

VEGAS LEX

# COMPREHENSIVE INSURANCE

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MAY 2013



Today's businesses frequently face uncommon challenges, which result in uncommon risks. Most risks the administrators face may be successfully minimized using various risk management techniques.

Insurance has been a traditional risk management tool. The mechanism of property insurance allows transferring the risk of an unfavorable event and the resulting losses to the insurer.

However, the current insurance system does not fully address all the needs of the modern economic turnover. The spheres where insurance products are widely represented are very limited. Those include personal insurance, automobile insurance, cargo insurance and some other types of property insurance. The mechanisms of mandatory liability insurance of hazardous facilities owners, travel agencies, custom employees. Financial risk insurance, optional insurance of certain types of liability are not as popular in Russia and not as frequent.

Obviously, the above insurance options in many cases prove insufficient for the desired degree of risks transfer.

Those policy holders who discuss the policy terms and conditions with the insurer individually have more flexibility in risk management. A unique contract may, however, backfire with complexity of its protection - until recently, insurers have frequently had to:

- disprove the insurer's arguments that the insurance contract is void due to non-compliance with the Civil Code of the Russian Federation (in particular - contractual liability insurance contract, not provided for by the law);
- prove that the losses incurred are included in the insured object;
- prove that the insured event has occurred;
- confirm that the procedure of the insurer notification was followed; that no intentional abuse took place; and there were no other circumstances that would exempt the insurer from payment.

If after the passing of Ruling No. 16996/09 by the Presidium of the RF Supreme Arbitration Court dated April 13, 2010, in which the court rejected an insurer's plead that an insurance contract be recognized as void, interpreting it as violation of the limits of exercising the civil rights set by Article 10 of the RF Civil Code, a way was found to resolve the first of the above issues, the rest

severely impaired the ability to protect policy holders' rights until very recently.

The tendency of supporting insurance holders was greatly driven by Ruling No. 7884/12 dated November 20, 2012, where the Presidium of the RF Supreme Arbitration Court stated a position according to which the widely practiced insurance contracts describing the property insurance object in general terms may be considered as «comprehensive insurance» contracts and be subject to protection along with other property insurance contracts.

In the case considered, the insured object, as per the contract, comprised «the company's property interests related to liability to repay losses inflicted to the Beneficiary by violation (failure to fulfill or improper fulfillment) of contractual responsibilities». The insured event was defined as «the company's liability arising from a reasonable claim made by the contractual counteragent or from a court ruling to repay to the counteragent any losses inflicted by infringement of contractual obligations».

The Company failed to observe the deadline for fulfilling its contractual obligations, and as the result, the counteragent claimed the paid advance through court. After that the counteragent (the beneficiary of the insurance contract) turned to the insurer for the insurance indemnity in the amount of the advance collected by the court, and being rejected - to court.

Three jurisdictions dismissed the beneficiary's claim and recognized only the risk of losses as civil liability for improper fulfillment of obligations under Articles 15 and 393 of the RF Civil Code, which do not include the collected advance.

However, the Presidium of the RF Supreme Arbitration Court found that from the literal interpretation of the insurance contract it follows that the said payment is included in the insured object and complies with the features of the beneficiary's loss resulting from failure to fulfill the policy holder's obligations under the contract.

Given that while transferring the case to the Presidium the chamber of the RF Supreme Arbitration Court pointed out that contracts similar to the contract in question are widely used in the insurance practice, and their legal qualification by courts is not unanimous, the significance of the conclusions made in Ruling No. 7884/12 is immense.

The considered Ruling contains a note that the court acts on cases with similar circumstances that have become effective may be revised based on Par. 5, part 3, Article 311 of the Administrative Procedural Code of the RF.

This unconditionally means that broad prospects of using comprehensive insurance in commercial practice are opened before policy holders.

## CONTACT INFORMATION:

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ALEXANDRA  
VASYUKHNOVA

Head of Technology  
and Investment group

[Vasukhnova@vegaslex.ru](mailto:Vasukhnova@vegaslex.ru)

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Current issue contains an overview of the recent legislative changes. The presented material should be treated as general information and not as professional advice. VEGAS LEX recommends seeking professional advice on any matter

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- Best Lawyers 2012
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- Chambers Europe 2012
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- PLC which lawyer? 2012
  - ▶ Competition/Antitrust
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- The Legal 500 EMEA 2012
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- Russia's leading rankings "Pravo.ru-300", 2012
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### MOSCOW

Tel.: +7 (495) 933 0800  
Fax: +7 (495) 933 0802  
vegaslex@vegaslex.ru

### VOLGOGRAD

Tel.: +7 (8442) 266 312/313/314/315  
Fax: +7 (8442) 266 316  
volgograd@vegaslex.ru

### KRASNODAR

Tel.: +7 (861) 274 7408  
Fax: +7 (861) 274 7409  
krasnodar@vegaslex.ru