

Direct claim / action under an insurance contract: Can a Dutch party claim damages from a Czech insurer?

This article concerns the international transport of goods by road.

The transport of goods involves risks, such as the goods being stolen. Companies often take out insurance against such risks. If a Dutch insurer compensates a Dutch company for damage resulting from, for example, the theft of goods, the Dutch insurer will attempt to seek direct action against the Czech insurer. This is straightforward for the Dutch insurer, as in many cases the insurer can bring proceedings in the Netherlands and summon a Czech insurer to appear in court there. This is very inconvenient for the Czech insurer. Firstly, the Czech insurer must litigate in another country (in this case the Netherlands) under Dutch procedural law and in the Dutch language. As in many cases Czech law applies to the insurance policy, the matter will be heard by a 1) Dutch court, 2) under Dutch procedural law, 3) in the Dutch language and 4) dealt under Czech law. This means that the assistance of both Dutch and Czech lawyers will be required.

For a Czech insurer, this is a costly affair. The Dutch insurer is aware of this and therefore attempts to exert pressure to reach a settlement. Such a settlement means that the Czech insurer – which is being pressured – pays out money anyway to avoid legal proceedings. In essence, the Dutch insurer is rewarded for exerting pressure and receiving money to which it has no right. Unfortunately, such practices are becoming more common, and it is wise for the Czech insurer to be aware that the Dutch insurer has absolutely no right to demand payment.

Insurance agreement

The insurance terms and conditions state who the beneficiary is.

In most cases, the beneficiary will be a Czech party. This is logical, as the Czech party is the one who takes out the insurance. This means that, under the insurance agreement, only the Czech party can claim on the insurance.

Direct action

Whether direct action is possible depends on the applicable national law.

The insurance terms and conditions specify which law applies. If the insurance policy has been taken out by a Czech party with a Czech insurer (or with an insurer having a branch in the Czech Republic), Czech law will in many cases apply to the insurance contract.

It is then important to determine whether a direct action is possible under Czech law. This means that it must be determined whether direct action against the Czech insurer is possible under Czech law.

In a few exceptional cases, it is possible to take direct action against an insurer, for example in the case of motor vehicle liability insurance. This is compulsory insurance. In the event of damage caused by a vehicle to another property or person, the injured party has a “personal right to compensation” against the insurer. However, this is not the case here.

However, when it comes to voluntary insurance – in this case, insurance for the goods – direct action is not possible. Under Czech law, direct action is not possible for this type of damage.

What does this mean for you?

If a Dutch party / insurer claims to have a claim on the basis of direct action, it is important to first determine what damage is involved and which law applies. It is good to know that direct action is not possible under Czech law. Only if the damage arises from motor vehicle liability insurance (compulsory insurance) is direct action possible.

The Czech insurer would be well advised to send a letter to the Dutch insurer (or its solicitor) arguing that only the beneficiary can make a claim under the policy and that, under Czech law, there is no direct right of action for the damages claimed.

In a case our firm handled, the Dutch insurer refused to listen and went ahead with the proceedings anyway. The Czech insurer was found by Dutch court to be entirely in the right. The Dutch court ruled decisively against the Dutch insurer and reprimanded it. The Dutch court even awarded the Czech insurer a higher reimbursement of legal costs as a penalty for the Dutch insurer’s unnecessary litigation. The Dutch insurer was therefore severely punished for this conduct.

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