IN THE COUNTY COURT AT SOUTHEND

Case No. K33YX184

Courtroom No. 5

The Courthouse
80 Victoria Avenue
Southend-on-Sea
SS2 6EU

Monday, 18th November 2024

Before:
HIS HONOUR JUDGE DUDDRIDGE

B E T W E E N:

MARKERSTUDY INSURANCE SERVICES LIMITED

and

MR [redacted]

MR J LESTER appeared on behalf of the Claimant
MR M HARPER appeared on behalf of the Defendant

JUDGMENT
(Approved)

HHJ DUDDRIDGE:

1. This is an unusual set of proceedings brought by a company known as Markerstudy Insurance Services Limited, which I will abbreviate to "MISL", which appears to be a service company within the Markerstudy Group, which provides agency services to other companies which are insurers.
2. The proceedings are brought against Mr [redacted], who was the owner of a Toyota Landcruiser motor vehicle and who had a policy of insurance with a company known as Markerstudy Insurance Company Limited ("MICL"). The policy was effective between 1 November 2018 and was due to expire on 1 November 2019, but it included a condition that his mileage, or the mileage of him and any authorised drivers, was limited to 8,000 miles per annum and that condition was set out in an endorsement which said:

> "The annual mileage in the current period of insurance is restricted to the amount of miles shown next to this endorsement on your schedule. Your policy cover is inoperative, except as required under the Road Traffic Act, and of no effect if the insured vehicle is driven in excess of the annual mileage displayed on your schedule in the current period of insurance. You should contact Lancaster Insurance Services Limited if you think you will travel more miles than you originally agreed".

3. Unfortunately, on 12 August 2019, the defendant's wife was driving the car when it had a collision with another motorcar. The defendant reported the accident to his insurers, but they declined to indemnify him against his or his wife's personal losses arising out of the accident.
4. The other driver and passengers of the other vehicle brought claims which somebody settled for the sum of £101,159.19. It appears that they arrived at that settlement without taking into account the explanation given by the defendant's wife for the accident. At least, that is something that the defendant asserts and so, therefore, would assert that the claim by the third parties was settled either prematurely or inappropriately in that it did not take into account that the defendant's wife asserted that the other parties were either fully liable or contributorily negligent in respect of the accident which led to their losses.
5. In any event, the claimant, MISL, decided to bring this claim against the defendant, seeking to recover its outlay of £101,000 or so, on the basis that he was in breach of the mileage restriction in the policy and MISL in due course issued this claim against the defendant.
6. The claim asserts two causes of action. The first is breach of contract and it is asserted that the claimant is entitled to recover the sum of £101,000-odd under the contract of insurance, as flowing from the defendant's breach of the contract and that it has a contractual right of recovery for the financial losses it has incurred against him and seeks contractual damages.
7. In the alternative, it pleads reliance upon section 151(7) of the Road Traffic Act, 1988, which gives a statutory right to recover financial losses in certain circumstances. Section 151(7), as set out in the pleaded particulars of claim says:

> "Where an insurer becomes liable under this section to pay an amount in respect of a liability of a person who is insured by a policy, he is entitled to recover from that person—
> (a) that amount, in a case where he became liable to pay it by virtue only of subsection (3) above, or

> (b) in a case where that amount exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability, the excess".

8. I assume that the claim under section 151 is brought under subsection (b) and that what is asserted, essentially, is that the insurer only had a liability as a result of the statute in circumstances where the policy had become inoperative save as required by the statute and, therefore, that the sum they have paid out is in excess of the sum to which they were liable under the policy itself and they are entitled to recover it.
9. There are three applications before me, which arise out of problems with this claim. The claimant, MISL, makes an application to substitute MICL as the claimant, recognising that MICL was, in fact, the insurer, who insured the defendant and his wife and is, therefore, the correct claimant for the purposes of a claim under the contract of insurance or under the statute itself.
10. The second is also an application made by the claimant and that is to add Mrs [redacted], the defendant's wife, as a party to the proceedings under CPR 19.2 on the basis that she was the driver of the vehicle and, therefore, is the person against whom the appropriate claimant would be entitled to recover under the statute.
11. The third application is an application by the defendant to strike out the claim on the basis that, if MICL is not substituted as the claimant, MISL has no cause of action against the defendant or his wife and, therefore, the claim should be struck out for that reason, or alternatively, that the pleaded causes of action do not show reasonable grounds for bringing the claim in that they do not give rise to proper causes of action against the defendant or his wife.
12. The application to join Mrs [redacted] as a party is not, in itself, particularly controversial in that it is accepted that if this claim survives today, then she should be joined as a party. Equally, if the claim does not survive the applications for substitution and/or strike out, then there would be no need to join her as a party. Therefore, I shall say nothing more about that application in itself, save to comment that I have read in the evidence that, amongst the many problems with this case and the many criticisms that are made by the defendant of the conduct of the claimant and its solicitors, one is that the claimant was told, at the outset, that Mrs [redacted] was the driver of the vehicle and knew at the outset, therefore, that she would be the appropriate person against whom to bring a claim under the Act and, therefore, it is surprising that they did not proceed against her from the outset.
13. That, in itself, is a minor point, but there are a number of related points or criticisms that have been made, including that in pre-action correspondence, the defendant repeatedly informed the claimant that it was not his insurer and asked the claimant for an explanation as to how it was able to bring a claim against him. However, that information was not forthcoming and nor did it provide any documents in response to a request from him to do so. In addition, nor did it engage in mediation, despite him asking for it to do that and he says that the claimant has effectively engaged in wholesale failure to properly comply with the pre-action protocols, or the spirit of them, or to seek to resolve this case by ADR.
14. It is also asserted in the defendant's evidence that the claimant settled the claim against the third-party drivers voluntarily and without taking into account the explanation given by Mrs [redacted] for how this accident happened. That explanation being of a kind which, at least if true, suggests that the third-party driver was negligent and was either wholly responsible or partly responsible for this accident and their losses, with the implication that the claimant or MICL, whoever it was, over-settled the claim because they did not take into account potential defences to the third-party claim.
15. The application to substitute MICL as a claimant is made under CPR 19.2(4), which provides:

> "The Court may order a person to be added as a new party if –
> (a) it is desirable to add the new party so that the Court can resolve all the matters in dispute in the proceedings;
> (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the Court can resolve that issue".

No conjunction is provided between (a) and (b), but it does seem clear from the authorities and the notes to *The White Book*, that these two subparagraphs are intended to be disjunctive, and it is common ground between counsel that that is the case.

16. MICL, therefore, may be substituted, if it desirable to substitute MICL so that the Court can resolve the matters in dispute in the proceedings. If MICL is the correct claimant, as appears to be the case, then, ordinarily, one would expect substitution to follow so that the issues in the case can be properly resolved, and one would expect that would be consistent with the overriding objective. However, in this case, it is problematic because I am required to be satisfied that MICL consents to be a claimant in these proceedings.

17. A document by which MICL's consent purports to be given has been included in the bundle at page 199. However, that document is headed with the details of the claim number and the parties. The claimant is described as follows: "Markerstudy Insurance Company Limited (incorrectly named as Markerstudy Insurance Services Limited)" and then in the body of the document it says this:

> "We, Markerstudy Insurance Company Limited, of 45 Westerham Road, Besselsgreen, Seven Oaks, Kent, England, TN13 2QB do consent to be added to proceedings as claimant. We acknowledge that we will be substituting and replacing Markerstudy Insurance Services Limited as sole claimant".

It is signed by somebody who identifies herself as [Catherine Alexander?] and gives her position as MSG Recoveries TM and is dated 20 December 2023.

18. There are a number of issues with that document. The first is that the heading implies that what has happened in this case is a simple misidentification of the claimant through confusion over the correct name of one of a number of companies, or one of two or more companies within a particular group of companies. However, that is not quite what has happened. The particulars of claim positively assert that MISL was the relevant insurer for the purposes of bringing the claim and that it paid out the sum of money in settlement to the third parties. It is true that towards of the end of the particulars of claim, it appears to accept that it is an agent because at paragraph 25, it says this:

> "The claimant is the relevant motor insurer, domiciled within the UK at Companies House, authorised and regulated to act as a managing general agent to effect policies of motor insurance on behalf of other insurers and has the requisite standing, to bring this claim against the defendant in both contract and statute".

19. However, nonetheless, although that suggests an agency relationship, the earlier paragraphs positively assert that it was the insurer, and it paid out the relevant sum of money. However, MISL was aware, or at least the defendant, it appears, repeatedly informed it, both before and after proceedings were issued, that it was not the insurer and was not the party entitled to bring a claim under the Act or indeed in contract, and that the appropriate party should be MICL.

In addition, it appears that MISL proceeded, notwithstanding what the defendant had been saying.

20. Furthermore, during the proceedings, the defendant's solicitors wrote to the claimant's solicitors, again drawing this to their attention and, eventually, that produced a reply to the effect that the claimant's solicitors were satisfied that MISL was the appropriate claimant and if the defendant thought otherwise, he should make an application to strike out.
21. He did make such an application, and it appears that it was only following that application that the claimant's solicitors then woke up to the fact that the defendant was right and that MISL was the wrong party and, therefore, made this application. In those circumstances, it is misleading to suggest that all that has happened is a commonplace error of name, due to some unwitting mistake.
22. Secondly, and more importantly, it is not clear what relationship Catherine Alexander has to MICL or on what basis she is authorised to consent to it being a party to proceedings. It has been suggested by Mr Lester that this is really a technical objection in that it is not inherently likely that Ms Alexander would sign a document unless she was authorised or believed she was authorised to do so, or indeed that the solicitors who are acting for the claimant would be willing to put forward amended particulars of claim naming MICL in substitution for the claimant unless they believed that they were authorised to do that. However, the difficulty with that submission is that there is a paucity of evidence explaining what the relationship is between the claimant and MICL and, more importantly, between Ms Alexander and MICL.
23. Notably, in the form, it states "We, Markerstudy Insurance Company Limited, of 45 Westerham Road" in Kent, but the research by the defendant's solicitors has revealed that, in fact, MICL does not have either a registered office or a trading address at 45 Westerham Road. It is a company which is registered in Gibraltar. Furthermore, that research revealed that in 2018, MICL, which was formerly a member of the Markerstudy Group, was sold to a Qatari-based company known as Antares Re. That research has also produced a list which is attached as notes to financial statements, dated 31 December 2023 or for the year end 31 December 2023, which sets out both the directly held and the indirectly held subsidiary companies of Markerstudy Group Limited, and MICL is not on that list of companies.
24. In the evidence that is relied on to support this application, I have seen a witness statement of Samuel McLennan[?], a paralegal in the employ of DWF, who are the solicitors for the claimant. Paragraph 16 says this:

> "DWF received instructions from MISL to issue proceedings to recover the aforementioned sums from the first defendant in its capacity as handling agent. After taking further instructions from the Markerstudy Group, it has been confirmed that MICL are the correct entity, issuing and effecting the policies of motor insurers to its customers, whereas MISL are the handling agent. I apologise for this oversight and assure the Court that no disrespect was intended to the Court and/or prejudice meant to be caused to the first defendant. Ostensibly, the claimant will say that the cause of action facing the defendants is identical, save for the minor amendment to the name of the claimant, the effect of which would be substitute one party in the conglomerate of companies under the umbrella of Markerstudy Group to another one".

25. The difficulty with that evidence, is that it appears that instructions have been taken from Markerstudy Group, but not necessarily directly from MICL. It is, of course, possible that Markerstudy Group are authorised to give instructions on behalf of MICL, but the evidence does not say that that is the case, and no explanation is given as to how it is the case. The

assertion appears to be that MICL is one party in a conglomerate of companies under the umbrella of Markerstudy Group. However, as I have just said, the notes to the financial statements for year end 31 December 2023 suggest that MICL is not part of the group. The other evidence suggests that it wholly owned by a different entity, based in Qatar, and there is no evidence as to the relationship between the two.

26. I acknowledge that, as a matter of inherent probability, it is not very likely that Ms Alexander would sign a document unless she was authorised to do so, or that solicitors would be holding themselves out as, effectively, acting on behalf of MICL unless they believed they were authorised to do so. However, I am afraid that is not really good enough in the circumstances of this case. There are clearly questions that are unanswered about the relationship between Ms Alexander, MSG Recoveries, the Markerstudy Group and MICL and clearly questions about whether or not Ms Alexander is in fact authorised to give MICL's consent to be a claimant in these proceedings.

27. I note that in the absence of an express rule about who should give that consent, one would adopt the ordinary principles of company law and/or agency. However, it would have been the easiest thing in the world, in my view, for MICL to have provided evidence to its solicitors, if DWF are its solicitors, which would have allowed them to explain precisely what these relationships are and to ensure that there was evidence that an appropriate agent for MICL, properly authorised, had given consent to be joined as the claimant in these proceedings. What I have is a lack of clear evidence about these matters and an appeal to the inherent probabilities. However, given the way this case has unfolded and the other issues about proceedings, and I have referred to the other problems and criticisms that are made, I do not think it is satisfactory to fall back on the inherent probabilities alone. In addition, I am not satisfied on the evidence before me that MICL has consented to be joined as claimant to these proceedings.

28. The difficulties do not quite stop there because, as pleaded, the claim is that MISL was the insurer and paid out the money. The proposed amendment to substitute, simply substitutes the name of MICL, but does not change internal references to "the Claimant" and the effect of that is that MICL would be asserting not only that it is the relevant insurer, which is not in itself contentious, but that it was the party who paid out the money to the third parties involved in the accident.

29. Again, there is no evidence before me explaining how it comes to be that MISL asserted that it paid out the money if it was in fact MICL that did so, or how it is that MICL now wishes to assert that it paid out the money if it was in fact MISL that did so. It is not good enough simply to substitute a name and assume that everything else in the pleading can simply follow where the pleading includes positive averrals of fact which are verified by a statement of truth, and which are then going to be contradicted by the substitution because the effect of the substitution is to aver that somebody else did those very things. At the very least that calls for explanation, but no explanation has been given in the evidence.

30. Mr Lester submitted that it is open to the Court, where consent has not been given by the putative substitute claimant, to adjourn or stay the proceedings and make an order that such consent be provided with the substitution being conditional upon that consent. In addition, in the course of submissions he agreed that I could make an unless order that would have the effect that if evidence of that consent was not provided within a defined period of time such as seven days, then the claim would be automatically struck out. In addition, he invited me to take that step, rather than to strike out at this stage, if I am not prepared to order substitution today, on the basis that that would be more consistent with the overriding objective.

31. The overriding objective, of course, requires the Court to manage cases in a way that is designed to ensure that it deals with them justly and at proportionate cost, but that it gives

weight to the requirement to ensure compliance with the Civil Procedure Rules, Practice Directions, and any orders made by the Court. In general terms, the Court might be expected to take a problem-solving approach to an issue of this kind, trying to identify the most efficient way to deal with it, so as to avoid unnecessary and additional expense to the parties and to the Court.

32. However, Mr Harper urged me not to take that step, of making an unless order, but to strike out today, not to allow substitution and to strike out on the basis that unless MICL is substituted, the claimant has no cause of action. He pointed out that the claimant has had ample opportunity to bring this claim properly and ample opportunity to provide evidence showing that MICL consents to be substituted as claimant, as well as ample opportunity to deal with other issues. There have been a number of problems on the way in bringing this claim and we are now some way on from when the application to strikeout was made, yet still the lack of evidence has not been properly addressed.

33. Limitation has not expired in this case, so it would still be open to MICL to bring proceedings if it wishes to do that, if the current proceedings are struck out. Mr Harper submitted that, in this case, there was no real point in giving MISL further opportunity to put its case right, in circumstances where that is quite likely to lead to further disputes about whether it has been successful in putting it right, and the better course would be simply to refuse the application for substitution and to strike out the claim, leaving it to MICL to proceed as it wishes. At least that would mean there would be a clean start, and it ought to be clear, provided that MICL is the claimant, that it has authorised the new proceedings. Or, assuming it proceeds through solicitors, that at least solicitors give an express or implied warranty that they have authority to act on its behalf so that there would be some recourse against them if that turns out not to be the case.

34. In my view, there have been so many issues with the bringing of this claim that the fact that the incorrect claimant was the one that issued the claim, the fact that Mrs [redacted] was not a party at the outset, the fact that there is a lack of proper evidence showing MICL's consent to be substituted, are all good reasons why I should refuse the application to substitute and should, therefore strike out the claim, leaving it to MICL to proceed as it sees fit.

35. However, in addition to that, it does seem to me that this is a claim which is, at best, very doubtful in terms of its viability and whether there is a proper cause of action identified. It is clear that, in my judgment, the claim under section 151 of the Road Traffic Act 1988 cannot succeed because section 151(1) has the effect that section 151 only applies where there has been a judgment. There was no judgment in this case, there was a settlement without going to court.

36. Of course, as I have commented in the course of submissions, one might have expected that the statute would cater for possible settlement of claims brought against insurers in accordance with the general policy of discouraging litigation and encouraging settlement. However, the statute clearly says that it applies when a judgment has been obtained and it is quite possible that that is a deliberate choice, because it provides a degree of protection for the allegedly negligent driver against whom insurers might wish to recover under section 151, in that it is designed to ensure that insurers do not simply settle in their own interests without taking into account the driver's explanation as to how an accident happened and whether or not it might be said that, either they were not negligent at all, or that the other driver was negligent in a way that contributed to the accident and is therefore, material to what sums should be paid out.

37. There may be other reasons why a judgment is required and at the end of the day, if parties settle a case and an insurer knows that it requires a judgment in order to then proceed against its insured driver, then there is nothing to stop the insurer and the parties with whom it settled

from issuing proceedings simply in order to get a consent order so that they have a judgment in place. That would have been straightforward enough. However, it is clear to me that section 151 requires a judgment and, because there is no judgment in this case, the claim under section 151 does not get off the ground. The claim under section 151 would fall to be struck out in any event, therefore, as not showing reasonable grounds for bringing the claim.

38. The claim under contract is more tricky, in that it is clear that there was a contract in this case and there is a clear allegation of breach of that contract by exceeding the mileage limit. However, there is not a clear pleading as to how that breach gave rise to a right to recover the £101,000 either from Mr [redacted] or from his wife. I note that the particulars of claim do not allege that there was any express term of the contract that allowed such recovery, and they do not set out how it is that the claimant suffered a loss in that sum, as a result of a breach of the mileage limit.

39. Mr Lester has set out in his skeleton argument and his submissions today an explanation of causation, along the lines that if the defendant had been observing the mileage limit in the contract, he or his wife would not have been driving the vehicle at all on the day of the accident and the accident, therefore, would not have happened. However, in my judgment, it is not enough to make submissions that that is how causation works; the claimant is required to prove causation. In my judgment, causation is far from straightforward in this case. I think it highly unlikely that a Court would accept the version of causation put forward in submissions today. A more likely scenario is that if the insured was conscious of the mileage limit and conscious that they might exceed it and wanting to act lawfully, as I am sure Mr [redacted] would have done, they would have phoned their insurer and said, "It looks like I am going to do more mileage than I said at the outset of the policy", and, therefore, either arrange to extend the mileage limit, presumably on payment of some additional premium and/or administrative expenses or, if the insurer said, "Well, we are not prepared to insure you for additional mileage", would have then gone and sought additional insurance elsewhere.

40. However, the result of the Road Traffic Act is, and indeed the wording of the contract in this case is, that, on any view, the insurer remains liable to indemnify third-party losses even if the mileage limit was exceeded. Therefore, it is far from straightforward to say, as a result of this breach, we became liable to pay this sum, because the contract itself appears to contemplate that they would remain liable as required by the Road Traffic Act and, therefore, would have been liable to pay out that sum, notwithstanding the breach of the mileage limit.

41. In all those circumstances, it seems to me that causation is very far from straightforward in this case and for that reason, ought to have been properly pleaded so that the defendant could properly respond to that pleading with such answers as the defendant is able to give to it. On that basis, although I cannot say that the claim in contract is absolutely unviable, I consider that it is not appropriately or adequately pleaded at the moment.

42. Very often on applications to strike out on the basis that a claim shows no real reasonable grounds for bringing the claim, the Court would not strike out when it is clear that there is some amendment that will make the claim one that has apparent merit, or at least sufficient merit to survive that test. However, in this case, the claimant has had plenty of time within which to set out its case on causation. It can hardly claim that it did not realise there was a problem in its case on causation, given the way that the defence is pleaded and the way the defendant has drawn attention through evidence and submissions to the paucity of the pleading. In addition, in those circumstances, I do not think this is an appropriate case, given the substitution issues as well, for me to adjourn to allow the claimant to consider amending this claim.

43. In my judgment, the claim is wholly defective as naming the wrong claimant. It is not appropriate to allow the application to substitute it. In addition, for the reasons I have given,

as pleaded, one of the causes of action has no prospect of success, it just does not get off the ground and the other is, as currently pleaded, not viable and it does not reasonably set out a case on causation. For all of those reasons, I have come to the conclusion that I should refuse the application to substitute MICL and that I should strike out the claim.

44. In my judgment, costs should be on the indemnity basis. That is not because I find high levels of misconduct, but there is conduct which is out of norm in this case. There has been a catalogue of failures by the claimant to properly appreciate basic things such as who are the correct parties to the claim. In addition, I found that one of the heads of claim would have been struck out in any event as it is simply not viable, and then the other one, as pleaded, was probably not viable and would require amendment. All of those do take this case outside the norm and justify an award on the indemnity basis.

45. That does mean that proportionality is not an issue in the assessment. The costs are very substantial, even bearing in mind that they are costs of the entire proceedings to date, bearing in mind that the proceedings have not really advanced beyond pleadings and these three applications. However, proportionality itself is not an issue. In terms of reasonableness, I can see that quite large amounts of time have been spent on some tasks, albeit that there appears to have been appropriate delegation with much of the work done on documents, for example, done at grade C level and these are three applications, very closely interrelated with complex issues which did justify that level of care and attention and also instructing appropriate counsel.

46. Nonetheless, I think the bill is subject to some reduction on a very broad-brush basis. I am going to allow the sum of £42,000 plus VAT in total.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
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Acolad UK Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the judge.