

Soviet Insurance Law*

Dr. Rudden began his address by briefly outlining the history of insurance in Russia. Starting with Tsarist Russia, Dr. Rudden said that there were no private insurance companies operating until the end of the 18th century. A State insurance department was set up by Catherine II to provide some fire insurance, but it never really prospered and was liquidated in 1822. In the 19th century the growth of industry, especially textile and mineral, made some form of insurance an economic necessity and led to the setting up of the first private company in 1827 known as the "First Russian Insurance Society". By the end of the century there were some fifteen or sixteen private companies in competition with each other. This led to rate cutting and financial difficulties so that a law was passed in 1894 requiring a minimum capital of 500,000 roubles and limiting dividends until adequate reserves had been built up.

Many small mutual societies were also formed (about 150 by 1919) which were set up by householders within a given town or industrialists within a given industry.

Because the mutuals and joint-stock companies concentrated on urban risks a law was passed in the 1860s making it compulsory to insure buildings in rural areas. The cover was fixed by the rural authorities according to the building construction and was limited to half the value of the building. The householder could seek additional cover but not exceeding three-quarters of the value.

By the 1900s insurance in Russia was not unprofitable and the speaker attributed the success of the business to the following factors:

1. Availability of statistics and the publication of mortality tables.
2. Availability of reinsurance facilities - especially foreign.
3. Experience and spread of information.
4. Research. Both lawyers and mathematicians had done research and a fair amount of it was published.

Ironically, these factors also led to centralisation and thence to the advocacy of State insurance. The arguments in favour of State

*These notes represent our summary of the address given to the Association on 7 December, 1966, by Dr. B. Rudden, a lecturer in law at Oxford University and a Fellow of Oriel College.

monopoly were economic and political. Wide-scale operations, it was said, would ensure accuracy in rating, greater efficiency and mercy -- this last meaning that premiums could be adjusted to assist the poor.

Soviet Insurance

Existing companies were not at first nationalised. In 1918 a decree of Lenin directed all Soviets to desist from exacting, for the benefit of local organs, special taxes from insurance societies. At the same time, a special Commission was set up to ensure working-class control of the machinery of insurance. Later in the year a further decree established the first State insurance monopoly. The assets of the private companies were confiscated and life cover was abolished, the funds being transferred to the State treasury, since it was assumed that the only lives insured would be those of the bourgeoisie. Benefits in cash and kind were made available to those in need and whose "economic activity answers the interests of the Worker-Peasants State". The aid did not amount to very much.

In 1920 Lenin's New Economic Policy re-injected some capitalism into the system, including insurance. Some voluntary insurance in mutual societies was permitted, but not much. Subsequently, Gosstrakh (State insurance) was set up as an independent entity on a basis of economic accountability and under the supervision of the finance ministry. Compulsory fixed-rate cover was laid down in the civil code. There were three categories of cover:

- (1) Obligatory fixed-rate cover: on immovable property in villages and towns (against fire); on crops against hail and other natural calamities; and on cattle "against death".
- (2) Obligatory free-rate cover: on State and communal property while in the possession of private persons or collectives; and on co-operative property if not insured with mutuals.
- (3) Voluntary cover: on property and goods of State enterprises, and supplementary insurance of crops and cattle.

Obligatory cover amounted to a half or a third of the value of the holding and the simplicity of the rating structure meant that the well-to-do owner of a standard construction house would pay more for his insurance than the peasant paid for his more hazardous dwelling.

The advantages of monopoly insurance were demonstrated within a few years and when funds were needed to compensate earthquake victims

in 1927, earthquake damage was declared the equivalent of fire damage and compensation was paid, first a half and then at full rate.

In the 1930s Stalin pursued a policy of collectivisation of peasants in farming and the obligatory fixed-rate cover was used as a weapon to foster collective, weaken individual, and extirpate kulak farming. The collectives have numerous advantages, such as the range of risks against which their buildings are protected, the objects which can be insured, and the compensation which is assessed at inventory value. Only the poorest of individuals have full value for their property; other toilers have 75% and kulaks 50%. Collectives also pay lower premiums.

Turning from the agricultural risks and private buildings which were to some extent protected by the obligatory fixed-rate system, the speaker referred to the country's developing industrial wealth and the State housing stock. These presented a problem which was handled differently at various times, and since the State is both insurer and insured it was a question of finding the best way to protect its own wealth. Most of the schemes tried were unsuccessful and by 1931 the attempt at insuring the larger industrial complexes was dropped. In lieu, a scheme was introduced whereby the property of State industry was covered against damage caused by the elements without payment of premium. The premium income was replaced by credit allotments in the federal budget. On the other hand, State property on lease to private citizens and dwelling houses belonging to State trusts were insured for the cost of reconstruction. Later, however, it was considered that State property was better protected from central reserves, and since 1956 no insurance by housing funds or local enterprise has been permitted. Types of insurance are thus distinguished according to the category of interest involved. Personal and co-operative property is insured with Gosstrakh, but not that of the State, unless it is leased to citizens.

It is difficult to assess the effects of the war on insurance business. Because of widespread devastation, especially of the Ukraine, a law was passed decreeing that the Gosstrakh bear no insurance liability in cases of death or disability of lives assured, or in the case of destruction or damage to property, if occasioned by military activities. As far as possible, obligatory fixed-rate cover was continued on buildings and, in addition, some voluntary insurance was permitted. Collective farms were allowed to insure crops, animals, products and transport, while citizens might insure cattle and horses. Life assurance was also encouraged and mixed policies covering endowment and death or disability caused by accident were issued by the Finance Commissariat. No medical examination was necessary for sums up to 5,000 roubles. The collective cover which had embraced certain classes of industrial workers was to cease in favour of individual life policies.

Citizens were not able to insure their crops, nor was any cover available against theft or public liability.

Gosstrakh

Dr. Rudden next discussed the structure and operation of Gosstrakh. Because of its immense scale of operations, the lack of competition and the compulsory nature of much of its business it should be successful. But whether or not it makes a profit is not disclosed; no balance sheets or accounts are published. Gosstrakh operates as a separate entity or organ in each State, although policies are valid throughout the Union. Within each Union republic there is a Chief Administration and subordinate Administrations in counties and cities. At district level are inspectors whose duties are concerned with the registration each year of property subject to obligatory insurance. In the voluntary field a number of agents may be employed and paid commission. Many are especially active in the field of life and accident cover. But because insurance staffs are not well trained, there is a rapid turnover.

Some examples of the tariff structure used by Gosstrakh were given.

In obligatory insurance general premium ranges are fixed by the federal legislation and precise figures are then worked out by each locality. So far as movables, cattle and crops are concerned, it is not possible to insure for full value - it is more likely to be in the region of 40% to 50% of the value. Rates for cattle are in the region of 2% for collectives, 3% for collective farmers and 6% for individual farmers (i.e., those who will not join the collective farms). As the speaker observed, insurance rating in the Soviet suggests some class distinctions.

In the last few years there has been an increase in the voluntary insurance available in the Soviet Union. The speaker stressed that it is voluntary for the citizen, but that Gosstrakh must accept his proposal provided the proper conditions are met. Such insurance is available in a somewhat narrow field and even then it is not permissible to insure up to full value. Thus, collective farmers can voluntarily insure crops for another 30% over their obligatory cover, bringing the total cover to about 80%, but not up to 100%. And the regulations provide that Gosstrakh is not liable if the damage is caused by the fault of the farm, its members "or other persons". The last provision, as Dr. Rudden pointed out, contradicts one of the basic tenets of modern insurance, viz., that the insurer accepts risks of damage caused by the acts of a stranger subject to rights of subrogation against him. Likewise, collective farmers and individual peasants can voluntarily insure buildings and chattels within limits, leaving the proposer to bear some

measure of the risk to promote careful housekeeping. There is no cover for loss of profits nor is it possible to insure jewellery, watches and money against theft.

Since a decree of 1942, limited life assurance has been permitted and represents to-day one of the few "investments" available to the Soviet citizen. There are three main types of policy available:

- (1) Accident cover. This is the most popular, and citizens aged from 16 to 70 may effect cover for one to five years. The sum assured is payable on death or permanent loss of working capacity caused by the movement of vehicles, while working at a machine, or sundry other perils. There is no payment for temporary loss of working capacity. Premiums vary with occupations which are classified according to the degree of hazard involved.
- (2) Endowment, disability and death. Healthy citizens of 16 to 60 years may effect mixed policies for terms of 5, 10, 15 or 20 years. The principles are similar to our own, but no assignment is permitted so that the policy cannot be used as a collateral. But borrowing is permissible up to 75% of the surrender value and an interest rate of 4%. The insured may name a beneficiary, not necessarily restricted to his kin, to be paid in the event of his death. When death occurs during the period of cover only half the sum assured is paid at once; the yearly payments equal to 10% of the sum assured are paid until the end of the period when the other half of the sum assured is handed over.
- (3) Employees life insurance. It is possible for employers to cover their workers in respect of death or permanent loss of general working capacity while in the course of employment. Premiums are payable by the employer and the sums assured are fixed by agreement with the government.

Contract

Contracts of voluntary insurance are permitted by the civil code of 1922 and the basic rules governing such contracts, said the speaker, are very similar to our own. The classification used in Soviet law relates to property and personal insurance, thus drawing a distinction in terms of the thing exposed to hazard. In fact, however, it is commonly understood that the subject of insurance is not the material thing or the welfare of the human being, but the proposer's interest in it - an interest measured by his potential loss sufferable as a result of the event insured against. The civil code of 1922 required the contract

merely to be evidenced in writing, but later amendments leave the matter in doubt as to whether writing is necessary merely as evidence or as a condition of validity. As the regulations require policies to be issued in all cases, the point may seem academic, but it has not been unknown for overworked officials to overlook the issue of a policy.

The contract of insurance is one of the utmost good faith but, unlike English insurers who demand a high standard of disclosure and impose warranties, the Russian system shows a gradual relaxation of strictness in favour of the proposer. For example, in life assurance the contract can only be validated if the proposer failed to disclose that he was over 60 years of age or when from the medical documents it was established that he was suffering from one of the diseases which preclude his being accepted for insurance. It seems that, apart from age or serious disability or sickness, the proposer is under no liability to disclose what he knows or ought to know about his health. On the other hand, if he were suffering from a malady which he could not reasonably have known and it was one of the listed diseases, if he dies from it, the sum assured is not payable!

However, the Soviet system takes a very strict view of negligence and when the event insured against is occasioned by gross negligence it will invalidate the policy. Similar stipulations apply to property insurance. Then the regulations on insurance of personal effects stipulate, in respect of automobile damage, that nothing is payable if the accident resulted from failure to observe the highway code or because the vehicle was not in good repair.

Tort

Dr. Rudden said that this field of liability was in theory very well organised in modern Russia. Although the Soviet jurists claim that their law of tort is essentially different from that of bourgeois societies, the speaker thought that, on the surface, the problems and solutions adopted in the Soviet were not so very dissimilar from those of the western world.

The more advanced systems of tort (and the speaker excluded those of ancient Rome and modern England) operate, conceptually, at a high level of abstraction. The fundamental principle of such systems is that whoever, by his fault, injures someone, must make good that wrong. The 1922 code provides accordingly and only absolves the tortfeasor if he proves that he could not prevent the harm, that he was privileged to cause it or that it arose as a consequence of the other party's gross negligence, i.e., the onus is on the defendant to prove absence of culpability.

Organisations and citizens whose activities are ultra-hazardous - e.g., factories, motor-car owners and the like - are bound by the 1964

code to make good harm caused by the source of the increased hazard unless they prove that it arose as a result of insuperable force or the intent of the victim. However, the stringency of the Soviet principle of increased hazard liability is mitigated by a general provision on contributory negligence.

The speaker went on to refer to the interaction between the law of tort and social insurance. Most of the working population are covered by the social insurance scheme, with the exception of children and housewives. Thus, a worker who sustains industrial injury will receive a temporary disability benefit or, if the damage is permanent, a pension. Because the amounts payable are small it leaves room for accident insurance. And most victims wish to turn to the law of torts to make up the difference.

The interaction of the social insurance scheme with the law of torts has the curious effect of curtailing compensation by (a) limiting liability and (b) lessening damage. Because of the ultra-hazardous principle, the law says that the factory owner is absolutely liable for injuries caused by the hazardous activities. The social insurance scheme, on the other hand, relieves the employer of liability imposed by the increased hazard rule unless the injury is occasioned by the employer's fault. Damages awarded by the courts are payable in periodic instalments which provides opportunities for review. Thus, payments may be increased or lessened by the court, depending on alteration in the victim's social insurance benefits or working capacity. The Soviet system goes much further than western countries in devising means whereby an injured man is not allowed to profit from his misfortune and there is no question of his receiving social insurance benefits and full damages besides.

Another grave problem in Soviet Russia is the fact that, while motorists' liability for accidents is strict and it is relatively easy to get judgment against the motorist, it is almost impossible to get damages because the motorist cannot insure. Even if it were accepted that car-owners are generally able to afford damages, cases will arise where both parties are crippled for life and the tortfeasor is killed. The statutory benefits under the social insurance scheme usually fall short of past earnings, and a not insignificant section of the population - housewives and children - are not covered by the scheme. The most they can receive is a State grant of about 10 roubles a month. There is no unemployment benefit or other form of national assistance in the Soviet. It is illogical to impose a high degree of responsibility on the motorist and then deny him the opportunity of insuring, since both plaintiff and defendant will suffer.

The speaker summarised his research into Soviet insurance in a few cryptic concluding sentences: Whatever is not compulsory is forbidden! You can rarely insure against your own negligence because this would contradict the basic policy of reward according to merit.