INI Magazine

International Network of Insurance

Amlin NL: **Dutch market confronted with coverage gap**

Supreme Court aim on fair play with the 'Arena' verdict.

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Amlin



It is in the early morning of 1995 when the driver of a van makes a mistake, causing an accident on the way from his and his colleagues workplace: the construction site of the new soccer stadium of Ajax, the Amsterdam Arena, back to the office. The driver and his colleagues took turns in driving the long way to work on a daily basis. Thus the driver was picked at random. The accident resulted in severe bodily injury of both the driver and his passengers and that is where the Dutch market was confronted with a serious issue regarding policy coverage. After verdicts of the Cantonal Court, the District Court and the Court of Appeal the Supreme Court ended the liability discussion in 2001 deciding that it is only reasonable, justly and fairly that, regarding the circumstances of the case, the employer should pay for the employee's claim. And more juridic: it does not indicate to be a good employer if the employer does not arrange a proper insurance which covers such a claim from the employee.

The passengers of a motor vehicle can hold the driver liable in case of damages but the driver can not hold himself liable. If he is driving a car on behalf of his employer (either a private car or a company car) he can hold his employer liable, which has been confirmed by the above verdict.

As the claims of the passengers were being taken care of by the liability insurer of the van, the driver saw himself dealing with the situation, that his employer meant that he was not liable according to article 7:658 Dutch Civil Code (which specifies that employers are liable for their employees' claim if the employer failed his duty to provide safe work environments).

Now the employer was facing the fact that none of his insurances were covering the claim. The Auto Liability Insurance does not cover any claims from the driver and the General Liability Insurance specifically mentions that any claims regarding motor vehicles of any kind is not covered at all. Ergo: a coverage gap occurred.

The Dutch market responded by developing new products that cover the employees' claims. Nowadays all good local standard liability policies have a clause added, but this does not seal the gap completely. Therefore a so called Wegam, Wegas or SchadeVerzekeringInzittende (PassengerClaimInsurance) is sufficient and it should be conclusive.

If Employer's Liability is included under the Foreign Workers Compensation policies or in any other way under your Master policies you should be aware, that this gap exists. A supplementary policy should be arranged which can be supplied by Amlin.

However, our opinion as an INI Member is that this supplementary policy is not the best solution. As INI Member, you do not want to be worrying that a local policy does not fit your master policy. As one of the leading INI Members we are working on a policy that is sealing the gap in one set of terms so in the near future the above mentioned issue will be history.