

THE HIGH COURT

[2021] IEHC 661

[Record No. 2017/5636 P.]

BETWEEN

**URBAN AND RURAL RECYCLING LIMITED
AND RSA INSURANCE IRELAND DAC**

PLAINTIFF

AND

ZURICH INSURANCE PLC

DEFENDANT

JUDGMENT of Ms. Justice Reynolds delivered on the 3rd September, 2021

Introduction

1. The parties have stated questions of law arising from the proceedings herein in the form of a special case for the opinion of the court.

Background

2. The first plaintiff (otherwise referred to as 'Urban and Rural') carries on the business of glass recycling. In the course of its business, it provides bottle recycling bins to commercial entities and engages in regular bottle bin collections.
3. The second plaintiff (otherwise referred to as 'RSA') provided employer's liability insurance to Urban and Rural under a policy of insurance.
4. The RSA policy was in force on 19th December, 2013 when an employee of Urban and Rural, Mr. Joseph Moore, sustained severe life-changing personal injuries in the course of using a recycling truck owned and operated by Urban and Rural.
5. Urban and Rural had taken out motor insurance in respect of the recycling truck with the defendant, Zurich Insurance plc (otherwise referred to as 'Zurich'). That policy was also in force on the 19th December, 2013, the date of the accident.

The proceedings

6. The plaintiffs instituted the within proceedings claiming declaratory and other relief with a view to resolving the issue relating to which of the insurers is liable to provide indemnity to Urban and Rural. The parties agreed (and the court ordered accordingly) that issues of law raised by these proceedings might appropriately be determined under the special case procedure pursuant to O.34 of the Rules of the Superior Courts.
7. In the context of these proceedings, RSA contends as follows: -
 - (a) that the motor policy, i.e., the Zurich policy, provides cover to Urban and Rural in respect of the accident and that Zurich is, therefore, required to provide indemnity;
 - (b) that liability covered by the Zurich policy is one that is required to be insured under the Road Traffic Act, 1961 (as amended) (the '1961 Act') and consequently, liability is excluded under the RSA policy so that it is Zurich alone that is required to provide indemnity.

8. Zurich has disputed that it has any liability under the Zurich policy (whether by contribution or full indemnity).

Special case

9. Order 34 of the Rules of the Superior Courts provides as follows: -

"The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the court to decide the questions raised thereby. Upon the argument of such case the court and the parties shall be at liberty to refer to the whole contents of such documents, and the court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial."

Order 34, r.2 further provides: -

"If it appears to the court that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to an arbitrator, the court may make an order accordingly, and may direct such question of law to be raised for the opinion of the court, either by special case or in such other manner as the court may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed."

The facts

10. The agreed facts are set out in the special case as follows: -

- "(1) The first Plaintiff carries on business as an independent recycling operator whereby it attends third-party sites to carry out collections of material for recycling. Recycling material stored on the said sites in bins (including wheelie bins) is loaded on to the recycling truck.*
- (2) The Recycling Truck has lifting points for six (6) bins, with four (4) points at one side capable of holding four (4) bins of domestic type bin size 360 litres and two (2) at the rear.*
- (3) The lifting process involves manually moving the wheelie bin onto the locking points, which sit in a castellated row and which lock in place below the bin shelf. The bins lift upwards to the top of the wagon side where the tipping process occurs, lifting the lid at approximately 35 degrees to the holding bar. Photographs of the Recycling Truck and the Bin (or an equivalent) are appended hereto at Appendix 3.*
- (4) On 19th December, 2013, the first Plaintiff undertook recycling collections.*

- (5) *Mr. Moore was driving the Recycling Truck between collections with the principal of the first plaintiff, Mr. Michael Wickham, as passenger.*
- (6) *At Sinnott's Store, Duncormick, Co. Wexford, the Recycling Truck stopped on the verge of the road immediately outside the said store.*
- (7) *The Recycling Truck having stopped, Mr. Moore and Mr. Wickham alighted therefrom. Mr. Wickham fetched two bins, one of which was the relevant bin for the purpose of these proceedings, and placed them at the side of the Recycling Truck for Mr. Moore to load onto the lifting equipment of the Recycling Truck.*
- (8) *Mr. Moore loaded the said bin onto the lifting equipment of the recycling truck.*
- (9) *While in the process of being lifted, and with Mr. Moore operating and controlling the lifting equipment, the Bin fell from near its emptying position to the ground striking Mr. Moore in the head.*
- (10) *For the purpose of this Special Case, it is agreed that at the time of the accident both Mr. Moore and Mr. Wickham were acting in the course of their employment and the Recycling Truck was in a public place.*
- (11) *Mr. Moore sustained severe personal injuries in respect of which he has instituted the Underlying Personal Injuries Proceedings. A copy of Mr. Moore's claim form submitted to the Personal Injuries Assessment Board and a booklet of the pleadings and proceedings (tabbed and indexed) in the Underlying Personal Injuries proceedings are appended to this Special Case at Appendix 4 and Appendix 5 respectively."*

Questions of law

11. The questions of law raised in the special case are as follows: -

- "(I) Whether the liability (if any) of the first Plaintiff to Mr. Moore in the Underlying Personal Injuries Proceedings was a liability that was required to be insured under the Road Traffic Acts?*
- (II) Having regard to the answer to Question (I), whether the first Plaintiff is entitled to indemnity in the Underlying Personal Injuries Proceedings in respect of Mr. Moore's claim under:*
 - (a) The Zurich policy; or*
 - (b) the RSA policy; or*
 - (c) Both the Zurich policy and the RSA policy?"*

Underlying personal injury proceedings

12. Mr. Moore instituted proceedings arising from the accident entitled "The High Court, Record No. 2014/3312P, Joseph Moore, Plaintiff, and Urban & Rural Recycling Ltd,

Defendant, ("the underlying personal injury proceedings") seeking damages as against Urban & Rural in respect of the catastrophic injuries he sustained.

13. Prior to the institution of proceedings, a claim form was submitted to the Personal Injuries Assessment Board on behalf of Mr. Moore. Under the heading of "Accident Details", it is stated as follows: -

"The Claimant was working for the Respondent and collecting a bottle bin full of bottles and when the container was being lifted up the mechanism failed and the entire container fell on top of the Claimant causing very serious injuries."

14. In his personal injury summons dated the 24th March, 2014, Mr. Moore has based his claim against Urban & Rural on breach of contract, negligence, breach of duty and breach of statutory duty. In particular, it is alleged that Urban & Rural failed to provide a safe system of work, adequate plant and equipment and failed to comply with its statutory duties pursuant to the Occupier's Liability Act, 1995 and/or the Safety, Health and Welfare at Work Act, 2005 together with the Safety, Health and Welfare at Work (General Application) Regulations Act, 2007.

15. Paragraph 2 of the endorsement of claim to the personal injuries summons pleads that "a bin became detached from the recycling truck whilst it was being lifted and fell upon Mr. Moore".

16. In response to a request for particulars in respect of the alleged defective or deficient equipment, Mr. Moore's solicitor replied as follows: -

"We await a specialist engineer's report on the lorry hoist mechanism and bins used."

17. Further particulars of negligence and breach of duty were duly furnished by Mr. Moore's solicitor on the 2nd February, 2017 and included the following: -

- (i) paragraph (a) pleads 'the hazard of falling bins, a risk of which [Urban and Rural] was, or ought to have been aware';*
- (ii) paragraph (g) pleads a failure by Urban and Rural 'to ensure that the locking mechanism on the lift worked satisfactorily';*
- (iii) paragraph (h) pleads the provision by Urban and Rural of 'defective plant and equipment, specifically the locking mechanism on the lift'.*

18. Urban & Rural essentially deny the alleged negligence, breach of duty and/or breach of contract and set out very extensive pleas of contributory negligence against Mr. Moore in its defence.

The insurance policies

19. It is common case that both policies were in force on the date of the accident, the subject matter of the proceedings.

The RSA policy – employer's liability insurance

20. Section 1 of the RSA policy provides as follows: -

"The Company will provide indemnity to the Assured

- 1. Against legal liability for any damages in respect of Bodily Injury of any Employee within the Territorial Limits caused during any Period of Insurance and arising out of and in the course of employment by the Assured in the Business..."*

21. RSA's policy provides indemnity to Urban & Renewal against legal liability for any damage in respect of bodily injury to any employee arising out of and in the course of employment with Urban & Renewal, **save** to the extent of any applicable exclusion in the RSA policy.

22. Paragraph 3 of the "General Exclusions" specifies that the indemnity provided by it does not apply to or include: -

- "3. Any liability as required to be insured by the relevant Sections of the Road Traffic Acts or their equivalent in respect of Requirements in respect of Policies of Insurance relating to compulsory insurance.*

This Exclusion shall apply whether or not the Assured is exempt from the Requirements of Third Party Insurance or Security or has in force a Security in accordance with the relevant Section of the Road Traffic Act or has made a Deposit with the Accountant General of the Supreme Court..."

23. The RSA policy, therefore, *excludes* liability required to be covered by compulsory motor insurance under the Road Traffic Acts.

24. Paragraph 4 of the "General Exclusions" further provides: -

"This insurance does not apply in respect of any loss or damage which at the time such loss or damage arises is insured by or would but for the existence of this policy be insured by any other policy or policies."

25. The policy stipulates that the insurance provided by it does not apply in respect of any loss or damage which at the time such loss or damage arose was insured or would but for the existence of the RSA policy be insured by any other policy or policies.

26. In practical terms, Urban and Rural is entitled to an indemnity in respect of the injury to Mr. Moore under the RSA policy *unless* either the injury is one against which insurance was required under the Road Traffic Acts, or the Zurich Policy applies.

The Zurich policy – motor insurance policy

27. The policy, entitled "Commercial Motor Fleet Policy" provides as follows: -

"Section 1 – Liability to Third Parties:

1. *We will indemnify you against all sums which you...become legally liable to pay by way of damages or costs on account of ... bodily injury to any person ... caused by or in connection with any motor vehicle described in the Schedule for any one accident..."*
28. The insured under the Zurich policy are Urban and Rural and Michael Wickham, and accordingly, the term "you" in the policy refers to Urban and Rural and Mr. Wickham.
29. The policy further provides an exception as follows: -

"Except so far as is necessary to meet the requirements of the Road Traffic Acts legislation, we will not be liable for... death or bodily injury to

 - (i) *Any person driving the vehicle or in charge of the vehicle for the purpose of driving;*
 - (ii) *Any passenger being accommodated in or on the vehicle.*
30. Condition 3 of the "General Exclusions" of the policy provides: -

"If any other insurance covers the same damage, loss or liability, we will not be liable to pay more than our rateable proportion..."
31. It is common case that RSA's policy prima facie responds to this incident when Mr. Moore was injured in the course of his employment but RSA's liability does not apply if the liability, i.e. the injury to Mr. Moore, was a liability which was required to be insured under the compulsory Road Traffic Acts insurance provisions.
32. The question, therefore, is whether the "liability" of a bin falling during the emptying process and hitting Mr. Moore is a liability which was required to be insured under the compulsory Road Traffic Acts insurance? It is RSA's contention that it was so required and that Zurich's motor policy should respond.
33. It is Zurich's contention that it is not so required and that RSA's employer's liability policy should respond.
34. There is a further exclusion to the indemnity provided in "Section 1 – Liability to Third Parties" as follows: -

"We will not be liable for:

death or bodily injury to any person or damage to property caused or arising beyond the limits of any road in connection with:

 - (i) *the bringing of the load to any vehicle for loading or*
 - (ii) *the taking away of the load from any vehicle after unloading by any person other than the driver or attendant of the vehicle."*

35. This exclusion is of no application to the issue for determination in this application because the injury sustained by Mr. Moore was caused and arose within and not "*beyond the limits of the road*" and the loading operation was being undertaken by Mr. Moore and Mr. Wickham, as driver and attendant respectively. However, the necessary corollary by implication to this exclusion is that cover extends to claims by persons on a road injured in connection with the bringing of a load to the vehicle by the driver or attendant of the vehicle.
36. On the basis of the agreed facts, the loading was being done within the limits of the road and the driver and attendant of the vehicle were involved in the loading operation. Injury to any person in such circumstances is covered by the policy and there is no exclusion in respect of injury to the driver or the attendant. This issue is further discussed below in the context of the *Lynch* decision.

What is required to be insured under the Road Traffic Acts?

37. Irish law relating to motor insurance is now a combination of primary legislation and amending statutory regulations giving effect to EU directives.
38. Section 56 (1) of the Road Traffic Act, 1961 (as amended) provides: -
- "A person (in this subsection referred to as the "user") shall not **use in a public place** a mechanical propelled vehicle unless ... a vehicle insurer.... or an exempted person would be liable for any injury caused by the **negligent use of the vehicle** by him at that time or there is in force at that time...*
- (a) **an approved policy of insurance** whereby the user or some other person who would be liable for injury caused by the negligent use of the vehicle at that time by the user, is insured against all sums ... which the user ... shall become liable to pay to any person by way of damages or costs on account of injury to person ... caused by the negligent use of the vehicle at that time by the user..."
39. Section 56 (1) of the Road Traffic Act, 1961 originally included the words "*other than excepted persons*". However, these words were deleted by Reg. 2 of the European Communities (Motor Insurance) Regulations 2008 (SI No. 248 of 2008).
40. Section 65 (1) of the Road Traffic Act, 1961 provides: -
- "In this Part of this Act "excepted persons" means the following persons:*
- (a) *any person claiming in respect of injury to person to himself sustained while he was in or on a mechanically propelled vehicle to which the relevant document relates, other than a mechanically propelled vehicle of a class specified for the purposes of this paragraph by the Minister by regulations..."*
41. Section 6 of S.I. No. 14/1962, Road Traffic (Compulsory Insurance) Regulations, 1962 (as amended) states: -

"6. (1) *The following classes of vehicles are hereby specified for the purposes of paragraph (a) of subsection (1) of Section 65 of the Act:*

(a) *Vehicles, other than cycles, designed and constructed with seating accommodation for passengers;*

(b) *Cycles designed and constructed with seating accommodation for passengers."*

42. It is evident from the foregoing that the driver or "user" of the vehicle is himself or herself excluded from the compulsory insurance requirements of the Road Traffic Act, 1961(as amended) in respect of liability to himself/herself.

Concept of driver or user

43. The clear concept that the "user" of the vehicle is excluded from compulsory insurance requirements in respect of liability to himself/herself has also been maintained by European Directives governing the third provision of compulsory motor insurance within the European Union. The Third Council Directive on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, 90/232EEC of the 14th of May 1990, states, in Article 1 thereof, the following: -

"Without prejudice to the second paragraph Article 2(1) of Directive 845/EEC, the insurance referred to in Article 3(1) of Directive 72/166 EEC shall cover liability for personal injuries to all passengers other than the driver arising out of the use of a vehicle".

44. In *Buckley on Motor Insurance* (Fourth Edition) the matter is discussed, at page 888, para. 15.34 as follows: -

"As a result of the EC Decisions and the Regulations contained in S.I. No. 248/2008, giving legal effect to the provisions of Directive 205/146EC, commercial vehicle policies must now provide indemnity in respect to all persons other than the driver, conveyed in or on insured vehicles".

45. It is clear, therefore, that the "driver" or "user" of the vehicle is excluded from the compulsory insurance requirements in respect of liability to himself.
46. However, Urban and Rural and RSA maintain that this is not a case where the provisions have any application in circumstances where Mr. Moore is suing somebody else in respect of the liability of that person to Mr. Moore and the liability is that of Urban and Rural because Mr. Moore was using the lorry owned by Urban and Rural and insured by Zurich. It contends that the lorry was defective and that is the basis of Mr. Moore's personal injury claim against his employer.
47. Zurich argues that Mr. Moore was the "user" of the vehicle, and that Section 56 of the Act and the European Directives, do not require the "user" to be insured for injury to himself caused by the "negligent use of the vehicle" by him.

48. However, it is clear from the facts that Mr. Moore is suing Urban and Rural as the owner and user of the vehicle. The vehicle – the recycling truck-was in use for the purposes of the business of the company.

Concept of use – interpretation

49. The statutory duty pursuant to the 1961 Act provides that a person shall not use in a public place a mechanically propelled vehicle without an approved policy of insurance.
50. The statutory definition of the term “use” in relation to a vehicle in s. 3 of the Act is not exhaustive with “use” including park.
51. The meaning of “use” has been considered in a number of EU authorities as follows and supports a broad interpretation of the term.
52. In *Vnuk v. Zavarovalnica Triglav DD* Case C-162/13, EU:C:2014:2146; [2015] Lloyds Rep. I.R. 142; [2016] RTR10 an accident occurred when a trailer, attached to a tractor reversing in a farmyard, struck a ladder on which Mr. Vnuk was standing causing him to fall and suffer injury. The policy of insurance in respect of the tractor only covered damage by its use as a means of transport. The CJEU held at paras. 41 and 42 that the “*use of vehicles*” is an autonomous community law concept for the purposes of the motor insurance directives and should be interpreted to include any use that is “*consistent with the normal function of the vehicle*”.
53. In *Rodrigues de Andrade v Salvador*, Case C-514/16; EU:C:2017:908 [2018] WLR (28 November, 2017) the Grand Chamber of the CJEU revisited the meaning of “*use of vehicles*” in Art 3(1) of the First Motor Insurance Directive. In considering the facts in that case, the Grand Chamber held that the concept of “*use of vehicles*” covers “*any use of a vehicle as a means of transport*” (para. 38).
54. The judgments in *Vnuk* and *Rodrigues de Andrade* were confirmed in *Torreiro v AIG Europe Ltd* Case C-334/16 EU:C:2017:1007, 20 December 2017; [2018] Lloyd’s Rep IR 418 where it was held that the use of a vehicle under the consolidated directive is not confined to a road or public place, but covers any use that is consistent with the normal function of that vehicle.
55. It is common case that the use to which the recycling vehicle was being put, at the time of Mr. Moore’s accident, was a use that was consistent with its normal function.
56. Whilst Zurich accepts that it is bound by the decision in *Vnuk*, it maintains that both *Vnuk* and *Rodrigues de Andrade* concern accidents to third parties and are, therefore, not in any way relevant to the factual scenario herein.
57. In my view, that contention is simply untenable in circumstances where it is clear that Mr. Moore is a third party. Mr. Moore is not seeking to sue himself but is seeking to recover from his employer, Urban and Rural, in respect of the injuries sustained by him during the course of his employment and whilst operating and controlling the lifting mechanism of

the recycling truck, owned by Urban and Rural, in a manner that was consistent with its normal function.

First question of law raised – was the liability required to be insured under the compulsory Road Traffic Acts insurance provision?

58. As a starting point, it is clear that Urban and Rural is entitled to an indemnity in respect of the injury to Mr. Moore under the RSA policy unless the liability is one required to be covered by compulsory motor insurance.
59. Pursuant to s. 1(1) (Liability to Third Parties) of the Zurich policy, Zurich agreed to indemnify Urban and Rural against all sums that it would be legally liable to pay by way of damages or costs on account of death or bodily injury to any person or damage to property “*caused by or in connection with any motor vehicle*” described in the relevant schedule.
60. The policy further provides an exclusion/exception clause whereby it is stipulated that except so far as is necessary to meet the requirements of the Road Traffic Acts, it will not be liable for:
- “...death or bodily injury to
- (i) Any person ***driving the vehicle or in charge of the vehicle for the purpose of driving;***”
61. It is the plaintiffs’ case that Mr. Moore was not driving the recycling truck and was “*not in charge of the vehicle for the purpose of driving*” at the time of the accident complained of. It is submitted that he was engaged in an operation consistent with the normal use of the truck, namely a loading operation on to the lifting equipment thereof.
62. Further, the plaintiffs contend that even if Zurich successfully argued that Mr. Moore was still in charge of the recycling truck at the relevant time, that of itself would not be sufficient for the exclusion to apply; Mr. Moore would have to have been in charge “*for the purpose of driving*” which it is submitted was not the case.
63. The agreed facts in the case stated are that Mr. Moore had been driving the vehicle and had alighted from same. Thereafter, he loaded the bin onto the lifting equipment of the recycling truck and during the lifting process, the bin fell and struck him. The vehicle was at all material times stationary.
64. The issue of what constitutes “*in charge for the purpose of driving*” was considered by the High Court in *Lynch v. Lynch and the New PMPA* [1993] 3 IR 495. In that case, the High Court held that a driver who was injured by the vehicle she had parked and moved away from was no longer physically in charge of the vehicle for the purpose of driving it and the insurer could not rely on an exception in the policy relieving the insurer of liability for the death of, or bodily injury to, the person driving, or in charge for the purpose of driving the insured vehicle. Costello P. held that the plaintiff was not an “*excepted person*” under the terms of the insurance policy as she was not at the time of the accident “*in charge for*

the purpose of driving the vehicle". It was held that the exception clause could only be construed as referring to a physical relationship between a person making a claim and the insured vehicle and was intended to except the insurance company from liability to a person making a claim under the policy who was physically driving the vehicle at the time when the accident occurred.

65. Zurich accepts that in the *Lynch* case, what was being interpreted by the court was an identical clause. However, it argues that the facts of that case are distinguishable from the facts herein, as the person who had been driving the car and who had parked it, was walking away from the car and had no physical connection to the vehicle, unlike the scenario herein, wherein Mr. Moore was the person actively controlling and in charge of the vehicle for the purpose of driving it at the time of the incident herein.
66. I cannot accept that proposition in circumstances where even if I was satisfied that Mr. Moore was still in charge of the vehicle, that would not be sufficient. For the exclusion to apply, he would have to be "*in charge of the vehicle for the purpose of driving*" at the time of the accident and that was clearly not the case on the basis of the agreed facts.

Discussion

67. At the outset, it is necessary to return briefly to the salient facts as agreed and set out in the special case.
68. On the day in question, Mr. Moore was driving the recycling truck between collections with Mr. Wickham as his passenger.
69. He stopped the vehicle and both himself and Mr. Wickham alighted therefrom.
70. Thereafter, Mr. Moore loaded the relevant bin onto the lifting equipment of the recycling truck.
71. Whilst the bin was in the process of being lifted, and with Mr. Moore operating and controlling the lifting equipment, the bin fell and struck Mr. Moore on the head thereby causing the injuries complained of.
72. The personal injuries claim is pleaded in very broad terms in circumstances where Mr. Moore has based his claim against Urban and Rural on breach of contract, negligence, breach of duty and breach of statutory duty. However, it is specifically pleaded that the lifting mechanism on the recycling truck failed thereby causing the bin to fall on top of Mr. Moore.
73. It is common case that Mr. Moore was an employee and he sustained an injury that arose out of and in the course of his employment with Urban and Rural.
74. However, on the basis of agreed facts and documents submitted, I am satisfied, on the balance of probabilities, that the accident is indisputably connected with the vehicle and a defect in it.

75. It is common case that the Zurich policy provides cover in respect of this vehicle. I am satisfied that it is the mandatory cover that is required under the Road Traffic Acts for the following reasons.
76. Firstly, I am satisfied for the reasons outlined above, that the term "*user*" within the Road Traffic Acts properly construed covers the use of the vehicle that led to the injury to Mr. Moore and the liability in respect thereof, having particular regard to the *Vnuk* decision.
77. Secondly, I am satisfied that Mr. Moore was not "*in charge of the vehicle for the purpose of driving*" having regard to the *Lynch* decision where an identical exception clause was at issue and further, where it is common case that the vehicle had been parked and Mr. Moore had alighted therefrom.
78. Thirdly, in my view, the manner in which Mr. Moore has constructed his personal injury claim is, on balance, consistent with "*negligent use*" within s.62(1)(b) of the 1961 Act, whether by virtue of a defect in the vehicle or other negligence, so as to be subject to the compulsory insurance requirement.
79. For the reasons foregoing, I am satisfied that under the Road Traffic Acts, the liability of Urban & Rural to Mr. Moore was required to be covered by an approved policy of insurance such that the entire liability (if any) rests with Zurich because the RSA exclusion applies.

Conclusions

80. Accordingly, I am satisfied that the answers to the questions posed in the special case are: -
- In relation to question (1), that the liability (if any) of the first named plaintiff to Mr. Moore in the underlying personal injury proceedings is a liability that was required to be insured under the Road Traffic Acts.
 - In relation to question (2), the first named plaintiff is entitled to an indemnity in the underlying personal injury proceedings in respect of Mr. Moore's claim under the Zurich policy.