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**CLAIMS SECURED BY A REGISTERED PLEDGE IN SANATION
PROCEEDINGS**

Abstract

This study concerns the legal situation of a receivable secured by a registered pledge in a debtor's sanation (restructuring) proceedings. The registered pledgee has a special position in the course of such proceedings. The study discusses the rules of subjecting the receivable secured by the arrangement, the rules of preparing and contesting the list of receivables, and finally the rules of satisfying the pledgee.

Keywords: restructuring, sanation proceedings, list of claims, registered pledge, arrangement

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Introduction

General comments on sanation proceedings

Sanation proceedings – one of four restructuring proceedings under the Polish¹ Restructuring Law Act – are intended to avoid the debtor’s bankruptcy and to satisfy the debtor’s creditors.² Sanation proceedings are ‘hybrid’ restructuring proceedings with a very wide range of practical applications, which makes them quite popular in practice. Opening and conducting the proceedings is independent of the ‘payment morality’ of the debtor.³ Sanation proceedings allow the features of restructuring liabilities and liquidating assets to be combined. Sanation mass (the assets of the debtor that existed on the day the sanation proceedings were begun and those acquired during the proceedings), unlike in other restructuring proceedings, may be liquidated by the administrator with the effect of a bankruptcy (enforcement) sale.⁴ In this case, the creditors are satisfied even before the arrangement is concluded at the creditors meeting and approved by the restructuring court. The arrangement reached in the sanation proceedings may be either a restructuring or a liquidation in nature.⁵ The establishment of the list of claims in sanation proceedings is simplified. Sanation proceedings are subjected to the principles of speed of conduct. In the absence of a consensus in the course of proceedings regarding claims, it is possible to settle the dispute (trial before the court) on general principles.

¹ Comparative legal analysis was abandoned in this study. In the justification of the bill on the so-called the following simplified restructuring proceedings were raised as follows: ‘It should be noted that, according to the Restructuring and Bankruptcy Directive, in-kind secured claims must be covered by law by arrangement’ (Print No. 382 of the Sejm of the 9th Term).

² Adamus, R., *Polish Restructuring Law*, Saarbrücken 2019, p. 87; Adamus, R., *Bankruptcy and Restructuring Law in Poland*, “Societas et Iurisprudentia” 2019, Vol. VII (2), pp. 19–49; Malmuk-Cieplak, A., in: Torbus, A., Witosz, A., Witosz, A.J. (eds.), *Prawo restrukturyzacyjne. Komentarz*, Warszawa 2016, p. 721; Zimmerman, P., *Prawo restrukturyzacyjne. Komentarz*, Warszawa 2016, p. 1579.

³ Adamus, R., *Importance of payment morality in the Polish bankruptcy law*, “Journal of Business Law and Ethics” December 2019, Vol. 7, No. 1 (2), p. 9; Adamus, R., *Grounds for opening restructuring proceedings in Poland*, “Gaps in Russian Legislation” 2018, No. 7, pp. 162–166.

⁴ Adamus, R., *Likwidacja masy upadłości. Zagadnienia praktyczne*, Warszawa 2016, p. 56.

⁵ Adamus, R., *Some remarks on the issue of the legality of arrangement proposals under the Polish Reorganization Law*, “The Social and Political Sciences”, Moscow 2018, No. 5, pp. 300–306.

Registered pledge and restructuring proceedings

A registered pledge is an institution of substantive civil law. The restructuring law does not lead to prejudice to the personal right of the pledgee to the registered pledge,⁶ but it provides a certain procedural order under which the pledgee's rights guaranteed by substantive law are exercised. However, the interpretation of procedural provisions should not lead to a reduction of the pledgee's personal right under substantive law. Restructuring proceedings only provide a simplified way to recognise claims, and thus, as mentioned above, generally does not preclude a trial on general principles.

The status of a claim secured by a registered pledge on the debtor's property in sanation proceedings

The claim secured by a registered pledge as a non-arrangement claim

In accordance with Article 151 section 2 Restructuring Law Act (RL), which applies to all types of restructuring proceedings, the arrangement does not – by virtue of the law – cover claims secured on the debtor's property by a registered pledge in the part covered by the value of the subject of the registered pledge, unless the creditor has agreed to include it in the arrangement. It is worth recalling here that as early as the inter-war period, in the comments to the arrangement law of 1934, the view was expressed that claims secured by a mortgage or pledge in the part not covered by the subject of the registered pledge are not covered by the arrangement.⁷ The legislature has given this concept a normative power. The provision of Article 151 section 2 RL serves to preserve the essence of the registered pledge, and thus effective *erga omnes* security, the essence of which is to provide satisfaction to the pledgee with prior right to the personal creditors.

It is worth emphasising the legislature's flexible approach to the legal fate of claims on a debtor's property secured by a registered pledge. The pledgee's consent to cover the claim with the arrangement should be expressed unconditionally

⁶ Groele, B., in: Hrycaj, A., Filipiak, P. (eds.), *Prawo restrukturyzacyjne. Komentarz*, Warszawa 2016, p. 56; Zimmerman, P., *op. cit.*, p. 1336.

⁷ Arnold, S., *Prawo o postępowaniu układowem wraz z przepisami związkowymi z uwzględnieniem motywów Komisji Kodyfikacyjnej*, Kraków 1936, p. 15.

and irrevocably, at the latest before voting on the arrangement at the creditors' meeting. Consent may be expressed orally in the minutes of the meeting of creditors. The effects of initiating sanction proceedings extend to secured claims as soon as the creditor submits a statement of consent to be included in the arrangement. Consenting to cover the claim with the arrangement is not tantamount to waiving the security (registered pledge). The creditor may be allowed to cover only part of the claim by the arrangement. In the event the security (registered pledge) expires or is waived in the course of sanation proceedings, the claim becomes an arrangement claim.⁸

The extent to which a claim is secured by a registered pledge may be the subject of a dispute in restructuring proceedings. In this case, the source of the dispute may be the value of the subject of the registered pledge. In some situations, the value of the subject of the registered pledge may be 'mobile' by nature, in particular when a registered pledge is established on a set of items with variable composition.

There are some crucial issues not regulated by the legislature. In the context of securing claims, the legislature did not regulate the following issues in particular. First, there is a dilemma according to which assumptions should be made about the valuation of the subject of a registered pledge – at liquidation value or at normal market value. Secondly, there is a question concerning when the value of the subject of a registered pledge should be determined – on the day the sanation proceedings are begun, on the day inventory is taken, on the day the inventory is prepared, or on another day. Thirdly, there is a question of how to proceed in a situation where the subject of the registered pledge degrades during the restructuring procedure (significant value changes).

The role of the inventory and the list of claims

The legal nature of the inventory in sanation proceedings

In accordance with Article 294 RL, on the day the sanation proceedings are begun, the property used to run the business and the property belonging to

⁸ Gurgul, S., *Prawo upadłościowe. Prawo restrukturyzacyjne. Komentarz*, Warszawa 2016, p. 1116.

the debtor become the sanation mass.⁹ According to *Lege non distinguente*, the sanation mass includes components of the debtor's property encumbered by a registered pledge. The composition of the sanation mass is determined by the administrator (Article 296 RL),¹⁰ and the administrator has this authority when, pursuant to Article 288 section 3 RL, the debtor is allowed to manage the sanation mass. The composition of the mass is determined within thirty days of the opening of sanation proceedings based on entries in the debtor's books and on uncontested documents. The composition of the sanation mass is determined by making an inventory. Together with the inventory, the property included in the sanation mass is assessed (Article 275 sections 1 and 2 in connection with Article 296 section 3 RL). Herein, property evaluation does not have to take place with the participation of professional property appraisers. However, in doubtful situations it would be advisable to prepare an appraisal report. The contents of the inventory cannot be appealed by either creditors or the debtor in the course of sanation proceedings. The regulations do not provide for the inventory to be changed, but it is reasonable that the liquidation value¹¹ of an asset encumbered by a registered pledge should be assumed.

Legal nature of the list of claims in sanation proceedings

In accordance with Article 76 section 1 RL, the list of claims includes personal claims against the debtor arising before the day the restructuring proceedings are initiated.¹² The list of claims is universal since, as a rule, it covers all arrangement claims, taking into account the criterion of when they are created. This applies to both public and private law claims, claims against which the debtor is the main debtor, as well as claims against a pro rata co-debtor and a joint debtor. The list of claims includes both monetary and non-monetary claims (Article 79 RL).¹³ It does not matter whether the creditor is a domestic or foreign entity. The list of claims includes only personal claims, i.e. those in respect of which the

⁹ Filipiak, P., in: Hrycaj, A., Filipiak, P. (eds.), op. cit., p. 964; Zimmerman P., op. cit., p. 1612.

¹⁰ Filipiak, P., in: Hrycaj, A., Filipiak, P. (eds.), op. cit., p. 966.

¹¹ Groele, B., in: Hrycaj, A., Filipiak, P. (eds.), op. cit., p. 568; Zimmerman P., op. cit., p. 1616.

¹² Lipowicz, Ł., in: Hrycaj, A., Filipiak, P. (eds.), op. cit., p. 319.

¹³ *Ibidem*, p. 332.

debtor corresponds with all his present and future assets. Personal debt can be secured by a mortgage or a pledge, and this is also subject to inclusion in the list of claims. The list includes claims arising before the day of opening the restructuring proceedings. The time when the claim arises is decisive.

According to Article 76 section 2 RL, the inclusion of claims in the list of claims determines the amount with which the creditor participates in the restructuring proceedings.¹⁴ This regulation is absolutely crucial. The list of claims, thus, has a specific legal function: it determines a) whether the person is the creditor in the restructuring procedure, and b) at what amount of the claim. The list of claims also serves to determine, for the purposes of sanation proceedings, what part of the claim is subject to the arrangement and which is not subject to the arrangement due to the value of the subject of the registered pledge. The legal function of the list of claims indicated herein is not exclusive. In accordance with Article 107 section 1 RL, as a rule, at the meeting of creditors, the right to vote is given to creditors whose claims have been placed in the approved list of claims, and to creditors who appear at the meeting of creditors and submit to the judge-commissioner an enforcement order confirming their claim.¹⁵ At the same time, pursuant to Article 107 section 2 RL, creditors vote with the sum of claims included in the approved list of claims or in the writ of execution. The legal function of the list of claims is related to its informative function. The enforcement function of the list should also be mentioned. In accordance with Article 102 RL, the list of claims is a building part of the writ of execution against the debtor.¹⁶ Importantly, in accordance with Article 101 section 1 RL, failure to include claims in the list of claims does not prevent their recovery in the proper manner (by trial). Therefore, the list of claims does not create the *res iudicata* or *res transacta*, which is characteristic of civil proceedings.

When is the value of the subject of the registered pledge determined? Various dates could be considered. It seems that it should be assumed that in the event of changes in the value of the subject of the registered pledge the date when the list of claims was established should be considered.¹⁷ In the civil procedure, the rule of assuming the state from the date of adjudication applies. In accordance

¹⁴ Ibidem, p. 323.

¹⁵ Hrycaj, A., Geromin M. in: Hrycaj, A., Filipiak, P. (eds.), op. cit., p. 319.

¹⁶ Lipowicz, Ł., in: Hrycaj, A., Filipiak, P. (eds.), op. cit., p. 400.

¹⁷ Groele, B., in: Hrycaj, A., Filipiak, P. (eds.), op. cit., p. 567.

with Article 316 § 1 of the Code of Civil Procedure, after closing the trial, the court issues a judgment based on the *status quo* at the time the trial closes. In addition, the value of the subject of the registered pledge estimated on the date of the list of claims corresponds best to the actual state of affairs.

In the list of claims in sanation proceedings, the amount that is covered by the arrangement and which determines the creditor's voting power and the value of the entire claim separately is included.¹⁸ The author of the list of claims in sanation proceedings (the entity responsible for its creation and content) is the administrator (Article 84 RL).¹⁹ According to Article 320 RL, the administrator prepares and submits a list of claims to the judge-commissioner within thirty days of the opening of the sanation procedure.²⁰ The administrator prepares the list of claims on first of all the debtor's documents, i.e. the debtor's accounting books and 'other documents of the debtor,' 'Other documents of the debtor' refers to documents in the possession of the debtor, not necessarily created by the debtor. However, this does not mean the value of the subject of the registered pledge is determined at book value. Secondly, the administrator draws up an inventory based on public registers. The legislature indicates land and mortgage registers. Nevertheless, it should be remembered that in the restructuring proceedings, the list of claims relates only to personal creditors (who can additionally be subject to the material subject of the registered pledge on the debtor's assets). Another register may be, e.g. a register of registered pledges. In the procedure for preparing the list of claims, creditors do not have to submit anything.

Opposition to the list of claims in sanation proceedings

It is permitted to make an objection that includes claims in the list or omits claims in the list. The structure of the objection is important when there is no institution for the submission of claims. An objection may be lodged by a participant in the restructuring procedure. In other words, both the creditor and the debtor have the right to object. This principle requires some explanation. First, in accordance with the resolution of the seven judges of the Supreme Court of 15 May 2014, III CZP 88/13, '*gravamen* is a prerequisite for the admissibility

¹⁸ Witosz, A.J., in: Torbus, A., Witosz, A., Witosz, A.J. (eds.), op. cit., p. 431.

¹⁹ Lipowicz, Ł., in: Hrycaj, A., Filipiak, P. (eds.), op. cit., p. 344.

²⁰ Hrycaj, A., in: Hrycaj, A., Filipiak, P. (eds.), op. cit., p. 1089.

of an appeal, unless the public interest requires substantive consideration of that measure.’ This rule applies accordingly to submitting an objection against the list of claims. Herein, the debtor may file an objection, provided that the list of claims is not consistent with his statement. Secondly, any creditor may object to the inclusion of claims in the list. Thirdly, an objection to the omission of claims in the list may be made by a creditor omitted from the list. It seems that as part of the opposition, the method of determining the amount of the claim subject to the arrangement may be questioned due to the accepted value of the subject of the registered pledge.²¹ In the literature, Aleksander J. Witosz expressed the opinion that ‘the correction of the division of property claims into parts can only be made as a result of the creditor’s opposition.’²² According to Article 96 RL, after the decision regarding the objection to the list of claims becomes final, changes shall be made to the extent specified in the decision. According to Article 98 section 1 RL, after the expiry of the deadline for submitting an objection – and, if it is submitted, after the ruling on the objection becomes final – the judge-commissioner approves the list of claims.²³ Objection is not, however, an instrument used to adjust the list of claims if the value of the object of the registered pledge changes after the list of claims is approved.

Permissible changes and supplements to the list of claims in sanation proceedings

First, in accordance with Article 99 RL, the judge-commissioner may *ex officio* remove a claim from the list of claims if it is found that the list contains a claim which in whole or in part does not exist or is entitled to a person other than the one indicated in the list as a creditor. The ruling on deleting the claim from the list of claims shall be served on the creditor concerned, the debtor, or the administrator. It should be remembered that a change of name, surname, name of the creditor, change of address, or other data or a change of creditor (as a result of subject transformations, assignment of claims, or *cessio legis*) which occurred after the list of claims is submitted to the judge-commissioner does not constitute grounds for changing the list and does not deprive the creditor of the right to

²¹ Witosz, A.J., in: Torbus, A., Witosz, A., Witosz, A.J. (eds.), op. cit., p. 431.

²² Ibidem, p. 432.

²³ Lipowicz, Ł., in: Hrycaj, A., Filipiak, P. (eds.), op. cit., p. 393.

participate in further restructuring proceedings (Article 100 section 2 RL). The decision of the judge-commissioner is subject to an instance control.²⁴

Secondly, the judge-commissioner changes the list of claims in accordance with the final judgments presented to him (Article 101 section 2 RL) because failure to include claims in the list of claims does not prevent it being properly asserted. Theoretically, in this mode the amount of the subject of the registered pledge to the arrangement could be adjusted.

Thirdly, according to Article 100 section 1 RL, if – after the list of claims is submitted, a claim is disclosed that has not been included in the list, the administrator prepares a supplement to the list of claims. In this mode, however, the amount of claims cannot be revised.

Effects of not including claims in the list of claims in sanation proceedings

In accordance with Article 101 section 1 RL, failure to include claims in the list of claims does not prevent their recovery in the proper manner. Moreover, in accordance with Article 310 RL, opening sanation proceedings does not exclude the creditor from initiating court, administrative, administrative or court proceedings before arbitration courts in order to pursue claims that may be included in the list of claims. However, the costs of these proceedings are charged to the person initiating the proceedings if there were no obstacles to placing the claim in its entirety in the list of claims. Recognition of claims in restructuring proceedings is simplified. It is mainly subordinated to the objectives of the restructuring procedure. The authority that ‘recognises’ the claims is the administrator, and only in the event of an objection to the judge-commissioner and the restructuring court in the event of an appeal against the decision of the judge-commissioner will the administrator step in. The procedure is adversarial to a limited extent. Consequently, the recognition of claims in restructuring proceedings does not create a claim. Failure to include the claim in the list does not prevent it being pursued properly, except for restructuring proceedings. It should be remembered that, as a rule, the arrangement binds all creditors whose claims under the law are subject to the arrangement, even if they were not included in the list of claims (Article 164 section 1 RL).²⁵

²⁴ Ibdiem, p. 397.

²⁵ Groele, B., in: Hrycaj, A., Filipiak, P. (eds.), *op. cit.*, p. 601.

If the dispute is resolved during the restructuring proceedings, the judge-commissioner changes the list of claims in accordance with the final judgments presented to him. In accordance with Article 102 section 3 RL, the debtor may request a determination that the claim covered by the approved list of claims does not exist or exists to a lesser extent, if he has lodged an objection in the restructuring proceedings and no final court decision has been issued regarding the claim. It seems, therefore, that it is also possible to determine the amount of the claim that is subject to the arrangement outside of the restructuring proceedings, provided that the conditions listed above are complied with. According to Aleksander J. Witosz²⁶ and approved by Andrzej Jakubecki:

The distribution of the sum of claims is binding for the purposes of determining the creditor's voting power in the course of proceedings. It has no material meaning. This means that in a situation where the determined value of the subject of the registered pledge item turns out to be underestimated, the greater part of the claim (...) will not be restructured. If the value was overestimated, the arrangement will cover the given claim to a greater extent than expected.²⁷

Ways to satisfy the pledgee

Satisfying the pledgee in the pledgee's sanation proceedings in the event an object secured by a registered pledge is liquidated

In accordance with Article 323 section 1 RL, the components of property belonging to the debtor and included in the sanation mass may be sold by the administrator with the consent of the judge-commissioner, who sets out the conditions for their disposal. However, this does not apply to the sale of property components as part of business operations if it does not exceed the scope of ordinary management (Article 323 section 5 RL). The sale has effects similar to sales made by a trustee in bankruptcy proceedings (Article 323 section 3 RL). In this case, the administrator prepares a sanation plan for the distribution of sums obtained from the sale of things, claims, and rights encumbered by a registered

²⁶ Witosz, A.J., in: Torbus, A., Witosz, A., Witosz, A.J. (eds.), op. cit., p. 432.

²⁷ Jakubecki, A., in: *System prawa handlowego. Prawo restrukturyzacyjne i upadłościowe*, A. Hrycaj, A. Jakubecki, A. Witosz (eds.), Vol. 6, Warszawa 2020, pp. 363–364.

pledge, in accordance with the provisions of the Bankruptcy Law (Article 323 section 4 RL). In this case, the issue of subjecting the claim to the arrangement is irrelevant. The administrator *ex officio* includes a pledgee with a sesectionte division plan.²⁸

Satisfying the pledgee in the pledgee's sanation proceedings if the claim is not covered by the arrangement

If the claim of the registered pledgee maintains its non-arrangement status, then the satisfaction of the creditor in the sanation proceedings occurs outside the scope of the arrangement. Suspending the obligation to perform obligations under the law is an exception to the rule. What does this mean in practice? First, a statutory moratorium allowing the legal cessation of obligations must be based on a clear legal norm. Secondly, no expanding interpretation is allowed (*exceptiones non sunt extendae*). In accordance with Article 151 section 2 RL, the arrangement does not include claims secured on the debtor's property with a registered pledge in the part covered by the value of the subject of the registered pledge, unless the creditor has agreed to be included in the arrangement. In accordance with Article 252 section 1 in relation to Article 297 RL, from the day the sanation procedure is begun until it is completed or the ruling to discontinue composition proceedings becomes final, the administrator cannot satisfy claims which are legally covered by the arrangement. In other words, the secured claim is subject to voluntary satisfaction by the administrator. Therefore, if in the course of sanation proceedings the secured claim is subject to voluntary satisfaction by the debtor – the pledgee, it is *prima facie* to conclude that the creditor – the pledgee may, in principle, use other forms of satisfaction, including the clause for taking over the subject of the pledge.²⁹ A claim secured by a registered pledge can and should be satisfied by the administrator during the sanation proceedings. In addition, from Article 326 section 2 RL, the conclusion is that non-arrangement obligations should be regulated by the administrator under consequences of discontinuing the proceedings. Therefore, if a given claim is not subject to the rigors of the arrangement, the administrator should pay it because the debtor, in principle, is responsible for it with

²⁸ Filipiak, P., in: Hrycaj, A., Filipiak, P. (eds.), op. cit., p. 1051.

²⁹ Sierakowski, B., *Pozycja wierzyciela rzeczowego w postępowaniu sanacyjnym – wybrane zagadnienia*, "Monitor Prawa Handlowego" 2017, No. 4, p. 30.

all his property, both property constituting the sanation mass and that which is excluded from the mass.³⁰

Obtaining satisfaction from the subject of the registered pledge

In the course of sanation proceedings, the pledgee may in principle use the clause on taking ownership of the subject of a registered pledge.³¹ First of all, it should be stated that the pledgee's competence to take ownership of the subject of the registered pledge, and therefore the personal right, may be excluded or limited only by an explicit provision of the law, and there is no such normative regulation in the provisions on sanation proceedings. This argument is conclusive. If the provisions on sanation proceedings do not provide for any deadlines for the pledgee to exercise their right, or if no formal rigor is introduced by the provisions, it only means that the pledgee exercises greater freedom when exercising their right. In the literature on the subject, Bartosz Sierakowski aptly notes that 'cases in which the creditor encounters restrictions on the possibility of satisfying his due claims against the will of the debtor have been regulated by law and should not be interpreted broadly.' It must be further argued that the subject of the registered pledge may be disposed of in the course of sanation proceedings by the administrator. The sale of assets under sanation proceedings requires that this circumstance be included in the restructuring plan (Art. 323 section 1 sentence 1 RL).

The administrator prepares a secession plan for the distribution of sums obtained from the sale of things, claims, and rights encumbered by a registered pledge in accordance with the provisions of the Bankruptcy Law (Article 323 section 4 RL). In the summary of this argument, it should be noted that if in the course of sanation proceedings the administrator sells the subject of the registered pledge subject to the pledgee's right, the pledgee may also take ownership of the pledge.

It should be further noted that the pledgee's self-satisfaction clause cannot be eliminated *in genere* by the provisions of Article 248 RL in connection with

³⁰ Adamus, R., Chrapoński D., *Problem nadania klauzuli wykonalności bankowemu tytułowi egzekucyjnemu po ogłoszeniu upadłości dłużnika*, "Monitor Prawa Bankowego" 2014, No. 6, p. 73.

³¹ Adamus, R., *Dopuszczalność przejęcia przedmiotu zastawu rejestrowego na własność w toku postępowania sanacyjnego prowadzonego wobec zastawcy*, "Przegląd Prawa Handlowego" 2019, No. 4, pp. 48–53.

Article 297 RL, which stipulate that a contract to which the debtor is a party that prevents or obstructs the achievement of the purpose of sanation proceedings is ineffective in relation to the sanation mass.

Conclusions

In the event of placing a claim secured by a registered pledge in the list of claims in sanation proceedings, the amount to which the creditor participates in the restructuring proceedings is determined. The list of claims separately specifies the amount that is covered by the arrangement and which determines the creditor's voting power and the value of the entire claim. The list of claims, therefore, specifies to what extent a claim secured by a registered pledge is subject to an arrangement and to what extent it is a non-arrangement.

The pledgee may question the value of the subject of the registered pledge given in the list of claims.³² The appropriate procedure within the sanation proceedings is to raise an objection. However, this does not apply if the value of the subject of the registered pledge changes after the list of claims is approved. It is permissible to question the value of the subject of the registered pledge as determined in the list of claims in a civil procedure on general principles. A civil trial may still be initiated during sanation proceedings.

The value of the claim which is not covered by the arrangement should be calculated according to the liquidation value of the subject of the registered pledge determined on the date the list of claims is prepared. In the literature, the prevalent view is that the list of claims does not specify the division of arrangement claims and non-arrangement claims with final effect.

The list of claims specifies the rules for the division of claims into arrangement and non-arrangement claims due to the value of the subject of the registered pledge for the purposes of sanation proceedings. Payment made to the pledgee by the administrator in the course of sanation proceedings leads to the redemption of the claim or its relevant part within the limits of the payment made. In the event that payment was made, in fact, without covering the claim secured by the security, it could be assumed that the creditor had received an undue payment. The benefit may be untitled due to its duration or to its amount.

³² The terminological inconsistency of the legislature is noteworthy in Article 284 sec. 2, Article 86 and Article 151 sec. 2. From the phrase 'likely satisfaction' it can be concluded that the value of the object of security should be reduced by the anticipated enforcement costs.

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