



The Educator



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Motor Issue

Some 30 years ago, while co-facilitating a one week "Overseas (Caribbean) Fire and Accident Insurance" course with my mentor, the late Bertrand H. Doyle, HBM, AC11, ACI Arb, [1931-2013], at the Academy of Insurance in Trinidad, and while preparing students for both the CII and TII exams, one topic that we spent time on was the Motor Insurers' Bureau (MIB) that operated in the UK. We spent a lot of time going over Chapter XVII of Kenneth Cannar's (1979) Motor Insurance Theory and Practice. I remember students asking when will we have our own MIB.

I remember also discussing the students' question with Mr. Doyle who said to me, as he handed me a copy of a court decision, "Jai, read this boy. *That isn't coming here you know*". The decision was that of Mr. Justice George Edoo (as he was then) in the Trinidad and Tobago High Court case of **Velma Germaine Eligon v N.E.M. (West Indies) Ltd.** (1982), [an action that was started in 1974]. Edoo J; said:

It is ironic that legislation enacted primarily to protect persons who suffer injury and loss by accident arising out of the use of a motor vehicle on a public road is of no avail where there is a breach of a policy affording cover for such injury or loss, in effect leaving the policy holder uninsured. While it is true that the third party can sue the policy holder and recover any amount for which the latter is liable, if the policy holder is a man of straw, the third party is left without any relief. In such circumstances, the very purpose for which the Motor Vehicles Insurance (Third Party Risks) Act (supra) was enacted, is defeated.

...

Our law has not kept pace with developments in other countries. In the United Kingdom, a Motor Insurers Bureau is established by law to secure compensation for the victim of road accidents in cases where they are deprived of such compensation through the driver of vehicles being uninsured or untraced. The establishment of some such organization in this country is necessary if victims of road accidents, like the present one, are left without recourse against the insurers.

Mr. Doyle was a man of great wisdom.

Talk, talking MIB

Perusal of Hansard (Trinidad and Tobago Parliament) for Tuesday, November 05, 1996, shows the Attorney General of Trinidad and Tobago, the Hon. Ramesh Lawrence Maharaj (as he was then), speaking on the Motor Vehicles Insurance (Third-Party Risks) (Amdt.) Bill, said:

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It is in that context that this administration is considering having a similar kind of scheme as obtains in the United Kingdom and other parts of the Commonwealth whereby there would be a motor insurance bureau which would consist of representatives of insurance companies, and the function of the bureau would really be where there is a claim, the motor insurance bureau would pay the claim and then it would recover the money from the insurance companies. With that set up which has been introduced in the United Kingdom, there has been a great reduction in the litigation in respect of motor vehicular accidents and there has been a massive redressing of the problem in respect of motor insurance claims, damages and injuries which are done to victims.

Social Evil

The Caribbean is faced with a "social evil" (see July 2015 issue of *The Educator*) resulting from the ownership, use or operation of motor vehicles. Motor vehicles can cause injury, substantial damage and loss. Some may argue that the intention of the legislature in the Caribbean, given the scheme enacted in the Motor Vehicles (Third-Party Risks) Act, is to protect innocent third parties against the risks to which they are exposed by the use of motor vehicles on the public roadway.

However, from Belize to Guyana we hear of cases where people who were injured or suffered property damage at the hands of uninsured motorists or unidentified (untraced) motorists. These innocent victims have no recourse to compensation from insurance coverage or another funded source.

Throughout the region, courts continue to address this "social evil". For example:

Kokaram J; in the Trinidad and Tobago High Court case of ***Benjamin v Jairam and Citizen Insurance Company Ltd., and Capital Insurance Company Ltd., et al*** [2006] noted that it was clear that one of the main objects of the Motor Vehicle Insurance (Third Party Risks)Act was to make provision for the protection of third parties against risks arising out of the use of motor vehicles. He said that its "plain and obvious effect" was to write into the insurance policy as persons covered by it a class of persons driving with the consent of the person insured specified in the policy, so that it was;

.... therefore impermissible for an insurer to avoid liability by asserting the existence of a named driver only policy where the insured has given his consent to a person not specified in the policy to drive the insured's vehicle.

Mr. Justice Kokaram went on to say:

The upshot of the second co-Defendant's [Capital Insurance Company Ltd.] proposition is that in policies of insurance which are "named driver" policies a third party falls outside the Act or is not entitled to be indemnified as against the insurer in respect of a judgment obtained against the negligent driver who was not named in the policy but was driving with the consent and permission of the insured. Indeed such a proposition is startling.

The Eastern Caribbean Supreme Court in the Saint Lucia Court of Appeal case of ***EasternCaribbean Insurance Ltd. v. Edmund Bicar*** [2010], noted that:

It is worthwhile to have regard to the policy behind the Act [Motor Vehicles Insurance (Third-Party Risks) Act]. It expressly states that it is "[a]n Act to make provision for the protection of third parties against risks arising out of the use of motor vehicles.

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In 2011, in the Trinidad and Tobago High Court case of **Isha Bisnath v. Kazuhiko Shaiyana, Terrance Sammy and The New India Assurance Company Limited** (2011) Madam Justice Pemberton reiterated and wholly adopted Edo J's dicta in **Velma Germaine Eligon**, noted above.

Privy Council in "test case" of **The Presidential Insurance Company Limited v Resha St. Hill** [2012], from the Court of Appeal of the Republic of Trinidad and Tobago, had this to say:

Despite public awareness of the issue [compensation for innocent victims of negligent but uninsured drivers of motor vehicles] for at least thirty years, there is in Trinidad and Tobago still no equivalent of the Motor Insurers Bureau or any other facility to ensure that the victims of negligent but uninsured drivers do not go uncompensated.

In fact, The Board while noting Mr. Justice Kokaram's findings above, also noted the earlier comments of Edo J; who had said that the creation of a Motor Insurers Bureau was necessary.

In the Antigua and Barbuda High Court case of **Tameikah Hughes v. Ciseron Alphonso Martin Maestre and Tirso Baptista Rodrigues** [2014], Cottle, J: stated:

Public policy demands that users of the road be protected from losses due to vehicular accidents. This is why insurance is mandatory. It would make a mockery of the requirements to permit owners to escape liability for damage caused by vehicles which they deliberately allow to be used by others on the basis that these drivers are about their own business.

In the Belize Supreme Court case of **Everaldo Quetzal v. Jorge Adrian Trejo and Insurance Corporation of Belize Ltd.** (2014), Arana J: said:

.....the spirit of the Act [Motor Vehicles Insurance (Third Party Risks)] is designed to assist the injured person with immediate expenses arising as a result of an accident and obviate the need for litigation before these expenses can be recovered.

The issue of the uninsured driver reared its head again recently in the Privy Council case of **The Presidential Insurance Company Ltd v Mohammed and others** [2015], on Appeal from the Court of Appeal of Trinidad and Tobago. In this case, the Board in its decision suggested that the Trinidad and Tobago government set up an Uninsured Driver's Fund to compensate innocent accident victims who are injured or suffer property damage at the hands of people who drive or operate vehicles without insurance.

Over the years, the courts have given us many reminders to pay sufficient regard to the legislative scheme of the Act, which is aimed at protecting innocent third parties. However, as Edo J said almost 35 years ago, "[O]ur law has not kept apace with developments in other countries".

Still talking

Almost 20 years after Mr. Maharaj's address in the Trinidad and Tobago Parliament, in a Trinidad and Tobago Newsday article of February 9, 2015, Mr. Azad Hallim, Chairman of Presidential Insurance, commenting on the recently released Privy Council decision in **Presidential Insurance Company Ltd. v. Mohammed and others** [2015], where their Lordships urged the TT government

to set up an Uninsured Driver's Fund to compensate accident victims who ride in vehicles without insurance, said:

Despite public awareness of the issue for at least 30 years, there is still no equivalent in Trinidad and Tobago to the Motor Insurance Bureau in England, to ensure that the victims of uninsured drivers, are compensated. [<http://www.newsday.co.tt/hotline/0,206735.html>].

However, as people continue to use or operate motor vehicles without proper insurance coverage as required under the Motor Vehicles Insurance (Third-Party Risks) Act, the Privy Council in **The Presidential Insurance Company Ltd v Mohammed and others** [2015], noted that the problem, which Edo J: pointed to, remains today - 33 years later. The Board in its decision suggested that the Trinidad and Tobago government set up an Uninsured Driver's Fund to compensate innocent accident victims who are injured or suffer property damage at the hands of people who drive or operate vehicles without insurance.

In less than five months after the Privy Council decision in **Mohammed and others**, the Jamaica Court of Appeal sounded its own warning in the case of **Mecheck Willis v. Globe Insurance Company of Jamaica Limited** [2015]. Madam Phillips JA in the Court's written reasons handed down 19th June 2015, wrote:

*The injuries suffered by the appellant are serious and substantial and it is most unfortunate that no facility exists in Jamaica to satisfy the judgment in this claim. The Privy Council in **Presidential Insurance Co Ltd v Mohammed and Others** has highlighted the step taken by Great Britain's legislature to protect innocent third parties from the actions of uninsured drivers with the creation of the Motor Insurer's Bureau (Compensation of Victims of Uninsured Drivers) Agreement. This agreement provides that if judgment in respect of any relevant liability is obtained against any person in any court in Great Britain, whether or not the person is covered by a contract of insurance and any such judgment is not satisfied in full within seven days the Bureau will pay or cause to be paid the said sums in full with costs. While I recognize that unfortunately there is no institution of this type in Jamaica, the Jamaican legislature ought to take the crucial and novel step of being the first in the region to implement such a scheme in order to cure the social evil created when unlicensed drivers cause personal injury, property damage or death to innocent third parties for which there is no compensation.*

The culture shift suggested by Edo J; in 1982, which is the establishment of a *Motor Insurers Bureau*, has not, as the Privy Council noted in **Mohammed** in 2015, yet happened. So, again, the question is - why is it taking legislators and insurers so long to remedy this 'social evil'?

Is this the start of something?

In an article in the Trinidad Express on Wednesday January 25, 2017, Nikitta Braxton-Benjamin wrote that on Friday January 20, 2017, Mr. Justice Ricky Rahim of the Port of Spain High Court, granted leave to the not-for-profit Motor Insurance Bureau Association of Trinidad and Tobago (MIBATT), for a judicial review against the Ministry of Finance and the Board of Inland Revenue (TT) regarding the failure to "disburse more than \$1.6 billion allocated to a fund since 2008 for victims involved in accidents with uninsured vehicles".

Just do it

A starting point to remedy the "social evil" (see July 2015 issue of *The Educator*) may be to build upon, and follow what has long been in existence and tested in Bermuda and Barbados, and also exists in Saint Lucia and other OECS jurisdictions. This legislative change will provide financial

protection for innocent victims of an at-fault motorist, even if he or she has violated the terms of the motor insurance policy.

About 25 years ago in the Barbados case of **Bryce v. Caribbean Insurance Company Limited** [1992], the motor vehicle in question was being driven by someone other than the named driver under the policy. The insurer sought to rely on the restriction in the 'named driver policy' to defeat the third party claim. However, the court ruled that the insurer was not permitted to rely on the restriction and was therefore liable to the third party. Also, the Privy Council in **W. G. Suttle v. Elenor Joyce Simmons** [1989], on Appeal from the Court of Appeal of Bermuda, decided that the exclusion of liability in relation to non-authorized drivers was rendered ineffective by section 8 of the Bermuda Motor Car Insurance (Third-Party Risks) Act.

The question still is - why is it taking legislators and insurers so long to remedy this 'social evil'?

In light of the urgent need across the region, and the recent suggestion from of the Court of Appeal of Jamaica in **Mecheck Willis** that:

....the Jamaican legislature ought to take the crucial and novel step of being the first in the region to implement such a scheme in order to cure the social evil created when unlicensed drivers cause personal injury, property damage or death to innocent third parties for which there is no compensation

As we said in the July 2015 issue of *The Educator*, it may be advisable that a uniform project be initiated at the Caribbean Association of Insurance Regulators (CAIR) level.

Strange but True

Mint employee guilty of smuggling \$165K of gold in rectum¹

Caribbean born Leston Lawrence, a former Royal Canadian Mint employee has been found guilty of smuggling \$165,000 worth of gold from the building on Sussex Drive — apparently in his rectum, an Ottawa judge ruled earlier this month.

Leston Lawrence "clearly had the opportunity" to steal the gold because he often worked alone and the security cameras would not have caught him slipping gold pucks into his pocket, Justice Peter Doody ruled.

"His locker contained Vaseline and latex gloves, which could have been used to insert a puck into his rectum," he ruled, adding that there were no cameras in the locker room.

The pucks ranged from 192 to 264 grams [6.77 to 9.31 ounces] in weight.

Lawrence set off the mint's walk-through metal detectors more than any other employee without a metal implant — 28 times between December 2014 and March 2015, court heard. But when a secondary check with handheld detectors failed to alert guards to the gold, Lawrence was able to leave with it each time, Doody found.

¹ **Source:** <http://www.cbc.ca/news/canada/ottawa/ottawa-mint-gold-stolen-guilty-1.3843169> [Posted: Nov 09, 2016 10:33 AM ET]

The handheld detectors are less sensitive than the walk-through detectors, and do not detect metal in body cavities, the ruling detailed.

Though there was no video evidence of Lawrence stealing the gold from the mint, Lawrence was found guilty of the theft of 22 gold "pucks" worth \$165,000, and laundering 18 of them via Ottawa Gold Buyers.

Lawrence's income was insufficient to purchase the gold he sold, the ruling detailed. He was also found guilty of possession of property obtained by crime, conveying gold out of the mint, and breach of trust by a public official.

Bank flagged police

Lawrence worked at the mint from July 2008 until March 2015. His job included purifying gold — jewelry, coins and bars purchased by the mint — by melting it, injecting it with chlorine gas and skimming off base metal until the molten gold was 99.5 per cent pure.

Once he believed the molten gold was pure, he was tasked with scooping some out with a ladle, letting it cool and then testing it for purity. He was supposed to return the pucks into the vat of molten gold after testing.

In February 2015, Lawrence cashed two cheques from Ottawa Gold Buyers — one for \$7,992.27 and another for \$7,269 — at the RBC at Westgate Mall, the ruling detailed. He told the teller the cheques were from "gold nuggets" and that he wanted to transfer the money to help his parents rebuild a house in Jamaica.

When the teller noticed he worked at the mint, the bank notified the RCMP.

RCMP surveillance

Under RCMP surveillance, he was seen visiting the Ottawa Gold Buyers store at Westgate Mall on March 9, 2015.

The RCMP found Lawrence sold a 24-karat gold puck to the store for \$7,966.27, and had previously sold 17 similar pucks to the store for a grand total of \$138,172.46.

The RCMP also seized four gold pucks — roughly the diameter of golf balls with a total value of \$27,278.84 — from Lawrence's bank safety deposit box on March 11, 2015, the ruling detailed. Experts analyzed the gold pucks, and found that they matched the purity of gold at the mint. The pucks were identical in diameter to those produced at the mint, and fit the ladle used exclusively by the mint perfectly, Doody's decision detailed.

Source: <http://www.cbc.ca/news/canada/ottawa/ottawa-mint-gold-stolen-guilty-1.3843169>
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Mr. Baliram Sawh, General Manager - General Insurance Services of the Maritime Financial Group told *the Educator* that this type of loss will be covered under most Fidelity Guarantee policies issued by insurers in the Caribbean.

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Students of the AIIA's Risk Management course may find the videos (cut and paste the link in your search bar) useful when looking at risk management, risk control and loss prevention.

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