

## Agreement

Body	Claims Manager Commission (CMC)
Date	12 March 2008
Subject	<b>Agreement on the regulation of claims arising from pile-ups</b>

### Preliminary remarks

At the beginning of November 2003 there was a pile-up on the A1 involving 70 vehicles. More than 50 people were injured and one person died. In view of the extent and complexity of the event the CMC decided to work out some pragmatic solutions in cooperation with the victims and the insurers involved.

Its aim in so doing was to guarantee that claims were handled rapidly and to spare the victims and insurers protracted investigations and disputes related to liability issues. This was achieved, and property and personal injury claims were dealt with in a way that met with the acceptance of all those involved.

The favourable experience gained from this event prompted the CMC to appoint a working group to draft an agreement intended to lay down provisions to be adopted, in the case of future incidents of a similar nature, by all insurers operating in Switzerland who could be involved in handling claims arising from a pile-up.

Meeting on numerous occasions, the working group formulated the following agreement based on the solutions developed for the pile-up of 2003. It regulates specifically the treatment of property and personal injury claims and seeks to further streamline the way in which claims were handled in 2003. It centres around the creation of a task force comprising not only representatives of the private insurance industry but also those of the social insurers and the FSIO. The task force is responsible for the implementation of the agreement.

At its meetings of 19/20 June and 16 November 2006, the CMC approved the draft and commissioned the working group to take up the matter further with SUVA, the FSIO and health insurers. Contacts with SUVA, the FSIO, Helsana, CSS, Groupe Mutuel, Visana, Sanitas and the Swiss National Bureau of Insurance NBI proved fruitful, and the feedback was, on the whole, positive. The CMC approved the definitive version of the following agreement at its meeting of 12 March 2008. The agreement is considered as having no implications for competition.

## 1 Scope of the agreement

This agreement applies to pile-ups involving at least 25 vehicles whose cause or sequence can either no longer be clarified after the fact or if so only at excessive cost.

## 2 Property damage claims are to be handled as follows:

### 2.1 *Property damage to vehicles*

- a. With motor physical damage cover: Physical damage insurers shall process claims submitted for vehicles for which they have concluded physical damage policies (without a deduction for gross negligence and loss of no-claims bonus, but subject to a deductible)
- b. Without physical damage cover: Motor liability insurers shall process claims submitted for vehicles for which they have concluded liability policies (maximum current market value, subject to a CHF 1 000 deductible)

### 2.2 *Damage to personal effects*

- a. The physical damage insurer shall handle claims covered under a physical damage policy.
- b. The household contents insurer shall handle claims in the absence of physical damage cover but where there is cover under a household contents insurance policy.
- c. Damage to cargo being transported by a haulage vehicle shall be handled by the marine insurer.
- d. In the absence of cover, the motor liability insurer shall handle claims for damage to items being transported in the vehicle for which it has concluded a liability insurance policy, up to a limit of CHF 1 000.

### 2.3 *Courtesy vehicle, towing and garaging charges*

- a. Physical damage insurers shall regulate these charges if covered under a physical damage policy; otherwise they will be assumed by the motor liability insurer under the motor liability policy.
- b. Courtesy vehicle charges shall be covered for the duration of the repair, up to a maximum of 10 days after the event. The same applies to immobilisation claims.
- c. Towing charges shall be paid to the nearest suitable garage; rescue charges shall be paid according to the time required;
- d. Garaging charges shall be covered up to a maximum of 20 days after the event.
- e. Additional charges shall not be covered.

### 2.4 *Minimum benefits of the property insurer*

Where a property insurance policy exists, the property insurer shall provide at the minimum benefits that the motor liability insurer indemnifies under the above points 2.1 to 2.3.

**2.5 Recourse**

The insurers surrender the right to seek recourse against each other irrespective of whether benefits have been provided under this agreement or according to the provisions of the law.

**3 Personal injury claims are to be handled as follows:**

**3.1 Principle**

Personal injury claims shall be processed by the motor liability insurer of the vehicle occupied by the injured or dead persons.

**3.2 Direct damage**

a. Claims for uncovered direct damage shall be reduced as follows (taking into account absence of evidence, operational risk or the claimant being at fault):

I. Passengers:	No reduction
II. Non-owner at the wheel:	20% reduction
III. Owner as passenger:	30% reduction
IV. Owner at the wheel	40% reduction

b. When calculating the compensation entitlement, the direct damage claims will be reduced by the amount of the reduction (no application of quota privilege).

**3.3 Social insurer's right to recourse**

a. *The social insurers recover 50% of the legally prescribed benefits, with the assets applicable to disability and survivors' benefits being capitalised without taking into account annuity claims and a remarriage deduction.*

b. *Objections such as quota right, quota distribution, right to recourse, recourse agreement, non-accountability of benefits, objections arising from the insurance agreement shall not be made.*

**3.4 Private insurers' right to recourse**

The private insurers shall surrender their right to seek recourse from each other irrespective of whether benefits have been paid under this agreement or as prescribed by law.

**4 Declaration of consent and settlement of all claims by the victim**

- a. The victim is requested to submit in writing his/her consent to the regulation of his/her claims under the provisions of this agreement.
- b. The motor liability insurer shall collect the declarations from the passengers of the vehicle under their liability insurance cover. The template in the annex to this agreement shall be used for this purpose.
- c. The injured parties have one month as of receiving the declaration of consent form to respond. Failure to submit a declaration of consent within this period will result in the claim being settled according to the provisions of the law. The motor liability insurer will inform the social insurers as to the decision of the victim.
- d. When regulating the claim the compensation agreement between the injured party and his or her motor liability insurer must make express mention of the fact that all claims vis-à-vis others involved in the pile up and their liability insurers are fully and finally settled.

**5 Third-party damage and other claims**

The head of the task force has the authority to pay third-party damage and other claims (eg for damage to roads, the costs incurred by the emergency services, costs of police reports) up to a maximum of CHF 250 000 by way of pre-financing by his company. The motor liability insurers indemnify that share of the costs applicable to the number of the vehicles involved (on a "per steering wheel" or "per handlebars" basis) covered by their policies.

**6 Investigations by the motor vehicle liability insurers**

Every motor liability insurer has an expert assess the damaged vehicle it insures and carries out the necessary investigation with regard to any personal injury sustained by the occupants of the vehicles it insures.

**7 Foreign vehicles**

Foreign insurers' loss adjusters in Switzerland must endeavour to secure such insurers' accession to the agreement. If they are not willing to do so, the property damage to the foreign vehicle, the personal injuries sustained by the occupants of the foreign vehicle and all rights to seek recourse shall be subject to the provisions of the law

## 8 Organisation

### 8.1 *Claims Manager Commission CMC of the SIA*

- a. If the application of this agreement becomes an issue in a specific case, the Chairman of the CMC or his deputy shall convene a meeting of the CMC immediately. This should take place within 48 hours of the event's occurrence.
- b. The CMC:
  - I. shall decide whether the agreement is applicable;
  - II. shall decide on further action in particular with regard to the composition of the task force (head and three members; see Figure 8.2);
  - III. shall contact and inform without delay the private and social insurers who are signatories to the agreement as well as the NBI<sup>1</sup>

The CMC is responsible for any amendments to the agreement, and is the body to which to submit any suggested amendments.

### 8.2 *Task force*

- a. A task force shall be appointed with the mandate of implementing this agreement in each specific case.
- b. The task force shall comprise a head, put forward by a motor liability insurer, and six other members three of which are representatives of the private insurance industry and one each of SUVA, the FSIO and the health insurers.
- c. The task force
  - I. shall ensure that the agreement is implemented in each specific case;
  - II. shall decide whether third-party damage and other claims that exceed the authority of the head of the task force as provided for in Figure 5 or claims submitted by the head of the task force shall be processed under this agreement or according to the provisions of the law.
- d. In order for the task force to reach decisions, all members shall be present at the meeting.

---

<sup>1</sup> Swiss National Bureau of Insurance (<http://www.nbi.ch/>)

**8.3 Head of task force**

The head of the task force

- a. shall gather information on the event;
- b. shall identify and contact the insurers involved and all non-insured participants;
- c. shall maintain contact with the police, authorities, victim aid association, lawyers etc;
- d. shall obtains from the insurers involved data and information on property and personal injury damage and from the affected third parties data and information on third-party and other damage;
- e. can issue mandates to the members of the task force;
- f. can issue mandates to the SIA head office;
- g. prepares the basis upon which the task force is to take decisions;
- h. convenes and chairs the meetings of the task force;
- i. reports to the task force, to the Chairman of the CMC and to the member of the CMC charged with PR work.

**8.4 SIA Head Office**

The SIA Head Office shall support the task force and its heads, in particular in the collection, processing and evaluation of information and data.

**9 Media and PR work**

- a. The task force and its heads should be able to work without interference from, or being influenced by, the media and general public.
- b. The SIA's media office (Communication Unit) is responsible for contacts with the media and general public and for providing them with information. The CMC shall appoint one of its members a contact person for the media office. Media releases and interviews shall be conducted in consultation with this representative of the CMC and media office and where necessary with the insurers and companies involved that are non-SIA members.
- c. The involved insurers and companies and members of the task force shall not field questions from the media but pass these on to the SIA media office.

**10 General provisions**

- a. This agreement will enter into force on 1 January 2008. It shall be of non-determinant duration.
- b. The agreement may be acceded by all private and social insurers operating in Switzerland. Accession applies to the insurer's entire portfolio.
- c. Declarations of accession must be submitted to the SIA Head Office, which shall provide further information on the insurers who have acceded to the agreement.
- d. Insurers who have acceded to the agreement can cancel their accession subject to a notice period of six months at the end of a calendar year. Notice must be made in writing to the SIA Head Office.
- e. Acceded insurers have an exceptional right to submit notice in the event of any amendments made to the agreement. Notice must be made in writing to the SIA Head Office within 30 days of receipt of the notification of the amendment and will become effective on the date upon which the amendment enters into effect.
- f. Cases falling under this agreement before notice as per Figure 10.3 or 10.4 becomes effective are to be handled according to the provisions of this agreement.
- g. The place of jurisdiction for all disputes arising out of or in connection with this agreement shall be the headquarters of the Swiss Insurance Association SIA.



© Copyright 2008 by Swiss Insurance Association