



POLSKIE BIURO
UBEZPIECZYCIELI KOMUNIKACYJNYCH
POLISH MOTOR INSURERS' BUREAU

POLECONY

Członek Rady Bior The Member of the Council of Bureaux

do Członków PBK

Warszawa, 18 czerwca 2015 r.

PISMO OKÓLNE NR 3/2015

dotyczy: podpisania z Biurem Marokańskim umowy o ochronie gości

Szanowni Państwo,

Miło jest nam poinformować, iż w dniu 28.05.2015 r. Polskie Biuro Ubezpieczycieli Komunikacyjnych podpisało „Umowę między Biurami o Ochronie Gości” w zakresie Porozumienia Podstawowego z Biurem Marokańskim.

Umowa o ochronie gości ma na celu stworzenie europejskiego standardu ochrony osób poszkodowanych w wypadku w kraju odwiedzanym dla obywateli wszystkich krajów Systemu Zielonej Karty, także tych spoza Unii Europejskiej i Europejskiego Obszaru Gospodarczego, gdzie nie istnieją instrumenty wprowadzone przez IV Dyrektywę Komunikacyjną UE, jak ośrodek informacji i reprezentant ds. roszczeń.

Umowa weszła w życie z dniem 1 czerwca 2015 r.

W załączeniu przesyłamy tekst umowy wraz z podpisami.

Z poważaniem,

Mariusz W. Wichtowski
Prezes Zarządu

Zał.: 9 stron

Agreement between Bureaux on the Protection of Visitors

A. PREAMBLE

A.1. Current situation in the EEA (Protection of Visitors system)

In implementation of the so-called 4th MID or the Protection of Visitors Directive¹, an international system has been adopted in the EEA states to protect travellers who have been involved in a road traffic accident in any state belonging to the Green Card System other than their state of residence that is caused by the use of a vehicle insured and normally based in an EEA state.

In accordance with this Directive, every motor insurer² that has received its official authorisation in an EEA state shall appoint claims representatives in all other EEA states.

Any injured party may contact the so-called "National Information Centre" in his state of residence in order to identify the insurer of the motor vehicle involved in the accident and the claims representative appointed by this insurer in the injured party's state of residence, insofar as this insurer has its establishment within the EEA.

Each EEA state is required to establish a "Compensation Body".

If the insurer has failed to appoint a claims representative or if the insurer or claims representative fails to provide a reasoned reply to the points made in the claim within a period of three months, the injured party may present a claim to this Compensation Body in his state of residence.

The Compensation Body shall take action within two months of the date upon which the injured party has asserted the claim, unless the insurer or claims representative provides a reasoned reply to the claim or legal action has been taken directly against the insurer.

The Compensation Body in the injured party's state of residence shall be entitled to claim reimbursement of the sums paid by way of compensation from the Compensation Body in the insurer's Member State. This Compensation Body shall then seek recourse against the insurer.

¹ Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (OJ, L 181, 20/07/2000, p.65).

This so-called 4th EU Motor Insurance Directive (4th MID) is now coordinated and integrated in a new Directive: Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ, L 263, 07/10/2009, p.11-31).

The Directive is applicable in all member states of the EU and of the EFTA (EU and EFTA forming together the EEA or European Economic Area).

For more information: <http://www.4directive.org/>

² Except where the content otherwise requires, words denoting the singular shall include the plural and vice versa, words denoting any gender shall include all genders and words denoting persons shall include companies, partnerships and other legal entities and vice versa.

A.2. Extension of the scope of the EEA Protection of Visitors system to the Green Card System countries

This Agreement has been set up at the initiative of the Council of Bureaux in an effort to extend the Protection of Visitors system beyond the EEA states.

The aim of this Agreement shall be to assist visitors who suffered damage as a result of a road traffic accident outside their state of residence in a state belonging to the Green Card System.

The Agreement consists of two parts: a Basic Agreement (B.3.) and an Optional Agreement (B.4.).

The purpose of the Basic Agreement shall be to assist injured parties to identify the insurer and to obtain basic information.

The purpose of the Optional Agreement shall be to hand over the claims handling process to a claims representative. Any insurer whose national insurers' bureau adheres to this Optional Agreement has the possibility of appointing a claims representative in a state other than the one in which it has its establishment. By appointing such a claims representative, the insurer accepts that this claims representative is authorised to represent the insurer in relation to injured parties and to meet their claims in full. Claims shall be handled solely subject to the instructions of the mandating insurer and in accordance with the applicable law. The insurer may revoke the claims representative's authority to handle claims at any time. However, the insurer may not misuse this right in an attempt to reduce a justified claim asserted by the injured party.

Where the insurer has not made use of the possibility to appoint a claims representative, upon its approval this role may be assumed by the national insurers' bureau of the injured party's state of residence or be entrusted to an agent, likewise upon the approval of the national insurers' bureau.³

In such case, the national insurers' bureau or its agent shall handle the claim on behalf of the insurer. All other rules governing the relationship between the insurer and the claims representative shall apply *mutatis mutandis* to the relationship between the insurer and the national insurers' bureau.

The compensation body system⁴ shall be expressly waived, and no sanction may be imposed on the insurer if the latter fails to comply with its obligations under this Agreement or in execution of this Agreement. The injured party shall remain free at all times to take legal action against the insurer; in such case this Protection of Visitors Agreement shall no longer apply.

B. RIGHTS AND OBLIGATIONS

B.1. Definitions

For the purposes of this Agreement:

B.1.1 "accident" means any event causing loss or injury which may, pursuant to

³ See B.4. (4)

⁴ As applicable in the 4th MID and explained under A.1.

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- the law of the country in which it occurs, fall within the scope of compulsory third party liability insurance in respect of the use of a vehicle;
- B.1.2 "claim" means any one or more claims for compensation asserted by an injured party and arising from the same accident;
- B.1.3 "claims handling process" means one or more activities related to receiving a claim and dealing with it as regards examination of cover and liability, estimation of the damage caused and compensation to be paid;
- B.1.4 "claims representative" means any person appointed by an insurer who is responsible for handling and settling claims addressed to the insurer and received from an injured party who is resident in the state in which the claims representative is resident or established;
- B.1.5 "Council of Bureaux" means the body to which all national insurers' bureaux must belong and which is responsible for the administration and operation of the international motor civil liability insurance system (known as the Green Card System);
- B.1.6 "establishment" means the head office, agency or branch of an undertaking; any permanent presence of an undertaking in the territory of a state shall be treated in the same way as an agency or branch, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking;
- B.1.7 "Green Card System" means the international motor civil liability insurance system, as set up in accordance with Recommendation No 5, which is superseded by Annex 1 of the Revised Consolidated Resolution on the Facilitation of Road Transport adopted by the Inland Transport Committee of the United Nations Economic Commission for Europe;
- B.1.8 "injured party" means any person entitled to compensation in respect of any loss or injury caused by a vehicle;
- B.1.9 "insurer" means any undertaking authorised to conduct the business of compulsory third party liability insurance in respect of the use of motor vehicles;
- B.1.10 "national insurers' bureau" means the professional organisation which is a member of the Council of Bureaux and constituted in the country of its establishment pursuant to Recommendation No 5, superseded by Annex 1 of the Revised Consolidated Resolution on the Facilitation of Road Transport, adopted by the Inland Transport Committee of the United Nations Economic Commission for Europe;
- B.1.11 "state of residence" means the state where a person has its habitual or main place of living;
- B.1.12 "vehicle" means any motor vehicle intended for travel on land and propelled by mechanical power but not running on rails as well as any trailer whether or not coupled but only where the motor vehicle or trailer is made subject to compulsory insurance in the country in which it is being used.

B.2. Conclusion of the Protection of Visitors Agreement between Council of Bureaux members

If a national insurers' bureau wishes to sign this Protection of Visitors Agreement with another national insurers' bureau, it shall first submit an accession proposal to the latter.

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In this accession proposal, it shall explicitly state whether it is adhering only to the Basic Agreement (B.3.) or to both the Basic Agreement (B.3.) and the Optional Agreement (B.4.).

Each national insurers' bureau that is a signatory to this Agreement shall take all necessary measures to have the provisions of this Agreement made applicable to the insurers that are members of the said national insurers' bureau and that have used the possibility to appoint claims representatives in accordance with B.4 of this Agreement. These insurers shall also be required to apply these provisions to their relationship with the claims representatives.

B.3. Basic Agreement rules

Upon receipt of a request from an injured party (or its representative), the national insurers' bureau in the injured party's state of residence shall contact the national insurers' bureau in the state in which the vehicle involved in the accident is registered or the national insurers' bureau in the country in which the accident occurred, provided that all bureaux involved are party to this Agreement, for the purpose of obtaining the following information and of subsequently forwarding it to the injured party:

- B.3.1. Identification of the insurer of the involved vehicle and of the policy number on the basis of the registration plate;
- B.3.2. Identification of the driver, owner or holder of the involved vehicle, however, only in the event that the insurer cannot be identified within a period of six weeks and provided that this is not contrary to national legislation;
- B.3.3. Useful documents such as the police report which may prove helpful in the handling of a claim;
- B.3.4. Details about any possible guarantee fund operating in the state in which the accident occurred and, wherever possible, an explanation of the assistance that is available.⁵

In the event that the involved vehicle bears no (valid) registration plate, the national insurers' bureau in the injured party's state of residence shall contact the national insurers' bureau in the state in which the accident occurred, provided that both bureaux are party to this Agreement, in an attempt to obtain the information referred to in points B.3.1 to B.3.4. They shall subsequently forward this information to the injured party.

B.4. Optional Agreement rules

Any insurer whose national insurers' bureau is a signatory to the Optional Agreement has the possibility of appointing a claims representative in a state other than the one in which it has its establishment on condition that the national insurers' bureau of the latter state is also a signatory to the Optional Agreement.

The appointed claims representative shall have the right to receive, handle and settle claims asserted by an injured party who is resident in the state in which the claims representative is resident or established, resulting from an accident that has occurred in:

⁵ See B.5.4.

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- the state in which the insurer has its establishment;
or
- a state belonging to the Green Card System other than the injured party's state of residence.

In the latter case, claims representatives, national insurers' bureaux and insurers shall communicate and cooperate to avoid any double payments being made (as described in more detail in B.5.3.).

The claims handling process shall be in accordance with the applicable law. No irrevocable recognition or settlement of the claim may be made without the authorisation of the insurer.

The insurer shall have the right to withdraw the claims handling process from the claims representative at any time. The insurer may not, however, misuse this right in order to reduce a justified claim made by the injured party.

Where no claims representative has been appointed, the latter's role as described in this Article may, upon approval of the insurer, be assumed by the national insurers' bureau of the injured party's state of residence or by an agent appointed for this purpose by the national insurers' bureau.

The insurer shall at all times have the right to withdraw the claims handling process from the national insurers' bureau or its agent.

Subject to the law applicable in the state in which the accident occurred, no sanctions shall be applied under the present Agreement if the insurer or its claims representative fails to provide a satisfactory reply within a reasonable time period. In particular, no default interest shall ensue from such failure to act, and the national insurers' bureau of the injured party's state of residence may not withdraw the claims handling process from the claims representative and/or the insurer that is failing to meet its obligations in the claims handling process. However, the national insurers' bureaux shall agree to:

- keep each other mutually informed of such cases;
and
- encourage the claims representative and/or insurer in question to meet its obligations.

Each national insurers' bureau that is a signatory to this Optional Agreement shall draw up a list of the insurers that are its members and of the claims representatives that these insurers may have appointed in another state. The national insurers' bureau shall keep this list updated in accordance with the information provided by its members.

A copy of this list shall be sent to the Secretariat of the Council of Bureaux, which shall be responsible for publishing the list on the Council of Bureaux website.

Article B.5. Claims handling process

B.5.1. Claims handling process in the event of an accident that has occurred in the injured party's state of residence

This Agreement shall **not** be applicable in the event of an accident that has occurred in the injured party's state of residence. Such claims may be subject to the Green Card System and do not fall within the scope of this Agreement.

B.5.2. Claims handling process in the event of an accident

that has occurred in the state in which the insurer has its establishment

If a claims representative or the national insurers' bureau in the injured party's state of residence receives a claim for an accident that has occurred in the state in which the insurer has its establishment, it shall immediately contact either the insurer concerned or the national insurers' bureau in the state in which the insurer has its establishment for the purposes of:

- Informing the insurer or the national insurers' bureau of the country in which the accident occurred about the particulars of the claim received;
- Obtaining the necessary information as described in B.3.1. and B.3.2.;
- Requesting the insurer's approval that the claim may be handled and that negotiations may be entered into with the injured party with regard to liability and/or compensation of any damages;
- Exchanging any useful or necessary information for the purposes of reaching an arrangement with the injured party.

The claims representative, insurer and/or national insurers' bureaux shall cooperate and make every effort to provide the injured party with either provisional or final compensation for the damages suffered or a reasoned reply to the claim asserted within a reasonable period of time.

B.5.3. Claims handling process in the event that an accident has occurred in a state that is neither the injured party's state of residence nor the state in which the insurer has its establishment

If a claims representative or the national insurers' bureau in the injured party's state of residence receives a claim for an accident that has occurred in a state other than the state in which the insurer has its establishment, the provisions of B.5.2. shall apply.

In such a case, it shall be at the insurer's discretion to decide how to obtain the necessary information about the circumstances of the accident (including any possible police reports) and the details of the law applicable to the accident and its consequences. The insurer shall be free to call upon the assistance of a national insurers' bureau, Green Card correspondent, claims representative or other provider of services. Any costs related to the services rendered by the above-mentioned bodies shall be borne by the insurer.

By the same token, the insurer may at its discretion call upon a Green Card correspondent, claims representative or other provider of services in the state in which the accident occurred for the purposes of assisting the insurer's own client (insured) in dealing with the practical problems and questions relating to the accident.

The provisions of this point B.5.3. shall be without prejudice to the right of an injured party to address a claim to the national insurers' bureau in the state in which the accident occurred. Such a claim shall be subject to the provisions of the Green Card System, which shall not be jeopardised by this Agreement.

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If, however, it becomes clear during the claims handling process that the injured party has addressed his claim to several different bodies⁶ (i.e. the claims representative, national insurers' bureau and/or insurer), they shall bring this matter to the attention of the injured party and request that he select only one body.

The claims representative, national insurers' bureau and insurer shall communicate and cooperate to avoid making any double payments.

B.5.4. Accidents with unidentified or uninsured vehicles

In the event that an accident has been caused by an unidentified vehicle or by an uninsured vehicle, the national insurers' bureau of the injured party's state of residence shall gather any useful information and inform the injured party about any possible intervention of a guarantee fund or other insurance body in the state in which the accident occurred.

B.6. Settlement and advance payment

As soon as the claims representative or the national insurers' bureau in the injured party's state of residence is about to reach an arrangement with the injured party about the provisional or final compensation of the damages suffered on the basis of the instructions and authorisation provided by the insurer, it shall be entitled to request from the insurer:

- the advance payment of all compensation that has been agreed to be paid to the injured party;
- the advance payment or reimbursement of all costs and expenses that have been borne or are about to be borne by the claims representative or national insurers' bureau;
- a handling fee as set out below.

Even if a claim has not (yet) resulted in the payment of any compensation, the claims representative or the national insurers' bureau in the injured party's state of residence shall have the right to request from the insurer:

- the advance payment or reimbursement of all costs and expenses that have been borne or are about to be borne by the claims representative or national insurers' bureau;
- payment of a handling fee as set out below.

As soon as the claims representative or the national insurers' bureau of the injured party's state of residence has received payment of the above, it shall immediately take all necessary steps to transfer the funds to the appropriate injured party in accordance with the settlements reached.

The handling fee referred to in this Article shall be as follows:

- B.6.1. no handling fee shall be due for the exchange of information referred to in B.3.1., B.3.2. and B.3.4.;
- B.6.2 for the exchange of information referred to in B.3.3., a handling fee shall be due amounting to half the minimum handling fee applicable within the Green Card System, as approved by the Council of Bureaux (it being understood that the real costs of obtaining information such as a police

⁶ Depending on the legislation applicable in the state in which the accident has occurred, it is possible that the injured party may also address a claim to the national insurers' bureau in the state in which the accident has occurred.

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report have to be reimbursed in addition to the payment of the handling fee);

B.6.3. all other claims handling activities as described in this Agreement shall be subject to a handling fee approved by the Council of Bureaux, it being understood that:

- ❖ the handling fee under B.6.2. that has already been paid shall be deducted from the final handling fee;
- ❖ insurers and claims representatives shall be free to derogate from these rules;
- ❖ any costs or fees related to services rendered by a national insurers' bureau, Green Card correspondent, claims representative or other provider of services as referred to in B.5.3. shall be subject to an arrangement between the insurer and the above-mentioned bodies.

C. FINAL PROVISIONS

C.1. Approval and publication of the Agreement

This Agreement was adopted by the Council of Bureaux on 31 May 2012 for bilateral signature between the national insurers' bureaux.

Each national insurers' bureau that adheres to this Agreement shall give immediate notice of its signing to the Secretariat of the Council of Bureaux, together with a copy of the signed agreement.

At the latest at the moment of entry into force of an Agreement between two or more national insurers' bureaux, the Council of Bureaux shall publish on its website the names of the national insurers' bureaux that are signatories to the Agreement, as well as information as to whether they are adhering to the Basic Agreement (B.3.) only or to both the Basic Agreement (B.3.) and the Optional Agreement (B.4.).

C.2. Cancellation of the Agreement

Each national insurers' bureau shall have the right to cancel this Agreement by written notice to the other national insurers' bureau and to the Secretariat of the Council of Bureaux, which shall, in turn, inform the other national insurers' bureaux concerned. Such cancellation shall take effect upon expiry of six calendar months as of the day following despatch of such notification. The signatory national insurers' bureau concerned shall remain liable under this Agreement to satisfy all advance payments or claims for reimbursement relating to activities conducted under its authorization by the national insurers' bureau or claims representative of the injured party's state of residence until the expiry of the period described.

As soon as the states to which the signatory national insurers' bureaux belong are both member states of the European Economic Area (EEA), this Agreement shall automatically terminate between these national insurers' bureaux, it being understood that the Agreement shall continue to apply to all pending cases relating to accidents that occurred prior to the date of their membership in the EEA.

AGREEMENT BETWEEN NATIONAL INSURERS' BUREAUX ON THE PROTECTION OF VISITORS

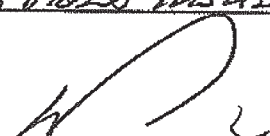
BASIC AGREEMENT:

Signed on: 28 MAY 2015

With entry into force on: 1 JUNE 2015

The national insurers' bureaux hereby declare the Basic Agreement applicable to (please tick as appropriate):

- ☒ Claims arising from accidents that occur on or after the date of entry into force of this Basic Agreement;
- ☐ Claims arising from accidents that are not finally settled and that occurred prior to the date of entry into force of this Basic Agreement.

On behalf of <u>Polish Motor Insurers Bureau</u>  Name: <u>Marek Wroblewski</u> Title: <u>PRESIDENT</u>	On behalf of <u>Bureau Central Marocain</u>  Name: <u>Hassan BENCHERIF</u> Title: <u>Délégué Général</u>
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