

MEMORANDUM OF AGREEMENT made the 21st day of December 1988 between the Secretary of State for Transport and the Motor Insurers' Bureau, whose registered office is at New Garden House, 78 Hatton Garden, London EC1N 8JQ (hereinafter referred to as "M.I.B") SUPPLEMENTAL to an Agreement (hereinafter called "the Principal Agreement") made the 31st Day of December 1945 between the Minister of War Transport and the insurers transacting compulsory motor insurance business in Great Britain by or on behalf of whom the said Agreement was signed and in pursuance of paragraph 1 of which M.I.B was incorporated.

IT IS HEREBY AGREED AS FOLLOWS-

DEFINITIONS

1. In this Agreement-

"contract of insurance" means a policy of insurance or a security;

"insurer" includes the giver of a security;

"relevant liability" means a liability in respect of which a policy of insurance must insure a person in order to comply with Part VI of the Road Traffic Act 1972,

and references to the Road Traffic Act 1972 are references to that Act as amended by the Motor Vehicles (Compulsory Insurance) Regulations 1987 (No 2171).

SATISFACTION OF CLAIMS BY M.I.B.

Basic
obligation
of M.I.B.

2.(1) If judgment in respect of any relevant liability is obtained against any person or persons in any Court in Great Britain whether or not such a person or persons be in fact covered by a contract of insurance and any such judgment is not satisfied in full within seven days from the date upon which the person or persons in whose favour the judgment was given became entitled to enforce it then M.I.B. will, subject to the provisions of paragraphs (2),(3) and (4) below and to Clauses 4,5 and 6 hereof, pay or satisfy or cause to be paid or satisfied to or to the satisfaction of the person or persons in whose favour the judgment was given any sum payable or remaining payable thereunder in respect of the relevant liability including any sum awarded by the Court in respect of interest on that sum and any taxed costs or any costs awarded by the Court without taxation (or such proportion thereof as is attributable to the relevant liability) whatever may be the cause of the failure of the judgment debtor to satisfy the judgment.

(2) Subject to paragraphs (3) and (4) below and to Clauses 4,5 and 6 hereof, M.I.B. shall incur liability under paragraph (1) above in respect of any sum awarded under such a judgment in respect of property damage not exceeding £250,000 or in respect of the first £250,000 of any sum so awarded exceeding that amount.

Compensation
from other
sources

(3) Where a person in whose favour a judgment in respect of a relevant liability which includes liability in respect of damage to property has been given, has received or is entitled to receive in consequence of a claim he has made, compensation from any source in respect of that damage, M.I.B. may deduct from the sum payable or remaining payable under paragraph (1) above an amount

equal to the amount of that compensation in addition to the deduction of £175 by virtue of paragraph (4) below. The reference to compensation includes compensation under insurance arrangements.

Excess (4) M.I.B. shall not incur liability under paragraph (1) above in respect of any amount payable or remaining payable under the judgment in respect of property damage liability where the total of amounts so payable or remaining payable is £175 or less, or, where the total of such amounts is more than £175, in respect of the first £175 of such total.

PERIOD OF AGREEMENT

3. This Agreement shall be determinable by the Secretary of State at any time or by M.I.B. on twelve months' notice without prejudice to the continued operation of the Agreement in respect of accidents occurring before the date of termination.

RECOVERIES

4. Nothing in this Agreement shall prevent insurers from providing by conditions in their contracts of insurance that all sums paid by them or by M.I.B. by virtue of the Principal Agreement or this Agreement in or towards the discharge of the liability of their insured shall be recoverable by them or by M.I.B. from the insured or from any other person.

CONDITIONS PRECEDENT TO M.I.B.'s LIABILITY

5.(1) M.I.B. shall not incur any liability under Clause 2 of this

Agreement unless-

Written
notice
of
proceedings

(a) notice in writing of the bringing of the proceedings is given within seven days after the commencement of the proceedings-

(i) to M.I.B. in the case of proceedings in respect of a relevant liability which is either not covered by a contract of insurance or covered by a contract of insurance with an insurer whose identity cannot be ascertained, or

(ii) to the insurer in the case of proceedings in respect of a relevant liability which is covered by a contract of insurance with an insurer whose identity can be ascertained;

Such notice shall be accompanied by a copy of the writ, summons or other document initiating the proceedings;

Supply of
information
by claimant

(b) the person bringing the proceedings furnishes to M.I.B.-

(i) such information (in such form as M.I.B. may specify) in relation thereto as M.I.B. may reasonably require; and

(ii) such information (in such form as M.I.B. may specify) as to any insurance covering any damage to property to which the claim or proceedings relate and any claim made in respect of that damage under the insurance or otherwise and any report which may have been made or notification which may have been given to any person in respect of that damage or the use of

the vehicle giving rise thereto, as M.I.B. may reasonably require;

Obtaining insurance details from person claimed against

(c) the person bringing the proceedings has demanded the information and, where appropriate, the particulars specified in section 151 of the Road Traffic Act 1972 in accordance with that section or, if so required by M.I.B., has authorised M.I.B. to do so on his behalf;

Judgment against all persons liable

(d) if so required by M.I.B. and subject to full indemnity from M.I.B. as to costs the person bringing the proceedings has taken all reasonable steps to obtain judgment against all the persons liable in respect of the injury or death or damage to property and, in the event of any such person being a servant or agent, against his principal; and

Assignment of Judgment

(e) the judgment referred to in Clause 2 of this Agreement and any judgment referred to in paragraph (d) of this Clause which has been obtained (whether or not either judgment includes an amount in respect of a liability other than a relevant liability) and any order for costs are assigned to M.I.B. or their nominee.

(2) In the event of any dispute as to the reasonableness of a requirement by M.I.B. for the supply of information or that any particular step should be taken to obtain judgment against other persons it may be referred to the Secretary of State whose decision shall be final.

(3) Where a judgment which includes an amount in respect of a liability other than a relevant liability has been assigned to M.I.B. or their nominee in pursuance of paragraph (1)(e) of this Clause M.I.B. shall apportion any monies received in pursuance of the judgment according to the proportion which the damages in respect of the relevant liability bear to the damages in respect of the other liabilities and shall account to the person in whose favour the judgment was given in respect of such monies received properly apportionable to the other liabilities. Where an order for costs in respect of such a judgment has been so assigned monies received pursuant to the order shall be dealt with in the same manner.

EXCEPTIONS

6.(1) M.I.B. shall not incur any liability under Clause 2 of this Agreement in a case where-

(a) the claim arises out of the use of a vehicle owned by or in the possession of the Crown, except where any other person has undertaken responsibility for the existence of a contract of insurance under Part VI of the Road Traffic Act 1972 (whether or not the person or persons liable be in fact covered by a contract of insurance) or where the liability is in fact covered by a contract of insurance;

(b) the claim arises out of the use of a vehicle the use of which is not required to be covered by a contract of insurance by virtue of section 144 of the Road Traffic Act 1972, unless the use is in fact covered by such a contract;

(c) the claim is in respect of a judgment or any part thereof

subrogation
claims

which has been obtained by virtue of the exercise of a
right of subrogation by any person;

Claimant
failing to
insure as
RTA requires

(d) the claim is in respect of damage to property which
consists of damage to a motor vehicle or losses arising
therefrom if at the time of the use giving rise to the damage
to the motor vehicle there was not in force in relation to
the use of that vehicle when the damage to it was
sustained such a policy of insurance as is required by Part
VI of the Road Traffic Act 1972 and the person or persons
claiming in respect of the loss or damage either knew or
ought to have known that that was the case;

(e) at the time of the use which gave rise to the liability
the person suffering death or bodily injury or damage to
property was allowing himself to be carried in or upon the
vehicle and either before the commencement of his journey
in the vehicle or after such commencement if he could
reasonably be expected to have alighted from the
vehicle he-

Stolen vehicle-
knowledge by
passenger

(i) knew or ought to have known that the vehicle had been
stolen or unlawfully taken, or

Uninsured
vehicle-
knowledge
by passenger

(ii) knew or ought to have known that the vehicle was being
used without there being in force in relation to its
use such a contract of insurance as would comply with
Part VI of the Road Traffic Act 1972.

(2) The exception specified in sub-paragraph (1)(e) of this
Clause shall apply only in a case where the judgment in respect of

which the claim against M.I.B. is made was obtained in respect of a relevant liability incurred by the owner or a person using the vehicle in which the person who suffered death or bodily injury or sustained damage to property was being carried.

(3) For the purposes of these exceptions-

(a) a vehicle which has been unlawfully removed from the possession of the Crown shall be taken to continue in that possession whilst it is kept so removed;

(b) references to a person being carried in a vehicle include references to his being carried in or upon or entering or getting on to or alighting from the vehicle; and

(c) "owner" in relation to a vehicle which is the subject of a hiring agreement or a hire-purchase agreement, means the person in possession of the vehicle under that agreement.

AGENTS

7. Nothing in this Agreement shall prevent M.I.B. performing their obligations under this Agreement by Agents.

OPERATION

8. This Agreement shall come into operation on 31 December 1988 in relation to accidents occurring on or after that date. The Agreement made on 22 November 1972 between the Secretary of State and M.I.B. shall cease and determine except in relation to claims arising out of accidents occurring before 31 December 1988 .

IN WITNESS whereof the Secretary of State has caused his Corporate Seal to be hereto affixed and the Motor Insurers' Bureau have caused their Common Seal to be hereto affixed the day and year first above written.



"NUMBER IN SEAL REGISTER"

D0/2278

THE CORPORATE SEAL of the Secretary of State was hereunto affixed in the presence of



An Assistant Secretary in the Department of Transport duly authorized in that behalf.

The COMMON SEAL of the Motor Insurers' Bureau was hereunto affixed in the presence of



Members of the
Council
Secretary