

New MIBI Agreement

APPENDIX

Text of an Agreement dated the 31st day of March 2004 between the Minister for Transport and the Motor Insurers' Bureau of Ireland, extending, with effect from dates specified in the Agreement, the scope of the Bureau's liability, with certain exceptions, for compensation for victims of road accidents involving uninsured or stolen vehicles and unidentified or untraced drivers to the full range of compulsory insurance in respect of injury to person and damage to property under the Road Traffic Act, 1961.

MEMORANDUM OF AGREEMENT made the 31st day of March 2004 between the MINISTER FOR TRANSPORT (hereinafter referred to as "the Minister") of the one part and MOTOR INSURERS' BUREAU OF IRELAND (hereinafter referred to as MIBI) whose registered office is at 39 Molesworth St. in the city of Dublin of the other part SUPPLEMENTAL to an Agreement (hereinafter called "the Principal Agreement") made the 10th day of March, 1955 between the Minister for Local Government of the one part and Those Insurers Granting Compulsory Motor Vehicle Insurance in Ireland by or on behalf of whom the said Agreement was signed (thereinafter and hereinafter referred to as "the Insurers") of the other part,

WHEREAS in pursuance of the undertaking given by the Insurers in paragraph 1 of the Principal Agreement a Company stands incorporated under the Companies Act, 1963 with the name of Motor Insurers' Bureau of Ireland (being a party to this Agreement and hereinafter referred to as "MIBI");

AND WHEREAS a memorandum of Agreement (hereinafter referred to as "the Agreement of 1955") was made between the Minister and MIBI on the 30th day of November, 1955:

AND WHEREAS the Agreement of 1955 was amended by an Addendum thereto made between the Minister and MIBI on the 12th day of March 1962:

AND WHEREAS a memorandum of Agreement (hereinafter referred to as "the Agreement of 1964") was made between the Minister and MIBI on the 30th day of December, 1964:

AND WHEREAS the Agreement of 1955 was determined by the Agreement of 1964:

AND WHEREAS the Agreement of 1964 was determined by the Agreement of 1988:

NOW THEREFORE IT IS HEREBY AGREED between the parties hereto as follows:

1. Determination of Agreement of 1988

The Agreement of 1988 is hereby determined but without prejudice to the continued operation of the said Agreement in respect of accidents occurring before the 1st day of May 2004.

2. Enforcement of Agreement

A person claiming compensation by virtue of this Agreement (hereinafter referred to as "the claimant") must seek to enforce the provisions of this Agreement by: -

- 2.1 making a claim to MIBI for compensation which may be settled with or without admission of liability, or
- 2.2 citing MIBI as co-defendants in any proceedings against the owner and/or user of the vehicle giving rise to the claim except where the owner and user of the vehicle remain unidentified or untraced, or
- 2.3 citing MIBI as sole defendant where the claimant is seeking a court order for the performance of the Agreement by MIBI provided the claimant has first applied for compensation to MIBI under the clause 2.1 and has either been refused compensation by MIBI or has been offered compensation by MIBI which the claimant considers to be inadequate.

3. Conditions precedent to MIBI's liability

The following shall be conditions precedent to MIBI's liability:

- 3.1 The claimant or the claimant's legal representative shall have given prior notice, by registered post or electronic mail as specified in the website (www.mibi.ie) of intention to seek compensation.
 - (a) in respect of personal injuries or death within the time limits prescribed in the Statutes of Limitation.

- (b) in respect of damage to property not later than one year from the date of the accident giving rise to the damage to property.
- 3.2 The claimant shall upon demand furnish MIBI with all material information (including all medical reports) reasonably required in relation to the processing of the compensation claim including information relating to the relevant accident, personal injuries or death, medical treatment, funeral expenses, damage to property, and legal, professional or other costs reasonably incurred by or on behalf of the claimant.
- 3.3 In the event of a claim arising from an accident caused or contributed to by an untraced motorist since MIBI is unable to obtain details of the accident from the driver, the claimant shall also make himself available for interview by the authorized agents of MIBI. The claimant shall have the right to have his solicitor present at such interview. The claimant must answer all reasonable questions relating to the circumstances of the accident. All answers by the claimant shall be used solely for the purpose of progressing the claimant's claim against MIBI and for no other purpose and may not be used by any party other than MIBI or its servants or agents. All such answers may be used in the course of any subsequent court hearing which may arise to determine MIBI's liability to the claimant and may not be used in any circumstances in any criminal proceedings.
- 3.4 The claimant shall co-operate fully with An Garda Siochana or any other authorized person in their investigations of the circumstances giving rise to the claim.
- 3.5 The claimant shall furnish MIBI with copies of all relevant documentation in relation to the accident and any subsequent legal proceedings relating thereto, including copies of all correspondence, statements and pleadings.
- 3.6 The claimant shall endeavour to establish if an approved policy of insurance covering the use of any vehicle involved in the accident exists by demanding or arranging for the claimant's legal representative to demand insurance particulars (including policy number if available) of the user or owner of the vehicle in accordance with the provisions of Section 73 of the Act. Provided the claimant or his legal advisers have made this demand in writing and he has been unsuccessful in so establishing after three months from the date of the accident, notification to MIBI may then take place. If within that three month period the claimant can present to MIBI written confirmation from a member of An Garda Siochana or the owner and/or user of the vehicle giving rise to the claim, then notification may take place immediately.

- 3.7 The claimant shall furnish MIBI with details of any claim of which the claimant is aware made in respect of the damage to property arising from the accident under any policy of insurance or otherwise and any report made of which the claimant is aware or notification given to any person in respect of that damage or the use of the vehicle giving rise thereto, as MIBI may reasonably require.
- 3.8 Notice of proceedings shall be given by the claimant by registered post before commencement of such proceedings: -
- 3.8.1 to the insurer in any case in which there was in force at the time the accident occurred an approved policy of insurance purporting to cover the use of the vehicle and the existence of which is known to the claimant before the commencement of proceedings;
- 3.8.2 to MIBI in any other case.
- 3.9 The claimant shall give not less than twenty eight days notice to MIBI before obtaining Judgement against any person which may give rise to an obligation on MIBI.
- 3.10 If so required by MIBI and subject to full indemnity from MIBI as to reasonable costs, the Claimant shall take all reasonable steps against any person against whom the Claimant may have a remedy in respect of or arising out of the injury or death or damage to property provided that any dispute as to the reasonableness of a requirement by MIBI that any particular step should be taken to obtain judgement against any such person shall be referred to the Minister whose decision shall be final.
- 3.11 All judgements shall be assigned to MIBI or its nominee.
- 3.12 The Claimant shall give credit to MIBI for any amounts paid to him or due to be paid to him from any source in respect of any liability for injury to person or property arising out of the event which occasioned the claim against MIBI.
- 3.13 Any accident giving rise to a claim made to the MIBI shall be reported by the claimant to An Garda Siochana within two days of the event or as soon as the claimant reasonably could.
- 3.14 The Claimant shall give credit to MIBI for any amounts paid to him by or on behalf of the defendant in respect of any liability for injury to person or property arising out of the event which occasioned the claim against MIBI.
- 3.15 A claim shall not be deemed to be notified to the MIBI unless all the following information is supplied or good cause is shown as to why it is not available:

- 3.15.1 name, PPS number and address of claimant.
- 3.15.2 registration of vehicle alleged to be uninsured and where available the type and make of such vehicle.
- 3.15.3 name of Garda Station to which the accident has been reported.
- 3.15.4 reason why the claimant considers the vehicle to be uninsured.
- 3.15.5 what steps have been taken to establish insurance position.
- 3.15.6 name and address of owner and/or driver of the uninsured vehicle.
- 3.15.7 date and time of accident.
- 3.15.8 place of accident.
- 3.15.9 brief description of accident.
- 3.15.10 if any other vehicles involved, its registration number, and where available the type and make of such vehicle.
- 3.15.11 name and address of owner and/or driver, and insurance details.

4. Satisfaction of Judgements by MIBI

- 4.1 Subject to the provisions of clause 4.4, if Judgement in respect of any liability for injury to person or death or damage to property which is required to be covered by an approved policy of insurance under Section 56 of the Act is obtained against any person or persons in any court established under the Courts (Establishment and Constitution) Act, 1961 (No.38 of 1961) whether or not such person or persons be in fact covered by an approved policy of insurance and any such judgement is not satisfied in full within 28 days from the date upon which the person or persons in whose favour such judgement is given become entitled to enforce it then MIBI will so far as such judgement relates to injury to person or damage to property and subject to the provisions of this Agreement pay or cause to be paid to the person or persons in whose favour such judgement was given any sum payable or remaining payable thereunder in respect of the aforesaid liability including taxed costs (or such proportion thereof as is attributable to the relevant liability) or satisfy or cause to be satisfied such judgement whatever may be the cause of the failure of the judgement debtor.
- 4.2 The claimant shall not be entitled to recover legal costs or expenses for the provision of information to MIBI as may be required by virtue of this Agreement except where MIBI have interviewed the claimant pursuant to Clause 3.3 of this Agreement in which case MIBI will be liable to pay the reasonable costs of such interview.

- 4.3 The claimant shall not be entitled to legal costs or expenses in excess of what would be payable.
- 4.3.1 if the owner or user of the vehicle were covered by an approved policy of insurance.
- 4.3.2 by virtue of the fact that MIBI is or may be a defendant or co-defendant to any legal proceedings relating to his claim.
- 4.4 Where a claimant has received or is entitled to receive benefit or compensation from any source, including any insurance policy in respect of damage to property, MIBI may deduct from the sum payable or remaining payable under clause 4.1 an amount equal to the amount of that benefit or compensation in addition to the deduction of any amounts by virtue of clauses 7.2 and 7.3.
- 4.5 Where a claimant applies to the MIBI for compensation and no judgement has been obtained or is obtainable, MIBI shall, as soon as is reasonably practicable, give a decision on the application and shall give reasons for the decision.
- 4.6 Where MIBI and the claimant agree an amount in respect of compensation, MIBI shall pay such amount to the claimant within 28 days of such agreement being reached.

5. Exclusion of Certain User and Passenger Claims

- 5.1 Where at the time of an accident, the vehicle had been stolen or obtained by violence or threats of violence or used or taken possession of without the consent of the owner of the vehicle or other lawful authority, the liability of MIBI shall not extend to any judgement or claim in respect of injury, death or damage to property sustained while the person injured or killed or the owner of the property damaged was the person or one of the persons who stole or obtained by violence or threats of violence the vehicle or who was in or on such vehicle in collusion with such person or persons, or knew it was stolen, taken by violence or threats of violence or without the consent of the owner.
- 5.2 Where at the time of the accident the person injured or killed or who sustained damage to property knew, or ought reasonably to have known, that there was not in force an approved policy of insurance in respect of the use of the vehicle, the liability of MIBI shall not extend to any judgement or claim either in respect of injury or death of such person while the person injured or killed was by his consent in or on such vehicle or in respect of damage to property while the owner of the property was by his consent in or

on the vehicle or the property was in or on the vehicle with the consent of the owner of the property.

- 5.3 Where a vehicle, the use of which is not covered by an approved policy of insurance, collides with another vehicle and the use of that other vehicle is also not covered by an approved policy of insurance, the liability of MIBI shall not extend to any judgement or claim in respect of injury, death or damage to the property of the user of either vehicle.

6. Unidentified or Untraced Vehicle, Owner or User

- 6.1 The liability of MIBI shall, subject to the exclusions of Clause 5 above, extend to the payment of compensation for the personal injury or death of any person caused by the negligent use of a vehicle in a public place, where the owner or user of the vehicle remains unidentified or untraced.

7. Damage to Property

- 7.1 The liability of MIBI for damage to property shall not extend to damage caused by an unidentified vehicle.
- 7.2 The liability of MIBI for damage to property shall not exceed the minimum property damage cover required by Section 56(2)(a) of the Act applying at the time of the event giving rise to the claim.
- 7.3 The liability of MIBI shall not extend to:
- (a) the first €220 of damage to property suffered by any one property owner due to the negligent use of a vehicle stolen or obtained by violence or threats of violence or used or taken possession of without the consent of the owner of the vehicle or other lawful authority;
 - (b) subject to the provisions of the foregoing paragraph, the first €440 of damage to property suffered by any one property owner due to the negligent use of a vehicle, the use of which is not covered by an approved policy of insurance.

8. Period of Agreement

This Agreement shall be determinable by the Minister at any time or by MIBI on two years' notice, without prejudice to the continued operation of the Agreement in respect of accidents occurring before the date of termination.

9. Recoveries

Nothing in this Agreement shall prevent any vehicle insurer from providing by conditions in its contracts of insurance or by collateral agreements that all sums paid by it on behalf of MIBI or by MIBI by virtue of the Principal Agreement or of this Agreement in or towards the discharge of the liability of its policyholders shall be recoverable by it or by MIBI from the policyholder or from any other person.

10. Offers in Satisfaction

When notice of proceedings has been given under Clause 3 it shall be competent for MIBI not later than ten days before trial to offer to the claimant in full satisfaction of the obligation of MIBI such sum as it considers sufficient in respect of damages together with the equivalent of the taxed costs to date and if in that action the claimant is awarded in respect of damages a sum (exclusive of any amounts for which MIBI would not be liable under this Agreement) which is not more than the sum offered under this Clause (exclusive of the sum for such taxed costs) then in satisfaction of this Agreement MIBI shall not be required to pay more than the total of such damages awarded less any amounts for which it would not be liable under this Agreement and the sum offered in respect of costs and shall be entitled to set off any costs incurred by them after the date of the offer. MIBI reserves the right to vary the amount offered in satisfaction.

11. State Vehicles and Exempted Persons

- (a) MIBI's acceptance of liability in respect of vehicles the use of which is required to be covered by an approved policy of insurance shall extend to vehicles owned by or in possession of the State or of an "exempted person" as defined in Section 60 of the Act only so long as there is in force an approved policy of insurance purporting to cover the use of the vehicle.

- (b) For the purpose of this Clause a vehicle which has been unlawfully removed from the possession of the State or from an "exempted person" shall be taken to continue in that possession whilst it is so removed.

12. Domestic Agreement

The Agreement entered into between MIBI and the insurers of even date with the Agreement of 1955 and referred to in the Agreement of 1955 as "the Domestic Agreement" or any subsequent or amended agreement made in renewal or replacement of the said Domestic Agreement shall not discharge MIBI from its liabilities or obligations under this Agreement.

13. Fund of Last Resort

Subject to the generality of the foregoing, the Guarantee Fund is a Fund of Last Resort.

14. Operation

This Agreement shall come into operation on the 1st day of May 2004 in respect of claims arising out of the use of a vehicle in a public place on or after that date.

15. Definitions

In this Agreement, "the Act" means the Road Traffic Act, 1961 (No.24 of 1961): "Injury to person" does not include any injury by way of loss of services of the person injured.

IN WITNESS whereof the parties hereto have hereunto set their hands and affixed their seals on the day and year first herein written.

MIBI Agreement 2004

GIVEN under the Official Seal of the Minister for Transport in the presence of:

John Murphy

Des Coppins

Civil Servants,

Custom House, Dublin

Seámus Brennan

Minister for Transport

Present when the Common Seal of the Motor Insurers' Bureau of Ireland was affixed hereto: -

Philip Bradley

Chairperson, MIBI

John Casey

Chief Executive, MIBI

Robert Thompson

Company Secretary, MIBI