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NEWSLETTER 03

Driven Forward: EV Insurance Hurdles, Evolving Injury Claims & Fleet Underwriting Tips

The Challenges of Insuring Electric Vehicles

Author: Andre Farrugia, PhD MSc FCII CFIRM

The popularity of electric vehicles (EVs) continues to rise due to the increasing number of individuals embracing eco-friendly transportation options. Consequently there is a surge in the requirement for specialised insurance coverage for these vehicles. Insurers face distinct challenges when it comes to insuring electric vehicles, encompassing issues such as the elevated expenses associated with repairs and the intricacies involved in underwriting risks specific to EVs.

In this edition:

Do I need a Professional Indemnity and D&O Insurance Policy? 1

The Consequences of Professional Mistakes 3

Professional Indemnity Insurance ... 4

Our Trip to London's Insurance Hub 6

Introduction to Insurance Bootcamp 7

Repair and Replacement Costs

One of the main challenges insurers face when providing coverage for electric vehicles is the significantly higher repair and replacement costs compared to conventional vehicles. EVs incorporate expensive lithium-ion battery packs, advanced electronics, and specialised components, making repairs more intricate and costly. Moreover promising a replacement vehicle until the damaged vehicle is being repaired, is a challenge in itself, as there is no adequate replacement fleet (like with like) readily available. These higher costs directly impact insurance premiums, as insurers need to account for the increased expenses in the event of accidents or damage.

Lack of Standardisation in Repair Procedures

Unlike traditional petrol vehicles, electric vehicles have not yet established standardised repair procedures and protocols. This lack of uniformity can create challenges for insurers, as they must navigate a more complex landscape when assessing repair costs and establishing relationships with repair facilities. The absence of standardised repair practices in the EV market contributes to uncertainty in estimating repair times and costs, making it more difficult for insurers to accurately price their policies. This is set to even out but only when critical mass is reached.

Limited Availability of Qualified Technicians

Another issue insurers face when insuring electric vehicles is the limited availability of technicians with the expertise to survey, service and repair these advanced vehicles. This scarcity of expertise can lead to longer repair times and higher costs, further impacting the insurers' ability to effectively underwrite and price EV insurance policies.

Evolving Technology and Risk Assessment

The rapid pace of technological advancements in the electric vehicle industry presents a challenge for insurers in assessing and managing associated risks. As EV technology continues to evolve, insurers must stay abreast of these developments and adapt their underwriting and risk assessment processes accordingly. This dynamic landscape requires insurers to continually update their knowledge base and risk models to accurately account for the unique characteristics of electric vehicles.

The expanding market for electric vehicles presents insurers with a range of complex challenges, from the high repair and replacement costs associated with EVs to the evolving technology and infrastructure considerations. We are currently somewhere within the learning curve and thus successfully addressing these issues requires insurers to continually adapt their approaches to underwriting, risk assessment, and claims management. By developing specialised expertise and enhancing collaboration with industry stakeholders, insurers can effectively meet the unique insurance needs of electric vehicle owners and contribute to the sustainable growth of the EV market.

Damages in Personal Injury Claims – A Shifting Landscape

Author: Francis Valletta, ACII, Chartered Insurer

The concept that compensation should be paid when one causes injury to another person, or causes loss or damage to their property, dates to the beginnings of civilisation with Babylonian law, the code of Hammurabi, that contained extensive provisions in this sense and was developed even further by the Romans.

Roman law in fact distinguished between different types of damages, including:

- "Damnum emergens" which referred to actual or direct damages suffered by the victim, such as the cost of repairing damaged property or medical expenses.

- "Lucrum cessans" which referred to loss of profit or income resulting from the wrongful act.

- "Pretium doloris" which referred to compensation for pain and suffering.

The Romans therefore recognised that a person should not only be compensated for any economic loss suffered as a consequence of the negligence of another person, but also for any pain or distress caused to the mind or body. These damages are known as "moral damages" but also as "non-material" or "non-pecuniary" damages, and most legal jurisdictions in Europe specifically allow for them.

While Malta's Civil Code refers to the awarding of "Damnum emergens" and "Lucrum cessans" damages, it makes no mention of "Pretium doloris" or any other type of moral damages. According to Claude Micallef Grimaud , the exclusion of moral damages was intentional, a decision attributed to Sir Adrian Dingli who in 1853, as Crown Advocate, started to draft several Ordinances that would eventually constitute the Maltese Civil Code. One of his main concerns about moral damages that led him to decide to exclude them was the fear that such damages could result in unjustified enrichment of the injured party. He felt that awarding such damages could go beyond the concept of restitutio in integrum (the principle of restoring a person or situation to the position they were in before a loss occurred, or as we refer to it in insurance "indemnity").

The lack of detailed provisions in Maltese law as to the way damages are calculated has meant that the quantification of damages has very much been left up to the judiciary. The formula laid down in the landmark judgement of Butler v Heard has influenced the awards of most judgements relating to personal injury cases in our courts, even if over time it has been refined and adapted to the circumstances. This formula is still the basis for calculating the loss of future earnings of the injured party during the remaining working life, resulting from the degree of permanent, physical disability suffered. If strictly interpreted, compensation should only be allowed if it is shown that the disability would actually result in the injured party's future earning potential being reduced,

however this factor is hardly ever considered by the courts. If for example, the injured party has incurred a 20% permanent disability (as rated by medical experts), this percentage of future income would be fully considered as lost as a result of the disability, even if the disability does not impact his or her income in any way.

The Court of Appeal, in a case going back to 2002 , had commented that it was unfair not to compensate a victim that suffered a permanent disability as a result of a traffic accident on the grounds that he suffered no actual loss of earnings. This was because such a person had no right under Maltese Law to claim moral damages, for such things as pain and suffering and for the diminution of the quality of his life owing to his disability. Our courts have been grappling with this issue for long, and aside from accepting that any permanent disability will always affect future income, in recent years it has become common for the courts to also accept that some compensation is awarded for what is termed as a "permanent psychological disability". This may result from the trauma incurred in the accident, such as post-traumatic stress disorder, especially if the physical disability incurred was a serious one. This has however created some controversy as assessing psychological as opposed to physical disability is more difficult, while there is often doubt as to the genuine nature of such a disability and whether it is in fact temporary rather than permanent.

The fact that there are no clear and defined rules, and that we do not have binding precedent in our legal system, means that there is always a degree of uncertainty when an insurer needs to decide on the reserve to put aside for a personal injury claim. This is because the damages awarded by the court in a specific case may sometimes be surprising and occasionally new factors that had not been considered in previous cases are introduced.

In one such case, Bugeja v Camilleri , the court awarded compensation for the "psychological trauma" incurred by the owner of a sports car (Bugeja), when his friend (Camilleri) crashed with it and rendered it a total loss. The car itself suffered damages costing €25,700, so naturally Camilleri had to compensate Bugeja for this financial loss, but in addition, the court also ordered him to pay an additional €59,000 as damages for the psychological disability incurred by Bugeja. Although Bugeja suffered no physical injury, he was not even in the car when it crashed, he was diagnosed as having suffered from "emotional disturbances" that changed him and that affected his work and social habits as a result.

In the meantime, an ongoing case in front of the Constitutional Court is challenging the validity of the Butler v Heard formula. This was brought by the heirs of a man who had died in a work-related accident as they are claiming that the use by the courts of this formula was in breach of their rights. They are arguing that it is discriminatory as it bases the calculation, among other things, on the victim's age. Their father had died as a result of injuries received when he was hit by a truck manoeuvring on a narrow road. It is likely that using the formula would result in the amount of compensation payable being rather low since technically there was hardly any loss of future income considering that deceased was already past retirement. The plaintiffs are probably expecting that the outcome of the case will be that a different method of calculating compensation that takes into consideration other heads of damages is used, possibly therefore including some form of moral damages.

This uncertainty surrounding the calculation of damages often also serves as a barrier when insurers and the lawyers representing the injured party are trying to negotiate a fair out-of-court settlement in personal injury claims. Insurers in Malta have in fact long lobbied for changes in the law to bring more clarity as this would likely result in less cases going to court and in speedier negotiations.

An effort was made in 2011 to amend the existing legal framework of civil damages through Bill 78 that was aimed at amending articles 1045 and 1046 by incorporating new provisions, including limited non-pecuniary damages. This bill however never made it

beyond the First Reading stage in parliament. Then in 2014 the Justice Minister of the time had set up a commission to recommend changes to the way in which compensation is awarded by the courts. The commission's report was never made public, but in an interview given by Dr Paul Cachia to the Times of Malta who headed the commission, he had made this very relevant comment on moral damages, "This is a very thorny issue. Should you compensate for moral damages at all? How do you quantify pain and suffering? And what about the effect of moral damages on the economy? At the end of the day, policyholders will end up paying for any compensation awards through their motor insurance premium, for example. It is not in the interest of Malta to go to the extremes seen in other countries." He also said that "We must never forget that justice needs to be done not only with the claimant but also with the defendant."

Whether the required changes in the way damages are calculated and awarded come about as result of court judgements, or due to amendments in the law, what ultimately matters is that the method used to calculate compensation is not only fair but also transparent and consistent. It must bring about enough certainty and confidence that will allow insurers and injured parties to reach swift agreements on the settlement of claims, and thus make it less likely for these cases to end up in court. Ultimately, we must keep in mind that it is not only important that injured parties receive a fair amount of compensation but that they also receive compensation in a timely manner, and that they do not have to wait years for it, which is an injustice in itself.

Motor Fleet Underwriting

Author: Hubert Said,
ACII – Chartered Insurance Practitioner

What is motor fleet insurance all about? Put simply, when a group of vehicles owned by a company or an individual are insured together as a fleet, the premium is mainly determined by the level of risk of that group of vehicles, instead of by the insurer's overall experience with its motor account. This may mean lower premiums especially when one also considers the savings that an insurer can make on administrative costs as it is less costly to process group of vehicles belonging to one owner as opposed to each one having separate ownership. Very often in fact only one policy and one "blanket" certificate of motor insurance is issued.

It is common that fleets in countries larger than Malta, like the UK, are made up of hundreds of vehicles, and thus the rating methods for fleets described in insurance textbooks, are designed for such fleets. One can therefore legitimately question whether these methods are also suitable for the much smaller fleets we tend to have in Malta.

As we all know insurance is based on the "law of large numbers". This basically means that the larger the number of similar risks that are insured together, the more accurate the claims predictions become, enabling more accurate rating. This is where the issue of fleet size arises. What is a large enough number of vehicles that is able to provide data that is suitable for accurate rating?

There is no specific answer to this question, however it is likely that no fleet in Malta is sizable enough to adopt the flat-rate per vehicle method used by many UK insurers. The insurer calculates the expected cost of claims using the "burning cost" method and adds to

these operational costs plus a profit element. The result will be the total premium required for the fleet and a flat premium per vehicle is obtained by dividing it by the number of vehicles. In actual fact, it is divided by the number of "vehicle years" since the size of a large fleet is likely to be constantly changing during the period of insurance as vehicles are added and removed. A vehicle year represents the actual exposure of each vehicle, indicating how long each one was part of the fleet over the course of a year. With this approach, the premium collected will reflect the changing size of the fleet and is administratively less costly to operate since there is no need to calculate the premium to be charged separately for each vehicle. In fact, there is no need for the insured to notify the insurer of each vehicle in the fleet, as a declaration listing them would be submitted periodically, say every quarter or every six months.

So, can we take anything from this approach to use with smaller sized fleers? The answer is that yes, we can use quite a lot of it. To start with, using the burning cost method to calculate the expected claims cost for the coming year is a good approach. However, with smaller fleets one needs to be careful about the impact that one or two high value claims may have on the total result. It would make sense to try and smoothen these out. Smoothing is a statistical technique for the removal of irregularities in a time-series data by reducing the financial impact of large losses which are distributed over more than one year.

There is then a choice as to how to charge the premium per vehicle. Most underwriters would work out the premium per vehicle using the standard rates then add up these together to get the total premium and compare that to the expected cost. The difference would be expressed as the fleet discount that is to be allowed on the basic premium. If the fleet is sizeable and homogenous enough, one could consider banding the vehicles in groups (for instance by value or by engine power or even insurance groupings) and charge a premium per band. This makes the process less burdensome administratively.

When underwriting fleets, pricing them correctly is very important but so also is the risk management part. Quite often commercial pressures to keep the fleet premium low apply especially since fleet owners tend to have other commercial business placed or about to be placed with the insurer. This may limit the ability of the motor underwriter to price the fleet at the correct level. One must also remember that it is better if losses can be prevented, than having to pay the claims that result from not having the risk well-managed, as the old adage goes "prevention is better than cure". Thus, working with the insured to identify the specific risks that can give rise to claims, and to take measures to minimize them, can help the fleet remain profitable. Measures need not be only prescriptive but could also be in the form of incentives awarding drivers with a good claims record, or additional training in how to drive more safely.

WORKSHOP

Motor Insurance Advanced Proficiency

18th September 2024
14:00 - 17:00
MITC Training Centre

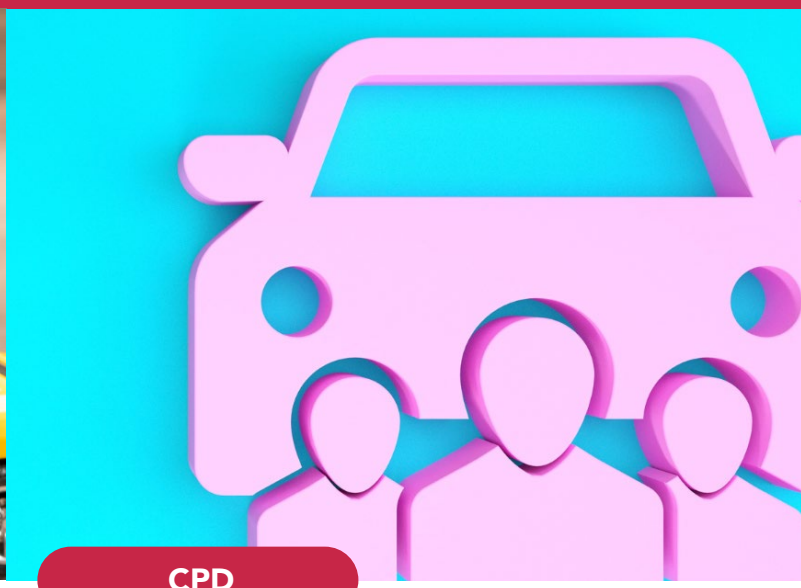
This workshop is designed for those who have some experience in motor insurance and who want to delve into the underwriting of more complex motor risks, cross border motor insurance and claims, adjusting personal injury and fatality claims and the overall management of a motor portfolio.

The workshop will include case studies allowing participants to apply the knowledge gained to real-life scenarios.

Topics covered

The law that makes motor third party liability insurance compulsory and its implications, Underwriting commercial vehicle risks, fleets, motor traders and contingent liability polices, Cross border cover and claims, Motor Claims Management

Click here to apply



CPD

Insurance in the Age of Shared Mobility: Challenges & Solutions

16th October 2024
12:00 - 14:00
Online

Motor insurers are facing a paradigm shift in mobility with low powered vehicles, ride and vehicle sharing, how best to tackle it?

As the transportation and the mobility sector undergo unprecedented transformation, traditional underwriting methods may fall short in addressing the emerging risks on the roads. In the absence of historical data, insurers must adapt by delving into innovative approaches to analyse, price, and monitor these novel risks. Gain important insights into the challenges being faced and the solutions being proposed and explore some of the strategies that are being adopted.

Click here to apply

PAST WORKSHOPS

Practical Marine Insurance Workshop

From May 20th to 23rd, 2024, MITC, in collaboration with the Ghana Insurance College, organised the Practical Marine Insurance Workshop. This workshop combined both theoretical and practical aspects of marine insurance.

Led by Mr. Norbert Cordina, the training covered several key topics, including marine shipment and containerisation, marine cargo insurance cover clauses, explanations of cargo clause exclusions, and cargo claims workshops.

Nineteen participants from Ghana attended the workshop, representing various entities such as the Ghana National Insurance Commission, the Ghana Shippers' Authority, and eight different insurance companies.

The visit also featured an engaging tour of the Malta Freeport, where the group was welcomed by Ms. Caroline Borg, Manager of Marketing Research & Sales. The visit included a presentation on Malta Freeport Terminals facilities and a tour of the Freeport's Control Room, showcasing the operations of the Berthing, Ship and Yard Planning, and Equipment Control departments.

A successful week enjoyed by all bodes well for future collaboration with the Ghana Insurance College and the broader Ghanaian insurance community.

Introduction to Insurance Bootcamp

MITC Training Centre

Empowering Future Insurance Professionals!

The Introduction to Insurance workshop, conducted by seasoned trainers Andre Farrugia and Mark Anthony Debono, took place on May 15th. This was the second edition of the workshop in 2024, and it proved to be a resounding success once again.

Aimed at individuals new to the industry, those seeking entry into the field, and anyone desiring a general understanding of insurance, this one-day workshop covered fundamental concepts related to insurance practices and principles.

Topics addressed included the general nature of insurance, the structure of the insurance market, the operation of insurance, underwriting and risk sharing, and the key aspects of claims and procedures.

The enthusiastic participation of the trainees greatly contributed to the success of the workshop, making it a truly enjoyable and productive experience.

The next bootcamp will take place in Q2, 2025. Let us know if you're interested in joining by contacting us on admin@mitcentre.com.mt

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