

VEHICLE INSURANCE

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Patricia Jones, Head of Rural at CLA Insurance, explains the ramifications of a recent European court case for the rural sector

In September 2014 the European courts ruled in the case of Damijin Vnuk v Zaraovlnica Triglav which could have significant and wide ranging implications for rural businesses and UK motor insurance. As a result of the case we expect the Government to imminently review and amend the Road Traffic Act 1988 (RTA).

Background of the Vnuk Case

On 13th August 2007, Mr Vnuk, the claimant, was working on a ladder in a Slovenian farmyard when he was hit by a tractor. He sued the driver's insurer for injuries from the fall, but the court denied his claim, citing that compulsory motor insurance in Slovenia only covers vehicles for road use and transport, not for damage caused when they are used as machines on private land.

The Slovenian Supreme Court referred the case to the Court of Justice of the European Union (CJEU) to determine whether the accident fell under the compulsory motor insurance requirements in the EU Motor Insurance Directive (2009). In other words: Do European directives on motor insurance require this kind of 'use of vehicles' to be covered by compulsory third-party motor insurance?

The CJEU ruled that compulsory motor insurance directives did apply to 'any use of a vehicle that is consistent with the normal function of a vehicle', meaning that, although the accident took place on private property, since the use of the tractor is consistent with its normal function, the owner must have compulsory motor insurance.

Implications of the Vnuk Case for UK Law

The implications of the Vnuk case are wide-ranging and require the UK Government to amend the RTA to comply with this new interpretation of EU law.

The problem is, under the RTA, UK

compulsory motor insurance does not extend to use on private land, only to 'use on roads or other public places' and it only applies to vehicles 'intended or adapted for use on roads'. Therefore, the Government must amend the RTA to harmonise it with the ruling by:

- Extending the definition of a vehicle to include any 'mechanically propelled vehicle intended for travel on land'



- Removing any restrictions on use, as long as that use is 'consistent with the normal function of that vehicle'
- Extending the scope of compulsory motor insurance to include use on private land

Extending compulsory motor insurance to include vehicles intended for travel and for use beyond public roads potentially means that previously exempt vehicles—such as tractors, quadbike and construction plant, etc—will now need compulsory motor cover. Agricultural businesses that rely on these vehicles may soon be faced with the burden of insuring a large collection of vehicles that were previously exempt.

Department for Transport, Parliamentary Under-Secretary Robert Goodwill has said: "We will, of course, consult before making any changes and we are determined to get a sensible outcome."

Although there is no change in underlying claims risk – you will remain liable for your employees' negligent driving whether on or off-road – the insurance differences are important. Unlike employers' liability (EL) and public liability (PL) insurance policies, motor policies legally have to provide unlimited cover for personal injury claims. Also any insurer offering a policy for RTA risks has to be a member of the Motor Insurers' Bureau (MIB) and has to pay in so that the MIB can meet claims caused by uninsured and untraced motorists – a cost that EL and PL insurers don't have. Not all insurers currently covering off-road and special vehicle risks are members of the MIB.

The changes will not take effect until the RTA is amended in Parliament and will apply only for claims happening after that. Until then the only recourse claimants have in a similar situation as the Vnuk case would be taking legal action against the Department for Transport for failing to adopt the Directive into UK law, also known as a Francovich action (a cause of action in damages against a Government for failure to implement EU law).

CLA Insurance will continue monitoring this case as it progresses and work to ensure that its ramifications are as negligible as possible. ■

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