

## Risk management and insurance

### Liability gaps for railway transport companies from the contents between leasing agreements and insurance policies



#### THE AUTHOR

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With the liberalisation of railway transport in the mid-90s, the number of participants operating on the rail transport market has risen quickly. While at that point in time only a few companies were active in carrying out goods and passenger transport tasks, a wide variety of national and international service providers meet carriage requirements on the rails today.

The interaction between the parties established to date is largely based on many years of lived coordination and practiced procedures. Detailed written contractual agreements to set mutual obligations tended to be only rarely available. The continually growing number of companies acting on the market has significantly changed relations with each other, however. With the provision of more innovative ideas by every market participant and the flexible adjustment of the existing companies following competition, cooperation has been and will be regulated by ever more complex sets of agreements.

This considerable change will be made clearer here using the example of vehicle financing through leasing, which today already has a share of around 54 per cent of externally financed investments in "rolling material". In this connection, a specific comparison will be made between the obligations assumed by railway transport companies from the variety of different leasing agreements with the diverse

possibilities of cover from the numerous ranges of insurance on offer.

With an almost free arrangement of their agreements, both leasing and insurance companies are in a position to set their requirements and obligations with the rail transport companies in mutual agreement. And in this connection a big problem arises for most railway transport companies. A confusing number of different agreements offered by various leasing providers compares with a just as confusing variety of various cover offers from numerous insurers. Not to mention the partly difficult or incomprehensible details of the individual sets of agreements.

At this point the author would like to go into a digest in some detail of the three most frequent discrepancies he has observed, which can be summarised under the key words:

- Transfer of risks,
- Compensation and
- Payments.

### Transfer of risks

In many leasing agreements certifications can be found in which the railway transport company is obliged to assume liability for the destruction, loss of or damage to the leasing object. With these contract formulations, unfortunately there are no restrictions on the cause of the impairment or loss of the rail vehicle, so that the railway transport company can be obliged to perform beyond all liabilities not excluded by law and limited liabilities.

Although all unforeseen damage and destruction or loss of the leasing object are generally deemed to be insured in the insurance policies, in most conditions from insurers there are also many exclusions from insurance cover. These can undercut the previously mentioned very extensive liability in leasing contracts.

### Compensation

In many cases leasing companies have agreed the comprehensible wish for complete and unlimited replacement of the damaged or lost rail vehicle for the whole term of the leasing business.

These ideas are however, largely not met by the cover offered by insurance companies.

The majority of sets of agreements from insurers provide restrictions to performance, such as a current value regulation or even through general compensation reductions for certain machine parts. The indemnification agreed with the insurer can thus represent a not inconsiderable discrepancy from the obligations entered into from leasing agreements.

### Payments

In a large number of leasing agreements it can be repeatedly ascertained that a unavailability of or a restricted possibility to use the leasing objects due to damage or loss (regardless of the reason) would not lead to a rejection or reduction of the leasing instalments.

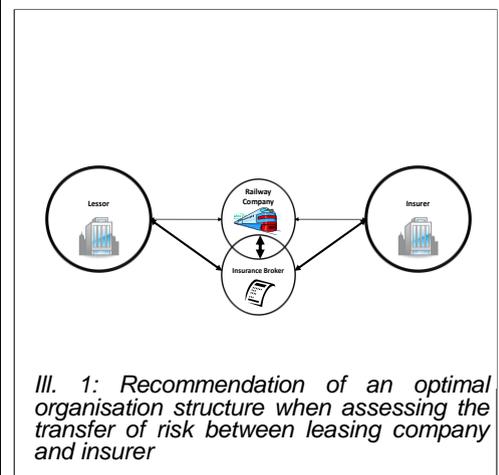
The overwhelming proportion of cover offered by insurance companies merely represents the availability of a duty to perform for the replacement of a damaged, destroyed or lost rail vehicle. Continuing leasing instalments due to the restricted or unavailability of use are then not an object of the insurance cover and have to be borne by the railway transport company itself.

### Conclusions

Even these few examples show what considerable financial burdens can be incurred by railway transport companies from the differences in contents between leasing agreements and insurance policies. Therefore, every railway transport company should make efforts to keep the differences between the various sets of agreements from the leasing and insurance companies as low as possible. Here the ideal solution would be equal cover between the offers made by the leasing company and the insurer.

Even at leasing companies that provide insurance cover for the leasing object too, these differences presented between the obligations imposed in the leasing agreement and the cover they grant themselves are repeatedly identified.

More than ever advice from independent experts, who are well versed in the peculiarities of the transport sector and insurance business, is in demand. Only those who know and understand their clients' environments can offer optimal solutions for the necessary individual tasks.



Remark: Translated from the original German