IN THE SUPREME COURT OF BELIZE, A.D. 2012

Claim No. 289 of 2012

Between:

KLAAS REIMER (as administrator for the Estates of Gerhard Thiessen, Dora Thiessen, Martha Reimer and Duane Reimer) — Claimants

And

INSURANCE CORPORATION OF BELIZE LIMITED — Defendant

Before: Hon. Chief Justice Kenneth Benjamin
October 4 and 26, 2012.

Appearances: Mr. E. Andrew Marshalleck, SC for the Claimant
Mr. Rodwell Williams, SC for the Defendant

JUDGMENT

[1] On June 23, 2003, there was a tragic motor vehicular accident on the Western Highway in Belize involving a motor-bus owned by Linea Dorado Mundo Maya Tourist Transportation of Guatemala ("the bus owners") and driven by Francisco Mayen Sevalles ("the driver"). The collision was with a minivan of which all four occupants, suffered personal injuries from which they died.

[2] The Claimant in this action is the administrator of the estate of the four deceased persons. Claim No. 29 of 2004 was brought on behalf of the estates of the deceased persons against the driver and owners of the motor-bus by Writ of Summons filed on June 22, 2004. On May 4, 2012, judgment was entered against the driver and owners against the representative Claimant in sum of $580,271.94 with interest on the judgment at the rate of 3.5 percent per annum from June 22, 2004 to May 4, 2012 and at the rate of 6 percent per annum from May 4, 2012 until payment. Costs of $74, 013.60 were also awarded.

[3] In compliance with the proviso to section 19(1) of the Motor Vehicle (Third Party Risks) Act, Chapter 231, ("the Act") the Defendant insurance company was served with a Notice of Action to Insurer dated June 23, 2004. Also, pursuant to the said proviso, the Registrar of the Supreme Court duly certified that the proceedings in the action against the driver and owners of the motor-bus were correct and in order.

[4] On June 2, 2003, the Defendant in these proceedings, Insurance Corporation of Belize Ltd, had issued a cover note to Jemabal, SA in respect to the motor-bus for the period 2nd June, 2003 to 1st July 2003. The said cover note was issued to provide insurance cover for the motor-bus for use on a public road in Belize and to comply with the Motor Vehicle Insurance (Third Party Risks) Ordinance, 1980.

THE PLEADINGS

[5] The present Claim was instituted on May 24, 2012 by the representative Claimant on behalf of the estates of the four deceased persons against the Defendant insurance company seeking payment of the full sums awarded by way of damages, interest and costs in the judgment in Claim No. 299 of 2004. The Claimant averred that by virtue of section 19 of the Act, the Defendant is liable to pay the amount of the judgment although it may be in excess of its liability under the terms of the policy.

[6] In its Defence, the Defendant pleaded that the cover note issued to the owners of the motor-bus covered the liabilities of the owners and their authorised driver only to the extent required by the Act. The alleged liability to pay the full amount of the judgment was disputed and liability only up to the limits imposed by the Act was conceded. It was stated that prior to the suit, certain sums were paid over to the representative of the deceased persons to cover medical and funeral expenses and that on June 8, 2012 further payment was made to satisfy the total

liability to each estate inclusive of interest and costs up to the Defendant's statutory limit of liability with respect to each estate.

[7] The crux of the Defence was that the Defendant has satisfied its obligation to the Claimant in full pursuant to the terms of the cover note and the provisions of the Act. Accordingly, the Defendant said, that the Claimant is not entitled to maintain the Claim.

[8] By Notice of Application filed on July 13, 2012 the Defendant applied to the Court for summary judgment pursuant to Rule 15.2 of the Supreme Court (Civil Procedure) Rules 2005 or, alternatively, for the Claim to be struck out on the ground that there are no reasonable grounds for bringing same pursuant to Rule 26.3 (3) of the said Rules.

[9] At case management conference, both sides agreed that there was no dispute as to the facts and that the substantive issue was a matter of law to be resolved by argument. Accordingly, the matter was set for trial and upon coming on for hearing, it was ruled that the substantive matter be proceeded with as the orders sought by the Defendant in its Notice of Application were subsumed in the substantive matter.

[10] It is not disputed that a policy of insurance was issued by the Defendant to the owners of the motor-bus and that the terms of the policy were evidenced by the cover note written up and issued by the Defendant. Further, the driver was an authorised driver of the insured owners and, at the time of the accident, they were covered by the policy of insurance. There is no demur that the owners and the driver are liable to the estates of the deceased persons and the judgment rendered in Claim No. 299 of 2004 is not being challenged. The Claimant has acknowledged receipt of $108,756.02 from the Defendant.

THE ISSUES

[11] The parties relied on written submissions which were developed during oral arguments. However, subsequent to the hearing, the court invited further submissions on two further points. The following issues emerged for the determination of the court:

1. Whether liability is unlimited under the Cover Note issued by the Defendant
2. Whether the Defendant as the insurers are liable to pay the full judgment less the amount already paid to the Claimant as the third party pursuant to section 19 (1) of the Motor Vehicles Insurance (Third Party Risks) Act, Chapter 231 ("the Act") or is the Claimant's liability limited to the Statutory minimum cover under the Act of $50,000.00 per person and $200,000.00 in total for any one accident; and
3. Assuming that recovery is so limited, whether awards of interest and costs are recoverable by the third party from the insurers in excess of the minimum statutory amounts.

ISSUE NO. 1

[12] The Cover Note was issued by the Defendant on June 2, 2003 as iterated in paragraph 4 above. There is no dispute that it was in force at the date of the accident and complied with the requirements of the Act. A copy of the Motor Cover Note No. 105660 was exhibited to the affidavit of Evodia Lawrence sworn to in support of the Defendant's Notice of Application. In the category labelled "cover", the words "Third Party Act" were handwritten. Ms. Lawrence deposed at paragraphs 6 and 7 of her affidavit:

> *"6. A cover note is usually issued for short term or temporary insurance such as in the circumstances of this case where insurance cover was for a period of one month. The type of cover provided is indicated on the face*

of the cover note where it says "Cover" ie; "Third Party Act." This cover is the basic cover required by the Laws of Belize particularly, the Motor Vehicle Insurance (Third Party Risks) Act (hereinafter referred to as "The Act" or "The Statute") and is the minimum cover provided by the Company. The cover provided by the Company. The cover provided by the Company. The cover provided, included limits and terms of use, is what is required to be provided by the Statute, no additional or other benefit is included in this type of cover, hence the name "Third Party Act."

7. The type of cover taken out also determines the premium paid, which, in these circumstances was $127.00, the premium payable for the minimum cover for a passenger bus such as the insured's. If a different cover is required by the insured, which includes higher limits of liability or comprehensive cover, ten additional premium would have been charged for other types of cover such as the "Third Party Standard" or "comprehensive" cover."

[13] In the written submissions, the Claimant acknowledged that it is not uncommon for an insurance company to offer "Bare Act" policies at a cheaper rate and, that such policies barely cover the minimum requirement of the Act but meet the requirements of the Act. It was urged that the "Bare Act" policies and the so-called "Million dollar" policies can both be described as "Third Party Act" policies. As to the Cover Note, it was said that given the paucity in its terms, the same having been prepared by the Defendant, it must be construed as being of no limitation as to the value of liability covered, applying the *contra preferentem* rule.

[14] The Defendant took issue with this construction and submitted that the policy as embodied in the cover note provided the limit of cover equal to the statutory minimum amounts required by the Act. It was countered that the cover note is not ambiguous, vague or unlimited but rather that it limits the cover to the statutory minimum required.

[15] The Motor Vehicle Insurance (Third Party Risks) Ordinance 1958 (now replaced the Motor Vehicle Insurance (Third Party Risks) Act ("the Act") imposes a compulsory requirement of third party insurance for motor vehicles in use on a

public road in Belize. The statutory obligation now resides in section 3(1) of the Act which mandates that no person shall use or cause or permit another person to use a motor vehicle on a public road unless the use of such vehicle is covered by a policy of insurance in respect of third party risks in compliance with the requirements of the Act. Such requirements are set out in section 4 of the Act. So far as relevant to this matter, section 4 enacts:-

"4. (1) In order to comply with the requirements of this Act, a policy of insurance must be a policy which:-

a) is issued by a person who is an insurer; and

b) insures such person, persons or classes of persons as maybe specified in the policy in respect of any liability which may be him or them in respect of the death or bodily injury to any person or damage to any property caused by or arising out of the use of the motor vehicle on a public road; and

c) insure such person, persons or classes of persons as may be specified in the policy in respect of any statutory liability which may be incurred by him or them under the provisions of this Act relating to the payment of the benefits mentioned in section 5,

but such a policy shall not be required to cover

i. .....

ii. .....

iii. any contractual liability;

iv. liability for death or bodily injury in excess of fifty thousand dollars in respect of any one claim by any one person;

v. liability for death for bodily injury in excess of two hundred thousand dollars in respect of the total claims arising from any one accident.

vi. Liability in excess of twenty thousand dollars for damage to any property, arising from any one accident;

vii. Liability for damage to the motor vehicle or to any property owned by or in control of those insured"

(2) Notwithstanding anything in any enactment, rule of law or the common law, a person issuing a policy of insurance under this section shall be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons.

(3) A policy shall be of no effect for the purposes of this section unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate (in this Act referred to as a "certificate of insurance") in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed, and different forms and different particulars may be prescribed in relation to different cases or circumstances."

The Act makes it mandatory that for use of a motor vehicle on the public road there must be in force a policy of insurance providing cover against liability for death or bodily injury to third party road users arising out of use of the motor vehicle on a public road up to the monetary limits specified in the Act.

[16] The resolution of this issue lies in the actual words written in the box set aside on the cover note for the description of the nature of the liability covered. In this regard the use of the word "Act" is crucial. Had the underwriter only written the words "Third Party", there would have been little difficulty construing the cover as being unlimited or at least up to the limit provided by the insurers in its standard third party policies. The Claimant submitted that the words "Third Party" meant

that the policy only covered third parties and not the insured and that the word "Act" meant that the Act had been complied with, thus rendering the cover to be over and above the statutory minimum limits. On this basis, it was concluded that the cover note offered cover for third parties, such as the Claimant, for unlimited amounts.

[17] As I see it, the words have to be read together to achieve their full meaning. Plainly, the insurers were identifying in one group of words that the cover note was in respect of liability to the third parties to the extent of the requirements of the Act. This would be in contradistinction to the issuance of comprehensive cover or cover up to specified monetary limits whether above or below the minimum prescribed as mandatory by the statute. This construction stands to reason and is consistent with the explanation embodied in the affidavit of Evodia Lawrence, where she said that this is the basic cover required under the law with no additional or other benefit. There is no evidence before the Court to suggest that the word "basic" would be integral to such cover or is recognized by industry usage.

[18] On the first issue, it is ruled that the cover note does not confer unlimited liability in the form issued by the Defendant but that it was issued to provide to the insured the minimum cover required by the Act. Such is the plain and ordinary meaning of the words in the cover note.

ISSUE NO. 2

[19] The second issue to be resolved by the Court is whether, as the Claimant asserted, the Defendant is liable to pay the full amount on the judgment in Claim No. 299 of 2004 less the amount already paid. The Defendant contended that the liability is limited to the statutory minimum requirements of section 4(1) of the Act. The court is being asked to determine, on the facts of the case, whether on a true construction of section 19 of the Act, the Defendant, as insurers, is liable to pay

to the Claimant as representative of the estates of the deceased persons, the full amount of the judgment (less sum already paid to the Claimant or representative of the deceased) plus interested and costs notwithstanding that the said judgment, interest and costs exceed the liability required to be covered by section 4(1)(b) or (c) of the Act, or contrarily, to pay to the Claimant only to the extent of the liability required to be covered by the Act.

[20] The relevant Statutory provision is section 19 of the Act, which, so far as relevant, enacts as follows:

> *"19 (1) If, after a certificate of insurance has been issued under section 4(3) in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under section 4(1)(b) or (c) (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then,.....; the insurer shall, subject to this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments:*
>
> *Provided that the court shall not proceed to entertain or hear a claim or to issue any judgments to which this section applies until a notice in the form prescribed in Schedule B is filed a the Registry of the Supreme Court by the plaintiff and is served on the insurer, and the Registrar of the Supreme Court has issued his certificate that the proceedings are in order."*
>
> *(2) .....*
>
> *(3).....*
>
> *(4) If the amount which an insurer becomes liable under this section to pay respect of a liability of a person insured by a policy exceeds*

the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability he shall be entitled to recover the excess from that person."

This section is designed to surmount the hurdle presented to a third party suffering loss from injury or death by the principle of privity of contract.

[21] The Claimant prefaced his arguments by pointing out that Section 4 (1)(b) & (c) describe the type of liability that is required to be covered by policies against third party risks and section (1)(iv) & (v) go on to fix minimum limits of coverage but do not prescribe the maximum value of coverage. However, this observation is trite and is no longer the subject of judicial controversy.

[22] The resolution of the second issue turns on the construction of section 19(1) of the Act, and was considered by the House of Lords in ***Harker v. Caledonian Insurance Co.*** **[1980] R.T.R. 241** on appeal from the Court of Appeal affirming the decision of Donaldson, J. Lord Diplock in his speech considered the meaning of the wording to be clear and free from ambiguity, requiring an examination of the relationship between section 4(1) and section 20(1) (now section 19 (1)) of the Belize Act. In that case, a British soldier stationed in Belize, then British Honduras, was injured in a road accident. The policy of insurance of the person whose vehicles was responsible for the accident was limited to $4,000.00. The Plaintiff sought to recover the full judgment from his insurers. Lord Diplock refused to accede to the claim. The learned Law Lord had this to say (at pp. 260-261):

> *"In a sentence the question of construction is: Is 'liability in respect of any sum in excess of four thousand dollars arising out of any one claim by any one person which by proviso (1) to subsection (1)(8) of section 4 a policy is not required to cover, nevertheless included in 'such liability as is required to be covered by a policy under paragraph (b) of subsection (1) of section 4'. Where that expression is used in section 20(1)? So stated, the only possible answer is, in my view, 'no'. Your Lordships were taken through various other provisions of the ordinance which it was suggested threw some darkness upon apparent clarity of the language of*

ss. 4 (1) and 20 (1). In particular an argument was based on sub-s (4) of s. 20 which provides:

20. (4) If the amount which an insurer becomes liable under this section to pay in respect of a liability of a person insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability, he shall be entitled to recover the excess from the person.

The reference to the liability of the insurer in a direct action "exceeding" his liability to his assured under the policy was relied upon as indicating that monetary limits lawfully provided for by the policy would be ineffective as a defence, in part, to a direct action on the judgment obtained against the assured. This sub-section was in my view intended to cover inter alia cases where the insurer was entitled to avoid or cancel the policy; but even if, in the absence of the words "(if any)" after the word "amount" where it appears for the second time in the sub-section, the verb "exceeds" is not the most apt to express an excess over nil, there are instances, of which costs and interest on the judgment are examples, where the insurer would be liable in the direct action for sums in excess of the permissible monetary limits upon the cover afforded by the policy. So even on its narrowest construction the subsection is not inconsistent with the dear and unambiguous meaning section 20(1)."

The appeal was dismissed.

[23] In the judgment, reference was made to the decision of the Judicial Committee of the Privy Council in ***Free Lanka Insurance Co. Ltd. v. Ranasinghe*** **[1964] AC 541** which Lord Diplock stated to be not helpful. The ***Free Lanka*** case concerned an award of 30,000 rupees as damages where the statutory limit was 40,000 rupees. In giving the advice of the Board, Lord Evershed held that liability was limited to 20,000 rupees and that the insurers were not liable to the third party for a greater sum than that for which he is liable under S. 128 of the Ceylon Ordinance (which is in *pari materia* to sections 4 and 19 of the Belize Act). The matter was decided purely upon arguments presented by the insurers.

[24] Learned Senior Counsel for the Claimant argued that Section 19(1) renders an insurer liable to pay to a third party the amount of the judgment so long as, firstly, the judgment is in respect of liability covered by a policy by section 4(1)(b) or (c)

and secondly, the liability is covered by the terms of the policy. Reference was made to the judgment of Malone, CJ in ***Eric Gillett et al. V. Motor & General Insurance Co. Ltd.*** **– Action No. 141 of 1976.** The Learned Chief Justice stated (at paragraph 4 of pg. 3):-

> *" 'liability' in the context of "liability as is required to be covered by a policy under paragraph (b) of subsection (1) of section 4" in section 20(1) of the Ordinance refers both to the nature and amount of the liability under the terms of the policy which must be read subject to section 4(1)(b) and its provisos."*

Emphasis was laid on the words "under the terms of the policy."

[25] The argument went on to cite the cases of ***Harker, Goberdhan v. Caribbean Insurance Co. Ltd*** **[1998] RTR 432** and ***P.W.G. Suttle v Eleanor Simmons*** **[1989] 2 Lloyd's Rep 227 (PC).** In the ***Goberdhan*** case, Sir Andrew Leggatt stated (at p. 437-8)

> *"It is evident that liability 'required to be covered by a policy' relates to liability which is covered by the terms of a policy that insures the holder in respect of liability for bodily injury and which need not exceed $50,000.00. In short, the insurer's insurer's liability to a third party is determined subject to permissible limits of liability, by reference to what that policy which rendered the insurer liable to his insured in respect of the accident was required to cover. Because the policy in question was not required to cover liability in excess of $50,000.00, that is the applicable limit."*

The Claimant's supplementary submissions took the position that a third party's entitlement to recover from an insurer is limited by the terms of the policy and is not restricted by the monetary statutory limits set out in section 4(1) of the Act.

[26] In ***Goberdhan*** as in ***Harker***, the terms of the policy under judicial scrutiny expressly limited the cover to the limits required under the Act. Having previously concluded that the cover note issued by the Defendant was limited by the paraments prescribed by Section 4(1), it is not necessary to proceed to decide

whether the Defendant would have been liable under a policy of unlimited cover or cover in excess of the statutory monetary limits set out in S. 4(1) of the Act.

[27] However, before leaving this issue, it is useful to briefly treat with the case of ***Jamaica C-op Fire & General Insurance Co Ltd. v. Sanchez*** **(1968) 13 WIR 138**, Luckhoo, JA held that where a policy of insurance afforded unlimited cover an injured Third Party was entitled to recover from the insurers the whole judgment, although it was in excess of the Statutory minimum. In ***Suttle v. Simmons***, the Board seemed to doubt the reasoning in the ***Sanchez*** case. Be that as it may, these arguments must be postponed for another day as any finding by this Court in the present case would be *obiter* and not required for the determination of the issues at hand.

[28] On the second issue, I hold that the Defendant is not liable to pay the full judgment but that liability is limited to the statutory minimum cover under the Act of $50,000.00 per person and $200,000.00 in total for any one accident.

ISSUE NO. 3

[29] The Claimant asserted the entitlement to further sums for interest and costs on the amount paid by the Defendant on the basis of section 4(1) and section 19(1) of the Act. In aid of this position, Learned Senior Counsel cited the case of ***Harker*** (ibid) where Lord Diplock said (at p. 559):-

> *"...there are instances, of which costs and interest on the judgment are examples, where the insurer would be liable in the direct action for sums in excess of the permissible monetary limits upon the cover afforded by the policy."*

Learned Senior Counsel for the Defendant simply urged that interest and costs are to be included within the minimum statutory amount required to be covered by a policy of insurance under the Act.

[30] The point has been adjudicated upon by courts in the region and by the Privy Council. In ***Greaves v. New India Assurance Co. Ltd.*** **(1975) 27 WIR 17,** Williams, J. in the High Court of Barbados was called upon to construe the words in section 9(1) of the Motor-Vehicle (Third Party Risks) Act, 1952 (the equivalent to S. 19(1) of Act:-

> *"including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."*

As His Lordship put it in short "does the word 'including' mean 'as well as" or is it to be construed restrictively?". The answer was given in the affirmative by reference to section 9(4) (S. 19(4) of the Belize Act) consistent with Lord Diplock in ***Harker.*** The dictum reads (at p. 19):-

> *"The point is that sub-section (1) of S. 9 is the only part of that section which imposes liability on an insurer and if it is to be construed as requiring the insurer to pay the third party no more than the amount which he was liable to pay under the policy, then sub-section (4) would seem to be pointless. However, sub-section (4) would have some meaning if sub-section (1) was intended to impose on an insurer a responsibility greater than his responsibility to the insured under the policy and acting on what I consider to be a reasonable and accepted interpretation of statute law, that every provision must be intended to have some purpose and some meaning. I agree with the interpretation of sub-section (1) of S. 9 put forward on behalf of the plaintiff. In my view the obligation of an insurer under the sub-section is to pay over and above the limit imposed under the policy, the costs of the suit and interest awarded without reference to any limit."*

[31] The Court of Appeal of Trinidad and Tobago in the case of ***Presidential Insurance Co. Ltd. v Stafford*** **(1997) 52 WIR 449** held that costs and interest are not to be included and were never intended to be included in the statutory minimum that covers damages for personal injuries and/or death. In that case, the court below ordered the appellant to pay $50,000.00 damages up to the statutory limit together with costs and interest. The appeal was rejected and the order of the High Court upheld.

[32] There is also the case of ***Matadeen v Caribbean Insurance Co. Ltd.*** **[2002] UKPC 69** in which the Privy Council accepted the argument that S. **10(1)** (S.19(1) of the Belize Act) ought to be construed as meaning that the person injured is entitled to recover costs and interest over and above the statutory minimum payable.

[33] His Lordship, Sir John Muria in ***Joel Charke et al v. Home Protector Insurance Co. Ltd.*** **– Claim No. 182 of 2010** followed the foregoing cases in declaring that the Defendants was liable to pay the injured Claimant the sum payable as per the statutory minimum of $50,000.00 together with interest thereon and costs. Accordingly, I unhesitatingly find that the Claimant is entitled to recover interest on the sum paid pursuant to the Cover Note and costs thereon pursuant to S. 19(1) of the Act.

ORDERS

[34] (1) Judgment is entered for the Claimant for interest on the sum paid from May 6, 2012 until payment in full and for prescribed costs on the said sum.

(2) The Defendant shall pay to the Claimant half the costs of these proceedings to be assessed if not agreed.

DATED this **10th** day of **November , 2017.**

KENNETH A. BENJAMIN
Chief Justice of Belize