https://doi.org/10.31489/2025L1/98-105 Received: 30 November 2024 | Accepted: 08 January 2025

UDC 347.45/.47

V.S. Belykh*

Ural State Law University named after V.F. Yakovlev, Ekaterinburg, Russia
(E-mail: belykhvs@mail.ru)
ORCID: 0000-0002-0611-088X

Insurance interest under the law of England

The article is devoted to one of the elements of the insurance contract. The author notes that the doctrine of insurable interest was developed in England in the middle of the 18th century. The classic definition of insurable interest in property insurance is contained in a court judgment. Initially, insurable interest was an "economic interest" — a real and expected possibility of property damage due to an insured event. It was first legislated in the Marine Insurance Act of 1745. In the 20th century, the Marine Insurance Act of 1745 was replaced by the Marine Insurance Act of 1906. A new definition of insurable interest was given. In addition to the economic interest, the insured had to prove a legal interest, namely the existence of a legal or equitable relationship to the object of insurance. Further, the article discusses the types of insurable interest. Thus, depending on the source of fixation the insurable interest can be statutory and contractual. It is noted that the Law Reform Commission is currently preparing amendments concerning insurable interest. Most members of the Commission are inclined to the position that the requirement of insurable interest should be removed from English law in property insurance contracts. It is also important to note that insurable interest in English law is not considered as the subject (object) of an insurance contract — the works of scholars speak about the subject of insurance.

Keywords: insurable interest, doctrine of insurable interest, types of insurable interest, economic and legal interest, judicial practice, insurable interest as a subject of insurance.

Introduction

The choice of this topic is not accidental. Over the years, under my scientific supervision, several theses related to the insurance law of Russia have been successfully defended, including others on related subjects. One of them is devoted to the contract of directors and managers' liability insurance in the law of England and Russia [1]. In 2023, I published a monograph titled Contract Law in England: A Comparative Legal Study (3rd edition), Chapter 11 of which addresses current issues regarding the insurance contract in English law.

Methods and Materials

For a comprehensive and complete study of the topic, comparative legal and hermeneutic methods were primarily used. Of course, other general scientific and specific scientific methods were also used in the process of conducting this study. In particular, the method of legal interpretation, which made it possible to focus on understanding laws through their content, scope of application, as well as purpose and historical con-

* Corresponding author's e-mail: *belykhvs@mail.ru*

text, which made it possible to identify how the provisions of laws are applied in national jurisdictions. Along with this, the historical method was used, which made it possible to comprehensively study the process of formation and development of insurance legislation in different states and identify common patterns in different national jurisdictions. Together, these above-mentioned methods help study individual legal categories and institutions, in particular, and contribute to the development of legal science in general.

The comparative legal method made it possible to compare legal concepts, legal phenomena and processes of the same order in different legal systems and identify the common and differences between them, provided that the objects are comparable. The hermeneutic method was used to interpret legal terms and legal concepts to determine their meaning and understanding in legal science and practice in different countries.

The materials for writing this article were regulatory legal acts on insurance of various states and scientific and practical comments from specialists in this field.

Discussion

First, let us take a brief look at the history of insurance. According to one version, the beginning of the insurance business is believed to have started in the XVII century in Edward Lloyd's coffee house in London. In the coffee house the merchants agreed to create a special money fund, which would be used to pay off the damage caused to the merchant who was in trouble (for example, in case of shipwreck or loss of a ship). According to another version, the first insurance organization ("Insurance Chamber") was established in 1310 in Bruges (Germany) to protect the property interests of merchants and craft guilds [2; 9]; [3; 10-11]. We believe that this issue is not simple, as it may seem at first glance. Historically, it is necessary to distinguish different moments when the first insurance contracts (agreements) appeared, when insurance companies were created and when certain types of insurance emerged. This reflects both historical progression and logical reasoning.

Along with marine insurance, fire insurance also emerged. A powerful impetus for the creation of this type of insurance was the Great Fire in London in 1666, when it destroyed almost the entire city center. A special "Fire Policy" financed by a certain group of people was established to insure houses and other buildings.

The idea of life and health insurance on a commercial basis was realized in later times. Thus, the first life insurance company was established in England in 1765. In continental Europe and America, the corresponding insurance companies appeared only in the XIX century.

It should be particularly noted that English laws (statutes) do not contain a legal definition of the concept of insurance contract, but the traditional definition is contained in the decision on the case of *Prudential Insurance v Inland Revenue* [4]. Channel J. noted that "This… contract whereby for some consideration, usually but not necessarily for periodical payments called premiums, you secure for yourself some benefit, usually but not necessarily the payment of a sum of money, upon the happening of some event. Then, the event must have some amount of uncertainty about it".

For comparative analysis: there is no legal definition of a single concept of an insurance contract in the Civil Code of the Russian Federation.

The Civil Code of the Russian Federation (Articles 929, 934) contains separate definitions of personal and property insurance contracts. We think that this should not be interpreted as legislator's rejection of the unified concept of insurance contract. The definition of property and personal insurance contracts includes the criterion of losses, which is not decisive for the separation of insurance contracts from other types of civil law contracts. This criterion, indicating the existing differences between personal and property insurance in no way detracts from the significance of the general concept of an insurance contract, which is the legal basis for the emergence of any insurance legal relations. The legislator should return to a unified concept of insurance contract [3; 195–197]. For example, Article 803 of the Civil Code of the Republic of Kazakhstan contains a single concept of the insurance contract. According to this provision of the Civil Code of the Republic of Kazakhstan, under the insurance contract, one party (the policyholder) is obligated to pay the insurance premium, while the other party (the insurer) is required to provide an insurance payment to the policyholder or another individual designated in the contract (the beneficiary), in the amount specified in the agreement (the sum insured), in the event of an insured occurrence. [5; 300-301].

It is well known that, in addition to the classical definition of the structure of legal relations (subjects, objects, and content), another classification of the elements of insurance legal relations can be applied in the field of insurance. They (elements) include insurance risk, insured event, insurable interest, insurance

amount and insurance payment, insurance premium (insurance premiums) and insurance tariffs. These elements are of a special nature.

For the purposes of this publication, let us consider insurable interest in English pre-contract law. Thus, English law states that a person entering into an insurance contract must have an insurable interest in the subject matter of the insurance. The potential policyholder must have a "relevant relationship" to the person or property he or she wishes to insure. Not only the insurer, but also society as a whole must be satisfied that the potential policyholder's purpose in taking out the insurance is appropriate.

The doctrine of insurable interest was developed in England in the middle of the 18th century. In this case, the legislators and practice pursued two main goals:

1. To prevent undesirable consequences in the form of deliberate destruction of the insured object or killing of the insured person in order to receive insurance compensation under the policy (moral hazard);

2. To distinguish insurance contracts from gambling, which was illegal in England[*].

The classic definition of *insurable interest in property insurance* is found in the decision in the case of *Lucena v Craufurd* [6]: it is "a right to property or a right derived from contracts in respect of property which in any event may be lost by unforeseeable circumstances affecting the possession or enjoyment of a party". Thus, *the insurable interest was originally an "economic interest" — the real and expected possibility of property damage due to an insured event*. It was first enshrined in law in *the Marine Insurance Act 1745*, which established the nullity (void) of marine insurance contracts concluded without insurable interest. Thirty years later, the need to take measures to prevent gambling through life insurance contracts led to *the Life Assurance Act of 1774*. This statute was aimed at preventing life insurance without a legitimate interest — such contracts were recognized as void. It (the statute) is applied even nowadays for life insurance and "other events except goods and ships". Thus, at the end of the XVIII century *the Marine Insurance Act 1745 and the Life Assurance Act 1774* signaled the legal necessity of insurable interest in marine and life insurance under the fear of nullity of the contract.

The 19th century was marked by a further consolidation of views on gambling. In 1845 *the Gaming Act 1845* was passed [7]. It established that all contracts in which the policyholder could not prove his interest were regarded as bets and could not be enforced (unenforceable). Since a bet is a contract in which neither party has an interest in its subject matter, this provision had the effect of making all contracts in which an interest could not be demonstrated unenforceable (and therefore unenforceable).

In the 20th century, *the Marine Insurance Act 1745* was replaced by *the Marine Insurance Act 1906* [8]. A definition of insurable interest was given: A person is recognized as having an interest in a marine adventure [9], *if he/she has a relationship (governed by common law or equity) to it or property* which is at risk during the adventure and in connection with which he/she may benefit from the preservation or timely arrival at the destination of the property, or may suffer loss, damage or delay in transit, or be liable to third parties in respect of the property. Thus, in addition to an economic interest, the policyholder had to prove a legal interest, namely a legal or equitable relationship to the subject matter of the insurance (a legal connection to the subject matter of the insurance).

Three years later, Parliament decided to introduce a sanction against persons who enter into marine insurance contracts without insurable interest. *The Marine Insurance (Gambling Policies) Act 1909* г. [10] stated that this was an offence.

In 1925 the Court of Appeal made a precedent-setting decision in the case of *Macaura v Northern Assurance Co Ltd* [11]: Mr. Macaura, being the sole shareholder of the company, insured timber belonging to the company in his own name. Macaura, being the sole shareholder of a company, insured on his own behalf timber belonging to the company. The property was damaged by fire, but when the claimant brought a claim for damages against the insurer it was refused. The House of Lords held that the claimant had no insurable interest as he *had no right* to the company's property. This decision extended the doctrine of "legal interest" to property insurance and finally established it in English law.

After 1909, the legislation remained unchanged for 100 years until *the Gambling Act 2005)* [12]. This statute repealed Section 18 of the Gaming Act 1845, stating that "the binding effect of a contract on gambling does not mean that it (the contract) is unenforceable". This provision came into force in September

[*] Insurance and wagering have in common that the reward depends on uncertain (random) events. In a bet, however, neither party is interested in the contract or the insured object, but only in receiving a specific sum of money (share) in case of winning. In an insurance contract, by contrast, the policyholder suffers a loss if the insured object is destroyed.

2007. Consequently, *for the purposes of determining whether a contract is enforceable (with the exception of marine and personal insurance contracts), the insurable interest is no longer relevant in England.*

Results

Analyzing the above definitions, it can be concluded that, under English law, an insurable interest arises when the following conditions are met:

1. The existence of an objective (legal) connection (based on common law or equity) with the subject of insurance — this is confirmed by both statutes and case law. A similar regulation is provided for in the Civil Code of the Russian Federation: for example, Clause 1 of Article 930 considers it possible to conclude a property insurance contract only in favor of a person who has an interest in preserving the property based on law or contract. This connection can be defined as the "legal interest".

2. The existence of an "economic interest" — a "real possibility" of loss for the "policyholder". In other words, the policyholder must have a benefit in preserving the thing and its loss, damage or destruction must have a non-favorable consequence for him/her.

The point of interest is when the insurable interest should take place. Unlike the Russian law, where the insurable interest, being the object of insurance, must take place at the conclusion of the contract and throughout its validity (clause 1, part 1, Article 942 of the Civil Code of the Russian Federation) under the fear of nullity, the situation in English law is fundamentally different. Indemnity insurance (or loss insurance) provides compensation for the number of losses incurred. Contingency insurance (non-indemnity insurance) provides payment of a predetermined amount. For indemnity insurance, the insurable interest is necessary only when the losses actually incurred (losses can also be potential, if their amount and basis are accurately established) take place, i. e. at the moment when the amount of compensation can be measured. Therefore, people can insure, for example, a house they have agreed to buy, even though they do not yet own it at the time the insurance contract is concluded. For insurance in case of unforeseen circumstances, the exact amount of damage incurred cannot be accurately calculated. Therefore, the existence of an insurable interest is required at the time of concluding a contract [13].

It is also important to note that depending on the source of the insurance interest, it can be statutory or contractual. A statutory interest is an insurable interest that is required by statute (e. g. the Marine Insurance Act 1906 and the Life Assurance Act 1774), i.e. in marine and life insurance. As for the other types of insurance, insurable interest is now contractual. The legal consequences in the absence of a "legal" and "contractual" interest are different. In case of non-compliance with the requirements established by law, the insurance contract is void, both parties lose the right to enforce the contract, and the court has the right to refuse the claim, even if the insurer does not refer to the insured's lack of insurable interest. If the policyholder had no insurable interest under the particular contract, until recently (before the Gambling Act 2005), the contract remained valid, but the policyholder lost the right to enforce it. Now, as we can see, the presence or absence of a contractual interest does not affect the enforceability of the insurance contract. As for the legal insurable interest, most researchers are of the opinion that the Gambling Act 2005 has not influenced the requirements of the Marine Insurance Act and the Life Assurance Act 1774, therefore the requirements of the legal insurable interest continue to apply in order to distinguish between insurance and wagering contracts and to prevent the policyholder's bad faith.

The introduction of the Gambling Act 2005 was not accidental — initially strict requirements relating to insurable interest were softened by judges' positions, which were then reflected in the legislation. For a long time, some members of the House of Lords had indicated that the "economic interest" was a sufficient basis for being able to insure an object. However, practice and legislation then favored a narrower framework for the existence of the "interest": in the event of destruction of the subject matter of the contract, the policyholder had to prove the "legal interest" — the existence of a legal connection (based on common law or equity) with the subject matter (in addition to the occurrence of material loss) [14]. In *Cowan v Jeffrey Associates* [15] in circumstances similar to the decision in *Macaura v Northern Accurance Co Ltd* discussed above, Lord Hamilton regretted that he had been unable to ignore the House of Lords' decision in *Macaura* in favor of the concept of the real possibility of loss. It may be stated that Lord Hamilton's dissenting opinion initiated a departure from a strictly formal definition of insurable interest. Professor M. Clarke in criticizing the decision in *Macaura v Northern Assurance Co Ltd* suggests that, as the sole shareholder and investor in the company, Mr. Macaura had in fact suffered loss by reason of the loss of the forest and the court should have taken that fact into account. In the US, this decision is also considered too harsh and the only justification is that the insured's actions contained fraud, which was difficult to prove, and therefore the court found an al-

ternative justification for the legitimacy of the denial of indemnity [16; 32-33]. In *Feasey v Sun Life Assurance Co of Canada* [17] Lord Waller held that "anything less than an interest based on common law or equity is considered sufficient to give rise to an insurable interest" [16; 37]. This precedent is today the leading judgment in cases concerning insurable interest. According to the decision in question, an insurable interest exists if:

1. The policyholder has a right based on law (common or statutory) or equity to the subject matter of the insurance;

2. The policyholder merely owns the subject matter of the insurance;

3. If the policyholder does not own the object of the insurance but is responsible for its loss or damage or bears the risk of loss due to such loss (damage). This position is similar to Lawrens J. dissenting opinion in *Lucena v Craufurd*.

Waller J. divided the court cases according to the manner in which the insurable interest is expressed into 4 groups, 3 of which have to do with property insurance[*].

*Thus, today the unity of legal and economic criteria is not necessary — it is sufficient to establish only the presence of one of them***.**

The academic community echoes the practice: M. Clarke also notes that the formal requirement of "legal connection" prevents the possibility of concluding insurance contracts for persons who have an essential economic interest in the property. For example, investors, employees of the company, and subcontractors cannot insure the property. It is for this reason that the concept of "link to property" has been abolished in Canada, Australia and the USA and has never been applied in Germany, Switzerland and France [16; 26–36]. D. Lord believes that the doctrine of insurable interest is obsolete in modern society. The development of the principles of good faith, full disclosure of information by the insured when entering into a contract, and the obligation of the insured to notify the insurer of a change in risk, in his opinion, leaves no room for the insurable interest [18]. As early as 1884, Brett J. pointed out that once the premium has been paid by the insured to the insurer, the insurable interest fulfils a purely technical function and carries no merit for the relationship of the parties [19]. Waller J. considered that the absence of an insurable interest should not prevent commercial contracts between the insurer and the policyholder [16].

In accordance with the needs of practice, English judges have developed precedents that allow insurance contracts to be entered into by persons with so-called "limited" insurable interests. For example, a custodian, mortgagor, pledgee, mortgagee, landlord, tenant, trustee, and beneficiary are deemed to have a sufficient interest in property to insure it. However, such persons may not obtain indemnity greater than the amount of their interest [20].

Today, English legal scholars conclude that the insurable interest has lost its significance: after the Gambling Act 2005, wagering contracts became enforceable: "the relationship of a contract to gambling is not an obstacle to its enforceability" [21]. Consequently, the purpose that the insurable interest was intended to serve no longer exists. The Law Commission is currently preparing changes to the law relating to insurable interest. Most members of the Commission are inclined to the position that the insurable interest requirement should be removed from English law in property insurance contracts [20]. One of the arguments in favor of levelling the importance of the insurable interest is the existence of the common law "indemnity principle" [22; 41-42]. This principle establishes that the policyholder can only receive payment from the insured if he or she suffers property damage[†]. If the policyholder cannot prove the existence of a damage due

[*] Cases in which the court has defined the subject matter of the insurance as property where the object of the insurance is the recovery of the property value. Waller J. held that in this case the requirement of insurable interest is strict — the insured must show a legitimate property interest in the subject matter of the insurance for the policy to be valid. This group includes the cases of *Lucena v Crauford and Macaura*. In our opinion, this group corresponds to the property insurance contract in the Civil Code of the Russian Federation (Article 930); 2. Cases where the subject matter of the insurance may relate to specific property, but the interpretation of the policy goes beyond that subject matter to cover such insurable interest as the policyholder has. Waller J. cites the case of *Wilson v Jones* as an example. In our view, cases arising out of business risk insurance contracts (Article 933 of the Civil Code of the Russian Federation) may be referred to this category; 3. Cases where "the court recognized an interest that was not strictly proprietary". For example, in *the Moonacre* case. This case had similarities to *the Macaura* case. Mr. Sharp insured a yacht owned by his company in which he was the sole shareholder and had no lien or claim on the property. Contrary to this, the High Court found that Mr Sharp had a sufficient insurable interest because he was free to use the yacht and had a duty to keep it safe. In this category of cases, Waller J. concluded that "an interest is recognized even if it is not based on common law, equity or property".

[†] The principle of indemnity can be expressed as either a statutory implied condition or an actual contractual condition. In the former case, the question of whether the policyholder has suffered damage is determined by the law of property. For example, the law of bailment determines whether the carrier has suffered a loss. This is different if the "indemnity principle" is expressed as an actual

to an insured event, the contract is not recognized as invalid or void — the person simply cannot receive compensation for the individual insured event. It is logical that if a person suffers material damage as a result of destruction of the object of insurance, he/she has an interest in this object. However, this rule is not identical to the insurable interest. The latter is intended to distinguish an insurance contract from a bet in order to recognize the enforceability of the contract and to prevent the policyholder from acting in bad faith, whereas the "principle of indemnity" is aimed at ensuring that the insured receives payment strictly equal to the amount of his loss. The principle of indemnity also takes place in the Russian law. It (the principle) finds its expression, for example, in clause 1 of Article 929 of the Civil Code, where it is established that under the contract of property insurance the insurer undertakes for a fee (insurance premium) stipulated by the contract, upon the occurrence of an insured event, to compensate the insured or the beneficiary for losses in the insured property or losses *in connection with other property interests of the insured* (to pay insurance compensation) within the amount determined by the contract (insurance amount), in Article 947 of the Civil Code of the Russian Federation, which establishes that the sum insured may not be higher than the insured value on pain of nullity of the contract in the part of such excess,* as well as in the norms of the Civil Code of the Russian Federation on unjust enrichment.

Conclusions

1. There is no legal definition of insurable interest in English law. The classic definition of insurable interest in property insurance is found in *Lucena v Craufurd*.

2. The insurable interest in English law is not regarded as the subject (object) of the insurance contract — the works of scholars speak about the subject of insurance (subject of insurance). The subject of insurance is understood as the property to which the policyholder's interest is linked, for which the insurance coverage is valid, and in relation to which the insured event may occur. Thus, the subject of insurance in English law coincides with the theoretical object of insurance protection developed in Russian theory.

3. English judges have developed precedents that allow insurance contracts to be entered into by persons with the so-called "limited" insurable interests.

References

1 Голева Е.В. Договор страхования ответственности директоров и менеджеров в праве Англии и России: сравнительный анализ: автореф. дис. ... канд. юрид. наук / Е.В. Голева. — Екатеринбург, 2013. — 26 с.

2 Гвозденко А.А. Основы страхования: учеб. / А.А. Гвозденко. — 2-е изд., перераб. и доп. — М.: Финансы и статистика, 2007. — 320 с.

3 Белых В.С. Страховое право России: учеб. пос. / В.С. Белых, И.В. Кривошеев, И.А. Митричев; отв. ред. В.С. Белых. — 3-е изд., перераб. и доп. — М.: Норма, 2023. — 368 с.

4 Prudential Insurance v. Commissioners of Inland Revenue (1904) 2 K.B. 658. — [Electronic resource]. — Access mode: https://swarb.co.uk/prudential-insurance-co-v-inland-revenue-commissioners-1904/

5 Белых В.С. Договорное право Англии: сравнительно-правовое исследование: монография. / В.С. Белых. — 3-е изд., перераб. и доп. — М.: Проспект, 2023. — 352 с.

6 Lucena v Craufurd (1806) 2 Bos & Pul (NR) 269 (HL). — [Electronic resource]. — Access mode: https://swarb.co.uk/lucena-v-craufurd-hl-1806/.

7 The Gaming Act 1845. — [Electronic resource]. — Access mode: http://www.legislation.gov.uk/ukpga/Vict/8-9/109/contents.

8 The Marine Insurance Act 1906. — [Electronic resource]. — Access mode: http://www.legislation.gov.uk/ukpga/Edw7/6/41/section/41.

9 Воронина Н.Л. Англо-русский словарь страховых терминов / Н.Л. Воронина, Л.А. Воронин — М.: ИРТИСС, 2001. — 424 с.

10 The Marine Insurance (Gambling Policies) Act 1909. — [Electronic resource]. — Access mode: http://www.legislation.gov.uk/ukpga/Edw7/9/12.

11 Macaura v Northern Assurance Co Ltd (1925) AC 619. — [Electronic resource]. — Access mode: https://swarb.co.uk/macaura-v-northern-assurance-company-limited-hl-1925/.

12 The Gambling Act 2005. — [Electronic resource]. — Access mode: http://www.legislation.gov.uk/ukpga/2005/19/contents.

contractual condition — in this case the regulation is more flexible — the parties can stipulate in the contract the types of damages to be compensated under the policy.

* Although in personal and liability insurance contracts the sum insured is determined at the discretion of the parties, the insurance payable cannot exceed the amount of loss incurred by the policyholder.

13 Dalby v India and London Life-Assurance Co (1854) 15 CB 365. — [Electronic resource]. — Access mode: https://swarb.co.uk/dalby-v-the-india-and-london-life-assurance-company-hl-9-may-1851/.

14 Deepak Fertilisers & Petrochemicals Ltd v Davy McKee (London) Ltd (1999) 1 AER (Comm) 69. — [Electronic resource]. — Access mode: https://swarb.co.uk/deepak-fertilisers-and-petrochemical-corporation-v-davy-mckee-london-ltd-ici-chemicals-and-polymers-ltd-ca-12-nov-1998/.

15 Cowan v Jeffrey Associates (1998) SC 496 at 502F. — [Electronic resource]. — Access mode: https://lawindexpro.

16 Clarke M. Policies and Perceptions of Insurance Law in the Twenty-First Century / M. Clarke. — London: Oxford University Press, 2005.

17 Feasey v Sun Life Assurance Co of Canada (2003) EWCA Civ 885, p. 90. — [Electronic resource]. — Access mode: https://swarb.co.uk/feasey-v-sun-life-assurance-company-of-canada-and-another-steamship-mutual-underwriting-association-bermuda-ltd-v-feasey-ca-26-jun-2003/.

18 Lord D. Insurable Interest: Is There a Rule? — [Electronic resource]. — Access mode: http://clients.squareeye.net/uploads/3sb/events/121005_lord.pdf.

19 Stock v Inglis (1884) 12 QBD 564 at 571. — [Electronic resource]. — Access mode: https://swarb.co.uk/stock-v-inglis-ca-1884/.

20 Brock J. Hurricane Damage and the Law [Electronic resource] / J. Brock // Commonwealth Law Bulletin. 2006. — Vol. 32. — No. 1. — P. 7–9. — Access mode: http://www.falcon-chambers.co.uk/uploads/docs/section9/JB.pdf.

21 Stock v Inglis (1884) 12 QBD 564C. 87: Gambling Act 2005. Section 335: Enforceability of gambling contracts. — [Electronic resource]. — Access mode: http://www.legislation.gov.uk/ukpga/2005/19/contents.

22 Insurance Contract Law. Issues Paper 4: Insurable Interest. P. 37. — [Electronic resource]. — Access mode: http://www.lawcom.gov.uk/insurance_contract.htm.

В.С. Белых

Англия құқығы бойынша сақтандыру мүддесі

Мақала сақтандыру шарты элементтерінің біріне арналған. Сақтандыру мүддесі доктринасы Англияда XVIII ғасырдың ортасында әзірленгені атап өтілді. Мүліктік сақтандырудағы сақтандыру мүддесінің классикалық анықтамасы сот шешімінде қамтылған. Бастапқыда сақтандыру мүддесі «экономикалық мүдде» болды, яғни сақтандыру жағдайына байланысты мүліктік залалдың туындауының нақты және күтілетін мүмкіндігі. Заңнамалық бекіту алғаш рет 1745 жылғы Теңізді сақтандыру туралы заңында көрсетілген. XX ғасырда 1745 жылғы теңізді сақтандыру актісі (Marine Insurance Act) 1906 жылғы теңізді сақтандыру туралы (Marine Insurance Act) заңмен ауыстырылды. Онда сақтандыру мүддесінің жаңа анықтамасы берілді. Экономикалық мүддеге қоса сақтанушы заңдық мүддені де дәлелдеуі тиіс болды, атап айтқанда, құқық немесе әділеттілікке негізделген сақтандыру пәніне қатынастың болуы. Әрі қарай, мақалада сақтандыру мүддесінің түрлері қарастырылған. Осылайша, қамтамасыз ету көзіне байланысты сақтандыру мүддесі заңды (statutory) және шарттық (contractual) болуы мүмкін. Қазіргі уақытта Заңнаманы реформалау жөніндегі комиссияның (Law Commission) сақтандыру мүддесіне қатысты түзетулер әзірлеп жатқаны атап өтілді. Комиссия мүшелерінің көпшілігі мүліктік сақтандыру шарттарында сақтандыру мүддесі туралы талап ағылшын құқығынан алынып тасталуы керек деген ұстанымға сүйенеді. Сондай-ақ, ғалымдардың еңбектерінде сақтандыру нысанасы маазмұны (subject of insurance) туралы айтылады және ағылшын құқығындағы сақтандыру мүддесі сақтандыру шартының пәні (объектісі) ретінде қарастырылмайтынын атап өтеді.

Кілт сөздер: сақтандыру мүддесі, сақтандыру мүддесі доктринасы, сақтандыру мүддесінің түрлері, экономикалық және заңдық мүдде, соттық тәжірибе, сақтандыру мүддесі сақтандыру пәні ретінде.

В.С. Белых

Страховой интерес по праву Англии

Статья посвящена одному из элементов договора страхования. Отмечается, что доктрина страхового интереса была разработана в Англии в середине XVIII века. Классическое определение страхового интереса в имущественном страховании содержится в судебном решении. Первоначально страховой интерес представлял собой «экономический интерес» — реальную и ожидаемую возможность наступления имущественного ущерба из-за страхового случая. Законодательное закрепление впервые было изложено еще в Законе о морском страховании 1745 года. В XX веке на смену Marine Insurance Act 1745 года пришел Marine Insurance Act 1906. Было дано новое определение страхового интереса. В дополнение к экономическому интересу страхователь должен был доказать еще и юридический интерес, а именно наличие основанного на праве или справедливости отношения к предмету страхования. Далее в статье рассматриваются виды страхового интереса. Так, в зависимости от источника закрепления

страховой интерес может быть законным (statutory) и договорным (contractual). Отмечается, что в настоящее время Комиссия по реформированию законодательства (Law Commission) готовит изменения, касающиеся страхового интереса. Большинство членов Комиссии склоняются к позиции, что требование о страховом интересе должно быть исключено из английского права в договорах имущественного страхования. Также важно отметить, что страховой интерес в английском праве не рассматривается как предмет (объект) договора страхования — в работах ученых говорится о предмете страхования (subject of insurance).

Ключевые слова: страховой интерес, доктрина страхового интереса, виды страхового интереса, экономический и юридический интерес, судебная практика, страховой интерес как предмет страхования.

References

1 Goleva, E.V. (2013). Dogovor strakhovaniia otvetstvennosti direktorov i menedzherov v prave Anglii i Rossii: sravnitelnyi analiz [Directors and managers' liability insurance contract in the law of England and Russia: comparative analysis]. *Extended abstract of candidate's thesis.* Ekaterinburg [in Russian].

2 Gvozdenko, A.A. (1998). *Osnovy strakhovaniia: uchebnik [Fundamentals of insurance: textbook]*. Moscow: Finansy i statistika [in Russian].

3 Belykh, V.S., Krivosheev, I.V., & Mitrichev, I.A. (2023). *Strakhovoe pravo Rossii: uchebnoe posobie [Russian insurance law: study guide]*. (3d edition revised and supplemented). V.S. Belykh (Ed.). Moscow: Norma [in Russian].

4 Prudential Insurance v. Commissioners of Inland Revenue (1904) 2 K.B. 658. Retrieved from https://swarb.co.uk/prudential-insurance-co-v-inland-revenue-commissioners-1904/.

5 Belykh, V.S. (2023). *Dogovornoe pravo Anglii: sravnitelno-pravovoe issledovanie: monografiia. [English contract Law: comparative legal analysis: monograph]*. (3d edition revised and supplemented). Moscow: Prospect [in Russian].

6 Lucena v Craufurd (1806). 2 Bos & Pul (NR) 269 (HL). Retrieved from https://swarb.co.uk/lucena-v-craufurd-hl-1806/.

7 The Gaming Act 1845. Retrieved from http://www.legislation.gov.uk/ukpga/Vict/8-9/109/contents.

8 The Marine Insurance Act 1906. Retrieved from http://www.legislation.gov.uk/ukpga/Edw7/6/41/section/41.

9 Voronin, L.A. & Voronona, N.L. (2001). Anglo-russkii slovar strahovykh terminov [English-Russian Dictionary of Insurance Terms]. Moscow [in Russian].

10 The Marine Insurance (Gambling Policies) Act 1909. Retrieved from http://www.legislation.gov.uk/ukpga/Edw7/9/12.

11 Macaura v Northern Assurance Co Ltd (1925). AC 619. Retrieved from https://swarb.co.uk/macaura-v-northern-assurance-company-limited-hl-1925/.

12 The Gambling Act 2005. Retrieved from http://www.legislation.gov.uk/ukpga/2005/19/contents.

13 Dalby v India and London Life-Assurance Co (1854). 15 CB 365. Retrieved from https://swarb.co.uk/dalby-v-the-india-and-london-life-assurance-company-hl-9-may-1851/.

14 (1999). Deepak Fertilisers & Petrochemicals Ltd v Davy McKee (London) Ltd 1 AER (Comm) 69. Retrieved from https://swarb.co.uk/deepak-fertilisers-and-petrochemical-corporation-v-davy-mckee-london-ltd-ici-chemicals-and-polymers-ltd-ca-12-nov-1998/.

15 Cowan v Jeffrey Associates (1998). SC 496 at 502F. Retrieved from https://lawindexpro.

16 Clarke, M. (2005). *Policies and Perceptions of Insurance Law in the Twenty-First Century.* London: Oxford University Press.

17 Feasey v Sun Life Assurance Co of Canada (2003). EWCA Civ 885, p. 90. Retrieved from https://swarb.co.uk/feasey-v-sun-life-assurance-company-of-canada-and-another-steamship-mutual-underwriting-association-bermuda-ltd-v-feasey-ca-26-jun-2003/.

18 Lord, D. Insurable Interest: Is There a Rule? Retrieved from http://clients.squareeye.net/uploads/3sb/events/121005_lord.pdf.

19 Stock v Inglis (1884). 12 QBD 564 at 571. Retrieved from https://swarb.co.uk/stock-v-inglis-ca-1884/.

20 Brock, J. (2006). Hurricane Damage and the Law. *Commonwealth Law Bulletin, 32,* 1, 7–9. Retrieved from http://www.falcon-chambers.co.uk/uploads/docs/section9/JB.pdf.

21 Stock v Inglis (1884). 12 QBD 564C. 87: Gambling Act 2005. Section 335: Enforceability of gambling contracts. Retrieved from http://www.legislation.gov.uk/ukpga/2005/19/contents.

22 Insurance Contract Law. Issues Paper 4: Insurable Interest. P. 37. Retrieved from http://www.lawcom.gov.uk/insurance_contract.htm

Information about the author

Belykh Vladimir Sergeevich — Doctor of Juridical Sciences, Professor, Head of Business Law Department, Ural State Law University named after V.F. Yakovlev, Ekaterinburg, Russia, e-mail: belykhvs@mail.ru.