EUGENIUSZ KOWALEWSKI

Risk posed by viatical settlement practices in the Polish life insurance market

This article is concerned with the issue of "viatical settlement practices": a specific and relatively new phenomenon in the Polish market that accompanies trading in increasingly more popular life policies, especially those with high face amounts. The main concept behind viatical settlement contracts, which originated and became prevalent in the US market, is that the beneficiary under an insurance contract, namely a policyholder or an insured person, transfers their right to collect the insurance proceeds in the amount agreed in the contract. In other words, under a viatical settlement contract, the viatical settlement provider becomes the beneficiary who is obliged to pay to the policyholder (or the insured) during their lifetime, a specific portion of the sum insured agreed in the insurance contract and simultaneously assumes an obligation to pay insurance premiums. Accordingly, the insurance contract on the life of the viator is not terminated and the insurance coverage in case of their death, as set out in the contract, continues. In addition, a viatical settlement agreement (contract) is made without the insurer's knowledge. The latter – figuratively speaking – stays outside the contractual ties resulting from the viatical settlement contract.

Viatical settlement contracts are most often entered into by elderly, chronically or terminally ill persons with a low life expectancy who have purchased policies with high or substantial face amounts. They are usually motivated by financial reasons, such as the need to cover the high costs of treatment, rehabilitation or care – which in combination with the obligation to pay significant premiums on a regular basis – can be beyond their immediate financial capacity.

Further in the article a legal analysis of viatical settlement contracts is presented, with a particular focus on the freedom to appoint beneficiaries as a condition conducive to the development of viatical settlement practices. Viatical settlements, which are also gaining presence in our insurance market, entail the risk of various abuses, in particular on the part of viatical settlement providers who treat such transactions as a kind of capital investment; these may be of a speculative or at least dubious nature considering the character and purpose of life insurance contracts.

Key words: life insurance, viatical settlement contract, viatical settlement practices.

Phenomenon of viatical settlement practices – introduction

The underdevelopment of the Polish insurance market – in comparison to the countries with rich and well-established insurance traditions, in particular the US and the leading Western European states – is reflected in, among other things, a relatively low level of life insurance development. Still, this is mostly true of individual (personal) life insurance contracts, as in Poland group life policies (notably employee group life insurance) are much more prevalent and cover tens of millions of the insureds annually.[1] However, the latter will not be discussed any further in this article, since viatical settlement practices relating to life insurance have emerged and become popular mainly in the area of individual life policies,[2] specifically those offering substantial (and sometimes very substantial) insurance proceeds. The phenomenon of viatical settlement practices – being a manifestation of the "moral hazard"[3] – creates an incentive for abuse, namely the practice of trading in insurance policies with sizeable death benefits, which opens the door to speculation in these amounts.

To date, the Polish insurance literature has devoted very little attention to the phenomenon of viatical settlement practices.[4]

A reason for this may be the fact that such contracts are still a novelty in the Polish market, and they are concluded too rarely to be deemed a real threat to the insurance business. Moreover, neither the scale nor the scope of this phenomenon in the Polish market are as of yet known. Finally, it is worth noting that viatical settlement practices are not monitored by the insurance regulator, the Polish Financial Supervision Authority (*KNF*) nor by consumer protection institutions, such as the Office of Competition and Consumer Protection (*UOKiK*) or the Insurance Ombudsman. Furthermore, even insurance companies do not monitor viatical settlements.

1. Etymological notes: *viaticum*, viatical settlement contract

The term *viaticum* is undoubtedly of Latin origin, though as a notion it refers to an earlier mythological tradition. However, I would like to explain its meaning from three perspectives: mythological, Eucharistic and in the convention of colloquial language (its dictionary meaning).[5]

1. In the case of group life insurance, insurance proceeds are usually low or very moderate, and perhaps for that reason they are of little interest to potential settlement companies.
2. J.A. Giacalone, "Analyzing an Emerging Industry: Viatical Transactions and the Secondary Market for Life Insurance Policies" (accessed April 18, 2010, http://www.christianstanley.com/pdf/Giacalone.pdf).
3. For further explanation – E. Kowalewski, "Wprowadzenie do teorii ryzyka ubezpieczeniowego" in *Ubezpieczenia w gospodarce rynkowej, part 2*, edited by A. Wasiewicz, (Bydgoszcz: Branta, 1994): 12–15.
4. Among the few publications, E. Kowalewski, "Prawo ubezpieczeń gospodarczych", 3rd ed., (Bydgoszcz-Toruń: Branta 2006), 270 and A. Kowalewska, "Nowa usługa ubezpieczeniowa – umowy wiatykalne", 9–10 *Wiadomości Ubezpieczeniowe* (1999): 40–42.
   Viatical settlement contracts in the life insurance market was the topic of an interesting master's thesis by R. Kamiński, entitled "Viatical settlement practices and life insurance" written in 2010 at the Insurance Law Department of the Adam Mickiewicz University; the thesis was also awarded in a national competition. Yet it has never been published in print.
5. See *Słownik wyrazów obcych*, 13th ed. (Warszawa: PIW 1967), 700 and *Słownik wyrazów obcych, synonimów, frazeologiczny* (Warsaw: Buchmann Sp. z o.o., 2003), 331.

Mythological etymology relates to the beliefs about a journey of the deceased's soul to the underground kingdom ruled by Hades. This myth comes from the Greek tradition, which borrowed the beliefs about the journey of the departed souls to the world of the dead probably from the Old Babylonian tradition, itself based on previous Sumerian beliefs. In this context, *viaticum* meant a provision (allowance) for the soul of the deceased on its last journey to the Kingdom of Hades. To reach their destination the deceased had to cross the mythological river Styx, which could only be done with the help of Charon, a ferryman, who – according to the Greek tradition – charged one obol for his service. Hence, the term *viaticum* is an explicit allusion to the "last journey" (*via* is the Latin word for "road" or "journey"). Other Greek sources associate *viaticum* with a small coin (obol,[6] shekel,[7] grosz), which was placed on the tongue of a dead person also as payment to the mythological ferryman carrying souls across the Styx. This tradition is equally reflected in later myths, beliefs and legends that can be found among Celtic tribes, the Goths and subsequently, the Slavs.[8]

The Eucharistic meaning refers to a Christian tradition connected with the last rites given to a dying person. In this context, *viaticum* means the last sacrament that is administered to a dying person by a clergyman, usually at the former's request. This sacrament is meant to facilitate (enable) the departure of the soul of a dead person from the physical (mortal) world.

Finally, there are dictionary definitions of the term *viaticum* saying it is a provision or monetary allowance given to a person going on a business trip, usually trade related. Oddly enough, they make no reference to the "last journey" or the journey of the soul of the dead. The meaning of the word as found in dictionaries (specifically in Webster's dictionaries)[9] probably alludes to credit and trade relations between *tamkar* and their agent, *shamall*, as regulated in the Babylonian tradition and law.[10]

In the light of the above comments, it can be argued that from a semantic point of view the contemporary notion of the viatical settlement contract indicates a connection between this legal transaction and the expectation of someone's death (in this case, the insured's death). Moreover, it suggests that the subject matter of such a contract is a specific benefit to be paid on the death of a person in question (*mortis causa*).[11]

6. From the Latin word "obolus" meaning a small ancient Greek coin equal to one sixth of a drachma.
7. In the Old Babylonian state the smallest coin was a "grain"; 180 units of grain made up a shekel of silver, whereas 60 shekels equalled one silver mina. See J. Klima, "Prawa Hammurabiego", trans. C. Kundurewicz (Warszawa: PWN, 1957), 213.
8. Interestingly, these tribes developed a habit of placing small coins on the eyelids of a dead person.
9. *The New Lexicon Webster's Encyclopedic Dictionary* (New York: Lexicon Pub., 1998) p. 1095 "provisions or money granted to an envoy about to make a journey (traveling money)".
10. See J. Klima, "Prawa Hammurabiego", 218 et seq.
11. There is some analogy to the legal transactions provided for by succession law (last will and testament, legacy or devise), though with the proviso that what we deal with here is a bilateral legal transaction between living persons which will bring benefits only after the insured's demise.

2. Freedom to appoint (and change) beneficiaries as a prerequisite element of viatical settlement contracts

In the typical scenario, the beneficiary of a life insurance contract is not the policyholder (insured) themselves, being a party to the contract, but a designated third party, called the beneficiary. The beneficiary is neither a party to the contract nor a directly insured person (as is the case with the insurance for a third party's account), so they do not have a status of a party to a tripartite legal relationship. Hence, the beneficiary is a third party who derives a future financial gain, namely the right to collect the agreed death benefit upon the demise of the insured. Until this condition is met, the beneficiary only has an expectancy[12] to a death benefit, which is not absolute because the insured may change the beneficiary at any time.[13] Any person can be a beneficiary, irrespective of whether they are among the insured's loved ones, their heirs or testamentary beneficiaries (legatees), or persons otherwise related to the insured. In practice, beneficiaries are members of the insured's immediate family or – from outside this group – loved ones or persons considered as such by the insured. Importantly, none of the above criteria is taken into account in appointing a beneficiary; such an appointment is made at free discretion of the insured. Therefore, there are no legal limitations on the appointment of a viatical settlement provider as beneficiary under a contract signed, and against remuneration.

At this point, it should be noted that motives that guide the insured are of no significance to the validity of actions they take. An analogy can be made to non-causal (abstract) actions, whose validity does not depend on a cause (*causa*) stipulated by law, provided the cause is not contrary to law or the principles of public policy;[14] the last example will be left out of further deliberations as it rarely occurs in practice and is difficult to prove.[15]

Another factor relating to life insurance contracts that is conducive to viatical settlement practices is the principle which excludes a death benefit payable to the beneficiary from the insureds' estate.[16] The scholarship notes[17] that the above principle favours insurance beneficiaries who are not heirs or testamentary beneficiaries, legatees or devisees, or persons entitled to the legitim, collectively known as "creditors of the succession."

12. The question of whether under a life insurance contract the beneficiary has a right to a future claim or merely a strictly understood expectancy to a claim has not yet been resolved by legal scholars. See, extensively on this issue J. Kuropatwiński, *Umowne rozporządzenie wierzytelnością przyszłą* (Toruń-Bydgoszcz: Dom Organizatora, 2007), 77 and 110–112. Discussing the issue at hand, the author leans towards the expectancy right concept, citing the earlier statements of W. Warkałło on the matter.
13. "A policyholder may designate one or more beneficiaries entitled to the insurance proceeds in the case of the insured's death; they may also enter in a bearer life insurance contract. The policyholder may at any time change or revoke any of the above provisions" (art. 831 (1) of the Civil Code).
14. Art. 58 (1–2) of the CC.
15. The question whether the non-gratuitous appointment (or change) of a beneficiary goes against the principles of public policy should be examined on a case-by-case-basis, in consideration of all the facts of a given case.
16. Art. 831 (3) of the CC.
17. A. Szpunar, "Oznaczenie uposażonego w ubezpieczeniu na życie" in *Ubezpieczenia w gospodarce rynkowej, part 4*, edited by T. Sangowski (Bydgoszcz-Poznań: Branta, 2002), 167.

According to A. Szpunar, the above measure constitutes a "breach of rules of succession law";[18] it opens broad possibilities for the appointment (and the change) of beneficiaries by an insured, also in the form of a viatical settlement contract, which is free of any limitations imposed by succession law.[19]

So far the issue under consideration has been the appointment (and the change) of the beneficiary under an insurance contract that is made by a policyholder for their own account; in other words, the policyholder is simultaneously the insured. However, the matter becomes much more complicated for an insurance contract made for a third party's account, namely when the policyholder and the insured are two different persons.[20] If this is the case, who should decide about the appointment of a beneficiary and who should have the right to change or revoke a statement appointing a specific beneficiary?

The issue mentioned above is important from the perspective of a possible viatical settlement contract, which transfers the right to insurance proceeds to a "new" beneficiary against remuneration. To put it differently, the question is who – the policyholder or the insured – has the viatical discretion. It is not hard to imagine that a conflict of interests arises between the policyholder and the insured.

This problem has been "noticed" by Polish legislators in connection with the 2007 amendment to the Civil Code's provisions governing insurance contracts.[21]

The adopted solution[22] is a reasonable compromise stipulating that, as a rule,[23] it is the policyholder who, as a party to an insurance contract and a premium payer, has the right to create (and to modify) the insurance relationship. However, under art. 831 § 2 of the CC[24] the policyholder may designate (or change) a beneficiary only following the prior consent of the insured. Still, the insured may exercise this entitlement independently, if an insurance contract or the GTI provides so.

It is thus clear from the above that in the case of an insurance contract for a third party's account (that of the insured), a viatical settlement contract may be entered into between either the policyholder as a party to the insurance contract and the viatical settlement provider or between the insured and the viatical settlement provider. In the first scenario, the insured's prior consent is required, whereas in the second one, the entitlement to designate (change) the beneficiary by the insured depends on whether the insurance contract or the GTI contain provisions to this effect.[25] This is a compromise

18. Ibidem.
19. Still, the above rule should not lead to a departure from the provisions of succession law (cf. art. 58 § 1 CC). A more extensive contribution to this topic – ibid., 167 et seq.
20. Cf. art. 808 (1–5) of the CC. The placement of this provision shows that the structure of insurance for a third party's account is also applicable to personal insurance, in particular life insurance. This opinion has its opponents though. See critical comments by J. Łopuski, "Reforma cywilnego prawa ubezpieczeniowego; uwagi na marginesie proponowanych zmian przepisów kodeksu cywilnego dotyczących umowy ubezpieczenia" in A. Nowak et al. (eds.) *Umowa ubezpieczenia. Dyskusja nad formą prawną i treścią unormowań*, 2nd ed. (Warszawa: Wydawnictwo Naukowe Wydziału Zarządzania Uniwersytetu Warszawskiego, 2008), 80 et seq.
21. The Act amending the Civil Code and certain other laws of 13 April 2007 [*Ustawa z o zmianie ustawy – Kodeks cywilny oraz o zmianie niektórych innych ustaw*] (Journal of Laws No. 82, item 557); the Act entered into force on 10 August 2007.
22. Cf. the amended arts. 829 and 831, read in conjunction with art. 808 of the CC.
23. Cf. art. 831 (1) of the CC.
24. *In the event of concluding an insurance contract for a third party's account, prior consent of the insured shall be required to exercise entitlements referred to in the preceding paragraph; the contract or the general terms of insurance may provide that the insured may exercise these entitlements independently*.
25. All the more so, a party to such a contract may simultaneously be the policyholder and the insured, both making a concurrent statement of intent.

aimed at, on the one hand, preventing "a conflict of interests" between the policyholder and the insured and, on the other hand, limiting the excessive freedom to make viatical settlements involving insurance contracts for a third party's account.

To conclude the discussion concerning appointing (and changing) a beneficiary in life insurance contracts, it is worth mentioning a special type of such contracts, namely a bearer insurance contract.[26] Leaving aside the complex issues of such policies and their legal nature,[27] it is enough to state that they should be treated as an entitlement instrument which does not specify the name of the bearer (art. 921 (15) § 3 of the CC).

The transfer of the right to insurance proceeds, that is the conclusion of a viatical settlement transaction, may appear to be a rather uncomplicated and simplified action. It would be enough to deliver an insurance document (policy) to the viatical settlement provider, who as the owner of a bearer document will have an entitlement against the debtor (insurer). The insurer, on their part, is not required to verify the bearer's entitlement and, as a rule, they discharge their obligation upon paying out the insurance proceeds to the bearer (provided the debtor acted in good faith).[28]

Superficially, it may be argued that in the case of bearer life insurance contracts viatical settlements may take the form of a factual act consisting in a simple delivery of the policy to the viatical settlement provider, which would be similar to a transfer of non-registered securities. However, at least under Polish law, a bearer policy actually is not considered a security,[29] and in particular it is not a tradeable security, hence the rights under the policy cannot be transferred by the simple delivery of that document. One must accept the argument that the effective transfer of the rights under a bearer policy (understood as an unnamed entitlement instrument), which include the right to collect insurance proceeds, requires the execution of a contract of assignment (in this case, the transfer of the right to a future claim) coupled with the delivery of the document (policy).[30]

3. The viatical settlement contract – essence and characteristics

A viatical settlement contract is entered into by a policyholder (insured under a life policy) and a viatical settlement provider. Clearly, the viatical settlement contract is not an insurance contract, though it certainly features some random elements, in particular in respect of the provider's expectations. This issue will be discussed in more detail below.

From the policyholder's perspective, the essence of a viatical settlement contract is the promise to name the viatical settlement provider as the beneficiary, or the person entitled to receive all or part of the insurance proceeds upon the demise of the insured; the provider, on their part, agrees to assume the obligation to pay premiums under the insurance policy and undertakes to pay, in advance, an agreed portion of the insurance proceeds to the insured.

26. As laid down at the end of the first sentence of art. 831 (1) of the CC, the policyholder may conclude a bearer insurance contract.
27. See extensive and detailed comments on the topic in A. Szpunar, "Oznaczenie uposażonego w ubezpieczeniu na życie", 173 et seq. and idem – "Charakter prawny polisy ubezpieczeniowej", 2 *Prawo Asekuracyjne* (1999): 9–10.
28. A. Szpunar, "Oznaczenie uposażonego…", 173.
29. A. Szpunar, "Charakter prawny polisy…", 9–10.
30. A. Szpunar, "Oznaczenie uposażonego…", ibidem.

Considering the above, the parties to the viatical settlement contract are the policyholder and a third party who has no contractual ties to the insurer. The contract creates reciprocal obligations and is a non-gratuitous contract, although it seems to be lacking typical features of reciprocity.[31] To the contrary, the values exchanged by the parties under this contract are, at their core, inequivalent, and this asymmetry, quite favourable to the viatical settlement provider, is pre-assumed and accepted. On the other hand, the policyholder may subjectively consider that the monies received from the viatical settlement company are an adequate consideration for the benefits obtained by the latter. Accordingly, if the equivalence of the parties' performances under viatical settlements is to be assessed subjectively, an argument can reasonably be made that a viatical settlement contract is in fact a reciprocal one.[32]

The policyholder, on their part, in addition to being released from the obligation to pay further premiums, receives the benefit of an immediately payable pecuniary performance.

It can be said, in quite simplistic terms, that the essence of a viatical settlement contract is the "sale" of insurance proceeds to a third party. To put it colloquially, this is a sale of a policy or – more precisely speaking – a gratuitous transfer of rights under the policy.

Accordingly, the popular trend of entering into viatical settlement transactions is sometimes styled "trading in policies." This phenomenon comprises the secondary life insurance trading, also known as the secondary market for life insurance policies[33] or simply the secondary insurance trading.

Without doubt, the viatical settlement contract falls into the category of innominate contracts as it is not regulated in the Civil Code or any other legal enactment. As to its juridical nature, the contract has a hybrid structure, similar to that of "mixed contracts," namely those which combine elements of innominate and nominate contracts. In particular, the viatical settlement contract comprises elements of a sale-purchase contract (or, more precisely, a contract for the transfer of an expectancy of a material claim), assumption of debt (in respect of the obligation to pay premiums), as well as certain elements of a contract of suretyship concluded between a creditor (policyholder) and a third party.

The suretyship element is manifested in the policyholder's (viator's) obligation to name the viatical settlement company as beneficiary, which coincides with their simultaneous waiver of the right to make any future changes in this regard, in particular by naming other beneficiary or beneficiaries. The Polish legal system accepts viatical settlements on the basis of the principle of freedom of contract, unless the purpose or wording of a given contract is contrary to the nature of the insurance relationship, a law or principles of public policy.[34]

4. Circumstances of and reasons for concluding viatical settlement contracts

As this article has already noted, viatical settlement contracts concern life policies with high (or relatively high) face amounts and are usually concluded by policyholders whose life expectancy is

31. In particular the feature of the equivalent character of parties' performances within the meaning of article 487(2) of the Civil Code.
32. See on this topic W. Czachórski "Zobowiązania – zarys wykładu", 8th ed., edited by A. Brzozowski, M. Safjan, E. Skowrońska-Bocian (Warszawa: PWN, 2002), 129–130.
33. The term is used in J.A. Giacalone, "Analyzing an Emerging Industry: Viatical Transactions and the Secondary Market for Life Insurance Policies".
34. Cf. art. 353(1) of the CC.

rather short due to their age or health condition. Some may even say that viatical settlements are made on the eve of one's demise. Quite often, the policyholder's decision results from their inability to pay further insurance premiums, caused by personal financial difficulties. Moreover, people who have terminal cancer, are HIV-infected or suffer from other life-threatening conditions which require expensive drugs or medical services or procedures are likely to need (often substantial) financial means to cover the costs of otherwise unaffordable treatment of their ailments.

Those who have high face amount life insurance policies, but cannot benefit from the cover during their lifetimes, may use one of the two options: First, they can stop paying the premiums and let their policies lapse. In this scenario, policyholders may opt for surrendering the policy and receive from the insurer an amount corresponding to the policy cash surrender value, which is usually just a fraction of the face amount. As a rule, the surrender value is the amount of the accumulated and paid premiums, indexed according to an insurance-specific algorithm (this process is known as the "indexation of accumulated premiums"). In the case of (relatively) short premium payment period, the cash surrender value available for the policyholder is too low to ensure that the increased financial needs of the policyholder, such as those resulting from an expensive medical treatment, can be met.

In such a situation, a viatical settlement is likely to be far more beneficial for the policyholder as it does not result in the lapse of their insurance policy and, at the same time, releases the policyholder from the obligation to pay further premiums, which is assumed by the viatical company. Furthermore, the insured immediately receives from the provider a pecuniary compensation equal to the agreed portion of the face amount of the policy. Needless to say, the amount of the settlement is incomparably higher than the cash surrender value payable to the policyholder upon the surrender, and the resultant lapse of the policy.

Finally, it should also be emphasised that for the relevant insurer a viatical settlement (a third-party transaction from the insurer's perspective) is in no way prejudicial to the insurer's interests because it does not affect the latter's legal situation in any way whatsoever. Indeed, the legal situation of the insurer remains exactly the same as it would have been had the policyholder not sold the viatical policy and continued to pay the premiums due. The opinion that such settlements in principle are unlawful as contrary to law or public policy seems to be unjustified.

Conclusions

1. Viatical settlement contracts originated and became rapidly popular in the US market. Under such a contract, the policyholder or the insured, called the viator, transfers, for a valuable consideration, the right to collect the sum insured to another entity. Viatical settlements are legally admissible because of the freedom to appoint or change a beneficiary, which is virtually unrestricted in insurance law.
2. The right to collect insurance proceeds is transferred to the viatical settlement provider by a non-gratuitous act in law (contract) performed between the policyholder and the provider. The provider pays a designated portion of the policy's face amount to the policyholder already during the latter's lifetime, while assuming the obligation to pay further premiums under the policy. This means that the insurance contract remains in existence and the insurer generally has no knowledge of the viatical settlement.

3. From a juridical perspective, a viatical settlement contract falls into the category of innominate contracts. The contract includes, among other things, elements of a sale-purchase contract, assumption of debt, as well as some features of a contract of suretyship. Consequently, it may be classified – at least under Polish law – as a "mixed contract." Viatical settlement contracts can be legally concluded pursuant to the principle of freedom of contract (art. 353^1 of the Civil Code); article 58 of the Code determines limits of that freedom.
4. One of the consequences of the massive popularity of viatical settlement contracts is abuse in various forms, which is especially visible in the US market – home to many viatical investors who have turned viatical settlements into a line of business, treating so-called trading in life policies as a profitable capital and financial investment. This phenomenon is sometimes referred to as the secondary market for life insurance policies or simply life insurance policy trading.
5. Tackling viatical abuses is extremely difficult because the viator usually agrees to the settlement voluntarily. In the case of terminally ill persons, the prevalent motive behind entering into a viatical settlement is the need to obtain money for an expensive treatment or care and the need to be released from the obligation to pay unaffordable premiums.
6. Polish life insurance law sets out certain "prudential" rules, introduced to the Civil Code by the amendment which came into effect on 10 August 2007 (articles 808, 829 and 831). However, these rules only apply to the appointment of beneficiaries under insurance contracts made for a third party's account. They arrive at a reasonable compromise in this area, designed to limit the arbitrariness of viatical changes of beneficiaries.

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Niebezpieczeństwo praktyk wiatykalnych na polskim rynku ubezpieczeń na życie

Artykuł poświęcony jest tzw. praktykom wiatykalnym, jako specyficznemu – i zarazem względnie nowemu na polskim rynku – zjawisku towarzyszącemu coraz bardziej masowym ubezpieczeniom na życie, zwłaszcza zawieranych na wysokie sumy. Istotą umów wiatykalnych, które pojawiły się, a następnie rozpowszechniły na rynku amerykańskim, jest odpłatne przenoszenie przez osobę uprawnioną z umowy ubezpieczenia na życie (ubezpieczającego lub ubezpieczonego) prawa do otrzymania zastrzeżonej w tej umowie sumy ubezpieczenia. Innymi słowy, na mocy tej umowy uprawnionym beneficjentem uposażonym) staje się nabywca wiatykalny (zwany „viatorem"), który z kolei zobowiązuje się wypłacić ubezpieczającemu (ubezpieczonemu) – i to jeszcze za jego życia – określoną część ustalonej w umowie ubezpieczenia sumy, a także przejmuje jednocześnie na siebie zobowiązanie do dalszego opłacania składek ubezpieczeniowych. Tym samym umowa ubezpieczenia na życie „zbywcy wiatykalnego" nie zostaje rozwiązana, a przewidziana w tej umowie ochrona ubezpieczeniowa na wypadek jego śmierci trwa nadal. Co więcej, takie porozumienie wiatykalne /umowa/ dokonuje się bez wiedzy ubezpieczyciela, który – mówiąc obrazowo – pozostaje poza węzłem obligacyjnym, wynikającym z umowy wiatykalnej.

Umowy wiatykalne zawierają najczęściej osoby obłożnie lub nieuleczalnie chore względnie będące w zaawansowanym wieku, nie rokujące dłuższego trwania życia, a które posiadają polisy opiewające na wysokie (lub znaczące) sumy ubezpieczenia. Najczęstszym celem, którym się kierują jest motyw materialny, wiążący się z ponoszeniem wysokich kosztów leczenia, rehabilitacji czy opieki – co w połączeniu z obowiązkiem systematycznego opłacania znaczących składek ubezpieczeniowych – może przekraczać ich doraźne możliwości finansowe.

W dalszej części artykułu poddano analizie prawną istotę umów wiatykalnych oraz swobodę wyznaczania osób uposażonych, jako przesłance sprzyjającej rozwojowi praktyk wiatykalnych. Praktyki te – które zaczynają wkraczać także i na nasz rynek ubezpieczeniowy – wiążą się z niebezpieczeństwem różnego rodzaju nadużyć, zwłaszcza ze strony nabywców wiatykalnych (viatorów), którzy transakcje tego typu traktują nierzadko jako swoiste inwestycje kapitałowe, mogące przybrać charakter spekulacyjny lub co najmniej wątpliwy z punktu widzenia istoty i funkcji umów ubezpieczenia na życie.

Słowa kluczowe: ubezpieczenia na życie, umowa wiatykalna, praktyki wiatykalne.

PROF. EUGENIUSZ KOWALEWSKI – head of Department of Insurance Law, Nicolaus Copernicus University in Toruń.