



N/REF : **CIRCULAIRE N° 9 /2014**

Re: Truck-trailer combinations and recourse of the insurer having compensated the victim against the other party's insurer

Paris, le 21 juillet 2014

Dear Colleagues,

Further to the BCF's Circular 5/2013 on lorry-trailer combinations, the terms of which are confirmed, the present circular is intended to supplement the previous one and to cover the recourse available to the insurer that has compensated the victim.

We remind you that when an accident involving a lorry-trailer combination occurs in France, the victim has the option of making a claim against the insurer of the lorry or trailer (Article R211-4-1 of the Insurance Code). This choice is entirely up to the victim and cannot be challenged so the correspondent receiving the claim is obliged to compensate the victim without being able to refer him/her to the insurer of the other part of the rig. The issue then is what recourse the insurer that has paid the victim on account has against the insurer of the other part. Since this recourse has raised a lot of questions among claims managers, the French market recommends a rule that is in line with recourse under the ordinary law and can be applied easily.

Most of our claims are solely for material prejudice for amounts of less than €50k under third party liability cover representing the entirety of the third party prejudice. Initially, the present recommendation will apply to claims for up to this amount.

Principle:

The following recommendation is issued to deal with recourse in respect of the claims defined above:

- 1/ Where the truck driver or custodian was at fault, contributing to the occurrence of the accident, final liability for the compensation borne lies with the truck's insurer on the basis of Articles 1382 and 1384.1 of the Civil Code.

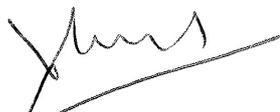
- 2/ Exceptionally, the trailer's insurer will bear the final cost of the compensation solely in the event of proven fault on the part of the trailer owner, e.g. established lack of maintenance of the braking system causing the accident.
- 3/ In the absence of any fault on the part of the truck driver or custodian contributing to the occurrence of the accident:
- where there is a third party at fault, the insurer compensating the victim on the basis of the involvement of the rig directly exercises its subrogatory recourse against the liable party and his/her insurer;
 - if there is no third party at fault, e.g. in the event of undetermined circumstances, the contribution to the compensation borne by the train road insurers is split evenly between them.

Exception:

The present circular does not cover cases where the FGAO (French Guarantee Fund) is competent (therefore ruling out any possibility of recourse for the contribution by the insurer that has paid compensation on behalf), notably an uninsured vehicle normally based in France, an unidentified part of the train road or an uninsured vehicle registered outside section III, because, given the FGAO's subsidiary obligation, the victim is entitled to make recourse solely in respect of the part of the train road that is insured or that is considered as such (cf. Section III of the General Rules).

Best regards.

Le Directeur



Xavier LÉGENDRE