

## **Motor Insurance Law in Jamaica**

Jamaica has a compulsory motor insurance law that makes it unlawful for anyone to drive a motor car without having insurance protection against property damage, personal injury and death that may befall a third-party. A “third party” for the purposes of this exposition is a person or persons not a party to a policy of insurance but who may have rights therein; or the other party involved in an accident or event. In my ten plus years as a Plaintiff lawyer and representing insurance companies, I have confronted many misconceptions concerning the rights of innocent third parties, insurance companies and the insuring public. The following will hopefully offer worthwhile tips to unmuddle motor car insurance law in Jamaica.

### **1. My insurance company refuses to honor the third party’s claim on grounds that I have breached a term of the policy. Is this legal?**

It is usually a condition of an insurance policy that the insured or policyholder<sup>1</sup> observes and fulfills the terms of the policy insofar as they relate to anything to be done or not to be done; including the truth of all statements. For that reason an insurance company, broadly speaking, can benefit from an insured’s breach of its contractual terms and refuse responsibility/liability under the policy.

When there is a clear provision in the policy, for example for the permitted use of the car by a named driver only, and you permit your friend who is not the named

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<sup>1</sup> The term Insured or policyholder is used interchangeably throughout to mean any person(s) who obtains or is otherwise covered by insurance to operate a motor car, including the owner.

driver, to drive your car this would constitute a breach under your policy. Accordingly, your insurance company would have the right to treat with the breach so as to refuse to settle a claim made against your policy. Also, if you were found not to hold a valid driver's license or found to be under the influence of drugs or intoxicating liquor, the insurance company would rely on the express provisions in the policy of insurance covering such likelihood. Even in circumstances where those factors may not have caused the accident your insurance company would nonetheless rely on the breach and not pay out on your behalf.

Your insurance company may therefore legally refuse to settle a third party's claim if there is clear evidence that you have breached contractual term(s) in the policy.

**2. Are there instances where an insurance company cannot deny responsibility notwithstanding a breach of the policy?**

There are instances where notwithstanding a breach of a term of the policy, the insurance company may still be liable to settle a claim made by a third party.

Many times an insurance company's denial of liability is accepted on grounds that you have breached a contractual term. However, the law expressly prohibits insurance companies from denying liability due to the age, physical or mental condition of the person driving the car. Further, an insurance company cannot

lawfully deny liability due to the condition of the car, the weight or physical characteristics of the goods that are being carried; or the times at which or the areas within which the car is being used; or the carrying of any particular apparatus. Also, where a car was overloaded at the time of the accident, as in there being six (6) occupants in a car, which was licensed and/or insured to carry only five (5), an insurance company cannot lawfully deny a third party's claim in such an instance. In any of the aforementioned examples it makes no difference whether there is connection or not between the breach and the third party's loss.

There are therefore instances where an insurance company is legally obliged to grant protection against a third party's claim and correspondingly an injured third party can legally recover from an insurance company up to a maximum of the statutory 'third party limit' which at present is one million dollars (\$1,000,000.00) in respect of death or bodily injury; and five hundred thousand dollars (\$500,000.00) in respect of damage to property.

**3. In trying to recover against a negligent third party, I was told that the third party's insurance company is denying liability because there is no report of the accident. What can I do?**

Insurance companies usually stipulate in their policies that their policyholders are obliged to report all accidents within a certain time period; or as soon as it is reasonably possible. This can be taken to mean within days and the failure of the policyholder/insured to comply is a breach of the policy permitting the company to

disallow or reject any claim brought to their attention at a late stage -- asserting that the lateness of the report has prejudiced their position.

Notwithstanding, the no or late report however, you do have a legitimate claim and are entitled to compensation. It is for your attorney to establish your claim against the third party's insurance company, present proof of the third party's involvement in the accident, usually through the presentation of a police report and obtain compensation notwithstanding the third party's failure to report the accident.

**4. My insurance company tells me that they paid out monies on my behalf from an accident that happened over three years ago. I did not report the accident nor did I authorize them to pay out any monies. Can they do this and now sue me?**

Your insurance company may be obliged to settle a third party's claim notwithstanding your non-reporting of the accident; and subsequent to honouring a third party's claim the insurance company is entitled to recover from you the monies paid out on your behalf to discharge any claim.

A term of your policy of insurance would have obliged you to report all accidents within a reasonable time after the accident. Such failure constitutes a breach of the contract and entitles your insurance company to recover from you the monies paid out, unless you could prove that your insurance company's action of paying out monies on your behalf prejudiced you, as in for example your insurance company

accepted liability for your negligence in the accident in circumstances where you were not at fault. You could challenge their decision by first proving the fault of the third party and your blamelessness in the accident, and only then could you be not held liable to repay the monies to your insurance company.

It is not typical for an insurance company to pursue the matter against you, as they would have made previous attempts to contact you before paying out on your behalf. Your insurance company can nonetheless legally sue you after their unsuccessful efforts to locate you and after they have paid out monies on your behalf.

**5. My insurance company alleges that I failed to disclose pertinent information on their insurance proposal form that I signed with them and therefore they are not paying out on my policy. Can they legally do this?**

A policyholder is obliged to disclose all material facts to the insurance company throughout the term of the policy and failure to do so entitles the insurance company to treat the policy as being breached if it in fact finds some material omission in the information provided.

It is arguable as to what constitutes material; but material is usually seen as that which would influence the judgment of a prudent insurance company in determining whether the risk should be taken, and if so, at what premium and on what conditions. For example, it would be material to an insurance company whether you have been involved in an accident in the recent past; whether you or a

third party has made any claim against your policy of insurance; whether you have been denied motor insurance and the reasons for the denial; or whether in your opinion there may be any material information that the insurance company should have. The validity of your insurance policy depends on the accuracy of all statements you submit and it doesn't matter whether the representation (statement) was made fraudulently or innocently. Unfortunately, there have been infrequent challenges in our courts against insurance companies who assert material misstatement by their policyholders and as a consequence refuse them coverage. In many cases a legitimate argument could be mounted that the omission or misstatement was not material and/or of little or no relevance to the risk the company undertook.

Invariably an insurance company will challenge any perceived misstatement, deny indemnity and leave it to you to bring the matter to court for a determination as to whether their action was legitimate and the alleged omission material. In the interim the insurance company may very well deny you coverage.

**6. My insurance company has sued in my name in a matter in the Supreme Court. Can they legally do this without my permission?**

There is a clause in most, if not every motor insurance policy, which makes reference to subrogation. This gives the insurance company the right to be placed in the position of the insured so as to be entitled to the advantages of all the rights and remedies, which the insured has against third parties.

The fact that you did not grant express permission to your insurance company is irrelevant; the subrogation rights entitle the insurance company to sue in your name. In fact, the insurance company can take over, in your name and/or on your behalf, the conduct and control of any defence that may be undergoing in any proceedings brought against you within the ambit of the policy. This power enables the insurance company to settle proceedings without consulting you; demand that you attend court as a witness in the matter and pursuant to the terms of your policy of insurance you may very well be obligated to comply. A claim being brought in your name has the likely consequence that judgement could be made against you with or without your knowledge, legally obligating you to the terms of the judgement. However, since the subrogation rights place your insurance company in your position, the insurance company having brought the claim would invariably be obliged to satisfy a judgement obtained against you.

**7. Negotiations with the third party broke down and my attorney tells me that we are beyond the limitation period to bring a claim. What does this mean?**

Limitation period is the time allowed by law to bring a claim through the courts and under our present law a claim must be commenced within six (6) years of the date of the accident for property damage and personal injury claim.

An important task faced by your attorney is to know when the relevant limitation periods expire. If you are barred in bringing a claim due to your attorney's failure

to notify you of the time specified by law, you could have a claim against your attorney; presuming of course that your attorney was consulted or instructed in ample time.

There are certain intricacies with respect to the limitation period that your attorney will be aware of, for example, if you had no knowledge of the injury or of the other party's (the defendant's) negligence then the six years would not start running until the date you knew; that notwithstanding the expiration of the limitation period, the Court has the general discretion to extend the period and provided that a justifiable reason can be presented, the court is always receptive to what would be equitable in the circumstances.

The nature and extent of the negotiations before the limitation period will be useful in determining the court's view in extending the period, as the rationale behind the limitation period is that a party is aware of a claim being made against him/her; and the negotiations could be seen as putting the party on notice.

**8. My insurance company settled the third party's claim some two years ago. How can I now be sued in respect of the same accident?**

There is a limit on the coverage that is offered on every policy of insurance and an insurance company may unilaterally decide to settle up to the limit of your policy leaving an aggrieved third party to advance a claim against you in excess of that limit.

Many motorists acquire policies with the minimum statutory third party limit of coverage. At present it is one million dollars (\$1,000,000.00) in respect of death or bodily injury; and five hundred thousand dollars (\$500,000.00) in respect of damage to property. Comprehensive motor policies often triple the statutory limit. Whatever the amount of the limit of indemnity (i.e. coverage or protection) being offered, your insurance company, pursuant to the terms of your policy, can unilaterally determine who it thinks is at fault in an accident and decide to settle to the limit of the policy. An aggrieved third party for personal injury or property damage is entitled to advance a claim against you personally for any amount in excess of the limit and the claim may be brought before or after your insurance company has paid out the limit.

The limited coverage that prevails invariably cannot redress the damage that may be done to your car, nor compensate for severe personal injuries nor offer any reasonable compensation for loss of life. It is therefore not unusual that a claim is being brought against you sometimes long after your insurance company has paid out.

**9. My son was a passenger in my car when he sustained injuries. How can my insurance company refuse liability on grounds that a family member is not eligible to claim under my comprehensive passenger liability policy?**

Insurance companies have clauses in their policies of insurance that release them from paying out claims made by family members and/or persons who reside in their policyholder's household.

The supposed rationale for including such a clause is to avoid a likely collusion or conspiracy between you and members of your household. Whatever the rightness of such a term the essential issue is that it may very well be a contractual term which once it has been agreed by your signing thereto, your insurance company can rightly refuse liability of a claim where a family member sustained personal injury and seeks to claim against your policy of passenger liability insurance.

The contractual arrangement creates an excluded class of persons or passengers who can claim. It is therefore important to acquaint yourself with the provisions or clauses contained in your policy of insurance before signing or committing yourself. You most likely cannot anticipate the many possible situations that may occur and to therefore safeguard yourself against them. Further, when seeking motor insurance in the first place you are most likely influenced with the lowest cost than the finer details or clauses in the policy of insurance. The end result is that such clauses can have adverse effects against you and/or your passenger.

**10. My lawyer received a judgement on my behalf and the third party's insurance company is refusing to pay the judgement. Is this legal and what can I do?**

An insurance company is obliged to pay a judgement against its insured to the extent of the policy limit provided there is evidence of the validity of the insured's policy and evidence that certain procedures were followed by the party claiming against the insured.

For a judgement to be enforceable against the third party's insurance company the judgment must be in respect to a liability, which is covered by insurance (e.g. damage for bodily injury, death or property damage) and must fall within the terms of the policy. For example, if the car is being used outside the scope of the policy the insurance company is immune from liability.

Assuming the coverage and terms of insurance are appropriate, and further that fault is certain, there are a number of instances wherein insurance companies have the right not to satisfy a judgement. For example, notice of the court proceedings must have been given to the insurance company. The law stipulates that the insurance company must first be served within ten (10) days after the commencement of the proceedings in which the judgment was given, failing which the insurance company would not be obliged to satisfy the judgement.

Finally, an insurance company is not obliged to satisfy a judgement if before the accident, the policy was cancelled by mutual consent or if by virtue of any provision contained in the policy, for example a clause making reference to 'description of use' which is breached; then there would be no obligation to satisfy the judgement.

**11. I suffered injuries in a motor car accident and cannot afford a lawyer to represent me. Do I have any options?**

Most personal injury lawyers will undertake accident cases on a contingency basis which is an arrangement between you and your attorney whereby the attorney will represent you, his/her fees being based on a percentage of the amount recovered e.g. 25% if the case is settled, 35% if the case goes to trial.

You can instruct an attorney agreeable to represent on a contingency basis and if your claim is successful you would pay your attorney the agreed sum or percentage from the settlement proceeds; and conversely, if you are unsuccessful, your monetary outlay would have been minimal. Because such an attorney would be assuming a risk in carrying the substantial part of the expenses, sometimes for several years, he or she will assess your likelihood of success from the outset; and once a favourable assessment is made and the terms agreed, your attorney should pursue your case with the same diligence and agility as in any other form of representation.

It is not unusual for your attorney to require you to assume some risk yourself and ask that you pay a nominal retainer. Or your attorney may require you to pay out-of-pocket expenses, such as costs for medical reports, police reports, court filing fees and costs for serving the documents on the defendant(s).

**12. I was awarded costs and attorney's costs by the court in a personal injury claim arising from a motor car accident. A friend told me that these should come to me but my lawyer says otherwise. What is true?**

Both could be correct but generally speaking court awarded costs belong to the party (named either the claimant or defendant) whom the court orders in favour of.

It is not unusual for your attorney to stipulate, in a contingency agreement or engagement letter, who would be entitled to those costs. In such an instance it would be a contractual term, which would speak for itself.

In the absence of an agreement, on the face of it, it can be taken that court awarded costs are yours. It is nonetheless safe to make such enquiries of your lawyer from the onset.

**13. What remedies are available if the third party who is at fault has no insurance at the time of the accident?**

You will have to explore the chances of recovering directly from a third party who has no insurance – maybe firstly by conducting your own investigative work, attempting persuasive means of negotiations, followed if necessary by suing the third party directly.

As in any claim to recover losses in a motor car accident, the claim would be brought against the third party directly. Firstly, it may be helpful if an investigation and/or report of the accident reveals that the guilty party had no insurance and appropriate steps were taken by the police. It is also useful if the police attends the scene of an accident or conduct an early investigation of an

accident to make the determination that the party has no or an invalid policy of insurance. It is even better if appropriate charges are brought and with some vigilance of the court proceedings and liaising with the investigating officer you could get the details of any court conviction. The evidence in a criminal or quasi-criminal proceedings, for example the above conviction of driving without motor insurance is admissible evidence and advantageous in subsequent civil proceedings.

A corresponding first step in the instance of an uninsured driver is to first conduct (maybe personally, if cost is an issue) an investigation to ascertain the financial ability to recover directly from the guilty party. Your investigation may reveal that the driver at the material time was not the owner of the motor car and you may very well have a right to a claim against the owner as well.

The guilty party might well be penniless and a judgement obtained against him or her through the courts may not be worth much more than the paper describing it. It may be a worthwhile approach to consult an attorney who will make an objective assessment of the value of pursuing a likely destitute party.

If fortunately on the other hand an assessment reveals the financial ability of the guilty party to compensate you, then it is advisable to instruct an attorney at an early opportunity to commence a claim against the guilty party who may devise

early means of hiding or liquidating private property that could be subject to an order for seizure and sale to satisfy a judgement debt.