

MOTOR INSURERS BUREAU OF IRELAND

COMPENSATION OF UNINSURED ROAD ACCIDENT VICTIMS

Agreement dated 29th January 2009 between the Minister for
Transport and the Motor Insurers Bureau of Ireland (MIBI)



Department of Transport
An Roinn Iompair



AGREEMENT

Text of an Agreement dated the 29th day of January 2009 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 29th day of January 2009 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:

AND WHEREAS the Agreement of 1988 was determined by the Agreement of 2004:

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

1. Determination of Agreement of 2004

1.1 The Agreement of 2004 is hereby determined but without prejudice to the continued operation of the said Agreement in respect of accidents occurring before the 30th day of January 2009.

1.2 This Agreement encompasses the Sixth Motor Insurance Directive which codifies the Five existing EU Motor Insurance Directives.

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 directly to MIBI for compensation which may be settled with or without admission of liability, or

2.2 making an application to the Injuries Board citing MIBI as a respondent under the terms of the PIAB Act 2003 which, pursuant to s.12(1), provides that unless and until such an application is made, no proceedings in court may be brought in respect of the claim,

2.3 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

2.4 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 and/or applied to the Injuries Board as at 2.2 and having received a release from the Injuries Board to proceed with legal action.

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 within the time limits prescribed in the Statutes of Limitation.

- 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. The claimant shall make himself available for interview within 30 days of completing an application to the Injuries Board so as to enable the Injuries Board and the MIBI to reach a decision on the claim within 90 days.
- 3.4 The claimant shall co-operate fully with An Garda Síochána or any other authorised 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 Road Traffic Act, 1961. Provided the claimant or his legal advisers have made this demand in writing and he has been unsuccessful in so establishing after two months from the date of the accident, notification to MIBI may then take place. If within that two month period the claimant can present to MIBI written confirmation from a member of An Garda Síochána 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 or application to the Injuries Board shall be given by the claimant by registered post before commencement of such proceedings or application:-

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 or application;

3.8.2 to MIBI in any other case.

3.8.3 to the owner and/or user of the vehicle giving rise to the claim except where the owner and user of the vehicle remains unidentified.

- 3.9 The claimant shall give not less than twenty eight days notice to MIBI before issuing a motion for judgement against any person which may give rise to an obligation on MIBI.

3.10.1 In the event of a dispute relating to compliance with these clauses the claimant can refer same to be decided by an arbitrator agreed by the parties or, in default of agreement, appointed by the President for the time being of the Law Society of Ireland or in the event of his being unwilling or unable to do so by the next senior officer of the Society who is willing and able to make the appointment provided always that these provisions shall apply also to the appointment (whether by agreement or otherwise) of any replacement arbitrator where the original arbitrator (or any replacement) has been removed by Order of the High Court, or refuses to act, or is incapable of acting or dies. Subject to the provisions of (ii) below, the Arbitration Acts 1954 . 1998 (or any subsequent legislation amending or replacing same and having like effect) shall apply to such arbitrations.

3.10.2 Any party to a determination under clause 3.10.1 may appeal such determination to the Minister whose decision shall be final.

3.10.3 This clause will be reviewed in the light of the Supreme Court judgement in the Case of Elaine Farrell v Whitty, The Minister for the Environment, Ireland and The Attorney General and The Motor Insurersq Bureau of Ireland; Record Number 1997 NO. 10802 P when received.

- 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 Síochána within two days of the event or as soon as the claimant reasonably could.
- 3.14 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:
- 3.14.1 name, date of birth, PPS number and address of claimant.
 - 3.14.2 registration of vehicle alleged to be uninsured and where available the type and make of such vehicle.
 - 3.14.3 name of Garda Station to which the accident has been reported.
 - 3.14.4 reason why the claimant considers the vehicle to be uninsured.
 - 3.14.5 what steps have been taken to establish insurance position.
 - 3.14.6 name and address of owner and/or driver of the uninsured vehicle.
 - 3.14.7 date and time of accident.
 - 3.14.8 place of accident.
 - 3.14.9 brief description of accident.
 - 3.14.10 if any other vehicle(s) involved, its registration number, and where available the type and make of such vehicle.
 - 3.14.11 name and address of owner and/or driver, and insurance details.

4. Satisfaction of Judgements by MIBI

4.1.1 Subject to the provisions of clause 4.4, if Judgement/Injuries Board Order to Pay 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) or the Injuries Board established

by the PIAB Act, 2003 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.

4.1.2 Subject to the provisions of clause 4.4, the MIBI shall satisfy, as soon as reasonably possible, any judgement in favour of a person who has issued proceedings pursuant to clause 2.3.

- 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 shall 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 The MIBI as the Compensation Body shall take action within two months of the date when the injured party presents a claim for compensation to it but shall terminate its action if the insurance undertaking, or its claims representative, subsequently makes a reasoned reply to the claim.
- 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 the accident the vehicle had been stolen or taken by violence, 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 voluntarily entered the vehicle which caused the damage or injury and MIBI can prove that they knew it was stolen or taken by violence.
- 5.2 Where at the time of the accident the person injured or killed or who sustained damage to property voluntarily entered the vehicle which caused the damage or injury and MIBI can prove that they knew 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.

6. Unidentified or Untraced Vehicle, Owner or User

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 unless compensation for substantial personal injuries involving an inpatient hospital stay for five days or more has also been paid in respect of the event causing the damage subject to an excess of " 500.
- 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 Road Traffic Act, 1961 applying at the time of the event giving rise to the claim.
- 7.3 The liability of MIBI shall not extend to 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.
- 7.4 In cases where the claimant and MIBI agree to accept an Injuries Board award, and if that award includes an allowance for property damage, the acceptance of that award by both parties is subject always to the provisions of Clause 4.4 and this Clause of the Agreement.

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

11.1 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.

11.2 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. Information Centre and Central Body

The MIBI shall act as both the Information Centre and the Central Body in accordance with the requirements of EU Motor Insurance Directives 2000/26/EC and 2005/14/EC.

13. 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 or incorporated into the Memorandum and Articles of Association shall not discharge MIBI from its liabilities or obligations under this Agreement.

14. Operation

This Agreement shall come into operation on the XXst day of January 2009 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).

~~An~~injury to person+ does not include any injury by way of loss of services of the person injured.

The ~~the~~injuries Board+ means the Personal Injuries Assessment Board set up under the Personal Injuries Assessment Board Act, 2003.

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

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

L.S.

Noel Dempsey
Minister for Transport

Andrew Cullen

Mary Lally

Civil Servants,

Department of Transport

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

John Sheehy
Chairperson, MIBI

L.S.

John Casey
Chief Executive, MIBI

Dáithí Ó Maolchoille
Company Secretary, MIBI