

Vnuk : an involuntary risk transfer

Why motor policies will be changing

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To discuss



- Overview of the Vnuk decision and its implications
- Thoughts on what changes may come and the impact on insurers and their customers
- Enable delegates to prepare and plan for the changes

Vnuk : where did it all start?



- *Vnuk v Zavarovalnica Triglav d.d.* [2014] CJEU C-162/13

- Accident 13 August 2007
- C working as farmhand – knocked from ladders by trailer hitched to a tractor
- Compensation claim of €15,944.10
- *Zavarovalnica Triglav insurers of the tractor (compulsory motor insurance)*

- At first and second instance the claim failed
- Slovenian court dismissed the appeal – compulsory insurance in respect of use of a tractor as means of transport, not as a “propulsion device”
- Slovenian appeal court referred the case to the Court of Justice of the European Union (CJEU)
- Asked to determine whether the duty to insure “the use of vehicles” within the meaning of Article 3(1) covered the circumstances of the accident

Article 3(1) of the First Directive



Each Member State shall..... take all appropriate measures to ensure that civil liability in respect of **the use of vehicles** normally based in its territory is covered by insurance

Emphasis added

- Advice from AG Mengozzi: broad interpretation of movement and “use” implies no requirement for the vehicle to be on a road
- The judgment highlighted that the definition of ‘vehicle’ is unconnected with the use
- Concept of ‘use’ referred to in 3(1) “cannot be left to the assessment of each Member State”

In short summary the judgment in Vnuk implies compulsory insurance extends to:

- any use
- consistent with normal function of vehicle
- anywhere

Definition of 'vehicle'



- Art. 1 of the 1st MID states:

“‘vehicle’ means any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled”

- Whereas Section 185 of the Road Traffic Act 1988 has a much narrower scope and restricts the definition of ‘motor vehicle’ to:

“a mechanically propelled vehicle intended or adapted for use on roads”

- The RTA definition is now too narrow in scope and cannot be interpreted in accordance with EU law following *Vnuk*





Definition of 'vehicle'

- Esoteric vehicles that may travel on the road
 - motability scooters
 - Segways
 - electric bicycles
- Vehicles not designed for road use
 - typically specialist motorsports vehicles
- Vehicles intended for road use but which are no longer on the road
 - show cars
 - museum exhibits
 - SORN declared
 - query "tools of the trade"
- Specialist trade vehicles
 - construction plant
 - fork lifts

Definition of 'use'



- Article 3(1) must be interpreted as meaning that the concept of 'use' covers:

any use of a vehicle that is consistent with the normal function of that vehicle

- *Gardner v Moore* [1984] AC 548
- *Dunthorne v Bentley* [1996] RTR428
- *AXN & Ors v (1) John Worboys (2) Inceptum Insurance (previously HSBC)* [2012] EWHC 1730 (QB)
- *UK Insurance Ltd v (1) Thomas Holden (2) R & S Pilling (T/A Phoenix Engineering)* [2016] EWHC 264 (QB)

- Not automatic that “vehicle” is subject to the obligation of compulsory motor insurance
- **Article 4(b) of the 1st MID, Member State may act in derogation of Article 3:**
 - “(b) certain types of vehicle or certain vehicles having a special plate; the list of such types or of such vehicles shall be drawn up by the State concerned and communicated to the other Member States and to the [European] Commission...”
- **Derogation from the MID insurance obligation is not permissible by types of use or by types of place. It is permissible only for certain persons and/or certain types of vehicles**
- **The UK Government has not derogated any type of vehicle to-date**

Derogation



- Austria derogates vehicles that have a maximum speed of below 10km/h, electric bicycles up to 20km/h
- Germany derogates agricultural type vehicles which do not exceed 20km/h
- Finland derogates children's toys
- Portugal derogates agricultural vehicles up to 300kg in weight
- Cyprus derogates invalid carriages, tools of the trade and lawn mowers

Derogation



- Any derogated vehicle must be covered by the compensatory guarantee scheme now codified under Article 10 of the 6th MID that prescribes the MIB's responsibilities for compensating victims of uninsured and unidentified vehicles
- Will the MIB (or members) want to take on the potential liability?
- MIB right to recover payments from uninsured defendant?
- Subordination to other policies but query exclusion of "vehicles" from those other policies?

**Insure your lawnmower!
EU directive means they join
mobility scooters and golf
buggies among vehicles
that must be covered**

Daily Mail

**Gardeners with
sit-on lawnmowers
face buying motor
insurance**

The Telegraph

**Now 'ridiculous' EU calls
for ALL vehicles to be
insured even LAWNMOWERS
and GOLF BUGGIES**

The Express

**European insurance ruling
could hit motor racing**

The Times



Road Traffic Act 1988

CHAPTER 52

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Reprinted 2000

Implications for UK



- Amendment to the RTA:
 - ss.143 and s.145 restrict duty to take out third party motor insurance to the 'use of a motor vehicle on a road or other public place'
- Amendment to MIB Agreements:
 - Uninsured Drivers Agreement 1999
 - Untraced Drivers Agreement 2003
- Potential exposure of UK Government to Francovich claims

EL? PL?? Motor???



- The MID requires motor insurance to cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle
- But consider AXA v NU [2007] EWHC 1046 – different conclusion post *Vnuk*?
- Current conflicting exclusion clauses in motor and EL policies?
- Potential liability under a motor policy that would previously have been covered under EL insurance

EL? PL?? MOTOR???



- UK PL liability market well developed, BUT
- Where household policy may provide liability cover for e.g. ride-on mower, policy may not be motor third-party liability cover compliant with RTA
- Concern on PL Claims aggravated risk of fraud: untraced claims on roads or public places would fall to MIB

Motorsports



- Art. 1: “vehicle”

any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails

- Article 3(1): “use”

any use of a vehicle that is consistent with the normal function of that vehicle

- **Isn't the simple answer derogation?**

 - certain types of vehicle or certain vehicles having a special plate not permissible by types of use or by types of place

- **Given broad spectrum of "Motorsports" where do we start / stop?**

- **Any liability arising from a derogated vehicle would fall to the MIB, with perhaps the inevitable increase to the MIB levy**

- **Insurers with no exposure to motorsports carrying a liability for where they receive no premiums**

- **MIB will seek to recover compensation from the driver at fault, exposing participants to potential liability**

LEWIS HAMILTON RUN OVER BY NICO ROSBERG IN SILVERSTONE PIT LANE 'ACCIDENT'

**'I didn't meant to hit him (that hard)'
says Rosberg**

Motorsports



- Disconnect from "RTA" precedents
- Interesting legal argument on liability:
 - driver v driver collisions 'on track'?
 - consent / Volenti / disclaimer?
- Category of claimant and their status in a claim:
 - spectator
 - marshal
 - pit crew / team
 - sidecar passenger
 - navigator
- Regulated v unregulated
 - track days
 - 'experience' / corporate / 'red letter' days?

Government and industry response



Department for
Transport



Association of British Insurers



- DFT consultation and overall impact assessment
- Liaison with other Member States
- MIB review and enquiry / potential impact
- ABI engagement with industry
- BIBA engagement and advice
- MSA engagement with EU Governing Bodies

What next?



- **Government:**
 - Amendment to RTA re 'vehicle' and 'use'.
 - Consequent amendment to the MIB agreements.
 - Potential risk of Francovich claims
- **Industry:**
 - Ability to write motor risk?
 - Gap in cover / Absence of cover / Professional Indemnity?
 - Indemnity limit? RTA v EL v PL
 - MIB Levy
 - Fraud risk

What next?



- Customer

- adequacy of cover
- disclosure of equipment / claims experience (c/f Insurance Act)
- policy premium
- MIB recovery

- Beyond?

- lobbying of European Commission / amendment of directive(s)

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