Loss of use governs how insurers compensate fleet operators when their vehicles are off the road following accidents deemed not the operator’s fault. The Confederation of Passenger Transport UK (CPT) developed a formula for loss of use claims called the ‘standing charge’ that divides the cost of fleet operation between all the vehicles an operator runs.

This formula has been used to settle loss of use cases for many years. However, a precedent finally set in 2014 – where Aviva challenged the loss of use claim by a bus operator after a negligent driver insured by Aviva put one of the operator’s buses off the road for 31 days – has changed the claims landscape. Aviva won the subsequent appeal making it good news for insurers… but bad news for PCV fleet operators.

In this bulletin by Arthur J. Gallagher one of the leading UK insurance brokers unpick the implications of the case and how you should approach your future loss of use claims.

The standing charge …

The CPT standing charge covers the cost of having a given vehicle available and ready for use.

- A fleet operator will typically have a spare vehicle(s) on-hand, ready to fill the gap left by any off the road for repair.
- Loss of use compensation is designed to cover that standing charge until the damaged vehicle comes back into operation.
- The formula covers a proportion of overheads for each vehicle with items like office expenses, business rates, utilities and canteens: it’s a daily cost calculation and naturally it varies between operators.

In such cases, the loss of use standing charge is usually quite modest when it comes to the insurance claim – typically well below the small claims court limit of £10,000. Insurers have long felt it uneconomic to challenge such amounts even though the general feeling in the insurance industry has been that the CPT formula broadly overstates the financial impact of loss of use.
Loss of use: Legal precedent has changed the game

Test case: West Midlands Travel Ltd (WMT) v Aviva Insurance UK Ltd

Inevitably the time came when an insurer would make a legal challenge to a loss of use claim based on the CPT formula. After an Aviva-Insured driver was deemed negligent in causing an accident with a WMT bus, WMT claimed general damages of £3,3001 for loss of use (loss of the standing charge benefit) for the 31 days the vehicle was off the road for repair.

Aviva challenged WMT’s claim, lost the initial ruling but continued to pursue it. The dispute subsequently arrived in the Court of Appeal in July 2013 as a test case. The Court of Appeal reversed the Judge’s original decision in the insurer’s favour, ruling that the CPT standing charge was “grossly overstated”.

• This overturned the previous precedent: Birmingham Corporation v Sowsbery from 1970.
• The Court of Appeal ruled the proper loss measurement was limited to interest on the vehicle’s capital value, capital depreciation while off the road and expenses wasted in that period.
• WMT’s claim was reduced to the region of £1,000.
• In 2014, the Supreme Court refused WMT the right to further appeal.

Case closed: new precedent set...

What’s the impact of the Supreme Court’s final say in WMT v Aviva? In short it means insurers can confidently challenge a CPT formula loss of use compensation claim and expect to win it. It’s good news for insurers. Estimates put the resulting annual savings for the industry at between £25 million to £50 million as there are thousands of road traffic accidents involving buses across England and Wales each year.

• It’s obviously bad news for operators who now face reduced loss of use compensation using just the criteria of capital value of the vehicle, capital depreciation and wasted expenses.
• It’s a tough hit for operators to take in a thin margin, highly competitive business sector.
• The Court of Appeal did note that loss of use compensation had to be fair, just not a “windfall”.

Recalibrating loss of use compensation

It’s interesting to note that the Court of Appeal stated that there is no all-embracing principle covering general loss of use compensation and therefore each case should be judged on its own facts. With the Birmingham Corporation v Sowsbery loss of use precedent now overturned and with the WMT v Aviva precedent replacing it, it will be a brave operator that tries to apply the CPT formula unless the circumstances are exceptional. Come and talk to us: we intimately understand the new landscape of loss of use and can help you pressure-test each claim to make sure you get a fair and proper result that won’t tie you up in a court challenge.

Arthur J. Gallagher: our conclusions...

Legal precedents change – as they have clearly done in this instance. The Supreme Court’s 2014 refusal of a further appeal by WMT closes the book on loss of use compensation as calculated by the CPT formula in all practical senses. However the nature of accidents always varies: we’ll assess your loss of use incidents on a case-by-case basis, working within the new precedent.

We’re here to help.

About Arthur J. Gallagher

Founded in 1927, Arthur J. Gallagher & Co. has become one of the largest, successful insurance broking and risk management companies in the world. With extraordinary reach internationally, our parent group employs over 22,000 people and provides services in more than 150 countries. Outside the US we are known as Arthur J. Gallagher and wherever there is an issue of risk, we’re there for our clients. We are a business without barriers – working together to create solutions that drive value and competitive advantage for our clients. Our people, our depth of technical knowledge and our global reach will deliver unrivalled advice and coverage expertise.

For more information, visit us at www.ajginternational.com

WOULD YOU LIKE TO TALK?

If you would like to find out more about how we can help you recalibrate your fleet loss of use compensation claims, then contact the Arthur J. Gallagher Transportation Team.

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