902/14 the court concluded that "the equivalent of the obligation to repay the cost of insurance low down ... is just a loan, access to the money that the consumer obtains despite the fact that they do not have their own means or adequate protection". This case was indeed won, but on the basis of other evidence, therefore lawsuit based on only the unlawfulness of the provision of UNWW is risky.

It must be remembered that each case refers to individual, given facts and the court always consider the legitimacy of the claim in a given facts. Our law firm recommend that the lawsuit shall be based on several separate legal grounds shown on the basis of our opinion on a given facts.

### **Which is better: individual or collective lawsuit?**

This question shall be answered individually, taking into consideration the following facts. The collective lawsuit is unquestionably cheaper, as the court fee equals to 3% of the value of the subject matter of a dispute instead of 5%, costs of the legal service are minimalized due to a number of the people and is easier from the prove side – with more plaintiffs it is easy to provide all the necessary documents, which are the same for all or a testimony of a certain number of people.

Undoubtedly, a "group power" is also important even if it does not effect a court judgment, but it can have an impact on the bank's approach (though the current position of the banks proves different). The main drawback of this procedure is a the fact, that preparation of the lawsuit takes significantly longer (completing the documentation of each plaintiff, then the technical preparation to join the lawsuit), and even the process itself is unfortunately extended. Depending on the type of process it can be carried out so as to establish the rules and not award the specific amounts (the group process requires the same amount at least double subgroups) and then the win only gives the right to bring an additional lawsuit for adjudication.

### **Is it worth?**

If you possess a low down payment insurance and wonder whether you have a chance to win the trial it is undoubtedly worth to consult it with the experienced lawyer. None lawyer will ensure you about the result but may estimate evidences and your position.

It is important that the legal grounds of the claim may not be only the fact that it is illegal provision. Maybe the basis for your case will be other issues, specific for your situation or for the given bank which will that will strengthen your evidential position. We met such situation on the lawsuit currently carried out by our Law Firm where after an analysis of the facts, we decided that the issue of abusiveness provisions on UNWW will be only auxiliary argument and the claim is based on a totally different facts applicable to a particular bank, and that we manage to established.



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If you consider filing a lawsuit against a bank regarding a low down payment insurance please do not hesitate to contact us.

*I want to underline that information contained in this paper is true and correct when posted on my website, but it does not constitute a legal advice. Specific legal advice may be provided only in response to a specific inquiry and in relation to a specific facts.*

  
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