

Indemnity Law in Estonia

I. Indemnity Law / Law of Tort

a. General overview

In the Republic of Estonia, the tort law's regulatory standards are set out in the Law of Obligations Actⁱ (Clauses 1043-1067). Motor third party liability is set out in the Law of Obligations Act (LOA) Clause 1057. The direct possessor of a motor vehicle shall be liable for any damage caused upon the operation of the motor vehicle, unless:

- 1) the damage is caused to an item being transported by the motor vehicle and which is not being worn or carried by a person in the vehicle;
- 2) the damage is caused to a thing deposited with the possessor of the motor vehicle;
- 3) the damage is caused by force majeure or by an intentional act on the part of the victim, unless the damage is caused upon the operation of aircraft;
- 4) the injured party participates in the operation of the motor vehicle;
- 5) the injured party is carried without charge and outside the economic activities of the carrier.

The possessor of a vehicle shall be liable for any damage regardless of fault. The judgement No. 3-2-1-76-09 of the Supreme Court of the Republic of Estonia sets out that strict liability also arises if one high-risk source incurs damage to another high-risk source, inter alia if the high-risk source's administrator of the incurred damage was not found guilty of incurring damage to another high-risk source's administrator. "Damage" in terms of strict liability means the realisation of inherent risk of a high-risk source (a high-risk source as an item or activity is characteristic of a heightened risk). Further, a motor vehicle as a high-risk source can incur damage for any other reason than the realisation of its inherent heightened risk. Clause 1057 Section 3 of the LOA sets out, e.g. that the liability of the direct possessor of a motor vehicle does not arise when the injured party's damage is incurred due to his intent. In this case, pursuant to Clause 2 of the Motor Third Party Liability Insurance Actⁱⁱ, the insurer of the direct possessor of a vehicle is not entitled to compensate traffic damage to the injured party. The judgement of the Supreme Court of the Republic of Estonia No. 3-2-1-11-00 sets out that damage incurred by legitimate acts is subject to indemnification only in cases prescribed by law, and in the event that several high-risk sources' administrator incurs damage to them collectively, the fault of each and every high-risk source's administrator of the incurred damage is of importance upon identification of civil liability of high-risk sources' administrators. If the defendant's culpable conduct incurred a traffic accident, the defendant shall fully compensate the claimant for the incurred damage. However, if the traffic accident was incurred by the culpable conduct of the defendant and the claimant, the either party's fault shall be taken into account upon identification of the defendant's liability. The judgement of the Supreme Court of the Republic of Estonia No. 3-2-1-26-05 sets out that in the event that several high-risk sources' administrator incurs damage to them collectively, the fault of each and every high-risk source's administrator of the incurred damage is of importance upon identification of civil liability of high-risk sources' administrators. Thus, in case of damage incurred by two high-risk sources' administrators to each other, the fault shall be

taken into account. Pursuant to Clause 2 of the Motor Third Party Liability Insurance Act, the subject of traffic insurance is motor vehicle third party liability and, in some cases, accident insurance (accident insuranceⁱⁱⁱ -- damage incurred to pedestrians and cyclists by a traffic accident is also compensated when the driver is not responsible for any incurred damage. Medical treatment expenses incurred by a traffic accident are compensated to the driver regardless of his fault, except for cases when the policy insurer's local liability insurance act or the insurance contract's terms award no indemnification. In relation to the two above-mentioned cases, there is an exception: the indemnification is not recoverable if traffic damage was incurred by the driver with intent of self-harm or suicide or was under the influence of alcoholic beverage, narcotics, or psychotropic substances at the time of the traffic accident). Although MTPL insurance is regulated by a special law in the Republic of Estonia (the Motor Third Party Liability Insurance Act), the insurance contract element of the Law of Obligations Act further

applies to the rights and obligations of the parties. Namely, the judgement of the Supreme Court of the Republic of Estonia No. 3-2-1-132-04 sets out that motor-third-party-insurance-related issues are resolved by the Law of Obligations Act in addition to the Motor Third Party Liability Insurance Act and to such an extent that the Motor Third Party Liability Insurance Act sets out no specific provisions. The traffic insurance contract shall be awarded to all motor vehicles or trailers that are registered or are subject to registration in the Traffic Register. The possessor of the vehicle subject to insurance liabilities is insured regardless of whether the possession is legal or illegal, and the person in possession of a vehicle is insured regardless of whether he is aware of the fact or not^{iv}. The judgement of the Supreme Court of the Republic of Estonia No. 3-2-1-55-06 sets out that the person in possession of a vehicle is insured, regardless of whether he is aware of the fact or not. The Motor Third Party Liability Insurance Act Clause 5 Section 2^v handles a natural person driving the vehicle as the possessor of the vehicle. The term "possessor" is broader in the Motor Third Party Liability Insurance Act than in the Law of Property (LOP). According to the Motor Third Party Liability Insurance Act, the possessor is not only a person who complies with the standard set out in the Clause 33^{vi} of the LOP, but also a person who uses force against the vehicle, regardless of whether this force can be classed as possession in accordance with the LOP or not. According to the Motor Third Party Liability Insurance Act^{vii}, the insurance compensatory amount is as follows:

- Until December 10, 2009, 1.6 million Estonian kroons for insured damaged property and 5.5 million Estonian kroons for personal injury per one injured party;
- From December 11, 2009, to June 10, 2012, 500,000 euros for insured damaged property and 2.5 million euros for personal injury per one injured party;
- From June 11, 2012, is the limit of indemnification for a traffic accident in Estonia (per one occurrence of an insurance event) 1 million euros for insured damaged property and 5 million euros for personal injury.

b. Material Damages

i. Repair costs

Clause 35 Sections 1 and 2 of the Motor Third Party Liability Insurance Act set out that the incurred damage is reconditioning and other direct costs incurred in relation to the possessor due to traffic damage, inter alia damage expenses incurred to the vehicle intentionally in order to rescue the injured party and related to the removal of the vehicle from the place of occurrence. The reconditioning or replacement method of a damaged item or its part (reconditioning estimate, the company to provide reconditioning or replacement acquisition of an equivalent) shall be co-ordinated with the insurer and required expenses shall be documentally proven. Subsection 5 of the same Clause sets out that if the injured party does not agree with the compensation for reconditioning or replacement expenses as decided by the insurer, financial compensation is awarded. The limit of the financial compensation is the amount of reconditioning or replacement expenses offered by the insurer. If the injured party does not submit reconditioning or replacement expenses documentation, the cost of spare parts required for reconditioning is compensated, minus the technical depreciation of their proportionate share. The reconditioning service cost is also compensated, which shall be reduced in accordance with applicable taxes. Thus, in the event if a dispute arises over the method, reconditioning shall be subject to financial indemnification. In case of non-monetary indemnification, the insurer shall arrange and be responsible for reconditioning or replacement as well as time limits and quality. Pursuant to Clause 35 Section 3 of the Motor Third Party Liability Insurance Act, the insurer is not entitled to accept the damaged item's reconditioning (replacement) method and repair shop offered by the injured party, and the insurer shall notify the injured party of a company which is to provide reconditioning (replacement). In this case, the insurer shall order services as the representative of the injured party and advocate the injured party's interests. The insurer shall guarantee that the work done and material used are of required quality. According to the judgement of the insurance disputes commission No. 7-1/04/117^{viii}, a complainant applied for a compensatory amount to be transferred to his settlement account, which resulted from the cost of the repair shop selected by the complainant, as he questioned

the competence of the repair shop selected by the insurer. The dispute commission justified the complainant's claim and that upon identification of indemnification, the complainant's calculations are to be taken into account. The dispute commission referred to the Motor Third Party Liability Insurance Act Clause 47 Section 4^{ix} setting out that upon reconditioning of property, quality parts and components shall be used. Pursuant to the above-mentioned act, the complainant is to prove that the repair shop selected by the insurer does not use quality parts and components during the reconditioning process. The judgement of the Supreme Court of the Republic of Estonia No. 3-2-1-139-05 sets out that the insurer's indemnification does not result from the injured party's expenses, i.e. the insurer is obliged to pay compensation to the injured party regardless of whether the injured party has borne expenses or not. The judgement of the Supreme Court sets out that Clause 35 Section 1^x of the Motor Third Party Liability Insurance Act shall not preclude Clause 128 Section 3^{xi} and Clause 132 Section 3^{xii} of the LOA. Therefore, the insurer should make a decision upon whether and to which extent he considers the extent of damage proved. Thus, the insurer shall provide reconditioning indemnification within the time limits regardless of the real reconditioning process of the injured party's vehicle.

ii. Reduction in value

Pursuant to the Motor Third Party Liability Insurance Act, loss in value is not subject to indemnification. However, this does not preclude the injured party's claim assertion to the wrongdoer pursuant to the Law of Obligations Act. The judgement of the Supreme Court of the Republic of Estonia No. 3-2-1-121-08 sets out that pursuant to Clause 132 Section 3^{xiii} of the LOA, a person is entitled to claim indemnification for reasonable repair costs and indemnification for loss in value available. Due to the fact, as a rule, loss in value is not compensated, but the damage is, which is the required cost of reconditioning. Indemnification for loss in value available, in this context, generally refers to a situation when a damaged item will be less valuable after reconditioning work than it used to be before the incurred damage. Such loss in value is meant in case of movable property (a vehicle may become less valuable due to reconditioning work incurred by a traffic accident than the same brand new vehicle) or immovable, such as landmark damage, taking into account its cultural and historical value. Although indemnification above all involves pursuant to the first sentence of Clause 132 Section 3 of the LOA reasonable reconditioning cost and possible loss in value, indemnification for the damaged item's loss in value without the item being reconditioned is not precluded by the provision. In this case, the indemnification should not conflict with the indemnification objective. The idea of the first sentence of Clause 132 Section 3 of the LOA would not be consistent with the idea of indemnification in excess as the item's reasonable reconditioning cost and possible loss in value, regardless of reconditioning work.

iii. Total loss

Pursuant to Clause 132 Section 1 of the Law of Obligations Act, total loss shall be compensated, which complies with reasonable expenses for acquiring the same item. If the item's value at the time of loss was significantly lower compared to the same brand new item, loss in value shall be taken into account upon identification of indemnification. Clause 34 of the Motor Third Party Liability Insurance Act sets out that total loss resulting from the damage consists of the item's general value at the moment before the occurrence of an insurance event, the removal cost from the place of occurrence and incurred disposal cost. While the Law of Obligations Act does not directly set out, from which moment the damage should be assessed^{xiv}, the restriction is set out precisely in the Motor Third Party Liability Insurance Act. The item's general value is likely to be its selling price at the moment before the occurrence of an insurance event or on the day of the traffic accident. If the insurer compensates the item's total loss or damage at a full price, pursuant to Clause 37 of the Motor Third Party Liability Insurance Act, the motor vehicle insurer is entitled to claim transfer of ownership. If the given item is not

transferred into the insurer's ownership, the indemnification shall be significantly reduced to the item's value after claim for indemnification.

iv. Loss of use

Clause 44 Section 3 Subsections 4 and 5 of the Motor Third Party Liability Insurance Act set out that loss of earning and damage are not recoverable, which is related to the fact that the vehicle damaged in an accident or any other property cannot be used. Thus, pursuant to the Motor Third Party Liability Insurance Act, the injured party is not entitled to assert any claims. However, this does not preclude the assertion of claim directly against the wrongdoer under the general provisions of the Law of Obligations Act governing indemnification issues.

v. Rental car costs

Clause 44 Section 3 Subsections 4 and 5 of the Motor Third Party Liability Insurance Act set out that loss of earning and damage are not recoverable, which is related to the fact that the vehicle damaged in an accident or any other property cannot be used. Thus, pursuant to the Motor Third Party Liability Insurance Act, the injured party is not entitled to assert any claims. However, this does not preclude the assertion of claim directly against the wrongdoer under the general provisions of the Law of Obligations Act governing indemnification issues. However, it is common practice among the insurers of the Republic of Estonia to provide the so-called car replacement service on a voluntary basis and free of charge. For instance, Estonia's second largest insurance company offers a free car replacement to the insured injured party. It is also common practice in large cities for partners of insurers – repair shops – to provide a free car replacement for the reconditioning period.

vi. Costs for a technical expertise

Pursuant to Clause 28 Section 3 Subsection 2 of the Motor Third Party Liability Insurance Act, one property damage type is reasonable and required -- expenses on expertise. The good insurance and legal practice has reached the conclusion that expenses on expertise are required and reasonable only if the insurer made the wrong decision, so that the injured party was forced to order examination, i.e. only in the latter case are the expertise expenses subject to indemnification.

vii. Costs for recovery / towing / parking

Pursuant to Clause 35 Section 1 of the Motor Third Party Liability Insurance Act, the expenses on the vehicle removal from the place of occurrence are subject to indemnification. In practice, a conclusion has been reached that the vehicle's towage to its parking place and/ or later to the repair shop is subject to indemnification. Pursuant to Clause 28 Section 4 of the Motor Third Party Liability Insurance Act damage related to the vehicle's total loss or damage is considered to be reasonable expenses for vehicle's parking. In practice, parking expenses are considered reasonable and are subject to indemnification in case of up-keeping the vehicle in a parking lot under security surveillance due to vehicle's damage.

viii. Additional Expenses (e.g. accommodation, meals)

Given expenses are not subject to indemnification pursuant to the Motor Third Party Liability Insurance Act of the Republic of Estonia.

c. Personal Injuries

i. Costs for medical treatment

Pursuant to Clause 31 Section 2 of the Motor Third Party Liability Insurance Act, the following medical treatment expenses are compensated to the injured party: medical treatment expenses for treating physical damage, expenses for acquiring medicaments, expenses on transportation made for visiting medical institutions related to the treatment, and other direct expenses.

ii. Nursing costs / increased needs

Pursuant to Clause 31 Section 1 of the Motor Third Party Liability Insurance Act, medical treatment expenses are subject to indemnification to a medical institution or any other person in charge who treated physical damage incurred as a result of an accident or applied aid to relieve posttraumatic complications.

iii. Loss of earnings / loss of income

Damage arising from incapacity for work is divided into temporary incapacity for work and permanent incapacity for work damage. Clause 29 of the Motor Third Party Liability Insurance Act sets out that a natural person is entitled to indemnification for temporary incapacity for work, if his income subject to social security tax has reduced due to physical damage as a result of a traffic accident. The basis for identification of the extent of indemnification is average daily gross income (gross income). Gross income is calculated as the income subject to social security tax received during the previous period by a natural person, which is subject to income tax and which is divided into calendar days during the period. The extent of indemnification per one calendar day is set out as the difference between gross income received before traffic damage caused and gross income during the period of incapacity for work. The injured party's gross income before traffic damage caused is set out taking into account income received during a period of twelve months directly before traffic damage and the number of calendar days. Clause 30 of the Motor Third Party Liability Insurance Act sets out that a natural person is entitled to indemnification for permanent incapacity for work, if his income subject to social security tax has reduced due to permanent physical damage as a result of a traffic accident. The extent of indemnification per one calendar day is set out by analogy with temporary incapacity for work calculation, taking into account identified extent of permanent incapacity for work expressed as an incapacity for work percentage.

iv. Damages for pain and suffering

Clause 33 Section 1 of the Motor Third Party Liability Insurance Act sets out that if a person claiming personal damage indemnification had to bear pain or became disabled, which includes loss or hypofunction of an organ or a body part, due to the above-mentioned personal damage and all of the above was proven by means of medical expertise, the insurer pays a one-time indemnification in the amount of up to 10,000 Estonian kroons. The order of non-property damage assessment incurred by a traffic accident is set out in the Directive No. 69 of the Minister of Social Affairs of the Republic of Estonia of May 31, 2004, in order to compensate non-property damage indemnification^{xv}. Pursuant to the above-mentioned Directive, injury is classed as extent of impaired function, medical treatment, and loss of capacity for work into six levels of severeness: slight, slight average and average; severe, very severe, and most severe injuries. No indemnification can be claimed for the first injury level, for the following levels, the indemnification is 2,000, 4,000, 6,000, 8,000, and 10,000 Estonian kroons. The quoted limits are valid only in terms of the insurer – the injured party may claim indemnification against the wrongdoer in a bigger compensatory amount.

v. Loss of maintenance

Alimony reduction indemnification (pension insurance) is awarded to each and every family member whose alimony has reduced due to declaration of death. The decedent's dependant (family member) shall be his widow, infant children, infant children incapable

of work, dependent parents incapable of work, other dependent persons incapable of work. Family income is up to 30% of family alimony. The rest is divided between family members, whereas the head of a family has three parts, his partner two parts, and one part per any other family member. The head of a family is the family member with the biggest periodic income. Gross income, being the basis for award of pension insurance, is the decedent's income received during a period of twelve months directly before traffic damage and the number of calendar days. In the event that a dispute arises over gross income, the amount subject to social security tax submitted to the Tax and Customs Board during a period of six months directly before traffic damage is taken into account. In case of non-working or unemployed person who was capable of work before traffic damage and who is not under 16 years of age and who has not attained pension age, the basis of income award is the minimum wage valid at the time of the traffic accident. Awarded pension insurance is re-calculated, if the income of the family member awarded with pension insurance has changed compared to the income at the time of an insurance event, has grown compared to the mark-up during the same period (compared to compatible index of the mark-up) or following the month the decedent's attained pension age, pension insurance in the amount of 50% shall be paid. Pension insurance is not awarded to a family member, if his income reaches the level preceding the insurance event; if he reaches 18 years of age, in case of continuous study, 24 years of age and is capable of work, or becomes a member of a new family, or dies. Pension insurance is paid periodically, one time per calendar month by the 15th calendar day of the next month.

vi. Funeral expenses

Clause 32 Sections 2 and 3 of the Motor Third Party Liability Insurance Act set out that the decedent's funeral expenses are compensated on the basis of verifying documents to a person who has borne the expenses. If the expenses were borne by multiple persons, the indemnification is paid to each and every person individually. All reasonable expenses directly related to the decedent's funerals are subject to indemnification. If necessary, the insurer also pays an advance in the amount of up to 60% funeral expenses coverage of the indemnification.

d. Financial Losses

Pursuant to the Motor Third Party Liability Insurance Act, indemnification of financial loss is not awarded. However, this does not preclude the injured party's assertion of claim against the person responsible for the incurred damage pursuant to the standards related to indemnification of the Law of Obligations Act.

e. Prescription periods

Pursuant to Clause 38 Section 1 of the Motor Third Party Liability Insurance Act, the injured party shall, at the earliest possible opportunity, notify any insurer in charge of motor third party liability insurance in Estonia or the Guarantee Fund either personally or by means of personal notice. To notify either orally or in written form. Pursuant to Clause 38 Section 2 of the Motor Third Party Liability Insurance Act, the person who incurred damage in a traffic accident shall notify the insurer or the Guarantee Fund at the earliest possible opportunity, but not later than five days after the traffic accident. If not possible due to a justifiable reason during a period of five days, the defendant shall provide proof to the insurer or the Guarantee Fund. Also, a follow-up explanatory note in written form and the participating vehicle to be examined shall be submitted. The injured party and the person who incurred traffic damage are obliged to keep the participating vehicle and other damaged property in the best post-accident condition possible and to submit them to the insurer for examination. The item shall not be kept in the post-accident condition after its examination by the representative of the insurer or longer than seven days after notification of a traffic accident^{xvi}. Pursuant to Clause 42 Section 1 of the Motor Third Party Liability Insurance Act, the time limit for claim of indemnification on the basis of

the insurance contract is as long as against the person responsible for damage. Pursuant to Clause 150 Section 1 of the General Part of the Civil Code Act, the time limit for claim of illegal damage indemnification is three years related to an item when a legitimate person was or had to be notified of damage and of the person to compensate the damage^{xvii}. Pursuant to Clause 45 Section 1 of the Motor Third Party Liability Insurance Act, the decision upon traffic damage indemnification or refusal shall be made instantly upon notification, but not later than during a period of 30 days, taking into account claim assertion to the insurer subject to indemnification.

II. Insurance Law

Non-life insurance branch is mainly regulated by three legal acts: the Insurance Activity Act^{xviii}, the Law of Obligations Act^{xix} and the Motor Third Party Liability Insurance Act^{xx}. The Insurance Activity Act sets out the legal basis of insurance activity (inter alia the activity of an insurance broker and of an insurance agent). Clauses 422-567 of the Law of Obligations Act related to insurance set out the rights and the obligations of the insurance contract's parties, i.e. contract regulations. The Motor Third Party Liability Insurance Act sets out the mandatory basis of motor third party liability insurance. In addition, damage insurance issues are resolved in a dozen of legal acts, setting out mandatory professional liability insurance for the branch figures (e.g. mandatory professional liability insurance for lawyers, notaries, etc.). As a rule, the regulation of the above-mentioned special legal acts is limited to setting out insurance liability exclusively, i.e. a specific insurance contract and the insurance contract element of the Law of Obligations Act apply to contract relations.

III. Procedural Law

a. System of Courts

At the moment, a special legal institution is entitled to solve insurance-related issues – the dispute commission^{xxi} (according to the discussion-in-question, the given institution is more likely to be closed and replaced with conciliation procedure). All compulsory insurance disputes are subject to examination by the dispute commission (i.e. in such cases, the insurer is obliged to participate in conciliation procedure). In case of voluntary insurance disputes, the dispute commission examines the disputes in case of the insurer's active concert. The party in dispute is not obliged to pass the dispute commission procedure before taking legal recourse, however, the service is free of charge and used actively. The decision of the dispute commission is binding to the parties, unless one party decides to challenge the decision in a judicial procedure. Judicial procedure of the Republic of Estonia consists of three instances. The first instance consists of the county courts of the four counties (Harju, Pärnu, Tartu, and Viru County Courts) and of the two administrative tribunals (Tallinn and Tartu Administrative Tribunal). In the area of the county courts (Harju, Pärnu, Tartu, and Viru County Courts), there are court houses with the central location in the county (there are three court houses in Ida-Virumaa and Harjumaa). In the area of the two administrative tribunals, there are four court houses in Tallinn, Tartu, Pärnu, and Jõhvi. Three district courts represent the Court of Appeal, or the second instance – Tallinn, Viru, and Tartu district courts. The State Court (with its location in Tartu) is the third instance or the Court of Cassation that generally supervises implementation of the current Constitutional Law^{xxii}.

b. Enforcement of judgments

Court judgements are subject to voluntary implementation or in invitum by a court bailiff. A court bailiff is entitled to block the debtor's bank account, to enforce collection against the debtor's movable and immovable property, to assert a claim in relation to the debtor's income. Implementation is regulated by the Implementation Act of the Republic of Estonia^{xxiii}.

c. Appeals / time limits for appeals

The decision of the dispute commission takes effect on the 10th day, taking into account the time when the decision was accepted by a party, but not later than the 30th day, taking into account the time when it was published on the webpage of the Estonian Traffic Insurance Fund^{xxiv}. The county court's decision takes effect, above all, if: 1) the time limit for appeal assertion has passed and the claim has not been asserted during the time limit period; 2) the administrative tribunal refuses the appeal or the appeal is outstanding, or if the appeal procedure is finished and no cassation claim has been asserted against the administrative tribunal's decision during the period of cassation claim assertion; 3) the appeal claim is outstanding with the administrative tribunal or if no cassation claim against the administrative tribunal's decision has been accepted and it remains outstanding. The appeal claim against the county court shall be asserted during a period of 30 days, starting from the appeal claim acceptance, but not later than five months after official publication of the decision by the first stage court. The cassation claim against the administrative tribunal shall be asserted during a period of 30 days, starting from the appeal claim acceptance, but not later than five months after official publication of the decision by the administrative tribunal.

IV. Professional regulations for Lawyers

a. Entitlement to plead before court

Pursuant to the Motor Third Party Liability Insurance Act, reasonable and necessary legal expenses are subject to indemnification^{xxv}. The good legal practice (above all, the good practice of the dispute commission) has reached the conclusion that legal expenses are subject to indemnification in case of being non-judicial, if the insurer previously made the wrong decision and with help of a legal adviser, the insurer changed his decision non-judicially. The good legal practice denies indemnification of legal expenses, if the indemnification process carried out by the insurer runs in an ordinary manner. The judgement of the Supreme Court of the Republic of Estonia No. 3-2-1-79-08 sets out that pursuant to Clause 128 Section 3^{xxvi} of the LOA, the wrongdoer is subject to indemnification of legal expenses also ante-judicial procedure. Such claim is justified provided that general provisions of indemnification requirements are met. Legal expenses insurance is not wide-spread in the Republic of Estonia (however, such service is provided by the insurer specialising in legal expenses insurance).

b. Lawyers fees

Legal advice fees' basis is dependent on the market requirements. The barrister's hourly fee is between 1,800-2,400 Estonian kroons plus the VAT. Legal adviser's (certified in Estonia) hourly pay is lower, ca. 1,000 Estonian kroons plus the VAT.

c. Possibility for compensation of lawyers fees

Possibility for Compensation of Lawyer's Fees The dispute commission and the court award the defeated party with indemnification of procedural legal expenses of the second party^{xxvii}. The court awards indemnification of expenses to justified and reasonable extent. Pursuant to the Civil Courts Act, the government of the Republic of Estonia has certified the limits of expenses^{xxviii} of a one-time contract representative and of an adviser claimed by other participants. There is a table that sets out the maximum limit of awarded indemnification pursuant to the value of an action (e.g. 5,000 Estonian kroons for a 10,000-kroon action, 270,000 Estonian kroons for a 1,000,000-kroon action). The judge is entitled to discretion to assess whether the claimed expenses are reasonable and required; also, the court shall not award indemnification of expenses greater than the maximum limit stated in the given table.

V. General Information of Insurance Associations

In the Republic of Estonia, there are two active insurance associations: the Estonian Insurance Association and the Estonian Traffic Insurance Fund. The Estonian Insurance Association^{xxix} is a non-profit organisation that unites insurance companies operating in Estonia. The objective of the organisation is to represent the general interests of its member companies in the development of the insurance sector and, in a broader sense, of the social and economic environments. The Estonian Traffic Insurance Fund^{xxx} is a non-profit organisation whose members are enterprises operating as insurers of MTPL insurance in Estonia. The target of the Estonian Traffic Insurance Fund is to promote common tasks of insurers of MTPL insurance system. The Estonian Traffic Insurance Fund is also a guarantee fund. Also, the Estonian Traffic Insurance Fund compensates traffic damage caused by uninsured and unidentified vehicles, administers the information system of MTPL insurance and the Register of Traffic Insurance, fulfils the tasks of a compensation body and an information centre, is the insurer of cross-border insurance, is the green card bureau in Estonia, organises damage prevention and solution of insurance disputes.

VI. Legal History / General Information

After the restoration of independence in 1992, on November 5, 1992, the Insurance Act of the Republic of Estonia was passed that came into effect on December 10, 1992. It was the "ancestor" of the Insurance Activity and the Law of Obligations Act valid at present time. In 2001, the Law of Obligations Act in compliance with the EU-directives and with European contract standards was passed, and on July 1, 2002, it came into effect. The Insurance Activity Act was passed in 2004, and it came into effect on January 1, 2005. Since then, the insurance law in the Republic of Estonia fully complies with the EU-directives. The Motor Third Party Liability Insurance Act was firstly passed in the Republic of Estonia on June 4, 1992; the above-mentioned Act was to come into effect starting from January 1, 1993, but the unreadiness of the community caused the Act's coming into effect in two steps:

1) On July 1, 1993, the Act came partly into effect, setting out that the insurance contract is voluntary, but damage caused by uninsured vehicles is subject to indemnification by the wrongdoer.

2) On October 10, 1993, the Act came fully into effect, thus becoming mandatory for each and every person participating in traffic with the vehicles listed in the Act. Thus, all drivers were subject to mandatory insurance.

On April 27, 1995, a new Motor Third Party Liability Insurance Act was passed by the parliament of the Republic of Estonia that came into effect on July 1, 1995. In the period of 14.11.1996 – 17.06.1998, a number of amendments were made to the Motor Third Party Liability Insurance Act, in relation to the tolerancy- and friendliness-issue of the insured and the injured party of the Motor Third Party Liability Insurance Act.

On April 10, 2004, a new Motor Third Party Liability Insurance Act was passed by the parliament, which is valid up to date. The Act came into effect on June 1, 2001; since then, the traffic insurance system has significantly changed compared to the previous one. Five greater changes can be emphasized: the motor third party liability insurance contract's perpetuity, the velocity of the damage indemnification process, insurance extension, the status change of the Estonian Traffic Insurance Fund and the establishment of the dispute commission (Insurance Court of Arbitration).

At the moment, a new bill of the Motor Third Party Liability Insurance Act is being compiled. It is justified with the fact that as the valid Act was passed before the reformation of the Private Law (the Law of Obligations Act of 2002), it does not compile with the requirements of the present insurance market, preventing its development. The general provisions of utmost importance that are being discussed at the moment are as follows:

- The subject of traffic insurance. The subject of traffic insurance is subject to regulation specification. The subject of traffic insurance is to set out risk liability and illegitimate damage liability, but limited contract liability.

- The insured. The insured could be any person interested, however, the possessor of a vehicle is to be liable for mandatory traffic insurance contract.
 - Contract and Policy. Mandatory traffic insurance contract is to be replaced by a typical insurance obligations contract and a single regulation of the Law of Obligations Act is to be applied to both the contract and the policy.
 - The insurer's fulfilment liability. The question remains open whether the procedure against the vehicle with no Guarantee Fund's contract shall start in the period of 12 or 24 months after the last insurance contract termination (the so-called seasonality issue). In relation to awards, it is to be specified and amended in which case the insurer is not subject to indemnification.
 - Damage indemnification procedure. As related to the insurance contract, the Law of Obligations Act applies in this case. The discussion has been started whether in some cases neither the insured nor the insurer is subject to indemnification.
 - Insurance amount. The issue related to insurance indemnification to other injured parties at the time when one or multiple injured parties assert an indemnification claim to the insurer is being regulated.
 - Unidentified vehicles. Indemnification of incurred damage by unidentified vehicles is to be limited, and personal liability issue is to be extended.
 - Reclaims. The list of reclaims is to be amended with the new basis and the whole list of reclaims is to be systemised and clarified.
 - The Register of Traffic Insurance. The Register of Traffic Insurance is part of the state information system, and the Guarantee Fund as well as insurer are to be entitled to access to the registers of other states required for successful operation.
 - Dispute solving. Dispute solving in the dispute commission shall be regulated by the Act on Conciliation Procedure. The aim is to ensure the continuous decision making of the dispute commission.
- The new Act is to be passed in the spring of 2010 and to come into effect in the middle of 2011.

VII. Annex / Legal Basis

ⁱ Available in Estonian as original text at

<https://www.riigiteataja.ee/ert/act.jsp?id=13160258> and as translation at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30085K3&keel=en&pg=1&ptyyp=RT&tyyp=X&query=v%F5la%F5igusseadus>

ⁱⁱ Traffic insurance is civil liability insurance of a high-risk source administrator and pursuant to Clause 27 of the given Act, accident insurance.

ⁱⁱⁱ Clause 27 of the Motor Third Party Liability Insurance Act

^{iv} Clause 5 Section 2 of the Motor Third Party Liability Insurance Act

^v The person in possession of a vehicle is insured regardless of whether the possession is legal or illegal. The person in possession of a vehicle is insured, regardless of whether he is aware of the fact or not.

^{vi} The possessor is a person who possesses the item. A person who possesses the item on the basis of rent, lease, storage, pledge, or any other basis of a kind that entitles him to temporarily possess another person's item, is the direct possessor; the other person, the indirect possessor. A person is not the possessor provided that he applies force towards another person's item in his household or company pursuant to another person's order.

^{vii} Clause 68¹ of the Motor Third Party Liability Insurance Act

viii The decision of the dispute commission (Insurance Court of Arbitration) No. 7-1/04/117 of 19.11.2009 on claim for identification of indemnification extent asserted by Mr Juri Jevstignejev against the decision of Salva Kindlustus Ltd.

ix Upon property reconditioning, quality parts and components shall be used.

x The incurred damage is reconditioning and other direct costs incurred in relation to the possessor due to traffic damage, inter alia damage expenses incurred to the vehicle intentionally in order to rescue the injured party and related to the removal of the vehicle from the place of occurrence.

xi Direct property damage is, above all, lost or totally lost property's value or loss in value incurred by property damage, even if it occurs in the future, and expenses incurred by damage or borne in the future reasonable expenses, including reasonable expenses on reconditioning and indemnification, inter alia damage identification and claim assertion for indemnification.

xii In case of property damage, above all, reasonable expenses on reconditioning and for loss in value are subject to indemnification. Provided that reconditioning incurs unreasonable expenses compared to the value, indemnification is pursuant to Section 1 of the given Clause.

xiii In case of property damage, above all, reasonable expenses on reconditioning and for loss in value are subject to indemnification.

xiv Pursuant to Clause 92 of the Law of Obligations Act, monetary liability is subject to nominal value, if not otherwise prescribed by law or agreement.

xv Available in Estonian as original text at <https://www.riigiteataja.ee/ert/act.jsp?id=766074>

xvi Clause 39 Section 1 of the Motor Third Party Liability Insurance Act

xvii Available in Estonian as original text at <https://www.riigiteataja.ee/ert/act.jsp?id=13161687> and as translation at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30082K2&keel=en&pg=1&ptyyp=RT&tyyp=X&query=tsiviilseadustiku+%F5Cldosa>

xviii Available in Estonian as original text at: <https://www.riigiteataja.ee/ert/act.jsp?id=13199184> and as translation at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X90004&keel=en&pg=1&ptyyp=RT&tyyp=X&query=kindlustustegevuse+seadus>

xix Available in Estonian as original text at <https://www.riigiteataja.ee/ert/act.jsp?id=13160258> and as translation at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30085K3&keel=en&pg=1&ptyyp=RT&tyyp=X&query=v%F51a%F51gusseadus>

xx Available in Estonian as original text at <https://www.riigiteataja.ee/ert/act.jsp?id=13074672> and as translation at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X40068K4&keel=en&pg=1&ptyyp=RT&tyyp=X&query=liikluskindlustuse+seadus>

xxi Motor Third Party Liability Insurance Act §§ 55-59

xxii The Courts Act regulates judicial procedure, available in Estonian as original text at: <https://www.riigiteataja.ee/ert/act.jsp?id=13153856> ja tõlkena: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30065K4&keel=en&pg=1&ptyyp=RT&tyyp=X&query=kohtute+seadus>

xxiii Available in Estonian as original text at <https://www.riigiteataja.ee/ert/act.jsp?id=13190237> and as translation at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X80003K1&keel=en&pg=1&ptyyp=RT&tyyp=X&query=t%E4itemenetluse+seadustik>

xxiv Clause 58 Section 4 of the Motor Third Party Liability Insurance Act

xxv Clause 28 Section 3 Subsection 2 of the Motor Third Party Liability Insurance Act: property damage is reasonable and required expenses on legal advice and expertise.

xxvi Direct property damage is, above all, lost or totally lost property's value or loss in value incurred by property damage, even if it occurs in the future, and expenses incurred by damage or borne in the future reasonable expenses, including reasonable expenses on reconditioning and indemnification, inter alia damage identification and claim assertion for indemnification.

xxvii Pursuant to Clause 157 Section 1 of the Civil Courts Procedure Act, in the event that one participant is subject to expenses for a one-time contract representative of another participant pursuant to the court judgement on determining division of procedural expenses, the court awards expenses to justified and required extent. A one-time contract representative is a barrister representing a participant or any other representative pursuant to Clause 218 of the given Act.

xxviii Available in Estonian as original text at <https://www.riigiteataja.ee/ert/act.jsp?id=13023109>

xxix http://www.eksl.ee/estonian_i_a.php

xxx <http://www.lkf.ee/index.php?1>

Olavi-Jüri Luik, *mag iuris*, PhD Student

Tallinn, 13.11.2009