Horwich Farrelly

Nagorski v Nikolics & Tradewise Insurance [2021] 1 WLUK 590

June 2021

The insurer is on MID, so they must be the RTA insurer, right?

In the recent Liverpool County Court decision of *Nagorski v Nikolics and Tradewise Insurance*, the court had to grapple with this issue.

The case concerned a minor RTC in which the uninsured first defendant, driving a Vauxhall Zafira, was uninsured. However, the vehicle he was driving was showing on the Motor Insurance Database ("MID") as being insured with Tradewise under a motor trader's policy in the name of a Mr Kiss, a motor trader/garage owner.

The Tradewise policy, as is commonly found with motor trade policies, did not insure specific vehicles defined by their registration but instead as "Any motor vehicle … the property of the insured or in their custody or control for motor trade purposes."

There was no dispute that Tradewise were not the contractual insurers of the first defendant but the claimant, represented by Bond Turner and counsel, Guy Vickers argued that it did have an RTA liability such that it was required to meet the claimant's claim for minor personal injury, vehicle damage of £685, storage and recovery charges of £1,261.20 and credit hire charges of £114,408.24.

Tradewise's position was quite simple: the Vauxhall Zafira was neither a vehicle owned by or in the custody or control of its policyholder Mr Kiss but was instead owned by and in the custody and control of the first defendant.

That being the case, the vehicle did not fall within the definition of vehicles insured under the policy such that there could be no RTA liability. Tradewise also went further and sought to allege that in actual fact Mr Kiss was a dishonest individual who was abusing the MID to act as a 'ghost broker' adding a considerable number of vehicles to the MID which he was not entitled to do.

In support of its case, Howard Palmer QC representing Tradewise highlighted the key Court of Appeal authority of *Bristol Alliance v Williams [2013] QB 806* which confirmed that an RTA liability depends on the policy covering the risk subject to the proposition set out in section 151(2)(b) of the Road Traffic Act 1988, namely that the policy insured "all persons".

Mr Vickers for the claimant sought to allege that once the vehicle was added to MID it was added to the policy and therefore Tradewise were fixed with an RTA liability which could only be extinguished by cancelling the policy, securing a Section 152 declaration or the policy lapsing through passage of time.

He sought to argue that once a vehicle was on MID, the insurer had an RTA liability come what may (and thus contrary to the Court of Appeal's decision in Bristol Alliance). He was unable to explain how the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003 which introduced the rules around MID had brought about any changes to the Road Traffic Act 1988.

Recorder Simon Parrington, in finding for Tradewise, accepted entirely the arguments advanced by Mr Palmer QC. In his judgment he noted:

"It is clear that the MID is a database that is designed to assist the Police and others, including foreigners, to identify insurers of vehicles. In my judgment, registration on the MID is not conclusive evidence as to the veracity of the information posted. I have not been provided with any authority or statute that supports the contention that registration amounts to conclusive evidence to that effect and/or that once registered thereon an insurer is bound to meet a judgment, regardless of the fact that the vehicle may have been registered in error, whether fraudulently or not, or that deregistration has not been effected at the appropriate time, for whatever reason, including innocent oversight… The MID is, as Mr Palmer submits, a useful tool for detecting uninsured cars, but it is no more than a database."

Recorder Simon Parrington did not make any findings as to whether or not Mr Kiss was running a ghost brokering operation – he did not need to in light of there being no evidence that the Vauxhall Zafira fell within the definition of insured vehicles.

The claimant also sought to argue that on the true construction of the Tradewise Policy, it covered any vehicle added to MID.

The claimant pointed to the Statement of Facts in which it was stated that failure to remove a vehicle from the Tradewise Motor Trade policy, meant that it 'stays on the MID in your name' and 'that means that you may still be liable on your insurance for claims involving a vehicle long after you sold it!'. The court rejected any suggestion that the policy could be construed in such a manner.

Accordingly, Tradewise were found to have no RTA liability. In terms of whether Tradewise could have an Article 75 liability, this is a matter between Tradewise and the Motor Insurers' Bureau. However, all the evidence points to Tradewise having no such liability on the basis of a line of Technical Committee decisions over the last few years.

The claimant sought permission appeal, citing amongst other things, the wider public interest in the outcome of the case. Recorder Partington granted the claimant limited permission to appeal stating:

"The [claimant] contends that there is an issue as to law on the interpretation of s.151(2)(b) RTA '88. I am satisfied that there is a potential point of law for consideration on appeal, there being no specific authority on the subject."

In our view, unsurprisingly, the claimant has now abandoned that appeal.

Comment

There has been an increasing tendency in recent years to treat what is recorded on MID as gospel. However, as we have made clear time and again, MID is only an indicative guide and nothing more. Whilst it is a good starting point for determining the relevant insurer of a vehicle, there can be numerous reasons why an insurer has no liability either in contract or pursuant to the Road Traffic Act 1988 despite appearing on MID. This is particularly so when dealing with 'open cover contracts' such as motor trade policies which define insured vehicles other than by registration mark. It is also the case that an insurer can have a contractual or RTA liability despite not appearing on MID; for instance a motor trader does not need to add a vehicle to MID for 14 days.

Where a motor insurer denies any RTA liability and does not accept an Article 75 liability, a claimant ought to submit a claim to the MIB under the Uninsured Drivers' Agreement at the earliest opportunity. However, that seemingly will not work with the OIC rules that are presently envisaged. Indeed, the Ministry of Justice published the following Q&A on 26 April 2021:

Q: Why is there no option to redirect a claim where the wrong insurer is identified?

A: We concluded that in a service where some claimants are unrepresented, the claimant cannot be left in limbo with two different insurers arguing about who is responsible. If the insurer is identified on Motor Insurance Database and the case passed to them, they will have to deal with it unless they can persuade another insurer to take over from them. Also, in this way the claimant only faces one set of time limits for the liability response.

Obviously, it must necessarily be the case that procedure for the OIC cannot determine the legal position under the Road Traffic Act 1988.

It appears the government has made the mistake of many others in equating a MID entry with a necessary liability on the part of the insurer (absent another insurer with a higher status). As this case highlights in a most timely fashion, there is clearly a need to find a solution to the problem where there is a single insurer on MID without a liability (e.g. a procedure to redirect the claim to the MIB). This case is far from being a one-off.

A copy of the judgment can be downloaded here

Key contacts

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