



CAUSE NO. 132 OF 2008

10-06-09

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

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5  
6 IN THE MATTER OF THE MOTOR VECHICLE INSURANCE  
7 (THIRD PARTY RISKS) LAW (2007 REVISION)  
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9  
10 BETWEEN:

11  
12 EDGAR GEORGE COLE  
13

14 Plaintiff

15 AND:

16  
17 N.E.M. (WEST INDIES) INSURANCE LIMITED  
18

19 Defendant

20 Coram: The Hon. Mr. Justice Foster (Actg)  
21

22 Appearances: Mr. Hector Robinson and Mr. Murali Ram of Mourant du Feu &  
23 Jeune for the Plaintiff  
24 Mr. Shaun McCann of Campbells for the Defendant  
25

26 Heard: 2<sup>nd</sup> April 2009  
27  
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30 REASONS FOR RULING  
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32 Background  
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34 1. The Plaintiff was injured in a road traffic accident in the evening of 19<sup>th</sup> January  
35 2005. He was a passenger in a motor vehicle being driven by a Mr. Dwight  
36 Diedrick (“the Driver”). The Driver was killed in the accident and the Plaintiff  
37 suffered very serious injuries as a result of which he has been rendered  
38 quadriplegic.  
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1 6. The Insurers did not instruct attorneys for the hearing of the Plaintiff's claim for  
2 liability against the Estate of the Driver. On 31<sup>st</sup> March 2008 the Plaintiff  
3 obtained a default judgment on liability against the Estate of the Driver with  
4 damages to be assessed.

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6 7. It is the Plaintiff's position that the judgment obtained against the Estate of the  
7 Driver in Cause 313 of 2007 is in respect of such liability as is required to be  
8 covered by the Insurers' policy and that pursuant to the Motor Vehicle Insurance  
9 (Third Party Risk) Law ("the Law") the Insurers are required to pay to the  
10 Plaintiff any damages assessed in Cause 313 of 2007 against the Estate of the  
11 Driver.

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13 8. In light of the dispute between the Plaintiff and the Insurers as to the  
14 interpretation of the relevant insurance policy, on 17<sup>th</sup> September 2008 the  
15 Plaintiff issued the present proceedings against the Insurers by way of Originating  
16 Summons. In his Originating Summons the Plaintiff seeks declarations against  
17 the Insurers as follows:

- 18  
19 "1. *That pursuant to the Motor Vehicle Insurance (Third Party Risks) Law*  
20 *(2007 Revision) the Defendant was the person who issued the Policy of*  
21 *Insurance and the Insurer of motor vehicle registration number 98-036 as*  
22 *at 19 January 2005 under an Insurance Certificate number: CAYX1 24727*  
23 *and an Insurance Policy number: C8AOG1933972 in favour of its*  
24 *Policyholder Robert Watler Jr. ("the Defendant's Policy");*  
25  
26 2. *That pursuant to the terms of the Defendant's Policy, Dwight Diedrick,*  
27 *[the Driver] deceased, was a person insured by the Defendant's policy;*  
28

1           3.       *That pursuant to the Motor Vehicle Insurance (Third Party Risks) Law*  
2               *(2007 Revision) the Defendant shall pay to the Plaintiff any judgment sum*  
3               *obtained against the Personal Representatives of Dwight Deidrick,*  
4               *deceased, in Cause No. 313 of 2007 payable thereunder in respect of the*  
5               *liability, including any amount payable in respect of costs and interest on*  
6               *that sum;”*  
7  
8

9           The Plaintiff also seeks the costs of the proceedings and such further or other  
10           relief as the Court may deem fit.  
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12       9.       The Insurers duly acknowledged service of the Originating Summons and gave  
13           notice of intention to defend the Plaintiff’s claim. The Originating Summons was  
14           duly listed to be heard before me on Thursday 2<sup>nd</sup> April 2009. At the start of the  
15           hearing counsel for the Insurers intimated that he wished to make a preliminary  
16           application, namely for a declaration that the claims which the Plaintiff seeks in  
17           his Originating Summons are statute barred pursuant to Section 17 of the Law. It  
18           was agreed that I should hear and rule on this preliminary application first, since  
19           if I granted the Insurers’ application that would be conclusive of the Plaintiff’s  
20           Originating Summons. I should say that the Insurers did not dispute the  
21           declaration sought in paragraph 1 of the Plaintiff’s Originating Summons, namely  
22           that they had issued the relevant policy of insurance in favour of Mr. Watler. The  
23           Insurers’ preliminary application related to paragraphs 2 and 3 of the Originating  
24           Summons.  
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1 **The Issues**

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3 10. Section 17 of the Law provides as follows:

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5 *“Notwithstanding anything contained in any other law or in any rule of law or*  
6 *equity, no action shall be brought in any court by or on behalf of any person after*  
7 *the end of the period of three years from the date on which a cause of action*  
8 *accrued for any injury or damage against or in respect of which a motor vehicle*  
9 *is required to be insured under this Law”.*  
10

11 11. Counsel for the Insurers contended that the Plaintiff’s cause of action accrued on  
12 the date of the accident, namely 19<sup>th</sup> January 2005 and that accordingly the  
13 limitation period specified by Section 17 expired on 18<sup>th</sup> January 2008. He  
14 submitted that therefore the Plaintiff cannot now bring an action under the Law  
15 and in particular an action under Section 15 (1) of the Law. That section provides  
16 as follows:

17  
18 *“15.(1) If, after a certificate of insurance has been issued under section 4(3) in*  
19 *favour of the person by whom a policy has been effected, judgment in respect of*  
20 *such liability as is required to be covered by a policy under paragraph (b)of*  
21 *section 4(1) (being a liability covered by the terms of the policy) is obtained*  
22 *against any person insured by the policy, then, notwithstanding that the insurer*  
23 *may be entitled to avoid or cancel, or may have avoided or cancelled the policy,*  
24 *the insurer shall, subject to this section, pay to the persons entitled to the benefit*  
25 *of the judgment any sum payable thereunder in respect of the liability, including*  
26 *any amount payable in respect of costs and any sum payable in respect of interest*  
27 *on that sum by virtue of any law relating to interest on judgments”.*  
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30 12. The Insurers’ counsel contended that the wording of section 17, in referring to  
31 “no action shall be brought in any Court”, extended to the Plaintiff’s action  
32 brought by his Originating Summons and that the Plaintiff’s cause of action in

1 these proceedings had accrued on 19<sup>th</sup> January 2005. He argued that the  
2 limitation period for personal injury claims is established by the Limitation  
3 Law, which provides by section 39 for the extension of the 3 year period in  
4 certain circumstances. The Law contains no such provision. Counsel also  
5 submitted that the Plaintiff's application was premature anyway since there  
6 was an issue whether the Driver was a person insured by the policy through  
7 acting in the course of his employment or with Mr. Watler's authority at the  
8 time of the account, which, he contended, required to be determined in Cause  
9 313 of 2007, where the issue of Mr. Watler's vicarious liability is raised.

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11 13. Counsel for the Plaintiff argued that section 17 of the Law is the source of the  
12 3 year limitation period in respect injury or damage as a result of motor  
13 vehicle accidents. He contended that the intent of section 17 of the Law was  
14 to make it clear that the limitation period in respect of a motor vehicle  
15 accident is 3 years. He argued that the opening words of the section  
16 "Notwithstanding anything contained in any other law ..." was a reference to  
17 the Limitation Law which was thereby superceded in respect of injury as a  
18 result of a motor vehicle accident. He accepted that in the Law there is no  
19 equivalent to section 39 of the Limitation Law (allowing discretionary  
20 extension of the limitation period in certain circumstances). He submitted that  
21 the Law creates a comprehensive statutory structure to deal with motor  
22 vehicle accidents, which it expressly provides are subject to a 3 year limitation  
23 period, and the position of Third Party insurers.

1 **Conclusions**

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3 14. In my opinion section 17 of the Law is not intended to create two limitation  
4 periods in respect of motor vehicle accidents. The section, in my opinion, clearly  
5 relates to a cause of action arising from injury or damage in respect of a motor  
6 vehicle required to be insured under the Law, which, pursuant to section 3 of the  
7 Law, is all motor vehicles. I accept the argument that the section supercedes the  
8 provisions of the Limitation Law in relation to personal injuries sustained in an  
9 accident involving a motor vehicle required to be insured pursuant to the Law. I  
10 do not consider that the section is intended to or does create a 3 year statutory  
11 limitation period in respect of actions brought under the Law once liability has  
12 been established through a personal injury claim brought within the 3 year  
13 limitation period, as is the case here. In the present case the accident occurred on  
14 19<sup>th</sup> January 2005 and the Plaintiff's proceedings in Cause 313 of 2007 claiming  
15 damages for negligence as a result of the accident were issued on 19<sup>th</sup> July 2007,  
16 well within the limitation period. In my view the intention of section 17 of the  
17 Law is not to create a further limitation period in respect of claims made pursuant  
18 to section 15(1) of the Law, such as the Plaintiff makes in the present  
19 proceedings.

20

21 15. An application under section 15(1) of the Law cannot be made until judgment on  
22 liability is obtained against any person insured by the required policy. The  
23 Plaintiff obtained judgment on liability against the Estate of the negligent party,



1 the Driver, on 31<sup>st</sup> March 2008. There is an issue between the Plaintiff and the  
2 Insurers as to whether the Driver was insured by the policy, which is the very  
3 issue which the Plaintiff seeks to determine by his Originating Summons in these  
4 proceedings. Counsel for the Insurers argued that the relief which the Plaintiff  
5 seeks in these proceedings is premature but I do not agree. The Plaintiff argues  
6 that under the wording of the policy the Driver was covered by the policy by  
7 virtue of his employment by the policyholder, Mr. Watler. There is no dispute  
8 that the Driver was employed by Mr. Watler. There is, on the face of the  
9 pleadings in Cause 313 of 2007, a dispute as to whether the Driver was acting in  
10 the course of his employment at the time of the accident but that is not the subject  
11 of the dispute over the construction of the policy, which is raised as a result of the  
12 Plaintiff's claim under section 15 of the Law in these proceedings. The dispute is  
13 simply over the interpretation of the policy, the construction of the wording, on  
14 facts which are agreed, namely that the Plaintiff was employed by Mr. Watler,  
15 which is what the Plaintiff seeks to have determined in these proceedings. That is  
16 not the issue in Cause 313 of 2007. The Plaintiff has very limited resources and  
17 understandably needs to know whether the Insurers will be required, pursuant to  
18 the Law, to pay the substantial damages which he is likely to be awarded in Cause  
19 313 of 2007 before he embarks on a costly hearing to assess damages which the  
20 Estate of the Driver is most unlikely to be able to pay.

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22 16. Having considered the arguments of counsel I was satisfied that section 17 of the  
23 Law does not establish a limitation period of 3 years from the date of the relevant

1 motor vehicle accident for claims of the nature made by the Plaintiff in his  
2 Originating Summons pursuant to section 15 of the Law in the present  
3 circumstances. I therefore rejected the interpretation of section 17 of the Law  
4 submitted on behalf of the Insurers and dismissed their application for a  
5 declaration that the Plaintiff's claims are time-barred by limitation. Since time  
6 did not then permit the substantive hearing of the Plaintiff's Originating  
7 Summons, I adjourned that to be heard as soon as possible with a time estimate of  
8 3 hours.

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Dated 10<sup>th</sup> June 2009

  
  
The Hon. Mr. Justice Angus Foster  
Judge of the Grand Court (Acting)