

IN THE LIVERPOOL COUNTY COURT

CLAIM NO: F01YM416

BEFORE RECORDER SIMON PARRINGTON

BETWEEN:

ALAN PIOTR NAGORSKI

Claimant

and

EDWARD OLIVER NIKOLICS

First Defendant

and

TRADEWISE INSURANCE COMPANY LIMITED

Second Defendant

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JUDGMENT

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## JUDGMENT

1. This is a claim for damages for personal injury and loss sustained by Alan Nagorski as a result of the alleged negligent driving of Edvard Nikolics on 26<sup>th</sup> September 2018 on Littleton Road, Salford. It is pleaded that the Claimant, Mr Nagorski, was the driver of a Toyota motor car and the First Defendant, Mr Nikolics, the driver of a Vauxhall Zafira. Not only does Mr Nagorski bring proceedings for damages against Mr Nikolics but also against an insurer, Tradewise Insurance Company Ltd, which the Claimant pleads is bound to satisfy such Judgment as he obtains against the First Defendant. So far, the First Defendant has taken no part in these proceedings. This matter comes before this Court for the determination of a preliminary issue pursuant to an Order of District Judge O'Brien of 21<sup>st</sup> December 2020, that being "*The question of the Second Defendant's liability to satisfy any Judgment which the Claimant may later obtain against the First Defendant and which remains unsatisfied*".
2. The facts of the alleged accident are of limited relevance to the matter that is before the Court today. Put simply, the Claimant contends that whilst driving his car on Littleton Road, Salford, the First Defendant drove from a parked position at the side of the road across the Claimant's path into collision with his car. I note, in passing, that the alleged accident is said to have occurred on the same road as the First Defendant's address, i.e. Littleton Road, Salford.
3. The Particulars of Claim initially plead the happening of the accident and then at paragraph 3:

3. "*By a policy of insurance identified by reference number 198686/18 – the Second Defendant as an authorised insurer was within the meanings of Sections 95 (2) and 145 (2) of the Road Traffic Act 1988 and in consideration of a payment, it agreed to insure the First Defendant in respect of any liability which he might incur in respect of the death or bodily injury to any person or damage caused by arising out of the use of on the road of a motor vehicle being such liability in respect of Third Party risks as is required to be covered by a policy of insurance under sections 145 (3) (a) of the Act, further, ... the Claimant is entitled to bring*

*these proceedings against the Second Defendant and the Second Defendant is directly liable to the extent that it is liable to its insured's driver, the Tortfeasor, Mr Edvard Oliver Nikolics.*

4. The Particulars of Claim then plead the Particulars of Negligence, General Damages and Special Damages.
5. The Defendant served a Defence, which was later amended. That Amended Defence, insofar as it is relevant to this issue, pleads the Second Defendant's case. It admits that the Second Defendant was a motor insurer which insured against third party risks, that it provided a motor trader's policy to the policyholder, Mr Tibor Kiss T/A Tibor Autos (who ran a car sales and repair business) which complied with Part VI of the Road Traffic Act 1988 and that it covered Mr Kiss and another driver called, Plajner Judit. It pleads that the First Defendant was neither a policyholder, nor a named driver under the policy. It set out the cover which extended to any vehicle owned by the policyholder and any other motor vehicle held in trust or in the custody or control of the policyholder for motor trade purposes and that the cover was in respect of use in connection with the motor trade business of Mr Kiss and for social domestic and pleasure purposes. The Second Defendant pleads that it has no liability to the Claimant because the vehicle with which the Claimant allegedly collided was not covered under the policy. To that extent, it says, firstly, that the policy was incepted for fraudulent purposes, citing in particular that it was for a ghost brokering business (about which I make no comment in this Judgment) and secondly, that the vehicle concerned, a Vauxhall Zafira, was not in the Second Defendant's insured's possession, custody, or control at the time of the accident and so was not covered by the policy at the time of the accident, and thus the Second Defendant has no liability to the Claimant.
6. The Amended Defence also pleads a denial that the Second Defendant is liable to the Claimant under the EC (Rights against Insurers) Regulations 2002 or that it can be liable to the Claimant under the Road Traffic Act 1988. Specifically, with regard to the Road Traffic Act 1988, it pleads as follows:

*"15. By Section 151(2) of the 1988 Act, only certain judgments carry with them the right to enforcement under Section 151".*

*“16. The relevant mandatory characteristics of any judgment are set out in Section 151(2).”*

7. The Pleading then sets out how Section 152 may be fulfilled, to which I will refer later in this Judgment.
8. In his reply, the Claimant admits that the Second Defendant's policy covered Mr Kiss and Ms Judit and that the First Defendant was not a policyholder or driver under the policy. He avers that Section 151 of the Road Traffic Act 1988 has the effect of making the Second Defendant liable to satisfy a Judgment obtained after the issue of a policy, not only as against any person who was insured by the policy but also in respect of any liability which would be so covered if the policy insured all persons and the Judgment was obtained against any person other than the one who is insured by the policy. The Claimant contends that the Second Defendant had conceded that the vehicle driven by the First Defendant at the time of the accident was covered by the Second Defendant for that period. However, a close reading of paragraph 7A(b) of the Amended Defence makes it clear that no such concession was made by the Second Defendant, indeed quite the reverse is the position with the Second Defendant twice pleading in that paragraph that it was not so covered.
9. The Reply makes reference to a database known as the Motor Insurer's Database ('MID'). I examine the nature and relevance of the MID later in this Judgment, but within the Reply, the Claimant pleads that when the vehicle was registered on the MID (on the 16<sup>th</sup> August 2018) it became covered for insurance purposes by the Second Defendant's policy and that a failure by the policyholder to remove the vehicle from the MID meant that the Second Defendant remained liable to third parties under Section 151 of the Road Traffic Act 1988, even if the policyholder had by then or later disposed of the vehicle.
10. The Reply then pleads the liability of the Second Defendant to meet any Judgment obtained under Section 151 against the First Defendant.

Section 151 of the Road Traffic Act 1988 states:

- (1) This section applies where, after [a policy or security is issued or given for the purposes of this Part of this Act] a judgment to which this subsection applies is obtained.
  - (2) Subsection (1) above applies to judgments relating to a liability with respect to any matter where liability with respect to that matter is required to be covered by a policy of insurance under section 145 of this Act and either –
    - (a) It is a liability covered by the terms of the policy or security, and the judgment is obtained against any person who is insured by the policy or whose liability is covered by the security, as the case may be; or
    - (b) It is a liability, other than an excluded liability, which would be so covered if the policy insured all persons or, as the case may be, the security covered the liability of all persons, and the judgment is obtained against any person other than one who is insured by the policy or, as the case may be, whose liability is covered by the security.
11. The Policy of insurance, the Motor Trade Policy, is in 3 parts. The policy documents include the Certificate, the Schedule (which incorporates what is referred to as a “Statement of Fact for your Motor Trade Insurance”) and the Policy Document.
12. The Certificate described the vehicle(s) covered as:
- “Any motor vehicle ... the property of the insured or in their custody or control for motor trade purposes.”*
13. The insured is recorded as Mr Tibor Kiss T/A Tibor Autos.

14. The policy is stated to commence on 25<sup>th</sup> June 2018 and to expire 1 year later.
15. The persons or classes of person entitled to drive are listed as Mr Tibor Kiss and Ms Plajner Judit.
16. The limitation as to use is stated to be:

*“Social, domestic and pleasure purposes of the insured and the insured’s employee or partner, as specified in Section 5 above and in connection with the motor trade business of the insured.”*

17. The schedule repeats much of the information that describes the cover as “third party fire and theft” and the vehicles covered as any motor vehicle “as described in the Certificate of Motor Insurance.”
18. With the Certificate, there is what is referred to as a “Statement of Fact for your Motor Trade Insurance”. There follows on page 6 of that document a section headed “Vehicle Updates and the Motor Insurers Database”. The first paragraph of this section states that the 4<sup>th</sup> EU Motor Insurers Directive requires policyholders to provide to the Motor Insurers Database (MID) the make/model and registration numbers of all vehicles that will be driven, used, or parked on a road or public place. This directive included all vehicles permanently owned, stock vehicles and vehicles driven on trade plates. Later in this document there is a warning to the effect that that failure to remove a vehicle from the Tradewise Motor Trade policy, means that it ‘stays on the MID in your name’ and ‘that means that you may still be liable on your insurance for claims involving a vehicle long after you sold it!’.
19. The Motor Trade Insurance Policy again sets out certain definitions including that of the “insured” and “insured vehicle”.
20. As has already been observed, the insured or policyholder was stated to be Mr Tibor Kiss. He was in business as a motor trader. He and Ms Plajner Judit were the only drivers named on the policy documents as those covered. Whether he was a wholly honest person is of limited relevance to this issue but

of passing interest, it is known that the policy with the Second Defendant was avoided by the Second Defendant in October 2018 on the ground that Mr Kiss had made a material non-disclosure on incepting the policy.

21. The vehicle that was involved in the accident of 26<sup>th</sup> September 2018 was a Vauxhall Zafira registration number NJ54WWU. It is not known when the vehicle came into Mr Kiss' ownership, possession, or control but there is evidence that it was transferred by Mr Kiss to Mr Nikolics, the driver, by 6<sup>th</sup> August 2018 as the Registered Keeper Form makes that clear. Whilst not conclusive, on the balance of probabilities, I find as a fact that on or about that date the vehicle was sold or otherwise transferred by Mr Kiss to Mr Nikolics. There are suggestions that on 16<sup>th</sup> August 2018 the vehicle was variously used as a courtesy car or that it came to Mr Kiss' possession for repairs, but I make no finding as to that.
22. However, it is clear is that by 16<sup>th</sup> August 2018 the vehicle was recorded on the MID as being a vehicle that was insured by the Second Defendant. It remained on the MID thereafter and was still there on 26<sup>th</sup> September when the subject accident occurred. However, it is agreed that on the day of the accident Mr Kiss was not the owner of the vehicle and that he was not in possession or control as it was not being driven by either of the two named drivers under the policy.
23. Notwithstanding the extent of the pleadings, there are two matters of relevance that I must consider when determining the preliminary issue, i.e. "The Second Defendant's liability to satisfy any Judgment which the Claimant may later obtain against the First Defendant and which remains unsatisfied".
24. Having read the helpful Skeletons from both Counsel, Mr Vickers and Mr Palmer Q.C. leading Mr Fear-Segal and heard submissions, the matters for consideration have been narrowed down to:
  - (i) Whether the registration of the vehicle on the MID fixes the Second Defendant insurer with liability to meet a Judgment (in every case); and
  - (ii) The Application of Section 151(2)(b).

25. For the Claimant, Mr Guy Vickers, concedes that the Vauxhall Zafira was neither driven by Mr Kiss nor Miss Judit, the named drivers on the Motor Trade Policy issued by the Second Defendant, when he, Mr Nagorski, was injured on 26<sup>th</sup> September 2018, (and that the First Defendant was not a named driver under the policy). Indeed, he concedes that the First Defendant was not known to Mr Kiss and not connected to him in any way. It is also accepted by the Claimant that the Vauxhall Zafira had changed hands on or about 6<sup>th</sup> August 2018 when Mr Nikolics became the registered keeper. The only fact linking the vehicle with Mr Kiss was the registration of the vehicle on the MID on 16<sup>th</sup> August 2018, which remained so registered until after 26<sup>th</sup> September, when the accident occurred.
26. What Mr Vickers contends is that the registration of the vehicle on the MID activated the Second Defendant's policy as "any vehicle" and that on 26<sup>th</sup> September it was still so covered. As for the Second Defendant's liability to meet a Judgment obtained against the First Defendant under Section 151, Mr Vickers asserts that the whole point of Section 151(2)(b) is that it covers situations where a person other than the one who is insured by the policy drives a vehicle to which the Section applies at the date of the accident, and that the Section applies where, after a policy is issued, a Judgment is obtained, and that it covers any vehicle notified to the MID. Further he contends that regardless of whether a vehicle has been sold or otherwise disposed of, unless the policy has been cancelled by consent, the insurers remain "on the hook" once the vehicle has been registered on the MID. He says that the Second Defendant took a risk by giving the policyholder the authority to activate the policy by registering and de-registering a particular vehicle on the MID rather than by notifying insurers each time any vehicle in his possession or control was to be used on the highway and that in so doing insurers must indemnify should a claim arise whilst so registered, as in this case. He points to four potential ways out for insurers but says that the Second Defendant failed to avail itself of any of them by 26<sup>th</sup> September 2018, when the accident occurred. He also points out the Policy Statement, which warns the policyholders of the consequences of not de-registering appropriately (which includes insurers seeking recovery of any sums paid out by insurers to a third party).



27. Mr Palmer QC for the Second Defendants points to the Motor Traders Policy, which was incepted, he contends, fraudulently, on 25<sup>th</sup> June 2018. He observes that the policy does not seek to specify particular vehicles the subject of the insurance, the description of vehicles being given as “any motor vehicles...the property of the insured or in their custody control or control for motor trade purposes”. It defines insured vehicle as just that, i.e. any vehicle.

28. The terms of indemnity provided to third parties, he says, are limited to circumstances where the vehicle, the use of which has caused damage to the third party for which the driver is liable:

(i) Is a vehicle which is the property of the insured (i.e. Mr Kiss T/A Tibor Autos) or is in the custody or control of that person, for motor trade purposes; and

(ii) Is driven by those authorised to drive i.e. the named drivers, Mr Kiss and Miss Judit.

29. Mr Palmer submits that as at the 26<sup>th</sup> September 2018, Section 151 of the Road Traffic Act 1988 laid down the rules by which a Judgment against a negligent driver could and can be enforced against a motor insurer. He accepts that in this case the Second Defendant had issued a policy so to enable Mr Kiss to satisfy Section 143 of the Act. Turning to Section 151 (1) and the preconditions imposed with regards to the enforcing of any Judgment and the definition by Section 151(2) of the Judgment to which the subsection applies, he says that what Section 151(2) requires is that the Judgment which is sought to be enforced against the motor insurer is required to satisfy one of two pairs of conditions.

30. The first of the two double conditions laid down by Section 151(2)(a) is that the Judgment must be in respect of liability:

*“Covered by the terms the policy”.*

31. And the Judgment must be obtained:

*“As against any person who is insured by the policy”.*

32. He submits, and it is agreed, that neither of these two preconditions are satisfied by Section 151(2)(a) because the only liabilities which are covered are those which arise in relation to the use of “any motor vehicle the property of Mr Kiss or in their custody control or motor trade purposes” and that the Judgment that the Claimant is seeking is not against either Mr Kiss or Ms Judit, the only persons covered by the policy.

33. It is liability under Section 151(2)(b) that is in issue. It provides that a Judgment will qualify to be enforced against the motor trader if it is in respect of a liability:

*“Which would be so covered if the policy insured all persons”, and*

*“That the Judgment is obtained against any person other than the one who is insured by the policy”.*

34. He concedes that the second of the two preconditions under Section 151(2)(b) is satisfied, as Mr Nikolics, the First Defendant, is a person other than those – (Mr Kiss and Ms Judit) insured by the policy. However, his case is that the first of the preconditions is not satisfied for, as with Section 151(2)(a) the only liabilities which are covered are those which arise in relation to any motor vehicle, the property of Mr Kiss or in his control or custody for motor trade purposes. He says, once more, that the vehicle was not the property of Mr Kiss or in his custody or control for motor trade purposes, it being driven by Mr Nikolics on 26<sup>th</sup> September 2018 and in his possession and control. For this reason, Mr Palmer submits the whole of Section 151 does not apply and that a putative Judgment against the First Defendant may not be enforced against the Second Defendant. In support of his submission, Mr Palmer submits that regard must be had for the terms of the policy, he cites the Court of Appeal decision in *Bristol Alliance v Williams* [2013] QB806 in which it was held that liability was to be covered by the terms of the policy in force at the time. Put another way, that Section 151 does not provide a “catch all” regardless of the terms of the policy, as Mr Vickers asserts.

35. Mr Palmer then turns, in the Skeleton and before me, to the significance of the MID. He says that the MID is a useful tool to detect uninsured cars and that the police are enabled thereby to approach people and impound cars if not insured but that it is a modern electronic system that is not wholly watertight. In fact, it is a central record of insured vehicles in the UK, i.e. a database. Mr Palmer notes that it was EU Regulations that led to the setting up of the MID, the purpose of which is to assist foreign drivers suffering accidents in the UK or accidents outside the UK which involve a car registered in the UK .
36. It is Mr Vickers' contention that the entry of a vehicle on the MID places automatic and unconditional obligations on insurers, regardless of the terms of the policy they have issued, to satisfy a Judgment obtained against a driver so identified. He says, that being so, Section 151(2) applies and the Second Defendant is fixed with liability on a proper interpretation of Section 151(2), the very purpose being to protect innocent victims. He points to *Keeley v Pashen* [2004] EWCA Civ 1491 for support, it being held in that case that the Claimant was entitled to enforce her statutory rights under Section 151. However, on any reading of that authority there was a policy of insurance, which covered the vehicle that was being used at the time the negligent act and the driver thereof notwithstanding any limitations on the cover provided.
37. It is clear that the MID is a database that is designed to assist the Police and others, including foreigners, to identify insurers of vehicles. In my Judgment, registration on the MID is not conclusive evidence as to the veracity of the information posted. I have not been provided with any authority or statute that supports the contention that registration amounts to conclusive evidence to that effect and/or that once registered thereon an insurer is bound to meet a Judgment, regardless of the fact that the vehicle may have been registered in error, whether fraudulently or not, or that deregistration has not been effected at the appropriate time, for whatever reason, including innocent oversight. That the insurer's policy's statement in this case posted a warning as to the potential consequences for a policyholder for a failure is of little relevance as to the potential for an insurer to be fixed with enforcement of a Judgment. The MID is, as Mr Palmer submits, a useful tool for detecting uninsured cars, but it is no more than a database. Further, the fact that the Second Defendant operated a system for purported activation of policy cover in respect of any vehicle by using

the MID was a matter of convenience as between the policyholder and insurer. That system could not override the operational terms of the policy or the application of Section 151 on a true interpretation.

38. I turn back to the application of Section 151. In doing so, I have regard to the question to be determined as a preliminary issue. I have already noted that it is agreed that on 26<sup>th</sup> September 2018, when the accident occurred, the Vauxhall Zafira was not driven either by Mr Kiss or Ms Plajner Judit. It is also agreed that the vehicle's keeper as at the 5<sup>th</sup> August 2018 was not Mr Kiss - the Keeper Form making it clear that Mr Nikolics had become the keeper and that on that date and thereafter Mr Kiss was not the owner. I therefore must ask myself how Section 151 could apply ?
39. Because of the agreed facts aforesaid, it is accepted that Section 151(2)(a) does not apply. That leaves Section 151(2)(b) which sets-out the second pair of preconditions. Again, it was agreed that the second of those preconditions that "*The Judgment is obtained against any person other than the one who is insured by the policy*" is satisfied because the First Defendant was such a person. Thus, the interpretation of the first of those preconditions that the Judgment is "*A liability which would be so covered if the policy insured all persons*" becomes of central importance.
40. Mr Vickers says that it applies because Section 151 fixes an insurer which has issued a policy which comes to cover a specific vehicle and a Judgment is later obtained either against any person who is insured by the policy (Mr Kiss and Ms Plajner Judit) or against any other persons who are not insured by the policy whether driving that vehicle when an accident occurs after the policy had been issued and where a Judgment is subsequently obtained. He says that Section 151 does not refer to vehicles but to persons. It is his case that Section 151 is designed to ensure that innocent victims of torts committed by such a person driving a car are able to obtain satisfaction of Judgments arising out of the commission of such torts by the insurer who chose to take on board such risks.
41. Mr Palmer submits that the vehicle not being owned or in the custody or control of Mr Kiss on 26<sup>th</sup> September 2018 (i.e. not within the description of the Schedule Certificate and Policy Document - any motor vehicle which is the

property of the insured or was in their custody or control for motor trade purposes) means that the first precondition of Section 151(2)(b) cannot be satisfied and thereby a putative Judgment against the First Defendant may not be enforced against the Second Defendant.

42. In my Judgment, Mr Palmer must be right. Having already determined that registration on the MID is not conclusive evidence of the correctness of the information posted per se and that such registration does not automatically fix an insurer with liability to a third party, I find that when considering the terms of the policy, a correct interpretation is as advanced by Mr Palmer and that in answering District Judge O'Brien's question, I find the Second Defendant is not liable to satisfy a Judgment which the Claimant may later obtain against the First Defendant and which remains unsatisfied pursuant to Part VI of the Road Traffic Act 1988.

END