



Following a number of prior High Court decisions in Northern Ireland and England, it has been a matter for Insurers to establish the basic hire rate in challenging the recovery of the credit hire rate by Credit Hire Organisations (CHOs). In recent months in Northern Ireland the judiciary have been universally rejecting evidence presented by Insurers, at Trial, on the basis that it does not demonstrate the basic hire rate, making it increasingly difficult to challenge these claims on the grounds of rate. A decision handed down by the Court of Appeal in England, on 15 March 2017, does however help clarify the position and makes encouraging reading for Insurers.

Neil McBride -v- UK Insurance Limited and Peter Clayton -v- DUI Limited

The Court of Appeal has now handed down Judgment in respect of the conjoined Appeals of *Neil McBride -v- UK Insurance Limited* and *Peter Clayton -v- DUI Limited*. These Appeals arose on foot of the decision of the Court of Appeal in *Stevens -v- Equity Syndicate Management Limited* [2015]. In that case, Burnett J found that the Basic Hire Rate should be the “lowest reasonable rate quoted by a mainstream supplier for the hire of such a vehicle to a person such as the Claimant...or, if there is no mainstream supplier, by a local reputable supplier”.

Background (McBride)

Mr McBride’s vehicle was damaged as a consequence of his involvement in a non-fault accident. He availed of a replacement hire vehicle for a period of 77 days at a daily rate of

£409.00 plus VAT. At the original Hearing, the District Judge rejected the alternative rates of hire presented by the Defendant. The reason for doing so centered upon the fact that the basic hire rates carried a significant excess. The District Judge awarded the Claimant the sum of £225.00 plus VAT which aligned with evidence presented by the Claimant to demonstrate that the credit hire rate was reasonable. The Claimant appealed the District Judge's decision on the basis that the District Judge was incorrect in applying the principles set out in *Stevens*.

The Claimant contended that the District Judge was incorrect in finding that the basic hire rates presented at the original Hearing were from well established hire providers. Moreover, the Judge should not have considered the basic hire rates in circumstances where none of the rates available to the Court carried a nil excess. That said, should the District Judge have accepted the basic hire rates an allowance should have been made for Crash Damage Waiver (CDW).

Decision

The Court of Appeal held that the decision in *Stevens* was good law. The Court of Appeal outlined that alternative hire rates could be attained with minimal effort over the internet. Essentially, any individual will have access to alternative hire rates should they have access to the internet.

Arguably, the most important facet of the Judgment related to the issue of excess. The Appellant contended that in circumstances where the Respondent was not able to provide an alternative rate with a nil or modest excess, the Claimant should be awarded the credit hire rate. The Court ultimately concluded that CDW should be dealt with in isolation. A Defendant will now only be required to demonstrate that the daily hire rate is unreasonable regardless of the position in respect of CDW/excess. It was acknowledged that excess waiver products such as Questor are available and can be used as evidence to demonstrate the cost of obtaining a nil excess.

Background (Clayton)

Mr Clayton's vehicle was damaged as a consequence of a non-fault accident. He availed of a replacement hire vehicle for a period of 52 days. The daily rate claimed in this case amounted to £355.00 together with a daily charge of £12.50 to reduce the excess from £3,500.00 to £1,750.00 in conjunction with an additional daily charge of £17.50 which would reduce the residual excess to nil. The Trial Judge took issue with the significant rate claimed in this case and saw fit to award the difference between the highest basic hire rate presented (£10,500.00) and that of the credit hire rate which totalled £24,823.20. This case was heard prior to *Stevens* and accordingly, the Trial Judge did not apply the lowest basic hire rate.

Somewhat surprisingly, the District Judge commented that it would "stick in my craw" to award the full credit hire rate in that case. The Judge appeared to make a number of unusual comments and was unable to hide his clear distain for credit hire providers. The figure which was ultimately awarded amounted to £13,131.66.

The decision was appealed on the basis that the District Judge had clearly expressed bias. That said, the first Appeal of the District Judge's decision was rejected on the basis that the District Judge had considerable experience when dealing with cases of this nature. The decision made by the District Judge could not have been construed as unreasonable.

The Court of Appeal upheld the decision of the District Judge in applying the basic hire rate in this case. That said, the Court of Appeal indicated that the District Judge had been incorrect in rejecting the Defendant's evidence that Questor should be considered as an excess waiver product. The Court stated that "*(if) there is evidence of the availability of an excess elimination insurance as a stand-alone product from Questor or other providers...the Courts should admit and accept such evidence as evidence of the reasonable cost of obtaining a nil excess...the admission and acceptance of evidence of these stand-alone products should be the norm*".

Implications for Insurers in the credit hire market

- These decisions will have a significant impact on the credit hire market. The Court of Appeal saw fit to uphold the decision in *Stevens*. Furthermore, a Defendant's basic hire rate evidence should not now be dismissed on the basis that the comparables provided do not demonstrate a rate with a nil excess. A Judge should now award the basic hire rate together with the figure claimed for CDW should the alternative hire rate provide for a nil excess. Should the basic hire rate not provide for a nil excess, the basic hire rate should apply and the Court should deal with the cost of additional charges separately. Where the Court is provided with an amount for a nil excess product, such as Questor, the charge in respect of same should be applied in place of the amount claimed for CDW.
- To combat the impact of these decisions, we would anticipate that a Claimant/Plaintiff will be more likely to rely on impecuniosity. It remains the position that an impecunious Plaintiff is entitled to recover the credit hire rate. This would serve as a convenient means to 'side step' these Judgments.
- It is unclear as to whether or not the credit hire company in these related cases will petition the Supreme Court. In light of the significant impact that these decisions are likely to have, we must assume that this will be the case.

CONTACT DEAGLAN

T: +44 (0)28 9024 0183
F: +44 (0)28 9031 3300
E: deaglan.lundy@johnsonslaw.co.uk

