

# Obligation to pay compensation for damages following disruption of tram network

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## Facts

### Decision

The Frankfurt District Court recently ruled in a dispute between the operator of the city's tram network and the insurer of a vehicle which had parked in such a way as to block the tram tracks.<sup>(1)</sup>

### Facts

Under a contractual agreement, the plaintiff was obliged to operate the city's public tram network.

The driver of a vehicle which was insured by the defendant parked it in such a way as to prevent trams from travelling in one direction on a certain line for one hour. During this time, the plaintiff provided a rail replacement service using taxis, which were selected based on the plaintiff's experience. The vehicles were monitored using GPS and their travel records were sent directly to the taxi company's invoicing department, which subsequently invoiced the plaintiff after a further check in accordance with the applicable legal requirements.

The plaintiff filed a claim for compensation against the insurer based on the damages that it had suffered as a result of the vehicle owner interfering in its business operations.

### Decision

The Frankfurt District Court decided in the plaintiff's favour. The plaintiff's claim was grounded in Section 249, Article 823(1) of the Civil Code, Article 115(1) of the Insurance Contract Act and Article 1 of the Compulsory Insurance Law.

According to the court, the vehicle owner's misconduct had caused the plaintiff to suffer damages as it had been unable to use the tram tracks as intended. The possibility of use was thus completely removed.

The plaintiff's property rights had also been infringed as the object in question (ie, the tram tracks) could not be used. This protective purpose resulted from the court's systematic interpretation of the Civil Code. Article 903(1) of the Civil Code emphasises the use or function of property, while Article 906 tacitly presupposes that an impairment of use constitutes a disturbance of property. However, there is a precondition under which the possibility of use must be more than partially restricted. A serious impairment of an object's intended use, triggering the injuring party's obligation to pay damages, will exist only if the encroachment essentially amounts to the object's withdrawal.

The plaintiff's ability to use the tram tracks for their intended use had been completely removed while they were obstructed and its trams could no longer run according to schedule.

The court held that the asserted damage was also adequately and causally attributable to the violation of property rights. According to the contract concluded with the city in accordance with the Passenger Transport Act, the plaintiff had been generally obliged to provide rail transport services and specifically responsible for the organisation and implementation of the tram network in accordance with the defined operating programme.

The court found that the alleged damage had been sufficiently proven, noting that the technical manipulation of the taxi company's GPS system was impossible.

Further, no options had been available to the plaintiff to limit the amount of damage that it suffered. Other trams could not have been used on this particular line due to the obstruction of the tracks. The plaintiff had also immediately arranged for the obstructing car to be towed.

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## **Endnotes**

(1) Frankfurt District Court, Case 32 C 3586/16 (72).

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