

Workshop Fallstudien

Fallbeispiel I

A Unfallhergang

1. Der Versicherungsnehmer „A“ des beklagten deutschen Versicherers „X“ fuhr am 22. 1. 2003 mit dem Motorrad die Strasse von Strassburg in Richtung Colmar. Die Klägerin „B“ befand sich als Beifahrerin auf dem Motorrad ihres Lebensgefährten „A“. Beim Durchfahren einer Ortschaft kam der französische Unfallgegner „F“ entgegen. Dieser bog unvorschriftsmäßig nach links ab; es kam zum Zusammenstoß zwischen dem abbiegenden Fahrzeug und dem Motorrad. Dabei wurde die Klägerin „B“ schwer verletzt.
„A“ und „B“ sind beide deutsche Staatsangehörige mit Wohnsitz in Deutschland.
2. Die Haftungsfrage ist unstreitig zulasten des französischen Unfallgegners „F“ geklärt.
Dies wurde auch von der französischen Versicherer „F“ anerkannt. Es wurde kein Mitverschuldens einwand gegen den „A“ erhoben. (Betriebsgefahr ?)
3. Der Regulierungsbeauftragte des frz. Versicherers hat den Sachschaden und Schmerzensgeld in Höhe von €10.000 gezahlt. Die Forderung der Klägerin belief sich auf €40.000 Schmerzensgeld; der französische Versicherer hat jedoch weitere Zahlungen abgelehnt. Die Regulierung erfolgte nach frz. Recht.
4. Die Klägerin „B“ wollte die Differenz von €30.000 gerichtlich einklagen. Da sie davon ausging, dass sie nach deutschem Recht ein höheres Schmerzensgeld erwarten kann, verklagt sie den Versicherer „X“ ihres Lebensgefährten als Gesamtschuldner vor dem Landgericht Köln auf Erstattung der Differenz von €30.000.

B FRAGEN

1. Wie wäre die Situation, wenn die Klägerin „B“ und der Fahrer des Motorrads „A“ Schweizer Staatsbürger wären?
2. Welcher Gerichtsstand ?
3. Ist es möglich, den gleichen Fall nach zwei verschiedenen Rechtsordnungen abzuwickeln (Gesichtspunkt des Verbotes des Statutenwechsels)?
4. Hat der Versicherer „X“, wenn er zu einer weiteren Zahlung verurteilt werden würde, ein Rückgriffsrecht gegen den französischen Versicherer „F“ ?

Der Fall wurde vom Landgericht Köln mit einem Vergleich beendet.

Fallbeispiel II

A Sachverhalt

- 1) Unfall 2007 in Mazedonien
Beteiligt 2 Kfz : eines mit mazedonischem Kennzeichen „A“
 eines mit OSCE Kennzeichen „B“
- 2) Die Klägerin fuhr als Insassin im Kfz „B“ ihres Lebensgefährten mit und wurde dabei schwer verletzt. Sie ist britische Staatsangehörige. Das Kfz „B“ ist in Österreich bei dem Versicherer „X“ versichert.
- 3) Die Klägerin wird in Wien akut behandelt und kehrt anschließend nach Grossbritannien zurück.
- 4) Sie klagt in Grossbritannien gegen den österreichischen Versicherer
Streitwert mehrere Mio €
Mindestdeckugssumme in Mazedonien in 2007 €100.000

B Fragestellung

- 1) Wie sollte sich der Versicherer verhalten ?
- 2) Wie die Klägerin ?
- 3) Kommt die 4.KH-RL zur Anwendung ?
- 4) Welcher Gerichtsstand ?
- 5) Welche Rechtsordnung ?

Fallbeispiel III

(Anwendung von Artikel 4 Ziff. 7 bzw. Artikel 6 der Internal Regulations)

A Sachverhalt

1. Unfallhergang:

Kollision zwischen zwei italienischen Fahrern „A“ und „B“ 2004 in der Schweiz,
Unfallverursacher mit gewöhnlichem Standort in Italien
Unfallopfer ist italienischer Staatsbürger „A“;
Verantwortung des italienischen Fahrers „B“ ist unstrittig;

2. Abwicklung:

Der Schweizer Korrespondent (K) des italienischen Versicherers zahlt am 1. 3. 2007 unter dem Titel „Sozialversicherungsregress“ CHF 100.000 und verlangt dies von dem italienischen Versicherer zurück.
Langer Briefwechsel ohne Ergebnis, da der italienische Versicherer nicht zahlungswillig ist.

Am 20.10.2007 wendet sich K. an das Schweizer Büro mit der Bitte, die Forderung beim italienischen Büro geltend zu machen. UCI lehnt eine Erstattung mit Hinweis auf Verjährung wegen des Ablaufs der 1-Jahresfrist gem. Art.4 Ziff.7 der Internal Regulations ab (diese Frist gilt ab dem Datum der letzten Zahlung an den Geschädigten). Diese Frist war unbestritten abgelaufen.

Daraufhin kündigt das Schweizer Büro einen Guarantee-Call an. Aber auch jetzt verweigert UCI die Erstattung, obwohl bei einem GC gem. Art.6 IR eine 2-Jahresfrist ab dem Datum der Rechnungsstellung gilt , die nicht abgelaufen ist .

3. Fragestellung

- a. Welche Frist ist hier einschlägig ?
Die 1-Jahresfrist gem.Art. 4 / 7 oder die 2-Jahresfrist gem. Art. 6 / 1 ?
- b) Wie verhalten sich die beiden Vorschriften zueinander ?
Wird Artikel 6 nicht durch Artikel 4 / 7 unterlaufen ?
- c) Kommt es dabei auch darauf an . ob das Schweizer Büro seinerseits den Korrespondenten entschädigt hat ?

Beilage zu Fallbeispiel III

Internal Regulations

Article 4 Correspondents

1. Subject to any agreement to the contrary binding it to other bureaux and/or to any national legal or regulatory provisions, each bureau shall set out the conditions under which it grants, refuses or withdraws its approval to correspondents established in the country for which it is competent.
However, this approval shall be granted automatically when requested in the name of a member of another Bureau for any establishment of this member in the country of the Bureau receiving the request provided that such establishment is authorised to transact insurance against civil liability in respect of the use of motor vehicles.
2. Bureaux in the Member States of the European Economic Area undertake when receiving such a request, to approve as correspondents in their country claims representatives already appointed by insurers of the other Member States pursuant to Directive 2000/26/EC. This approval cannot be withdrawn as long as the correspondent concerned retains its capacity as a claims representative under the said Directive unless it is in serious breach of its obligations under this Article.
3. Only a bureau shall have the authority, on the request of one of its members, to send to another bureau a request for approval of a correspondent established in the country of that bureau. This request shall be sent by fax or e-mail and supported by proof that the proposed correspondent accepts the requested approval.
The bureau concerned shall grant or refuse its approval within three months from the date of receipt of the request and shall notify its decision and its effective date to the bureau that made the request as well as to the correspondent concerned. In the event of no response being received, approval shall be deemed to have been granted and to have taken effect on the expiry of that period.
4. The correspondent shall handle all claims in conformity with any legal or regulatory provisions applicable in the country of accident relating to liability, compensation of injured parties and compulsory motor insurance, in the name of the bureau that has approved it and on behalf of the insurer that requested its approval, arising out of accidents occurring in that country involving vehicles insured by the insurer that requested its approval.
When any settlement envisaged exceeds the conditions or limits applicable under the compulsory motor civil liability insurance law applicable in the country of accident, whilst covered under the policy of insurance, the correspondent must comply with the provisions set out in Article 3(5).
5. The bureau that has granted its approval to a correspondent recognises it as exclusively competent to handle and settle claims in the name of the bureau and on behalf of the insurer that requested its approval. The bureau shall inform injured parties of this competence and forward to the correspondent any notifications relating to such claims. However it may, at any time and without any obligation to justify its decision, take over the handling and settlement of a claim from a correspondent.
6. If, for whatever reason, the bureau that granted the approval is required to compensate any injured party in place of the correspondent, it shall be reimbursed directly by the bureau through which the request for approval was sent, in accordance with the conditions set out in Article 5.

7. Subject to the provisions of Article 4(4), the correspondent is free to agree with the insurer that requested its approval the conditions for reimbursement of sums paid to injured parties and the method for calculating its handling fees which agreement, however, shall not be enforceable against any bureau.

If a correspondent is unable to obtain reimbursement of advance payments it has made in accordance with the conditions set out in Article 4.4 on behalf of the insurer that requested its approval, it shall be reimbursed by the bureau that approved it. The latter bureau shall subsequently be reimbursed by the bureau of which the insurer in question is a member in accordance with the conditions set out in Article 5.

8. When a bureau is informed that one of its members has decided to dismiss a correspondent, it shall immediately so inform the bureau that granted the approval. This latter bureau shall be at liberty to determine the date on which its approval will cease to have effect.

When a bureau that granted approval to a correspondent decides to withdraw it or is informed that the correspondent wishes to have its approval withdrawn, it shall immediately so inform the bureau that forwarded the request for the approval of the correspondent. It shall also inform the bureau of the date of the correspondent's effective withdrawal or the date on which its approval will cease to have effect.

Article 5 Conditions of reimbursement

1. When a bureau or the agent it has appointed for the purpose has settled all claims arising out of the same accident it shall send, within a maximum period of one year from the date of the last payment made in favour of an injured party, by fax or e-mail to the member of the bureau which issued the Green Card or policy of insurance or, if appropriate, to the bureau concerned a demand for reimbursement specifying:
 - 1.1. the sums paid as compensation to injured parties under either an amicable settlement or a court order;
 - 1.2. the sums disbursed for external services in the handling and settlement of each claim and all costs specifically incurred for the purposes of a legal action which would have been disbursed in similar circumstances by an insurer established in the country of the accident;
 - 1.3. a handling fee to cover all other charges calculated under the rules approved by the Council of Bureaux.
When claims arising out of the same accident are defended and settled without any compensation being paid, such sums as provided in subparagraph (1)(2) above and the minimum fee fixed by the Council of Bureaux in conformity with subparagraph (1)(3) above may be claimed.
2. The demand for reimbursement shall specify that the amounts due are payable in the country and in the national currency of the beneficiary, free of costs, within a period of two months from the date of demand and that, on expiry of that period, late interest at 12 % per annum on the amount due from the date of the demand until the date of receipt of the remittance by the bank of the beneficiary shall apply automatically. The demand for reimbursement may also specify that amounts expressed in the national currency are payable in euro, at the official rate of exchange current in the country of the claiming bureau at the date of the demand.
3. Under no circumstances shall demands for reimbursement include payments for fines, bail bonds or other financial penalties imposed upon an insured which are not covered by insurance against civil liability in respect of the use of motor vehicles in the country of accident.
4. Supporting documents, including the objective proof that compensation due to injured parties has been paid, shall be sent promptly on demand but without delay to the reimbursement.

5. Reimbursement of all sums cited in subparagraphs (1)(1) and (1)(2) above may be claimed in accordance with the conditions set out in this Article notwithstanding that the bureau may not have settled all claims arising out of the same accident. The handling fee provided for under subparagraph (1)(3) above may also be claimed if the principal sum which is the subject of the reimbursement is in excess of the amount fixed by the Council of Bureaux.
6. If, after satisfaction of a reimbursement demand, a claim is reopened or a further claim arising out of the same accident is made, the balance of the handling fee, if any, shall be calculated in accordance with the provisions in force at the time when the demand for reimbursement in respect of the re-opened or further claim is presented.
7. Where no claim for compensation has resulted from an accident, no handling fee may be claimed.

Article 6 Obligation of guarantee

1. Each bureau shall guarantee the reimbursement by its members of any amount demanded in accordance with the provisions of Article 5 by the bureau of the country of accident or by the agent that it has appointed for the purpose.
If a member fails to make the payment demanded within the period of two months specified in Article 5, the bureau to which this member belongs shall itself make the reimbursement in accordance with the conditions described hereunder, following receipt of a guarantee call made by the bureau of the country of accident or by the agent that it has appointed for the purpose.
The bureau standing as guarantor shall make the payment within a period of one month. On expiry of that period, late interest at 12 % per annum on the amount due, calculated from the date of the guarantee call to the date of receipt of the remittance by the beneficiary's bank, shall apply automatically.
The guarantee call shall be made by fax or e-mail within a period of 12 months after the date of despatch of the demand for reimbursement under Article 5. On expiry of that period and without prejudice to any late interest for which it may be liable, the liability of the Bureau standing as guarantor shall be limited to the amount claimed from its member plus 12 months interest calculated at 12 % per annum.
No guarantee call shall be admissible if made more than two years after the despatch of the demand for reimbursement
2. Each bureau guarantees that its members shall instruct the correspondents whose approval they have requested to settle claims in conformity with the provisions of the first paragraph of Article 4(4) above and forward to those correspondents or to the bureau of the country of accident all documents concerning all claims entrusted to them.

Explanatory Memorandum of the Internal Regulations

4.7 Insurers and their Correspondents are free to agree among themselves the terms for reimbursements and handling fees. These terms shall not, however, be enforceable against Bureaux which means that if a Bureau has to act in place of a Correspondent it shall do so in accordance with the rules set out in Article 5 and shall not be bound by those agreed between the insurer and the Correspondent.

The second paragraph provides that the Bureau having approved a Correspondent shall reimburse him for any sum (i.e. compensation, costs and charges relating to the compensation of injured parties, excluding the handling fee) that the Correspondent may have advanced and for which he fails to obtain reimbursement. Prior to making any such reimbursement the Bureau shall ascertain that payment has indeed been made in compliance with the provisions of Article 4.4. In other words, the Bureau shall ascertain that the Correspondent has taken all the steps which would have been taken if the Bureau had handled the claim itself. The Bureau shall subsequently be reimbursed in accordance with the conditions set out in Article 5 by the Bureau that sent the request for approval.

2005 General Assembly, Decision No. 6 – Reimbursement of payments by a correspondent

In the spirit of Article 5.1 of the Internal Regulations according to which a request for reimbursement shall be made within a maximum period of 1 year from the date of the last payment made in favour of an injured party, a correspondent who is unable to obtain reimbursement from the insurer can request reimbursement from the bureau that approved it within a maximum period of 1 year from the date of the last payment made in favour of an injured party.

The bureau which has reimbursed the correspondent shall request reimbursement from the bureau of which the insurer is a member within a maximum period of 1 year from the date of the last payment made in favour of the correspondent, as per Article 5.1.

2006 General Assembly, Decision No. 2 – Reimbursement of Correspondents

The second paragraph of Article 4.7 shall be interpreted in the sense that the request for reimbursement sent to the Bureau, of which the insurer is or was a Member, shall also include a handling fee if due and the late interest in accordance with the conditions set out in Article 5, but the requested handling fee and late interest shall not exceed the provisions of Articles 5.1.3 and 5.2. The handling fee and late interest shall be reimbursed to the approved correspondent by the Bureau which sent its request for reimbursement according to Article 5, after such amounts are received from the Bureau of which the insurer is or was a Member.