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Odpowiedzialność sprawcy wypadku komunikacyjnego i zakładu ubezpieczeń za szkodę wyrządzoną właścicielowi drogi polegającą na zanieczyszczeniu jezdni

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Streszczenie:

W orzecznictwie sądowym brak jednolitości poglądów co do tego, czy sprawca wypadku komunikacyjnego i zakład ubezpieczeń, z którym jest on związany umową ubezpieczenia odpowiedzialności cywilnej posiadaczy pojazdów mechanicznych za szkody związane z ruchem tych pojazdów, odpowiadają za szkodę wyrządzoną właścicielowi drogi polegającą na zanieczyszczeniu jezdni płynami silnikowymi, czy też elementami uszkodzonych pojazdów. W artykule omówiono ogólnie to zagadnienie. W ocenie jego autora, ten rodzaj szkody objęty jest zakresem normy z art. 34 ust. 1 ustawy z dnia 22 maja 2003 r. o ubezpieczeniach obowiązkowych, Ubezpieczeniowym Funduszu Gwarancyjnym i Polskim Biurze Ubezpieczycieli Komunikacyjnych.

Słowa kluczowe: sprawca wypadku komunikacyjnego, ubezpieczenie OC posiadaczy pojazdów mechanicznych, właściciel (zarządca) drogi, odpowiedzialność in solidum, szkoda spowodowana zanieczyszczeniem jezdni (drogi)

Liability of the perpetrator of a traffic accident and the insurance company for damage caused to the road owner and consisting in contamination of the road lanes

Abstract

Court decisions do not evince a uniform approach as to whether the perpetrator of a traffic accident as well as the insurance company, with which the perpetrator is bound by a third party liability insurance agreement for motor vehicle owners in respect of damage related to the movement of these vehicles, are liable for damage caused to the road owner and consisting in contaminating the road lanes with engine fluids or parts of damaged vehicles. The issue has been discussed in this paper in general terms. In the opinion of its author, this type of damage is included in the scope of the norm of Article 34, item 1 of the Act on compulsory insurance, Insurance Guarantee Fund and Polish Motor Insurers' Bureau of 22 May 2003.

Key words: perpetrator of a traffic accident, third party insurance of motor vehicle owners, road owner (administrator), joint and several liability, damage caused by contamination of the road (lanes)

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1. Introduction

This article will discuss the issue of whether the perpetrator of a traffic accident as well as the insurance company, with which the perpetrator is bound by a third party liability insurance agreement for motor vehicle owners in respect of damage related to the movement of these vehicles, are liable jointly and severally for damage caused to the road owner and consisting in contaminating the road lanes with engine fluids or parts of damaged vehicles. Cases involving such claims are not infrequently brought before civil (economic) divisions of courts. The issue is, therefore, of importance also for judicial practice, and moreover the decisions of common courts show a varied approach.[2] In a recent resolution of the Supreme Court of 20 January 2022, III CZP 9/22,[3] it was admitted that: "The perpetrator of a traffic accident as well as the insurance company, with which the perpetrator is bound by a third party liability insurance agreement for motor vehicle owners in respect of damage related to the movement of these vehicles, are liable towards the road manager for damage caused by contaminating the road with engine fluids." Legal literature, it appears, has not treated this question with vital interest.[4]

In suits for payment on this account, the defendant insurers not infrequently:

a) charge the plaintiffs with failing to demonstrate the causal relationship between a road event and the consequent damage in the form of contaminating the road, and also
b) that the damage which the plaintiff seeks to have redressed does not constitute damage specified in Article 34, item 1 of the Act on compulsory insurance, Insurance Guarantee Fund and Polish Motor Insurers' Bureau of 22 May 2003,[5]
c) cite Article 38, item 1, point 4 of the Act on compulsory insurance, Insurance Guarantee Fund and Polish Motor Insurers' Bureau of 22 May 2003 [hereinafter the "Act on compulsory insurance"] which stipulates that "the insurance company is not liable for damage consisting in contaminating or polluting the environment" or regulations found in Article 20, point 4 in connection with Article 19 of the Public Roads Act of 21 March 1985, which oblige the road manager to provide road maintenance, including cleaning activities which consist in removing post-accident wreckage,
d) finally, they cite Article 101, item 1 of the Waste Act of 14 December 2012,[6] pursuant

[2] Zob. np. wyroki Sądu Rejonowego w Legnicy z dnia 17 czerwca 2014 r., I C 576/14, LEX nr 1905988 oraz dnia 16 kwietnia 2015 r., VII C 1399/14, LEX nr 1928960, wyrok Sądu Okręgowego w Olsztynie z dnia 31 stycznia 2019 r., IX Ca 866/18, LEX nr 2627379 (uwzględniono z nich roszczenia zarządcy drogi dotyczące naprawienia takiej właśnie szkody). Z kolei żądania odszkodowawcze zostały oddalone [w:] wyrok Sądu Rejonowego w Częstochowie z dnia 27 czerwca 2018 r., VIII GC 2745/17, LEX nr 2631036, wyrokach Sądu Okręgowego w Łodzi z dnia 18 czerwca 2020 r. XIII Ga 55/20, LEX nr 3030499 i z dnia 26 maja 2021 r., XIII Ga 569/20, LEX nr 3191342, wyroku Sądu Okręgowego w Gliwicach z dnia 8 grudnia 2020 r., X Ga 89/20, LEX nr 3184480.

[3] Niepubl.

[4] Jedyne opracowanie na ten temat to: M. Fras, M. Orlicki, *Kompensacja kosztów uprzątnięcia pozostałości po wypadku komunikacyjnym przez ubezpieczyciela OC posiadaczy pojazdów mechanicznyc*h, „Wiadomości Ubezpieczeniowe" 2021, nr 1, s. 29-39.

[5] Tekst jedn. Dz.U. 2021 poz. 854, cyt. dalej jako ustawa o ubezpieczeniach obowiązkowych.

[6] Tekst jedn. Dz.U. 2021 poz. 779.

to which, whenever required by the protection of life, health and the environment, the county head may issue a decision and impose on the perpetrator of the accident the obligation to manage the post-accident waste.

In order to answer the legal situation presented above, one should actually clarify two issues. First, whether a road owner can be considered a person injured by a traffic accident (for example the collision of two cars), and hence an entity which suffered damage due to such an event. Second (if the preceding question is answered in the affirmative), whether the road owner has the standing to seek from the perpetrator of a road accident – based on Article 436 of the Civil Code[7] – the redress of damage caused by the movement of such vehicles on the road infrastructure, including contamination of road lanes, since in light of Article 20, points 4 and 11 of the Public Roads Act of 21 March 1985,[8] it is the road manager that has the duty to maintain the road surface, pavements, civil road facilities, traffic safety equipment and other road-related equipment, and to conduct intervention, maintenance and securing works. In essence, therefore, this is an issue of court standing understood as the capacity of an entity to appear in a particular suit as a party on the basis of substantive law. Lack of standing causes the suit to be dismissed, which is a substantive ruling of the court.[9] .

2. Can a road owner be considered a person injured by a traffic accident (the collision of two cars)?

I. Because of their function in the road network, public roads are classified according to the following scheme: 1) national roads, 2) regional roads, 3) county roads, 4) commune roads (Article 2, item 1 of the Public Roads Act of 21 March 1985[10]). Pursuant to Article 2a, items 1 and 2 of the act, national roads are the property of the State Treasury. Regional, county and commune roads are the property of the relevant regional, county or commune local government. Article 19 of the Public Roads Act stipulates that the road manager is the body of government or local government unit competent in matters of planning, construction, reconstruction, renovation, maintenance and protection of roads. The following authorities act as road managers for each category of roads, subject to items 3, 5, 5a and 8: 1) national roads – General Director of National Roads and Motorways; 2) regional roads – regional management board; 3) county roads – county management board; 4) commune roads – village head (mayor, city president). Within the limits of county level cities, the manager of all public roads, excluding motorways and express roads and roads referred to in provisions issued on the basis of Article 5, item 2a, is the city president (Article 19, item 5 of the Public Roads Act).

[7] Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny, tekst jedn. Dz.U. 2020 poz. 1740, z późn. zm.
[8] Tekst jedn.: Dz.U. 2021 poz. 1376 (dalej jako: u.p.w. z 2001 r.).
[9] Zob. np. M. Manowska, [w:] *Kodeks postępowania cywilnego. Komentarz*, t. 1, *Art. 1-477[16]*, red. M. Manowska, Warszawa 2021, Komentarz do art. 199 k.p.c., pkt 7.
[10] Tekst jedn. Dz.U. 2021 poz. 1376, dalej jako ustawa o drogach publicznych.

Without resolving here whether one can speak about damage and an injured party in case of such post-accident contamination of the road referred to in the present article, it should be mentioned in a general way that the injured party might be equated with the road owner (as a civil law entity), and not the road manager which is a body of a government or local government unit. These bodies do not have legal or judicial capacity in civil cases. Civil law entities here mean the State Treasury and local government units (communes, counties and regions).

As already mentioned, defendant insurers deny their liability for the road owner's claims for payment of costs of cleaning up the road after a road event, pointing out that under separate provisions, the liability falls on the road manager. This position is shared by certain courts and legal writers.[11] For example, in judgements of the Regional Court in Łódź 18 June 2020, XIII Ga 55/20 and of 26 May 2021, XIII Ga 569/20,[12] it was acknowledged, among others, that contamination of the road does not cause it to be damaged or destroyed, and therefore costs of removing such contamination are not included in the liability of the perpetrator's insurer under third party liability insurance. Accordingly the road owner has no right to compensation from the insurer. Activities undertaken on site, such as neutralising operating fluids, securing the location of the accident, as well as removing car parts and glass from the road are a duty of the commune imposed by means of statute. The costs of conducting these activities should not be considered as damage in the meaning of the provisions of the civil code, especially since the road surface has not been permanently damaged, but only contaminated. Shifting the costs of carrying out these duties on the third party liability insurer of participants of road collisions would result in unjust enrichment of the road manager, because local governments receive the funds necessary to carry out own tasks provided for in statutes as part of relevant budget subsidies and donations. The manner of financing the conduct of these (and other) activities related to road maintenance is specified in Article 3, item 2 of the Inland Transport Infrastructure Financing Act of 16 December 2005, pursuant to which tasks related to the construction, reconstruction, renovation, maintenance, protection and management of commune roads are financed from commune budgets. Accordingly it is the commune as a local government unit that bears the costs of road maintenance and protection, including its cleaning after a road event and restoring to safe use. Financing these costs has been imposed on the commune by statute and there are no grounds to assume that the duty of bearing the costs of this activity could be transferred to other entities, including insurance companies. In my view, discussed below, this belief cannot be approved.

II. The essence of insuring third party liability of motor vehicle owners under compulsory traffic insurance lies in that the insurer is liable towards the party injured by the

[11] Zob. M. Fras, M. Orlicki, *op.cit.*, s. 34-39.
[12] Zob. przypis nr 1.

movement of the vehicle on the same terms and conditions and to the same extent as the owner. Hence, the legal basis for seeking claims related to compulsory third party insurance of motor vehicle owners for damage caused by the movement of these vehicles lies in the provisions of the Civil Code,[13] in particular the provisions on torts (for example Article 415 and Articles 435-436), the Insurance and Reinsurance Activity Act of 11 September 2015,[14] and the Act on compulsory insurance of 22 May 2003.

Pursuant to Article 34, item 1 of the Act on compulsory insurance, compensation is awarded under third party insurance of motor vehicle owners if the owner or driver of a motor vehicle are liable, pursuant to civil law provisions, to compensate for damage caused in connection with the movement of the vehicle which results in death, bodily injury, sickness or the loss, destruction or damage of property. This provision reflects the tendency of the legislator to ensure that a third party liability insurance agreement provides as wide insurance coverage as possible both to the insured perpetrator of the damage, who is protected against the consequences of suffering third party liability personally, and to the injured party, who is sure to receive full compensation for damage caused by a perpetrator liable under civil law from the insurer. Consequently, the liability of the insurer is determined by the liability of the perpetrator of the accident.[15]

Compensation is due under motor vehicle owner insurance if the owner or driver of a mechanical vehicle is obliged to compensate for the following damage caused in connection with the movement of the vehicle: personal damage such as death, bodily injury and sickness, and property damage consisting in the loss, destruction or damage of property. The scope of third party liability insurance of motor vehicle owners is therefore very broad. Under Article 38, item 1, point 4 of the Act on compulsory insurance, damage consisting in contaminating or polluting the environment is not included in third party liability insurance of motor vehicle owners. Excluding the guarantee liability of the insurance company for damage to the environment, viewed critically in legal science,[16] is justified by the lack of clear grounds of liability of the insured for damage caused by contamination (pollution), difficulties in assessing insurance risk (which remains but little known) and threat of substantial damage[17] which could result in potentially extreme levels of possible compensation which might seriously impact the financial condition and prestige of the insurers.[18]

One of the prerequisites for holding an insurance company liable under third party

[13] LEX nr 32276.
[14] Tekst jedn. Dz.U. 2021 poz. 1130.
[15] Wyrok SA w Poznaniu z dnia 4 lutego 2015 r., I ACa 1093/14LEX nr 1681964.
[16] D. Maśniak [w:] *Komentarz do ustawy o ubezpieczeniach obowiązkowych, Ubezpieczeniowym Funduszu Gwarancyjnym i Polskim Biurze Ubezpieczycieli Komunikacyjnych*, [w:] *Prawo ubezpieczeń gospodarczych*, t. 1, *Komentarz*, red. M. Serwach, LEX 2010, Komentarz do art. 38 ustawy o ubezpieczeniach obowiązkowych, pkt V, ppkt 1.
[17] D. Maśniak, *Wybrane aspekty prawne nowego modelu ubezpieczeń ekologicznych*, „Prawo Asekuracyjne" 2000, nr 4, s. 34 i n.
[18] K. Niezgoda [w:] J. Miaskowski, K. Niezgoda, P. Skawiński, *Ustawa o ubezpieczeniach obowiązkowych, Ubezpieczeniowym Funduszu Gwarancyjnym i Polskim Biurze Ubezpieczycieli Komunikacyjnych. Komentarz*, Warszawa 2012, Komentarz do art. 38 ustawy o ubezpieczeniach obowiązkowych, Nb 11.

liability insurance of motor vehicle owners is causing damage in connection with the movement of means of communication. Civil law does not contain a definition of this term, but it is possible to ascertain its scope, also on the basis of Article 436 in connection with Article 435 of the Civil Code.[19] In legal theory, the notion of damage is not viewed uniformly. In the most general terms, damage is defined as any loss in the legally protected goods or interests of a particular entity (the injured party) which is suffered against its own will.[20] The prevailing view is that property damage means the difference between the property condition of the injured party resulting from an event causing the detriment and the condition which would have existed if the event had not taken place. The loss is expressed in the actual change of the injured party's material condition and involves either a decrease in assets or an increase in liabilities. Damage also includes necessary expenses related to the prejudicial event.[21] Loss, in the meaning of Article 361 § 2 of the Civil Code, also extends to expenses used to mitigate or prevent negative property consequences suffered by the injured party in the aftermath of the event causing the damage. A peculiar character of this damage consists in that it is a detriment which cannot be said to occur against the will of the injured party.[22]

Pursuant to Article 361 § 1 of the Civil Code, the person obliged to compensate is liable only for the regular consequences of the act or omission causing the damage. Redressing damage includes losses suffered by the injured party and the benefits they could have achieved if the damage had not occurred (Article 361 § 2 of the Civil Code). This means either the loss of decrease of the injured party's assets or the increase of their liabilities. Article 361 § 2 of the Civil Code suggests that the damage must be compensated in full. Legal theory and judicial decisions distinguish between direct and indirect damage. For some legal theorists, this division is of practical importance especially when legal provisions limit the scope of liability to just direct damage.[23] The essence of both kinds of damage can be understood in three ways. According to the objective approach, direct damage occurs when the effects of a prejudicial event are assessed with respect to the rights of the person directly affected thereby, while indirect damage affects other entities. Second, using the causal relationship approach one may consider direct damage as a detriment that is connected by a direct causal relationship (*causa proxima*) with the prejudicial event (for example Article 250 § 2, Article 320 of the Maritime Code). Third, direct damage may be defined as the outcome of violating a good directly affected by the prejudicial event and the injured party's interest to retain the integrity of their property without connection to violating a particular good (pure property loss), while indirect damage results from violating other goods of the injured party.[24] The issue of compensating

[19] K. Niezgoda, *op.cit.*, komentarz do art. 34 ustawy o ubezpieczeniach obowiązkowych, Nb 2.
[20] Zob. np. W. Czachórski i in., *Zobowiązania. Zarys wykładu*, Warszawa 1999, s. 98; Z. Radwański, A. Olejniczak, *Zobowiązania - część ogólna*, Warszawa 2012, s. 90.
[21] Zob. T. Dybowski [w:] *System prawa cywilnego. Zobowiązania - część ogólna*, t. 3, cz. 1, red. Z. Radwański, Ossolineum 1981,s. 230.
[22] Ibidem.
[23] Zob. np. T. Dybowski [w:] *System…*, s. 217.
[24] Zob. M. Kaliński [w:] *System prawa prywatnego*, t. 6, *Prawo zobowiązań - część ogólna,* red. A. Olejniczak, Warszawa 2018, s. 110 i podana

for indirect damage is a complicated one.[25]. The narrow bounds of this article do not permit to discuss these topics in detail. Legal theory is not unanimous on whether compensation must be made for: 1) both direct and indirect damage, 2) only direct damage, 3) both direct and indirect damage, unless compensation is limited to direct damage by statute[26], or finally 4) that the principle is to compensate for direct damage, unless the compensation is extended to indirect damage by statute. Among legal writers, M. Kaliński is of the opinion that the consequences of distinguishing between direct and indirect damage are negligible. The extent of damage subject to compensation is decided by the causality prerequisite defined in statute, and accordingly both direct and indirect damage must be indemnified, provided that it is included within such scope. In Kaliński's view, when evaluating the extent of the detriment, one should not limit oneself in particular to the right directly affected by the violation.[27]

As regards the views of the Supreme Court in this matter, in the resolution of seven judges of 27 April 2001, III CZP 5/01,[28] the court decided that a health insurance fund and a independent community health care centre are not entitled to demand the return of costs of medical treatment incurred by these entities from the perpetrator of damage caused to the injured party by a tort. In the opinion of the Supreme Court, the compensation referred to in Article 444 § 1 of the Civil Code may be demanded only by the party against whom the act of the perpetrator was directed, while no compensation claim is granted to persons who suffered damage only indirectly. The Supreme Court therefore referred to the so-called relative illicitness mechanism according to which the act of the perpetrator is directed against the person who suffered bodily injury or sickness and therefore only such person has, under Article 444 § 1 of the Civil Code, sole standing to demand all costs resulting on that account. Despite critical glosses of legal theorists to the resolution,[29] this position was upheld in a justification thereto on 3 March 2004, III CZP 2/04.[30] The justification asserted that granting a right to demand the return of costs sustained, compensation paid etc. must be grounded in a specific provision, for example Article 70 of the Act on social security cash benefits in case of sickness and maternity of 25 June 1999.[31] Likewise, a resolution made by the full panel of the Civil Chamber on 8 October 2010, III CZP 35/10,[32] decided that only the party that suffered damage as a result of a specific event is entitled to demand compensation (with Article 446 of the Civil

tam literatura.
[25] Zob. np. T. Dybowski [w:] *System...,* s. 217-218, M. Kaliński [w:] *System.,* s. 110.
[26] Tak uważa J. Widło (zob. tenże *Glosa do uchwały Sądu Najwyższego z dnia 27 kwietnia 2001 r., III CZP 5/01*, „Orzecznictwo Sądów Polskich" 2003, nr 6, poz. 74). Jego zdaniem art. 361 § 1 k.c. jak i art. 415 k.c. w swej treści nie zawierają zawężenia obowiązku odszkodowania tylko do szkód bezpośrednich, jak to uczynił ustawodawca w art. 289 kodeksu morskiego z dnia 1 grudnia 1961 r. (obecnie już nieobowiązującego) poprzez zastosowanie zwrotu językowego o szkodzie jako bezpośrednim następstwie niebezpieczeństw objętych umową ubezpieczenia.
[27] Zob. M. Kaliński [w:] *System...,* s. 110.
[28] OSNC 2001, nr 11, poz. 161.
[29] Krytyczne glosy do uchwały opracowali: A. Szpunar, „Przegląd Sądowy 2002", nr 5, s. 165 i n. oraz J. Widło. Z kolei aprobującą glosę do tej uchwały napisał M. Łemkowski, „Prawo i Medycyna" 2002, nr 12, s. 13-146.
[30] OSNC 2005, nr 6, poz. 95.
[31] Tekst jedn. Dz.U. 2021 poz. 1133.
[32] OSNC 2011, nr 2, poz. 13.

Code being an exception). The court assumed that it would be difficult to acknowledge that, in case of a traffic accident, the State Treasury is the person directly injured or that the perpetrator's act was directed against the State Treasury, whose property suffered a detriment because of the need to pay one-time compensation to an official injured by the accident.

In this context, one should consider that in the Słownik języka polskiego PWN [PWN Polish Dictionary],[33] the verb "destroy" means, among others, to cause something to become unusable. Activities undertaken by the road manager on site of a traffic event, consisting in removing from the road parts of damaged vehicles as well as fluids leaked from them, suggest that their purpose is to restore the usability of the accident site (the road is not suitable for driving as a result of the accident) by removing post-collision wreckage that prejudiced the safe, collision-free use of the road by its users. The engine fluids and parts of damaged vehicles remaining on the road may, after all, contribute to other dangerous road events (sliding, uncoordinated vehicle movements due to willingness to avoid scattered parts more or less visible to other users etc.) I am not convinced by the argument of M. Fras and M. Orlicki that "language intuition alone leads to the conclusion that the presence of vehicle remnants and other objects cannot be said to damage the road. Removing the wreckage is cleaning, not repair. The scope of meaning of these two words in the Polish language does not overlap – Polish speakers would certainly never equate cleaning with repairing the space being cleaned. If the road is not repaired, it is therefore not damaged."[34] The authors also admit that: "The conclusions related to contaminating a road lane by spilled operating fluids from damaged vehicles are perhaps slightly less obvious. Such fluids cannot be removed as easily as the wreckage of damaged vehicles. They stick to the road's surface or even seep inside it to some extent. Not infrequently, to neutralise and remove operating fluids recourse to specialist chemicals is necessary. One can therefore say that the surface is washed or cleaned."[35] Both kinds of damage can occur in the same traffic event and result in the need to undertake different repair activities (depending on the kind of damage). A surface can be said to be destroyed not only when it must be repaired. This notion should not be understood literally or intuitively. For this reason, costs caused by these activities are consequent upon destroying the property of the owner (road manager), liability for which is, pursuant to Article 34 of the Act on compulsory insurance, incurred under third party liability insurance. Consequently, it is valid to state that damage consisting in, among others, making road surface unsuitable for use, either due to the presence of parts of damaged vehicles or leaked operation/engine fluids, fulfils the disposition of Article 34 of the Act on compulsory insurance of 22 May 2003 in connection with Article 20 of the Public Roads Act as damage caused in connection with the

[33] https://sjp.pwn.pl/. Podaje on następujące znaczenie czasownika „zniszczyć": „spowodować pogorszenie stanu czegoś", „spowodować, że coś przestaje istnieć", „uczynić coś niezdatnym do użytku", potocznie „spowodować, że ktoś znalazł się w złym stanie psychicznym lub fizycznym", potocznie „utracić sprawność fizyczną lub psychiczną", potocznie „zrujnować kogoś materialnie".
[34] Zob. M. Fras, M. Orlicki, *op.cit.*, s. 37.
[35] *Ibidem.*

movement of the vehicle and resulting from destruction of property.

Having regard to the rationale for the regulation of Article 34, item 1 of the Act on compulsory insurance it must be assumed that insurance coverage granted by a third party liability insurance agreement also includes compensating for damage in the property of a road owner which consists in leaving on the road lane wreckage from vehicles participating in a collision/accident (steel sheets, glass from windows or other vehicle body elements), as well as leaked operating fluids. Such damage is also the result of behaviour of the vehicle driver who caused the collision/accident (and is insured under a third party liability insurance agreement). The costs of cleaning the road (removing operating fluids leaked from vehicles and vehicle body elements) constitute damage caused in connection with the movement of a means of communication, and therefore are included in the scope of third party liability insurance of motor vehicle owners (as property damage). They are the consequences of destroying property as a result of a road event. The damage has an adequate causal relationship to the road event and as such should be subject to compensation according to the principle expressed in Article 361 § 1 of the Civil Code. Expenses related to cleaning the road after the accident should be considered expenses caused due to the prejudicial event which would not have arisen but for the event, leading to a reduction (loss) in the injured party's property after the accident (Article 361 § 2 of the Civil Code).

Concluding this part of the discussion, it should be asserted that contamination of the road due to leakage of operational fluids and scattering of parts of vehicles damaged in a road collision (accident) is the normal, regular, and typical consequence of the collision (accident) in the meaning of Article 361 § 1 of the Civil Code. For this reason, the road owner may be considered an entity directly injured by a traffic accident as far as such damage is concerned. Indirect damage is, after all, understood as a detriment which is not the direct consequence of the prejudicial event in the causal relationship, or as a situation that affects other rights than the good directly affected by the prejudicial event.[36] Even if one wanted to treat such damage as indirect, it would nevertheless, in my opinion, be subject to indemnification due to remaining in an adequate causal relationship with the prejudicial event. I share the view of M. Kaliński that the scope and extent of damage subject to compensation is decided by the statutory criterion of causality, and therefore both direct and indirect damage will be indemnified provided that they fit in the scope thus defined.

3. Does the road owner have the standing to seek from the perpetrator of a road accident – based on Article 436 of the Civil Code – redress of damage caused by the traffic of such vehicles on the road infrastructure, including contamination of the road?

[36] Zob. np. T. Dybowski [w:] *System...,* s. 218.

I. The competences of the road manager include matters related to planning the construction, reconstruction, renovation, maintenance and protection of roads. According to the statutory definitions found in the glossary (Article 4 of the Public Roads Act), road maintenance means conducting conservation, cleaning and other works in order to increase the safety and comfort of traffic, including removal of snow and preventing slipperiness in wintertime (point 20). On the other hand, road protection should be understood as activities aimed at preventing premature destruction of the road, the deterioration of its class, limitation of its functions, improper usage and impaired traffic safety conditions (point 21).

Pursuant to Article 19, item 1 of the Public Roads Act, the road manager is the body of government or local government unit competent in matters of planning, construction, reconstruction, renovation, maintenance and protection of roads. Article 20, item 4 of that special statute specifies that tasks of the road manager also include maintenance of the road, pavements,[37] civil road structures, traffic safety equipment and other road-related equipment.[38] Legal literature[39] notes that the obligation to maintain order and cleanliness on public roads is specified explicitly in the provisions of the Maintenance of Order and Cleanliness in Communes Act of 13 September 1996.[40] In addition to cleaning up the road, the act obliges the manager to: 1) pick up and dispose of collected waste in designated equipment and maintain such equipment in an adequate sanitary, order and technical condition, 2) remove mud, snow, ice and other impurities swept from pavements by owners of real estate adjacent to a public road, 3) remove mud, snow, ice and other impurities from pavements if the road managing body collects fees for parking vehicles on such pavements (Article 5, item 4 of the act).

Such scope of liability of the road manager cannot, however, be directly and instinctively (uncritically) applied to road events (accidents and collisions) caused by the behaviour of a specific perpetrator, which resulted in contaminating a road lane so as to hinder the passage of other vehicles through the location in which the road event took place. The obligation to maintain the road surface, pavements, civil road facilities, traffic security equipment and other road-related equipment should be related to activities involving regular operation of the road supervised by the manager, such as conducting conservation, repair, order and other works to increase traffic safety and comfort. The obligation remains in effect also when a road section has not been damaged due to road events. Such activities can certainly include removal of snow and preventing slipperiness in wintertime. In addition, it must be noted that contamination of a road (lane) need not be the consequence of either

[37] Zob. też wyrok SN z dnia 29 stycznia 1999 r., I CKN 1005/97, LEX nr 50756.
[38] Przewidziany w ustawie zakres obowiązków zarządcy drogi, wskazany jedynie przykładowo, jest bardzo szeroki - zob. art. 20 ustawy o drogach publicznych.
[39] Zob. P. Zaborniak [w:] W. Maciejko, P. Zaborniak, *Ustawa o drogach publicznych. Komentarz*, LexisNexis 2010, komentarz do art. 20 ustawy o drogach publicznych, pkt 5.
[40] Tekst jedn. Dz.U. 2021 poz. 888.

culpable or non-culpable human behaviour (torts) – it may also result from weather conditions (storms, hurricanes etc.) or be caused accidentally (*casus fortuitius*) by an event that no one is liable for. Finally, it may be the result of events whose perpetrator is unknown. In such cases, the road is to be cleaned up by the manager as part of regular, everyday road maintenance.[41]

According to the provisions of the Public Roads Act, the road manager is obliged to properly secure the event location, clean up the road and prepare it for restoring traffic. The costs of such cleaning up of the road lane are within the bounds of liability of the perpetrator's insurer under third party liability insurance due to the regulation of Article 34, item 1 of the Act on compulsory insurance of 22 May 2003 The circumstance that the manager receives funds from the budget for activities related to, among others, road maintenance and protection does not frustrate the compensatory claim towards the perpetrator of damage and their insurer and is not an argument in favour of unjust enrichment. The funds received do not necessarily cover the expenses related to achieving these objectives. I do not agree with the view that actions of the road manager undertaken on the event site, such as neutralising operating fluids and securing the location, as well as removing car parts and glass from the road lane, should not be considered as damage liquidation in the meaning of Civil Code provisions. In my opinion, neither can it be assumed that this would shift the costs of fulfilling these duties (in fact, liquidating the damage) from participants of the road collision to the third party liability insurer, thereby leading to unjust enrichment on part of the road owner, because local government units receive the funds necessary to perform own tasks provided for in statute as part of relevant government subsidies and donations. I believe that the fact that road managers are obliged to maintain them does not mean that they assume liability for vehicle drivers who perpetrate property damage in roads. Neither does it exclude the liability of perpetrators of such damage.[42] This liability applies to culpable (Article 436 § 2 of the Civil Code) and non-culpable (strict liability – Article 436 § 2) behaviour as decided by the legislator because of the specific nature of threats caused by vehicle traffic.

The provision of Article 3 of the Inland Transport Infrastructure Financing Act of 16 December 2005 stipulates that tasks related to construction, reconstruction, renovation, maintenance, protection and management of roads are financed by: 1) the minister competent in matters of transport through the General Director of National Roads and Motorways or road special purpose companies with respect to national roads; 2) the regional local government with respect to regional roads; 3) the county local government with respect to county roads (item 1); tasks related to construction, reconstruction, renovation, maintenance, protection and management of commune roads are financed from commune budgets (item 2); within limits of county level cities tasks related to construction, reconstruction, renovation,

[41] Por. M. Fras, M. Orlicki, *op.cit.*, s. 34-36.
[42] Odmiennie M. Fras, M. Orlicki, *op.cit.*, s. 36-37.

maintenance, protection and management of public roads, except for motorways and express roads, are financed from city budgets (item 3). The scope of duties imposed on, for example, communes is very broad, and budget funds provided to fulfil them may turn out to be insufficient. Thus, there is nothing special about road owners seeking redress of damage sustained from the perpetrator of a road event or its insurer in connection with contamination of the road as a consequence of the event. Neither am I convinced by the argument[43] that "it is entirely compliant with the axiological assumptions of the legal system to state that carrying out certain tasks and covering specific categories of costs related to road traffic is a public duty. Traffic participants finance the conduct of these tasks as taxpayers, not individually as specific persons to whose acts or omissions is the emergence of a particular expenditure related."

In addition, in such case the insurer's liability under third party liability of the damage perpetrator is not extended to damage consisting in contamination of a road lane due to traffic collision or accident. Such liability could be contrary to the traits (nature) of a particular relationship referred to Article 9, item 1 of the Act on compulsory insurance of 22 May 2003. In this context, it is worth noting that proponents of the contrary position advance in favour of the *possibility* (my emphasis) of such discrepancy the general and imprecise argument that "the nature of a communication insurance agreement should be viewed in a systemic context."[44]

II. The claims of the road manager cannot be frustrated by the objection of the insured based on Article 38, item 1, point 4 of the Act on compulsory insurance of 22 May 2003 which stipulates that an insurance company is not liable for damage consisting in contaminating or polluting the environment. The actions undertaken by services summoned by a police unit to the road event location are focused first and foremost on securing the collision (accident) site. The circumstances of the accident are usually such as to require securing and marking the collision site to make it visible for other road users. As regards removing post-collision wreckage, i.e. remnants of vehicles (broken car body elements or broken glass from lamps, for example) and fluids which can be removed by sorbents, for example, coolant, brake or windshield washer fluid), which in the view of the police do not need to be removed by fire service units, are removed by the road manager. The size of such wreckage and its kind suggests a conclusion that it cannot be treated as leading to contaminating or polluting the environment. In this respect, I share the view of legal theorists and judicial decisions that minor vehicle wreckage in the form of leaking operational fluids and pieces of chassis will not as a rule constitute an emission which could be recognised as harmful to human health of the condition of the environment, cause damage to material goods, decrease the aesthetic value of the environment or use other justified methods of using the

[43] *Ibidem*, s. 36.
[44] *Ibidem*.

environment.[45] Its removal is, after all, necessary to ensure the safety of road users (uncontrollable skidding). Such wreckage is not included in the definition of environmental pollution found in Article 3, item 49 of the Environmental Protection Law Act of 27 April 2001,[46] according to which: "Whenever the act mentions: contamination – this is understood as an emission which may be harmful for human health or the condition of the environment, may cause damage to material goods, may reduce the aesthetic value of the environment or collide with other, justified ways of using the environment." Spilling engine fluid or other operating fluid from a vehicle or the presence of parts of damaged vehicles on a public road does not constitute contamination of the environment. For this reason, there are no grounds to assume that this constitutes damage to or destruction of property for which an insurance company is liable.

III. Finally, I wish to comment on the norm of Article 101, item 1 of the Waste Act of 14 December 2012, pursuant to which, if required by considerations of protecting human life or health or the environment, the county head competent with respect to the place in which post-accident waste was generated may impose on the perpetrator the obligations to manage waste from accidents, including transferring them to a designated waste owner. The Waste Act does not include the legal definitions of "accident" and "accident perpetrator." Colloquially, an "accident" is understood as "an unfortunate event causing material loss, suffering, injury or death,"[47] or as "an unfortunate event causing material loss and suffering to someone."[48] Legal literature notes that an "accident" is an event which, due to its location, may be classified as: 1) inland accident (on road, rail or otherwise), 2) water accident (in the sea or inland waters), 3) air accident (related to aviation or otherwise). As regards a "road accident," Article 1 of the Convention on the Law Applicable to Traffic Accidents, signed in The Hague on 4 May 1971,[49] considers it as "an accident which involves one or more vehicles, whether motorised or not, and is connected with traffic on the public highway, in grounds open to the public or in private grounds to which certain persons have a right of access." The notion of accident referred to in that provision includes both road accident (Article 177 of the Criminal Code) and road collision (Article 86 of the Petty Offences Code). Article 34 of the Act on compulsory insurance contains a similar distinction.

Pursuant to Article 3, item 1, points 2 and 3 of the Waste Act, whenever the act mentions: waste management – this is understood as the collection, transport and processing

[45] Zob. wyrok Sądu Rejonowego w Legnicy z dnia 17 czerwca 2014 r., I C 576/14, LEX nr 1905988, wyrok Sądu Okręgowego w Olsztynie z dnia 31 stycznia 2019 r., IX Ca 866/18, LEX nr 2627379., M. Fras, M. Orlicki, *op.cit.*, s. 33-34. Przez środowisko, w myśl przepisu art. 3 pkt 39 ustawy - Prawo ochrony środowiska rozumie się ogół elementów przyrodniczych, w tym także przekształconych w wyniku działalności człowieka, a w szczególności: powierzchnię ziemi, kopaliny, wody, powietrze, krajobraz, klimat oraz pozostałe elementy różnorodności biologicznej, a także wzajemne oddziaływania pomiędzy tymi elementami. Do jego elementów niewątpliwie zaliczyć zatem należy również drogę, na której dochodzi do wypadku komunikacyjnego (tak trafnie M. Fras, M. Orlicki, *op.cit.*, s. 34).

[46] Tekst jedn. Dz.U. 2020 poz. 1219.

[47] *Uniwersalny słownik języka polskiego*, red. S. Dubisz, Warszawa 2003.

[48] Słownik języka polskiego PWN, [online] https://sjp.pwn.pl/szukaj/wypadek.html.

[49] Dz.U. 2003n 63 poz. 585.

and waste, including supervision of these activities, as well as subsequent handling of waste disposal sites and activities undertaken as a seller of waste or intermediary in waste trading; waste industry – this is understood as the generation and management of waste. In Article 3, item 1, point 13 the act includes a legal definition of accident waste, which is understood as waste arising during a rescue or fire extinguishing operation, except for: a) waste arising due to a serious accident or serious industrial accident in the meaning of Article 3, points 23 and 24 of the Environment Protection Law Act of 27 April 2001, b) waste caused by damage to the environment referred to in Article 6, point 11 of the Prevention and Remediation of Damage to the Environment Act of 13 April 2007.

In the assessment of K. Karpus, the purpose of Article 101 of the Waste Act is actually to shift the legal responsibility on the owner of waste who is the "perpetrator" of a sudden and unforeseen event which requires a rescue operation that causes objects to be transformed into waste. As a result, this entity is suffering legal consequences on a basis other than administrative law. Following Article 22 (the "polluter pays" principle) and Article 27 (transfer of waste and bearing liability for waste management), the liability for waste management rests primarily on the producer or owner of waste. An administrative law reaction can therefore be directed against these entities in order to ensure proper performance of their obligations under the Waste Act and other special acts. In the view of K. Karpus, the solution included in Article 101 does away with this rule, because it allows obligating the "accident perpetrator" to manage waste other than owned by them.[50]

The authority competent to issue the decision referred to in Article 101, item 1 of the Waste Act manages accident waste if: 1) enforcement proceedings concerning the obligation to manage accident waste could not be initiated or enforcement has proven ineffective, or 2) it is necessary to manage such waste immediately because of a threat to human life or health or the possibility of irreparable damage to the environment (Article 101, item 5). If there is no possibility of determining the accident perpetrator or enforcing costs from the perpetrator, costs of managing accident waste, except for accidents causing marine pollution, are covered, on request of the competent county head of regional environment protection director, from financial means of the regional environment protection and water management fund (Article 101, item 6). Hence, the Waste Act allows the county head to immediately manage waste if this is necessary due to a threat to human life or health or the possibility of irreversible damage to the environment. Such cases do not occur in typical situations discussed in this article. In case of road collisions (accidents), the police as a rule orders the road manager to clean up the road in order to restore the safe traffic of pedestrians and vehicles. Hence, in the situation described in Article 101, item 1 the county head has the possibility to issue a decision and oblige the accident perpetrator to clean up the waste. Issuing the decision itself by the county

[50] K. Karpus [w:] *Ustawa o odpadach. Komentarz*, red. B. Rakoczy, LexisNexis 2013, Komentarz do art. 101 ustawy o odpadach, pkt 7.

head is optional. Most often in practice (as to the results of accidents and collisions), the authority does not decide to issue it. It can be assumed that this is because of considering that the decision is not justified by reasons of protecting life, health or the environment.

In addition, Article 22 of the Waste Act of 14 December 2012 stipulates that costs of waste management are borne by the original waste producer or the current or previous waste owner. In turn, pursuant to Article 3, item 1, point 6 of the act, waste is any substance or object of which the owner disposes, intends to dispose or is obliged to dispose. The producer of waste is everyone whose activity or existence causes waste to be generated (original waste producer) and everyone who conducts preliminary processing, mixing or other activities resulting in the change of the nature or composition of such waste (Article 3, item 1, point 32 of the act). A (prejudicial) traffic event caused by an insured results in certain objects and substances becoming separated from the vehicle structure by their owners (accident participants).[51] According to the above, the costs of cleaning up the road are borne by the accident perpetrator (the person whose behaviour caused the road contamination) or their insurer under third party liability insurance of motor vehicle owners. Incidentally, one might have doubts as to whether road contamination as a result of a road event meets the definition of waste in Article 3, item 1, point 8 of the Waste Act, understood as any substance or object of which the owner disposes, intends to dispose or is obliged to dispose. Of key importance here is the notion of "waste disposal." This is what distinguishes waste from other substances and objects. The notions of "substance" and "object" should be understood colloquially, as synonyms of things, fluids, bulk materials etc.[52] "Disposal," a notion not defined in the Waste Act, means getting rid of something unnecessary and burdensome.[53] It is assumed that waste is an object or substance which is unnecessary, and even burdensome, for its owner, who therefore wants to or must abandon it.[54] In the spirit of functional interpretation, the scope of this notion can in my assessment be extended to vehicle parts left on a road lane due to an accident. Such post-accident object or substance must be abandoned by the owner.[55] Doubts can however arise as to whether road contamination as a result of a road event matches the definition of accident waste in Article 3, item 1, point 13 of the act (waste generated while conducting a rescue or fire extinguishing operation). The mere cleaning up of post-accident contamination of the road is not an aspect of a rescue or fire extinguishing operation.

4. Summary

In court practice, granting a compensatory claim referred to in this article (due to damage consisting in contaminating a road lane due to a traffic event) gives rise to essential

[51] M. Fras, M. Orlicki, *op.cit.*, s. 33.
[52] W. Radecki, *Ustawa o odpadach. Komentarz*, Warszawa 2008, s. 80.
[53] Zob. *Uniwersalny słownik języka polskiego*, red. S. Dubisz, Warszawa 2003, s. 814.
[54] B. Rakoczy [w:] *Ustawa o odpadach. Komentarz*, red. B. Rakoczy, LexisNexis 2013, Komentarz do art. 3 ustawy o odpadach, pkt 2.
[55] Tak też M. Fras, M. Orlicki, *op.cit.*, s. 33-34.

doubts. In my opinion, one should recognise as correct the position in which, firstly, the road owner can be considered to suffer injury due to a traffic accident (a collision of two cars); and secondly, the owner has standing to seek from the perpetrator of a road accident, based on Article 436 of the Civil Code, the redress of damage caused by the traffic of such vehicles on the road infrastructure, including contamination of the road. Causing damage in the form of road contamination due to behaviour of the collision (accident) perpetrator, considering the existing causal relationship, gives the road owner a subjective right to compensation. This right is not frustrated by Article 20, points 4 and 11 of the Public Roads Act.[56] The argument that enforcing a wide scope of insurance coverage in compulsory third party liability insurance by the legislator does not mean equating the scope of the insurer's liability with the scope of liability of the insurant or insured does not lead to a different conclusion.[57] What is essential is that the damage discussed in this study matches the hypothesis found in the norm of Article 34 of the Act on compulsory insurance. The fact that accidents occur during normal use of roads by their users and form an inherent part of road traffic does not by itself mean that the liability of insurers for the damage discussed in this study is excluded.[58] A third party liability insurance agreement merely allows to protect the insured perpetrator of the damage against the consequences of bearing third party liability also in this respect and ensures that the injured party is fully compensated by the insurer for damage caused by a perpetrator bearing third party liability. The function of compulsory third party liability insurance of motor vehicle owners is, after all, ensuring effective compensation of damage resulting from traffic accidents.[59]

Finally, the contrary position is not supported by an argument according to which favouring the potential demands of road owners that perpetrators of traffic accidents redress damage to road infrastructure might eventually lead to similar claims being advanced by the ambulance stations, police and fire service. It is enough to retort that such claims from these entities are unheard of. Additionally, as regards the issue discussed here, the meaning is concrete property damage caused as a result of a road event. It would not be correct to assume that services such as fire service, ambulance stations and police which arrive at the scene of a road accident may seek the reimbursement of related costs (of travel and actions on site) due to being summoned. In undertaking these activities, they carry out the tasks imposed on them under, among others, the State Fire Service Act of 24 August 1991,[60] the State Medical Rescue Service Act of 8 September 2006,[61] and the Police Act of 6 April 1990.[62] The tasks of these entities are financed from the state budget (related to widely understood health, fire and safety protection) and applicable provisions of law do not contain any legal

[56] W doktrynie odmiennie M. Fras, M. Orlicki, *op.cit.*, s. 34-36.
[57] M. Orlicki, *Ubezpieczenia obowiązkowe*, Wolters Kluwer, Warszawa 2011, s. 411-425.
[58] Odmiennie M. Fras, M. Orlicki, *op.cit.*, s. 36.
[59] Zob. np. A. Szpunar, *Ustalenie odszkodowania z tytułu obowiązkowego ubezpieczenia komunikacyjnego*, „Kwartalnik Prawa Prywatnego" 1993, z. 1, s. 31.
[60] Tekst jedn. Dz.U. 2020 poz. 1123, zob. art. 1 ust. 2 tej ustawy.
[61] Tekst jedn. Dz.U. 2020 poz. 882, zob. art. 1 tej ustawy.
[62] Tekst jedn. Dz.U. 2020 poz. 360, z późn. zm., zob. art. 1 ust. 2 i 3 tej ustawy.

grounds for reimbursing the costs borne by these entities in carrying out these tasks. Finally, these entities, in light of the Supreme Court decisions discussed above, may be considered, at most, indirectly and not directly injured by a road event such as a road collision or accident. Even more importantly, however, if they intervene on site of a road event, they cannot be said to suffer damage which fits the statutory criterion of causality, which rules out the application of the norm of Article 34, item 1 of the Act on compulsory insurance.

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