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Supreme Court confirms repairs on private land will not require compulsory insurance under UK law

In *R & S Pilling t/a Phoenix Engineering v UK Insurance Ltd* [2019] UKSC 16, the Supreme Court has held that a motor insurance policy did not confer on the owner an indemnity against liability for damage caused to the property of a third party when a fire had broken out whilst he was repairing his car on the commercial premises of his employer, reversing the judgment of the Court of Appeal.

Facts of the case

Mr Holden was a mechanical fitter employed by the appellants ("R & S Pilling"). He held a motor insurance policy (the "Policy") with the respondents ("UKI"). His car failed its MOT and Mr Holden used the loading bay at the appellants' premises to enable him to repair it. The car caught fire in the course of the work; the fire spread to R & S Pilling's premises and the adjoining premises. The fire caused substantial damage.

Phoenix was insured against property damage and public liability by AXA. AXA made a subrogated claim in Phoenix's name against Mr Holden. Mr Holden sought to rely on the Policy. As a result, UKI brought an action seeking a declaration that it was not liable to indemnify Mr Holden, and AXA, denying this, counterclaimed for an indemnity.

The motor insurance policy

The relevant documents were (a) the policy set out in UKI's policy booklet, (b) the certificate of motor insurance ("the certificate"), (c) the motor insurance schedule and (d) the motor proposal confirmation. The policy booklet instructed the insured that he must read the four documents as a whole.

The policy booklet set out, in section A, the insurance cover in relation to the insured's third party liability. It provided in clause 1a:

Cover for you

> *We will cover you for your legal responsibility if you have an accident in your vehicle and:*

- *you kill or injure someone;*
- *you damage their property; or*
- *you damage their vehicle.*

The certificate included, inter alia, a certificate of the Chief Executive of the insurers in the following terms, as required by statute:

> "*I hereby certify that the Policy to which this Certificate relates satisfies the requirements of the relevant law applicable in Great Britain and Northern Ireland, the Republic of Ireland, the Isle of Man, the Island of Guernsey, the Island of Jersey and the Island of Alderney*."

The context of compulsory insurance

In terms of domestic law, the Policy is set in the framework of compulsory insurance, contained in the Road Traffic Act 1988. It is a statutory requirement that a driver has third party liability insurance and section 145 of the RTA sets out the conditions which the policy of insurance must satisfy. It provides, so far as relevant:

> *(1) In order to comply with the requirements of this Part of this Act, a policy of insurance must satisfy the following conditions.*
>
> *…*
>
> *(3) Subject to subsection (4) below, the policy -*
>
> *(a) must insure such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person or damage to property caused by, or arising out of, the use of the vehicle on a road or other public place in Great Britain …*

In terms of EU law, Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 ("the Directive") requires civil liability arising out of the use of motor vehicles to be covered by insurance. Unlike the RTA, the Directive is not confined to use of a vehicle on a public road or other public place.

Judgment

The case concerned the interpretation and application of the policy in the context of the legislative requirements for compulsory insurance. Lord Hodge held that the correct approach was to ask three questions:

1. what is the extent of the insurance cover which section 145(3)(a) requires, namely the correct interpretation of the statutory requirement: "caused by, or arising out of, the use of the vehicle on a road or other public place"
2. what words should be read into clause 1a
3. whether Mr Holden's accident falls within the wording of clause 1a as so interpreted

Question 1:

(i) The meaning of "*use*" under statute-

Lord Hodge observed that in English case law "use" has been interpreted to extend beyond driving a vehicle so that an owner had to have third party insurance if he "had the use of the vehicle on a road". It is a broad interpretation which includes management and control of a vehicle parked on a road.

It was common ground that section 145(3)(a) cannot be read down to comply with CJEU jurisprudence by removing the words "on a road or other public place", as to do so would "go against the grain and thrust of the legislation". Notwithstanding the failure to provide the cover which the Directive required; the person disadvantaged could instead seek compensation from the member state. The relevant "use" therefore is use "on a road or other public place".

(ii) The meaning of "*caused by, or arising out of*" the use of the vehicle on a road or other public place.

Lord Hodge accepted that the addition of the words "arising out of" after "caused by" makes it clear that there can be a causal link between use of a vehicle on a road and damage resulting from that use which occurs elsewhere. However, he declined to adopt a broader interpretation of the causal link which might have resulted in the insurance required by the RTA complying more closely with the scope of the Directive, which extends to use on private land. In holding that "there must be a reasonable limit to the length of the relevant causal chain", Lord Hodge upheld the decision of the majority of the Court of Appeal in *Romford Ice and Cold Storage Co Ltd v Lister* [1956] 2 QB 180, but refused the Appellant's invitation to hold that the well-known case of *Dunthorne v Bentley* [1999] Lloyd's Rep 560 had been wrongly decided.

Question 2:

Lord Hodge applied the well-known authority of *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38; [2009] AC 1101 and held that it was an appropriate case for the court to adopt a corrective construction because it was "clear that something has gone wrong with the language" and it was clear "what a reasonable person would have understood the parties to have meant." The apparent contradiction between the terms of clause 1a and the promise in the certificate that the Policy satisfies the requirements of UK law was to be cured by grafting an additional basis of cover into clause 1a as follows:

> "We will cover you for your legal responsibility if you have an accident in your vehicle or if there is an accident caused by or arising out of your use of your vehicle on a road or other public place and …"

In Lord Hodge's view the approach adopted by the Court of Appeal in construing clause 1a to mean: "We will cover you for your legal responsibility if there is an accident involving your vehicle" (emphasis added), but otherwise staying faithful to the wider scope of the insuring clause (which, unlike the RTA, did not require statutory "use" of the vehicle or use "on a road or other public place"), impermissibly extended the cover beyond the express terms of the clause and the requirements of the RTA.

Question 3:

Lord Hodge held that neither domestic case law nor the jurisprudence of the CJEU supports the view that the carrying out of significant repairs to a vehicle on private property entails the "use" of the vehicle. However, he observed that repairs carried out on a road or in other public places would fall within the scope of section 145(3)(a) of the RTA.

Lord Hodge then turned to Phoenix's argument that Mr Holden's repairs met the causal requirement either because the disrepair of the car was the result of its use or because the repair was a precursor to his getting the car back on the road as a means of transport. Lord Hodge held the causal connection to be too remote.

Comment

This was a case in which the parties agreed that something had gone wrong with the language of the insuring clause. The insuring clause, whilst generally wider than required by the statutory regime, was too restrictive in requiring the insured to be "in" the vehicle when he had an accident. The dispute concerned what a reasonable person would have understood the parties to have meant in circumstances where the intention was to include cover for the statutory regime. In effect, the Supreme Court held that the answer was to fill the gap in cover using all the criteria applicable to the statutory regime and not simply the kind of use which had been omitted from the insuring clause (i.e. use when not in the vehicle).

By approving the majority decision of the Court of Appeal in *Romford Ice and Cold Storage Co Ltd v Lister* [1956] 2 QB 180, but refusing to overrule *Dunthorne v Bentley* [1999] Lloyd's Rep 560, the Supreme Court has probably left in place the latter decision's interpretation that "arising out of" use of a vehicle can include consequences which are more remote than proximate causes. However, this is open to doubt since the judgment does not deal explicitly with this issue and arguably confines *Dunthorne* to its own facts.

As to the practical implications, the decision suggests that repairing vehicles which are on a road or in a public place would amount to use of the vehicle requiring compulsory insurance under UK law. However, at least until any change to bring UK law in line with EU law, repairs on private land will not require compulsory insurance under UK law. The Supreme Court also doubted that significant repairs on private land required compulsory insurance under EU law in any event.

Colin Edelman QC and Richard Harrison acted for the Respondent, instructed by DAC Beachcroft.

John Platts-Mills is developing a broad practice in insurance law, with particular expertise on multi-faceted 'out of the norm' motor accident cases.