IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

CLAIM NO. CL. B 194 OF 2001

BETWEEN	**NEWTON BENTLEY**	**CLAIMANT**
AND	**UNITED GENERAL INSURANCE COMPANY LIMITED**	**DEFENDANT**

Miss Carol Davis for the claimant

Miss Andrea Walters instructed by Palmer and Walters for the defendant

July 19, 20, 21, 23, 28 and 30 2004

Sykes J (Ag)

CONTRACT: INSURANCE

The terms of the contract

At 12:25pm on May 4, 2000, the claimant, Mr. Newton Bentley who is also a police officer appended his signature to a document headed "MOTOR PROPOSAL FORM". United General Insurance Company Limited (UGI) (the defendant) accepted this proposal form. Thus was concluded, between Mr. Bentley and UGI, a contract for comprehensive insurance in respect of Mr. Bentley's car. Thirty days later Mr. Bentley was involved in an accident.

He claims compensation under the contract for pain, suffering and loss of amenity, loss of income as a photographer and damage to his photographic equipment. The defendant contends that on a true interpretation of the contract

box 25 indicates the pay out limits it liable for under the various heads listed there. This stance of the defence came very late as will be shown below.

It is common to both parties that the proposal form contains the terms of the contract as agreed between the parties and that this is the sole document I am to interpret to determine the rights and liabilities of each party. There is no question of looking to extrinsic evidence to construe the terms of the contract.

In the proposal form there appears the following:

25 **EXTRA BENEFITS (ON REQUEST AT ADDITIONAL PREMIUM)**						
Manslaughter	Windscreen	Medical Expenses	Personal Accident	Increased T/P Limits	Hurricane & Earthquake	Riot, Civil Commotion
$15,000	$10,000	$1500	1000 units	Yes/No	Yes/No	Yes/No

26 **Indicate Limits of Liability required:-**						
☐ A. Standard Limits				☐ B. Increased Limits		
	PERS. INJURY	**PROP. DAMAGE**	**PASS. LIAB. (U/DRIVE ONLY)**	**PERS. INJURY**	**PROP. DAMAGE**	**PASS. LIAB. (U/DRIVE ONLY)**
Any claimant	$250,000	$50,000	$5,000	$750,000	$250,000	$50,000
Series of Claims	$1,000,000	$250,000	$50,000	$2,000,000	$500,000	$250,000

It is these provisions in particular which, in my opinion, I will have to construe to determine what are the rights of the claimant. After an admission by the defendant that the contract extended to personal injuries the issues were reduced to whether

(i) damages for personal injury were at large or limited?

(ii) the contract extended to personal effects of the claimant.

Judgment on admissions

Until July 20, 2004 it was defendant's case that the policy did not cover either personal injury to the claimant or damage to his personal effects. The new

position only arose when Miss Davis applied for judgment on an admission. This was after the defendant had filed a further witness statement. I will set out how this application arose and why I agreed with it.

Miss Lorraine Moore, a motor claims superintendent of the defendant, filed her first witness in which she stated at paragraphs 11, 12 and 13:

> *11. That under the terms of the said contract of Insurance (sic), absolutely no coverage was in place in respect of any personal injury sustained by the Claimant (sic) himself, the coverage for personal injury being expressly limited to Third Parties (sic).*
> *12. That likewise there was no coverage in place for lost or destroyed personal effects owned by the insured.*
> *13. That in the circumstances, the Defendant (sic) maintains that it is not liable to the Claimant (sic) for these aspects of the claim.*

On July 19, 2004 Miss Walters applied to have Miss Moore amplify her statement. On the suggestion of the court she reduced the amplification to writing and served the claimant. This was done by July 20, 2004. It was this further witness statement that precipitated the application for judgment on admissions by Miss Davis. Her application rested upon this paragraph 6 in the further statement of Miss Lorraine Moore which stated:

> *Insofar (sic) as his **personal injury claim** is concerned the Defendant (sic) acknowledges that Mr. Bentley is **entitled** to the sum of Two Thousand Five Hundred Dollars ($2,500) as **contracted** for in the said Proposal Form.* (my emphasis)

This was now a fundamental change in position of the defendant that was now coming three years after the suit began. This was never pleaded in the defence and it was not stated in the first witness statement.

Miss Walters attempted to resist the application by submitting that "personal injury" in this paragraph did not mean what it clearly said. Her efforts were unflagging. She eventually had to concede that paragraph six (6) meant that the

defendant was acknowledging that the contract did cover personal injury but that there was a limit. In light of this, the prospect of success of the defence that the policy did not cover personal injury diminished considerably.

This having been resolved the energetic Miss Walters raised this "problem". Her new contention was: under what part of rule 14.1 would the court say that an admission was made? Although she did not say so expressly she seemed to have argued on the assumption that rule 14.1 had exhaustively described and prescribed the manner by which an admission could be made.

Having examined the rule I conclude that it is not a complete description or prescription of the way in which an admission may be made. All six paragraphs in rule 14.1(1) use the word "may", not must. Rule 14.1(1) states:

> *A party may admit the truth of the whole or any part of any other party's case.*

It does not say how this may be done.
Rule 14.1(2) says:

> *A party may do this by giving notice in writing (such as in a statement of case or by letter) before or after the issue of proceedings.*

Rule 14.1 only describes some of the ways an admission may be made but there is no attempt to say that the admission can only be done in the ways mentioned in the rule. If an admission is permitted by the rule to be made in as informal a manner as a letter I cannot see any logical reason why the admission cannot appear in a witness statement which the witness certifies to be "true to the best of my knowledge, information and belief" as was done in this case. Rule 14.1(1) is of sufficient width to accommodate the admission made in this case.

In taking this approach I am guided by rules 1.1 and 1.2(b) which, together, have swept away the past and the mandate the court to deal with cases *justly*,

an adverb, which includes within its meaning the idea that cases are also to be dealt with expeditiously and fairly. In interpreting rule 14.1(1) and (2) the court is empowered by rule 1.2(b) to further the overriding objective in interpreting any rule.

This "problem" raised by Miss Walters is not one that cannot be surmounted and in my view it has been and so I entered judgment on the issue of whether the policy covered personal injury to the claimant. One simply cannot "acknowledge" an "entitlement" under a contract unless one is also saying that the contract covers the "entitlement".

Having so ruled it was now the turn of Miss Davis to raise a procedural bar that would prevent the defendant from raising the limitation issue.

The pleading point

Miss Davis vigorously contended that the defendant could not now raise the issue of the pay out limitation because it was not pleaded in their defence. I did not accede to Miss Davis' submission because they had one important flaw. The claimant's entitlements are to be found in the contract and nowhere else. What are the terms and meaning of the contract, are matters primarily of law and not fact. The claimant is relying on the proposal form to establish his case. I do not see how it would be possible to determine the claimant's entitlement under the contract without construing the contract. In so doing I must look at the whole document. The claimant's contention that damages are at large could not be determined without construing the contract. In doing this the defendant is entitled to make submissions on the proper construction of the contract.

Miss Davis' submissions are understandable. Had the defendant made the admission and narrowed the case to what was the real issue this matter would quite likely have been disposed of long ago. This was eminently the type of case that might well have proceeded on an agreed statement of facts. The need for

oral evidence would have been reduced if not eliminated. The conduct of the defendant has contributed significantly to the delay in disposing of this matter. The initial denial of even whether the car was covered by the policy only served to increase the cost of litigation. This case has consumed a disproportionate amount of the courts resources thereby preventing other litigants from having their matters heard. This conduct is not in keeping with letter and spirit of the Civil Procedure Rules 2002. Rule 1.3 places an express duty on the parties to further the overriding objective of the rules. The defendant has not fulfilled that duty in this case.

A point of procedure

In retrospect I erred in permitting Miss Walters to cross examine the claimant on a document which was among the records in the possession of the defendant but which was never disclosed pursuant to an order made by Master McDonald on October 7, 2003. I took the view then that the Peter Blake principle could be used (see ***R v Peter Blake*** 16 J.L.R. 61). This error did not adversely affect the claimant.

On further reflection I am now of the view that the document ought properly to have been disclosed and should not have been used during cross examination of the claimant. Its use in that manner by the defendant should not have been permitted because no reason was presented for its non-disclosure. The whole point behind the orders for disclosure and inspection is to let each of the parties know what documents are in the possession of each other that may be relevant to the proceedings. I am not saying that the Peter Blake principle can never ever be used to cross examine witnesses in civil proceedings but in the circumstances of this case the cross examination based upon the undisclosed document should not have been permitted. In coming to this conclusion I had reason to examine rule 28.14(1) which clearly prohibits a party who does not make disclosure in

accordance with such an order from relying on or producing the document at the trial. The rule suggest that the party guilty of non disclosure may only use the document is permission is granted by the court. Implicit in this rule is that a person who intends to use a document for any purpose, including cross examination, at the trial should disclose it to the other party. It may be that the Peter Blake principle may be limited in its application in civil trials in light of this rule. If my previous position was correct it would have the undesirable consequence, as it did in this case, of a litigant not disclosing a document and then producing and using it a trial under the guise of testing the credibility of the witness.

Miss Davis made a further objection with which I agree. Miss Moore in her further statement made extensive reference to a file and the contents of that file. It appears that the contents of the file were not disclosed in accordance with the order made by the Master. It cannot be fair at this stage for the defendant to seek to rely upon the contents of a file which were not disclosed to the claimant. This seems to be a clear breach of rule 28.14(1). In addition rule 39.1 requires a party to send to the claimant all documents they wish to have included in the bundle of documents and the claimant is then required to include in the bundle all documents that all the parties wish to use at the trial (see rule 39.1(2) and (3)). The rule goes further to indicate that the bundle of documents should be separated if it turns out that some are agreed and some are not agreed (see rule 39.1(4)). I have decided that the documents referred to by Miss Moore in her further statement, other than any agreed by the claimant, which were not disclosed in accordance with Master McDonald's order cannot be used for any purpose whatsoever at this trial. I have omitted them from my consideration of this matter.

The evidence

The claimant says that when he contracted with UGI it was on the basis of unlimited coverage. He simply told the clerk that he wanted a policy to cover everything. When he was cross examined extensively and exhaustively he was unable to give the precise conversation that he had with the clerk. He eventually tried to suggest that the numbers at box 25 were premiums. This was clearly an improvisation conjured to meet the pressure of cross examination. He never asserted that the clerk told him that the figures at box 25 were premiums. In relation to the figures inserted at box 25 he initially stated he did not see them at all but as cross examination progressed he accepted that he saw the figures inserted at box 25 **before** he signed the document.

He said that he and the clerk did not discuss limits. However the evidence is too plain for any contrary argument that the claimant read the document. The figures at box 26 as will be shown later are clearly pay out limits. He filled in parts of the form with his own hand writing. He signed it at the end. He might not have read it carefully but that is his own fault. He might not have understood fully what he was signing but UGI cannot be blamed for that.

The best interpretation that can be put upon the claimant's testimony is that he was asking for the best motor coverage that was available subject of course to his willingness to pay the required premiums.

Based upon the totality of the evidence I have concluded that when the claimant signed the form he was aware of the figures that were filled in at box 25 since they were done in his presence before he signed. The claimant did not fully understand what he was signing and the implications of it but this is not due to any misrepresentation by UGI.

The guiding principle

Once negotiations have ended and a contract has been reduced into writing it is to the contract one must look to see what the parties agreed. The aim is to interpret not remake. The first point is that, generally, parties are bound by what they have signed. Scrutton LJ stated the matter quite pithily in ***L'Estrange v F. Graucob Ltd*** [1934] 2 K.B. 394, 403:

> *When a document containing contractual terms is signed, then, in the absence of fraud, or I would add, misrepresentation, the party signing it is bound, and it is wholly immaterial whether he has read the document or not.*

The rationale is not hard to find. It is all too easy for a person who having signed a contract then to turn and say, "Oh, what I signed to was not what I meant." I need to make this point quite early because in my view it is not relevant that the claimant did not address his mind to box 25 when he signed the proposal form. He says he was not thinking about limits when he signed. The figures were inserted in his presence. He signed after they were inserted. There is no allegation of fraud or misrepresentation here. So like Miss Harriet Mary L'Estrange he is bound by the document even if he did not read box 25 or address his mind to it.

The second point is that a contract is construed taking into account its object and looking at the particular provision in the context of the whole document.

The third point is as stated by Lord Hoffman. His Lordship stated the modern approach to the interpretation of contracts in ***Investor Compensation Scheme v West Bromwich Building Society*** [1998] 1 W.L.R. 896, 912-913.

> *My Lords, I will say at once that I prefer the approach of the learned judge. But I think I should preface my explanation of my reasons with some general remarks about the principles by which contractual*

documents are nowadays construed. I do not think that the fundamental change which has overtaken this branch of the law, particularly as a result of the speeches of Lord Wilberforce in Prenn v. Simmonds [1971] 1 W.L.R. 1381, 1384-1386 and Reardon Smith Line Ltd. v. Yngvar Hansen-Tangen [1976] 1 W.L.R. 989, is always sufficiently appreciated. The result has been, subject to one important exception, to assimilate the way in which such documents are interpreted by judges to the common sense principles by which any serious utterance would be interpreted in ordinary life. Almost all the old intellectual baggage of "legal" interpretation has been discarded. The principles may be summarised as follows:

(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

(2) The background was famously referred to by Lord Wilberforce as the "matrix of fact," but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words

which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax. (see Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd. [1997] 2 W.L.R. 945

(5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in The Antaios Compania Neviera S.A. v. Salen Rederierna A.B. 19851 A.C. 191, 201:

> *". . . if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense."*

With these three lamps illuminating the path I now turn to construe the terms as agreed.

What the terms mean

This contract, based upon the evidence, had the commercial purpose of providing comprehensive insurance to the claimant. This meant at the very least that the policy would cover damage to his car and liability to third parties. In this case however the policy went further than is usual. It extended to personal injury of the insured. I should point out that even if the admission was not made the reference to "medical expenses" and "personal accident" at box 25 made the contention that the contract did not extend to personal injury untenable.

An examination of the form shows that five types of insurance are listed. The one selected was comprehensive insurance. The document does not contain any definition of comprehensive insurance. This led Miss Davis to submit that

comprehensive meant all embracing, without limit and therefore there was no limit to compensation under the contract. However as I have endeavoured to show this approach is not correct because the whole document has to be examined to see what was agreed between the parties.

The form has two pages. Page one has the usual biographical information, such as name, address, occupation and date of birth. It then asks for the details of the vehicle to be insured and the particulars of those who may drive the car. Mr. Gayle is listed as one of the persons who may drive the car. There is nothing on page one that speaks directly or indirectly to any limitation on liability. On page two boxes 19 – 24 were not applicable to the risk in question and consequently no information is recorded in those boxes.

I now come to the critical boxes. The figures in box 25 were all written by hand. The figures in 26 were already printed on the form. There is no dollar sign before the figure "1000" written under "personal accident" in box 25 but I take it to be referring to dollars. No limit was identified in box 26. The word "limit" does not appear anywhere in box 25.

Personal injury coverage

Despite this looking at box 25 in the context of the whole contract I have concluded that what is at box 25 represents maximum payouts. I have so concluded for the following reasons:

(1) Lord Hoffman's first three principles make it clear that the approach to the interpretation is an objective one. The reference to the reasonable person with the background knowledge supports this conclusion. There is nothing in this form that requires me to give the natural meaning of the words an unusual meaning. There is therefore no basis to invoke Lord Hoffman's fifth principle.

(2) box 25 is captioned "EXTRA BENEFITS (ON REQUEST AT ADDITIONAL PREMIUM)". Extra benefits here must mean all the benefits of comprehensive insurance and *something more*. It seems that this *something more* would be indicated by either by ticking or marking in some way, the relevant spaces in box 25. In this case the extra benefits were identified by figures being written under the agreed extra benefits. Here the identified and agreed extra benefits were: manslaughter, windscreen, medical expenses and personal accident.

(3) The natural and ordinary meaning of the caption of box 25 is that the claimant would be entitled to the extra benefits below each head if and only if he paid additional premiums. The bracketed words were placed there to make it clear that the additional benefits would only be available if the purchaser was willing to pay more. In other words the caption is saying, "*Mr. Bentley, UGI will pay you these extra benefits only if you agree to pay additional premium.*" The document could not be interpreted otherwise. If the words were something like "on request at these premiums" then the claimant's interpretation might have prevailed.

(4)It is true that no limit was indicated at box 26 but that is beside the point since in my view box 26 is clearly dealing with liability to third parties. The phrases "Any claimant" and "Series of claims" in box 26 are more apt to refer to claims by third parties than to a claim under the contract by the claimant. If one looks at the whole structure of the form it seems to me that boxes 25 and 26 go together. Box 25 deals with payouts to the claimant and box 26 deals with payouts to third parties.

(5) Box 26 has the standard and increased limits in respect of third parties. It may well be that the sums indicated at box 25 are paltry but that is what was agreed between the parties. In construing a contract the court cannot

rewrite it in the court's own image and likeness. The court cannot rearrange the bargain struck by the parties. The sole duty of the courts is to give effect to agreement as captured by the words of the document in line with the principles stated by Lord Hoffman. This case is not within the class of cases in which the court can go beyond the written contract.

(6) At the end of page 2, below boxes 25 and 26, there is a section headed "Premium Computation". In that section the premium was calculated. The very structure of the form shows that premiums are dealt with differently from benefits. Logically premiums can only be calculated after the insured and the insurer have agreed the terms of the contract.

Personal effects

(7) I have also concluded, applying the principles states under the subheading "The guiding principles" that the contract does not extend to the personal effects of the claimant. There is nothing in the contract to suggest that personal effects of the claimant were contemplated by the parties.

Conclusion

On a true construction of the proposal form it does extend to personal injury but it is limited to $2,500: $1,500 for medical expenses and $1,000 for personal accident. Judgment is hereby given for claimant. Damages limited to $2,500 for personal injury. Since the proposal form did not cover damage to the claimant's personal effects he cannot recover for these under the contract. Costs to the claimant to be agreed or taxed.