

FIAR Motor Insurance Conference

*MTPL coverage for loosing „right of use“
due to accident*

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Basic Case:

A's vehicle (6 year old VW Golf) has been damaged in an accident by B. The repair will take two days. A needs the car to go to work with no other possibility than using a rented car (VW Polo) and seeks reimbursement of € 124 from the MTPL insurer of B.

- Recognition of compensation for loss of „right of use“ basically discussed in all countries (broadly recognized as a loss category in Germany in the early 60s)
- Need to prove that right of use is exercised for the days own vehicle is not available (over time this has become more strict); assumed for commercial vehicles for regular working days
- Cost for car rent acceptable taking into consideration saved costs for own vehicle (esp. depreciation) and duty to minimize loss (using table of EurotaxSchwacke)

EurotaxSchwacke list – key features

- One part of „Schwacke-Liste“ evaluation tools;
- For rent-a-cars and right of use since 1966 with updates minimum once a year
- Categorizing all types of cars into 11 groups (A to L);
- Basic daily rates for right of use from € 23 (A) to € 175 (L); some more parameters for rent-a-cars
- For cars older than 5 years one group lower; for cars older than 10 years two groups lower.
- Rent-a-car one category lower than damaged vehicle to adjust for saved costs and due to duty to minimize losses

Case; Modification 1:

A's vehicle (6 year old VW Golf) has been damaged in an accident by B. The repair will take two days. A takes the two days off and does not need a rent-a-car. He seeks reimbursement of a value for right of use of € 78 from the MTPL insurer of B.

- Need to prove that right of use is exercised for the days own vehicle is not available (at least since decision of Federal Supreme Court (BGH) in 2008); before: different opinions of different courts.
- Also in cases where driver is e.g. in hospital; but recognized that other persons would drive the vehicle – burdon of proof getting more strict for the victim over time.
- Basically right of use compensation even if other options seem more rational (e.g. public transportation; bicycle often used by A in summer)

Case; Modification 2:

A's vehicle (6 year old VW Golf) has been damaged in an accident by B. The repair will take two days. A takes the two days off and does not need a rent-a-car. He seeks reimbursement of a value for right of use of € 78 from the MTPL insurer of B. Insurer, in turn offers a car without charge to A.

- Unclear position of different courts; but basically concrete use possibility due to offered car prevailing and no compensation for abstract right of use.

Case; Modification 3:

A's vehicle (6 year old VW Golf) has been damaged in an accident by B. The repair will take four days (Expert statement originally estimated two days). A needs the car to go to work with no other possibility than using a rented car (VW Polo) and seeks reimbursement of € 248 from the MTPL insurer of B.

- Former ruling opinion: risks connected to repair time are with A; today in most cases burden of proof shifted to insurers if not clearly evident that victim of accident has set an important cause for delay (e.g. missed deadline to call repair shop; chose other than recommended repair shop).

Case; Modification 4:

A's vehicle (6 year old VW Golf) has been damaged in an accident by B (total loss without repair). According to the expert report the period to acquire another car is 12 days. A needs 26 days to acquire a substitute car and seeks reimbursement of € 910 from the MTPL insurer of B: abstract compensation for lost right of use plus costs to look at potential vehicles to buy (0.30€ per km driven by his son).

- Quite different reasonings of different courts – see latest decision of Municipal Court (AG) Suhl of 9th Jan. 2019: full compensation.
- In case of total damages insurers often offer a substitute car or seek a lump-sum-agreement for loss of abstract right of use.



That's all for now

Thank you!