



## Vehicles as Weapons of Terror – To What Extent Are Insurers Liable?

by Manfred Tews, Gen Re, Cologne

As details of a potential third terror attack using a vehicle in London in as many months emerge, this article looks at some of the complexities involved in compensating the victims of such devastating atrocities in Europe at present.

The series of attacks in which vehicles have been used to devastating effect has understandably been keeping the public on edge. These acts are characterised by their spontaneity and lack of need for preparation or organised structure that might appear on intelligence agencies’ radars.

Before the latest attack near a mosque in Finsbury Park, the most recent example took place in London on 3 June 2017; three attackers in a rented van struck pedestrians on London Bridge, before launching knife attacks on civilians in the Borough Market area, killing eight and injuring 48.

In Stockholm on 7 April 2017, an attacker drove a stolen HGV at people in a pedestrian area, killing four and injuring 15, some seriously.

Two weeks prior, on 22 March 2017, an attacker in a rented vehicle ran over several pedestrians on Westminster Bridge in London before leaving the vehicle and fatally stabbing a police officer. Meanwhile, memories of the attacks in Nice on 14 July 2016 and Berlin on 19 December 2016, both involving an HGV, have yet to fade.

Looking at the attacks purely from an insurance perspective, these unthinkable acts raise an interesting question with regard to the extent to which vehicle liability insurers should step up and bear the consequences.

In the past, drivers running amok were mainly the cases that shocked the public from time to time and were covered by vehicle liability insurers. Both those cases and the recent terrorist acts have something in common in that the perpetrator uses the vehicle to carry out the deed.<sup>1</sup> However, “amok” is a psychiatric condition where a person attacks others suddenly and indiscriminately. In terrorism the violence inflicted on others is politically, religiously or financially motivated.<sup>2</sup>

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### About This Newsletter

*Insurance Issues* provides an in-depth look at timely and important topics on property/casualty insurance industry issues.

In Europe at present the duty of vehicle liability insurers to provide coverage is not tied to the intentions of the driver, but rather solely to the operation of the vehicle. This is construed extremely broadly with a view to providing victims with the most comprehensive protection possible, and therefore could encompass running amok and terrorism.

Even if it is used to injure or kill people, the vehicle does not lose its status as a vehicle, and the operation of the vehicle is therefore categorised as being “like a weapon”.<sup>3</sup> A line can only be drawn when the act is no longer linked to the operation of the vehicle; for instance, if a parked car is used to house a bomb or if a gun is fired from inside a car.

### Differentiating between running amok and terrorism

The question of whether an act should be categorised as terrorism or running amok is particularly relevant in countries with a guarantee fund for the victims of terror attacks, such as France (*FGTI, Fonds de garantie des victimes des actes de terrorisme et d'autres infractions*), or in countries like Spain, where the state pays the compensation (in Spain, intentionally committing a crime does not count as a traffic offence).<sup>4</sup> Following the attacks in Nice, the French terror fund was quick to confirm its duty to provide coverage, thereby releasing the vehicle liability insurer of the rented French HGV from its obligations. (The fund would have provided coverage even if the vehicle had been foreign.)<sup>5</sup>

### Potential duty of vehicle liability insurers to provide coverage

Given the six vehicle liability directives now in effect in Europe, one would be forgiven for thinking there would be a standard framework of compensation for accidents involving vehicle liability. However, the terrorism issue has shown that this is still a long way away in certain areas. The handling of the attack on the Christmas market in Berlin on 19 December 2016 is just one example that highlights this.

First of all, the public was highly unsure as to how the victims were to be compensated. The German Crime Victims Compensation Act (OEG) provides for government assistance in the event of attacks in Germany, yet pursuant to Section 1 (11) OEG the Act does not apply if the attack was carried out using a vehicle.

Additionally, the direct claim of the injured party against the vehicle liability insurer, pursuant to Section 103 of the German Insurance Contract Act (VVG), is excluded in Germany if the jointly insured driver acted with intent.

To balance this out, Section 12 (1) of the German Obligatory Car Insurance Act (PflVG) stipulates that the association Verein Verkehrsofferhilfe e.V. will serve as a compensation fund, yet only subsidiarily if and when the injured party is unable to demand compensation from third parties, especially the owner.

The liability of the owner of the vehicle – and in turn the duty of the insurer to provide coverage – is not contingent on the intent of the driver. As the potential opponent of the claim, the owner is generally liable for any personal injury and damage to property caused during the operation of his/her vehicle, regardless of culpability, pursuant to Section 7 (1) of the German Road Traffic Act (StVG) and Section 12 (1) line 2 PflVG.

However, as the perpetrator of the attack on the Berlin Christmas market used violence to obtain possession of the HGV, the vehicle was used without the knowledge or volition of the Polish shipping company to which it belonged. In this case, the company is not liable because this violent “joyride” for which the company was not at fault is subject to a statutory exception: Section 7 (3) line 1 StVG.

Verein Verkehrsofferhilfe e.V. therefore got to work shortly after the incident; it settles claims like a German insurer, yet only as part of the minimum coverage per case of damage – EUR 7.5 million for personal injury and EUR 1 million for damage to property (Annex 2 to Section 4 (2) PflVG).

According to the Rome II Regulation of the EU, the applicable law at the time was based on the law of the location of the accident – German law in this case. This also applies to injured parties of other nationalities who were able to file claims and lawsuits in their home countries.

As the compensation was expected to amount to tens of millions of Euros, the situation only relaxed when it was decided at a political level to apply the German Crime Victims Compensation Act (OEG) to that particular case.

The cases touched upon so far demonstrate that the vehicles used to commit attacks are rarely owned by the perpetrators:

- London, 19 June 2017 –  
Details as yet unknown at time of publication
- London, 7 June 2017 –  
Van owned by a British rental company
- Stockholm, 7 April 2017 –  
Truck belonging to a Swedish brewery
- London, 22 March 2017 –  
Car owned by a British rental company
- Berlin, 19 December 2016 –  
Truck belonging to a Polish shipping company
- Nice, 14 July 2016 –  
Truck owned by a French rental company

This represents a potential risk to vehicle owners (and their vehicle liability insurers) who grant use of their vehicles to others (e.g. rental car companies, taxi firms and parcel delivery firms). Violations of duties of care – in connection, for instance, with the safekeeping of keys or the selection and monitoring of drivers – can also place the owner at risk of being personally liable beyond limited amounts of cover.

The attack in Berlin also made it clear that terrorism using vehicles does not stop at borders. Under the green card system, vehicles always benefit from insurance protection in line with the minimum amounts of cover in the country in which they travel. This can lead to unpleasant surprises for vehicle liability insurers if, for example, a German vehicle is used in an attack in a country that does not exclude damage caused by willful misconduct and provides for unlimited minimum cover (e.g. Great Britain).

## Conclusions

The attack in Berlin highlighted an unsatisfactory legal situation that places the burden on survivors and injured parties to file their claims with different bodies. For those affected by these horrific events, it must be galling that their claims are treated as “normal” traffic accidents, especially when they appear to be “second class” due to the subsidiarity of Verein Verkehrsofferhilfe e.V. In addition is the worry stemming from the fact their claims might be limited, depending on the number of injured parties or severity of the losses.

Vehicle liability insurers must take the following into consideration with regard to terror attacks:

- The German exception for damage caused by willful misconduct pursuant to Section 103 WG is invalid if the owner, who is not the driver, is liable.
- In cases of international terrorism, the duty to provide coverage might be higher in another country due to different levels of minimum cover.
- Levels of compensation (e.g. for damage to property) often vary significantly between different countries.
- The number of claimants and the unique emotional situation of the injured parties can pose an extraordinary challenge in terms of the processing of claims.

In summary, the need for the consequences of terror attacks to be handled at a national level is clear. The original intention of vehicle liability insurance was to cover the risks associated with the movement of the vehicle. It makes sense that types of conduct that have little to do with this original intention should therefore not be covered by these companies’ insurance policies.

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## Endnotes

- 1 [https://en.wikipedia.org/wiki/Running\\_amok](https://en.wikipedia.org/wiki/Running_amok).
- 2 See Wikipedia: <https://en.wikipedia.org/wiki/Terrorism>.
- 3 Higher Regional Court of Hamm, judgement of 15 June 2005, ref. 13 U/63/05, NJW-RR 2006,397.
- 4 Art.1 No. 6 Real Decreto Legislativo 8/2004 de 29 de octubre/Sentencia T.S. 155/2012 (Sala 1) de 9 de marzo; Ley 29/2011, de 22 de septiembre, de Reconocimiento y Protección Integral a las Víctimas del Terrorismo.
- 5 [http://www.fondsdegarantie.fr/images/Livret\\_dinformation\\_à\\_destination\\_des\\_victimes\\_de\\_lattentat\\_14\\_juillet\\_2016.pdf](http://www.fondsdegarantie.fr/images/Livret_dinformation_à_destination_des_victimes_de_lattentat_14_juillet_2016.pdf).

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