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Abstract:

The author presents counterclaims the views expressed in the paper by K. Mularski and K. Grzesiowski, concerning the problem of accrual of benefits towards the reparable damage and demonstrating lack of a legal basis for the mechanism of accrual. He defends the view that the *compensatio lucri cum damno* construction constitutes a step in the determination of the extent of the damage. The normative justification for its application lies, in his view, in Article 361 § 2 of the Polish Civil Code and the principle of restitution derived from this provision. The prerequisite for the operation of the accrual of benefits is the fact of covering by the benefit exactly the interest of the injured party, the satisfaction of which is served by the claim for damages. The recourse *sensu lato* regulated by the law and vested in a third party, from whom the benefit originates, forces the benefit to be accrued towards the claim serving the injured party. However, the lack of recourse does not prejudice the inability to accrue.