

GROUP: Insurance - Fire & General
SERVICE: Motor Vehicle
Complaint No : 133247
YEAR: 2015

Casebook Index: Alcohol, Breach of policy condition - Other, Exclusion - Driver, Insurance Law Reform Act 1977, Interpretation - Specific policy provisions, Declined

Summary: Mr B's complaint was **not upheld** because, when the accident occurred, the person who was driving his vehicle had a breath alcohol concentration which exceeded the legal limit. Consequently, the insurer was entitled to rely on a policy exclusion to decline the claim.

In March 2015, Mr B's friend ("Mr F"), was driving Mr B's vehicle, when he crashed into a lamp post. The police attended the accident, and Mr F was breath-tested. The evidential breath-test gave a reading of 370 micrograms of alcohol per litre ("mcg/l") of breath. Mr B made a claim to his insurer for the damage.

The insurer declined the claim because, at the time of the accident, the driver of the vehicle had a breath alcohol concentration which exceeded the legal limit. Therefore, the insurer relied on a policy exclusion to decline the claim.

Mr B argued that the legal limit for breath alcohol concentration, at the last renewal of the policy in October 2014, was 400 mcg/l of breath. The law changed in December 2014, during the period of insurance. Therefore, Mr B argued that the insurer was bound to apply the legal limit, as it stood at the last renewal of the policy.

In the alternative, Mr B argued that alcohol did not cause or contribute to the accident and, therefore, section 11 of the Insurance Law Reform Act 1977 ("the ILRA") precluded the insurer from relying on the exclusion to decline the claim.

The case manager's assessment

The case manager did not agree with Mr B's interpretation of the policy. The policy referred to the "*legal limit*", not a specific blood alcohol concentration. Therefore, as soon as the "*legal limit*" changes, its meaning, in terms of the policy, changes. This did not mean the terms of the policy had been altered during the period of insurance, as Mr B had argued. The terms of the policy stayed the same, in that a driver must not operate a vehicle while over the "*legal limit*".

The Land Transport Amendment Act (No 2) came into force on 1 December 2014, with the effect that the "*legal limit*" of breath alcohol concentration changed from 400 mcg/l of breath to 250 mcg/l of breath. The accident occurred in March 2015. The driver of the vehicle, Mr F, gave an evidential

breath-test following the accident, with a reading of 370 mcg/l of breath. Consequently, as the person using the vehicle had a breath alcohol concentration that exceeded the legal limit, the insurer was entitled to rely on the exclusion to decline the claim.

However, Mr B also argued that Mr F's alcohol consumption did not cause or contribute to the accident. This point raised the question of whether section 11 of the ILRA applied to the claim to prevent the insurer from relying on the exclusion.

In his submissions, Mr B stated that “[t]here is no evidence that the presence of alcohol on the driver’s breath caused or contributed to the accident”. This statement overlooked the fact that the onus is on the insured party to prove the application of section 11. In order to rely upon the exclusion, the insurer did not need to prove that the excluded circumstances caused or contributed to the accident. Rather, Mr B, as the insured party, needed to prove that the excluded circumstances did not cause or contribute to the accident.

Mr B did not provide any evidence that Mr F's alcohol consumption did not cause or contribute to the accident. In his submissions, he stated that Mr F “advises that he was distracted by discussion with a passenger of the vehicle, and that this is what caused the accident”.

The case manager did not believe that this argument assisted in proving that Mr F's alcohol consumption did not cause or contribute to the accident. It is common knowledge that alcohol can impair concentration and reaction times, and this is largely why drink driving laws exist in the first place. Therefore, the mere fact that Mr F was “distracted” did not in any way prove that his alcohol consumption did not cause or contribute to the accident.

Having regard to the circumstances, the case manager did not believe Mr B had established, on the balance of probabilities that Mr F's alcohol consumption, did not cause or contribute to the accident. Therefore, he did not believe section 11 of the ILRA assisted him in the circumstances. He believed the insurer was able to rely on the exclusion to decline the claim.

Complaint not upheld