**IN THE CARIBBEAN COURT OF JUSTICE**
**APPELLATE JURISDICTION**

**ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS**

**CCJ Appeal No BBCV2024/002**
**BB Civil Appeal No 47 of 2022**

**BETWEEN**

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| **CGI CONSUMERS' GUARANTEE INSURANCE CO LTD** | **APPELLANT** |

**AND**

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| **VALENTINE STEVENSON** | **FIRST RESPONDENT** |

**AND**

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| **VINCENT ANTHONY THOMAS (Administrator of the Estate of Sherleen Ordeen Thomas, Deceased)** | **SECOND RESPONDENT** |

**Before:** **Mr Justice Anderson, President**
**Mme Justice Rajnauth-Lee**
**Mr Justice Barrow**
**Mr Justice Jamadar**
**Mme Justice Ononaiwu**

**Date of Judgment:** **30 July 2025**

**Appearances**

Mr Andrew Thornhill KC, Mr Kashawn Wood and Ms Shaddiah Hinds for the Appellant

Ms Verla De Peiza for the First Respondent

Sir Richard L Cheltenham KC and Ms Shelly-Ann Seecharan for the Second Respondent

*Insurance – Third-party risks – Statutory interpretation – Contractual interpretation – Contra proferentem rule – Whether insurance company can rely on exclusion clause to avoid duty to satisfy a judgment obtained by a third party against the insured – Road Traffic Act, Cap 295.*

## SUMMARY

On 29 November 2007, Mr Valentine Stevenson, owner and driver of motor vehicle L2393, while driving along the Speightstown By-Pass Road, accidentally hit and killed a pedestrian, Ms Sherleen Thomas. At the time of the accident, there was a current policy of insurance in respect of the vehicle as Mr Stevenson's insurers, CGI Consumers' Guarantee Insurance Co Ltd ('CGI'), had renewed his previous policy on or about 11 June 2007 for a period of 12 months. Mr Stevenson's driver's licence, however, expired on 30 June 2007 and remained expired until the first working day after the accident when he renewed it by paying the necessary renewal fee.

Ms Sherleen Thomas' estate commenced an action on 26 November 2010 in the High Court against Mr Stevenson and, on 31 March 2023, obtained judgment in the sum of BBD235,781.79 and costs in the sum of BBD44,367.27. Prior to obtaining that judgment, CGI brought separate proceedings in the High Court seeking declarations that it was not liable to indemnify Mr Stevenson in relation to the judgment obtained by Ms Thomas' estate. CGI denied liability to indemnify its insured on the basis that the accident was not covered by the policy which specifically excludes coverage if, '*[t]he driver does not hold or is disqualified from holding or obtaining a valid driver's licence or if the driver is entitled to indemnity under another policy.'*

CGI was unsuccessful both in the High Court and the Court of Appeal (2:1). The High Court found the exclusion clause was a condition rather than a warranty, the breach of which was not fundamental. Further, it found the exclusion clause was an unfair contract term. Even though payment of the fee to renew a driver's licence in accordance with the Road Traffic Act ('RTA') did not retroactively make an expired licence current, the High Court considered that a valid driver's licence, in its widest sense, is a driver's licence that

has been granted to a person who is legally authorised to drive as opposed to a driver who had paid the requisite fee to renew the licence.

The Court of Appeal (Narine, Belle and Cumberbatch JJA) overturned the High Court's finding that the exclusion clause was an unfair contract term and found that Mr Stevenson did not hold a valid driver's licence on the date of the accident. The majority (Narine and Belle JJA), however, reviewed ss 37(1)-(2), 38(1), 40(1)-(2), 43(1), (1A), (2), and 48(1) of the RTA and opined that the exclusion clause should be construed purposively, drawing a distinction between a formerly licenced driver who, through inadvertence or otherwise, failed to renew his driver's licence, and a person who was never licenced to drive. In the former scenario, the majority opined that the risk assumed by the insurer remains unchanged by the insured driver's failure to renew his licence. The application of this interpretation meant Stevenson, a formerly licenced driver, was covered by the policy. This interpretation was also grounded in public policy considerations as the denial of coverage for failure to renew the licence would defeat the object and purpose of the Act of providing protection to third parties.

Cumberbatch JA dissented. He found the exclusion clause to be clear and unambiguous. He therefore found there was no scope to apply the *contra proferentem* rule and that the effect of the exclusion clause was that the accident was not covered by the terms of the policy. He disagreed with the majority's view of the role of public policy as another relevant public policy consideration was the parties' freedom to contract.

CGI appealed further to this Court, maintaining that, because of the exclusion clause, it is not liable to indemnify Stevenson for the judgment debt owed to Ms Sherleen Thomas' estate. Mr Stevenson and the Estate also cross-appealed against the lower courts' rejection of the argument that pursuant to s 76(3) of the RTA, payment of the licence renewal fee retrospectively validated the licence to the date the previous licence expired.

This Court dismissed CGI's appeal and the Respondents' cross-appeals, affirming the judgment of the majority of the Court of Appeal that CGI is liable to indemnify its insured

in the circumstances. The Court also awarded costs to the Respondents against the Appellant.

The Court delivered two concurring opinions, one by Anderson P (with whom Ononaiwu J concurred, and Rajnauth-Lee, Barrow and Jamadar JJ partially concurred), and the other, the joint opinion by Rajnauth-Lee, Barrow and Jamadar JJ.

Anderson P identified the essential question for determination as whether, on a proper construction of the insurance policy in light of the RTA, the Appellant is liable to indemnify Mr Stevenson for the loss he caused to the deceased third party while driving on an expired licence in circumstances where the insurance policy excludes coverage for drivers who do not hold a valid licence, and, as a corollary, whether the estate of the deceased may recover from the insurer. With specific reference to s 43(1) of the RTA and the requirements that must be satisfied to trigger an insurer's duty to satisfy judgments obtained against persons insured in respect of third-party risks, the parties' dispute focused on whether the accident was a liability covered by the terms of the policy.

A minority of the Court (Anderson P and Ononaiwu J) held that s 43(1) did not create 'automatic' insurance for the benefit of third parties. They affirmed the orthodox view that the exposure of the insurer is restricted to liability covered by the terms of the policy. Further, subject to the restrictions in s 48, an insurer may circumscribe its risk and contractually exclude liability under the policy.

All judges unanimously agreed, however, that, when seeking to exclude liability, and given the asymmetry in favour of insurers in negotiating insurance contracts, insurers must ensure the language used is clear, precise and unambiguous. The exclusion clause in the instant case involved sufficient ambiguity or uncertainty to invoke the *contra proferentem* rule.

Regarding the cross-appeals, Anderson P accepted CGI's argument that the fact that s 76(3) does not pro-rate the licence renewal fee did not mean that the section operated retrospectively.

In their joint opinion, Rajnauth-Lee, Barrow and Jamadar JJ agreed that CGI had not discharged its burden of showing that the licence was invalid for the purposes of the insurance policy. Moreover, they opined that, independent of the licence validity issue, liability accrued to CGI pursuant to pt IV and s 43 of the RTA (third-party liability). They classified pt IV of the RTA, including ss 37, 38, 43, and 48, as a piece of social justice legislation, and consulted the Hansard as an additional aid to determine parliamentary intention. Reading the statute in its Anglo-post-colonial Caribbean context, they applied the mischief rule of statutory interpretation and a purposive and consequentialist approach. The result of that approach is that, but for certain specific statutorily prescribed exclusionary procedures, conditions, and circumstances, there is compulsory and enforceable coverage for injured innocent third parties up to certain statutory limits, subject to meeting certain conditions. This analysis was in their opinion, in any event and independent of reliance on Hansard, supported by the structure, language and provisions of pt IV and s 43 of the RTA, read and interpreted in all relevant contexts.

For Rajnauth-Lee, Barrow and Jamadar JJ, there are three essential conditions to be satisfied for an insurer to be liable to third parties: (i) the *issuance of a certificate of insurance* in favour of a person by whom a policy of insurance has been effected, (ii) an *existing judgment* obtained by a third party against the policy holder, and (iii) a judgment in respect of *liability required to be covered* by the policy under s 38(1) of the RTA. They found all three conditions satisfied in this case and, applying the mischief rule and on a purposive interpretation of s 43, concluded that 'covered' in s 43(1) means covered at the time of the making of the contract as opposed to at the time the accident occurred. They further found there was no applicable basis on which CGI could rely to avoid its liability under s 43 to satisfy the judgment and that s 48 was not relevant to resolving the issue.

Having determined that CGI did not prove that Stevenson was not the holder of a valid licence for the purposes of the insurance policy, and that the Road Traffic Act independently required CGI on the facts of this case to pay the judgment duly obtained by Sherleen Thomas' estate against Stevenson, Rajnauth-Lee, Barrow and Jamadar JJ found it unnecessary to address the issue raised by the cross-appeals as to whether pursuant to s

76(3) of the RTA payment of the licence renewal fee retrospectively validated the licence to the date the previous licence expired.

**Cases referred to:**

*A-G of Barbados v Joseph* [2006] CCJ 1 (AJ) (BB), (2006) 69 WIR 104; *A-G of Belize v Zuniga* [2014] CCJ 2 (AJ) (BZ), (2014) 84 WIR 101; *A-G of Guyana v Thomas* [2022] CCJ 15 (AJ) GY, (2022) 101 WIR 403; *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* [2024] CCJ 3 (AJ) BB, BB 2024 CCJ 1 (CARILAW); *Cadette v St Lucia Motor & General Insurance Co Ltd* LC 2021 CA 2 (CARILAW), (22 February 2021); *Caye International Bank Ltd v Rosemore International Corp* [2023] CCJ 4 (AJ) BZ, (2023) 104 WIR 74; *CGI Consumers' Guarantee Insurance Co Ltd v Stevenson* (BB CA, 11 January 2024); *Cheung Kwong-sui v R* [1976] HKLR 871; *Commissioner of Police v Alleyne* [2022] CCJ 2 (AJ) BB, [2022] 2 LRC 590; *Gilharry v Belize International Insurance Co Ltd* BZ 1986 SC 11 (CARILAW), (5 December 1986); *Heydon's Case* (1584) 3 Co Rep 7a, 76 ER 637; *Insurance Corp of Belize Ltd v Kahtal Resorts International Ltd* [2024] CCJ 5 (AJ) BZ, BZ 2024 CCJ 3 (CARILAW); *Kozel v Personal Insurance Co* 119 OR (3d) 55; *Luk Bik-yu v Fong Wing-fook* [1978] HKLR 215; *Marin v R* [2021] CCJ 6 (AJ) BZ, BZ 2021 CCJ 001 (CARILAW); *Matadeen v Caribbean Insurance Co Ltd* [2002] UKPC 69, (2002) 61 WIR 535 (TT); *Motor and General Insurance Co Ltd v Pavy* [1993] UKPC 47, [1994] 1 WLR 462 (TT); *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36; *Pepper v Hart* [1993] AC 593; *Presidential Insurance Co Ltd v Mohammed* [2015] UKPC 4 (TT); *Presidential Insurance Co Ltd v St Hill* [2012] UKPC 33, [2013] 3 LRC 7 (TT); *Rizzo & Rizzo Shoes Ltd, Re* [1988] 1 SCR 27; *Sandy Lane Hotel Co Ltd v Cato* [2022] CCJ 8 (AJ) BB, BB 2022 CCJ 2 (CARILAW); *Sea Haven Inc v Dyrud* [2011] CCJ 13 (AJ) (BB), (2011) 79 WIR 132; *Smith v Selby* [2017] CCJ 13 (AJ) (BB), (2017) 91 WIR 70; *Speednet Communications Ltd v Public Utilities Commission* [2016] CCJ 23 (AJ) (BZ), BZ 2016 CCJ 3 (CARILAW); *Suttle v Simmons* (1989) 37 WIR 133; *Willis v Globe Insurance Co of Jamaica Ltd* JM 2015 CA 64 (CARILAW), (19 June 2015).

**Legislation referred to:**

**Barbados** – Constitution of Barbados 1966, Consumer Protection Act, Cap 326D, Interpretation Act, Cap 1, Road Traffic Act, Cap 295, Road Traffic (Amendment) Act 1983; **Bermuda** – Motor Car Insurance (Third-Party Risks) Act 1943; **Trinidad and Tobago** – Motor Vehicles Insurance (Third-Party Risks) Act, Chap 48:51.

**Treaties and International Materials referred to:**

Agreement Establishing the Caribbean Court of Justice (adopted 14 February 2001, entered into force 23 July 2002) 2255 UNTS 319.

**Other Sources referred to:**

Barbados, *Hansard*, House of Assembly, 1st Session 1981-1986, (12 April 1983); Carnegie A R, 'Floreat the Westminster Model? A Commonwealth Caribbean Perspective' (1996) 6 Carib L Rev 1; *Halsbury's Laws of England* (5th edn, 2023) vol 60.

## JUDGMENT

**Reasons for Judgment:**



**ANDERSON P:**

### Introduction

[1] This appeal concerns the interpretation of certain provisions in the Barbados Road Traffic Act, Cap 295 ('RTA') and the construction of certain clauses in a motor insurance policy made under that Act. The principal issue is whether the RTA enables an insurer to avoid liability to a third party because of an exemption clause in its policy with the insured driver who caused the death of the third party in a motor vehicle accident. In short, the exemption clause excluded liability caused by a driver who 'does not hold … a valid driver's licence'. In the present case the driver's licence had expired prior to the accident but was renewed without difficulty on the first business day after the accident. The critical question is therefore whether the insurer is entitled to avoid liability to the third party on the basis that at the time of the accident the driver's licence had expired and was therefore not valid.

**Background**

[2] CGI Consumers' Guarantee Insurance Co Ltd ('CGI' or 'the Appellant') issued a policy of insurance on 12 June 2006 to Mr Valentine Stevenson ('Stevenson' or 'First Respondent') covering third-party risks in respect of the use of his motor vehicle L2393 on the road. The policy was valid for 12 months and was renewed by CGI on or about 11 June 2007 for a further year. Further to the policy, CGI issued Stevenson a Certificate of Insurance in accordance with s 38(7) of the RTA.

[3] Whilst driving his motor vehicle on the Speightstown By-Pass Road on 29 November 2007 Stevenson accidentally struck and killed a pedestrian, Sherleen Thomas ('the third party'). Stevenson's driver's licence expired on 30 June 2007 (some five months before the accident) and was renewed on 2 December 2007, the first working day after the accident.

[4] In an action commenced on 26 November 2010, the estate of the deceased third party ('Second Respondent') succeeded in the High Court against Stevenson and on 31 March 2023, was awarded the sum of BBD235,781.79 and costs in the sum of BBD44,367.27. This judgment has not been challenged. On 11 July 2011, whilst that case had been pending, CGI brought proceedings in the High Court against Stevenson and the estate of the deceased seeking declarations that it was not liable to indemnify Stevenson in respect of any legal liability arising out of the death of the deceased, and that it was not liable to satisfy any judgment obtained by the estate of the deceased. In an oral judgment delivered on 11 May 2022, which was formalised in a written judgment of 27 October 2022, the High Court refused the declarations sought by CGI. This decision was upheld by a majority in the Court of Appeal on 11 January 2024, albeit on different grounds to those relied upon by the High Court. The minority in the Court of Appeal considered that the appeal by CGI should have been allowed.

[5] It is now necessary to consider in more detail the reasons for the decisions given by the courts below.

**High Court**

[6] The trial judge, Cornelius J, gave two basic reasons for deciding against granting the declarations sought by CGI. The judge accepted that the relationship between insurance companies and their insured derives both from contract and insurance law principles but considered that the unequal bargaining power of the insurer over the insured was a basis for the court to be 'inclined to curtail the exclusion of liability' by the insurer. The judge then immediately considered whether the exclusion clause requiring Stevenson to hold a valid driver's licence was a condition or a warranty. The court found that the exclusion clause was a condition rather than a warranty, as it was not a fundamental term of the insurance contract. A breach of the term did not discharge CGI from liability both because it was a breach of a non-fundamental term, and because the exclusion clause was an unfair and inequitable contract term.

[7] Secondly, the court considered that some provisions in the RTA provided guidance on the object and purpose of providing coverage for innocent third parties. Sections 38(1)- (2), (6), 40(1)-(2), 43(1), (1A), (2) were considered against the background of local and regional authorities. The court reasoned that a valid driver's licence in its widest sense is a driver's licence that has been granted to a person who is legally authorised to drive as opposed to a driver who had paid the requisite fee to renew the licence. The court concluded that the payment of the fee was purely a technical or taxation provision and the continued validity of the driver's licence does not rest upon its payment nor was it lost upon non-payment of the fee.

**Court of Appeal**

[8] The panel of the Court of Appeal comprised Narine, Belle and Cumberbatch JJA. The majority consisting of Narine and Belle JJA found that Stevenson was not the

holder of a valid driver's licence on the day of the accident since the licence had expired before that day and had not been renewed. As to the exclusion clause, the majority overturned the trial judge's finding that the exclusion clause was an unfair contract term. It was neither unreasonable nor unfair that an insurer should include as a term of the contract that a person driving the vehicle should be the holder of a valid driver's licence, having regard to the materiality of the competence of a driver to the risk undertaken by the insurer.

[9] The majority then quoted ss 37(1)-(2), 38(1), 40(1)-(2), 43(1), (1A), (2) and 48(1) of the RTA and observed that it was clear on the undisputed facts that the basic requirements to ground the liability of CGI to indemnify Mr Stevenson in relation to the judgment debt owed by him to the third party had been satisfied. The relevant consideration was whether CGI could rely on s 43(1) to avoid liability by use of the exclusion clause which required the driver of the vehicle to hold a valid driver's licence. The majority decided against CGI for two reasons. First, construed in accordance with practical reality and common sense the exemption clause was designed to exclude someone who is disqualified from driving or who has never obtained a driver's licence. The majority relied heavily on the case of *Gilharry v Belize International Insurance Co Ltd,*[1] a first instance decision of the Supreme Court of Belize, to draw a distinction between a formerly licenced driver who, through inadvertence or otherwise, failed to renew his driver's licence; and a person who was never licenced to drive. In the former scenario, the majority opined that the risk assumed by the insurer remains unchanged by the insured driver's failure to renew his licence.

[10] Secondly, the majority also grounded its decision in public policy considerations. The majority considered that the purpose of the RTA was to protect third parties. To permit an insurer to avoid liability on the basis that a driver, through inadvertence or otherwise, had failed to renew his driver's licence, would defeat the whole purpose of the legislation, which is to ensure that innocent third parties are

[1] BZ 1986 SC 11 (CARILAW), (5 December 1986).

compensated for personal injury, loss of life, and property damage when they go about their business on the public roads.

[11] Cumberbatch JA dissented. He agreed with the majority that Stevenson was not the holder of a valid licence, and that the exclusion clause was not an unfair contract term but disagreed with the majority that CGI could not rely on the exemption clause in the insurance policy. The Justice of Appeal considered that the exemption clause was clear and precise, and that there was no room for application of the principle of *contra proferentem.* He took issue with the majority's view of the role of public policy and argued that public policy considerations also require courts to respect the freedom of parties, individual and commercial, to contract.

[12] It is important to emphasise that the Court of Appeal unanimously found that the exclusion clause was neither unfair nor unreasonable. The majority held that the Consumer Protection Act, Cap 326D applied to insurance contracts but was unable to uphold the trial judge's finding that the exclusion clause was an unfair contract term. They considered that it was neither unreasonable nor unfair that an insurer should include as a term of the contract that a person driving the vehicle should be the holder of a valid driver's licence since this was material to the competence of a driver to the risk undertaken by the insurer. Cumberbatch JA agreed that the exclusion clause was neither unfair nor unreasonable on the basis that the terms of the exclusion clause were not categorised in the schedule of the Consumer Protection Act as being unfair. The finding by the Court of Appeal that the exclusion clause was not unfair or unreasonable was not appealed to the Caribbean Court of Justice.

**Caribbean Court of Justice**

[13] The Appellant's appeal to this Court contained several separate grounds of appeal namely:

(a) Notwithstanding that the majority of the Court of Appeal held that 'Stevenson was not the holder of a valid driver's licence on the day of the accident, since it has expired before that day, and had not been renewed by Stevenson' their Lordships erred in their reasoning that:

(i) 'A person who has obtained a driver's licence but who fails to pay the prescribed fee to renew it must be viewed differently to someone who has never obtained a driver's licence, or one who is disqualified from holding one.' Their Lordships failed to properly distinguish between the legal implications of holding a valid versus an expired licence.

(ii) 'A licenced driver who fails or neglects to renew his licence, does not materially affect the risk undertaken by the insurer, so there is no commercial basis for excluding him from coverage.' Their Lordships failed to adequately consider the significance of the legal requirement for a valid licence in determining the risk to the insurer.

(b) Notwithstanding that the majority of the Court of Appeal held that '… the exclusion clause was not an unfair contract term within the meaning of the [Consumer Protection] Act' they erred in refusing to allow the Appellant to pray in aid the said exclusion clause, thereby disregarding the clear contractual terms agreed upon by the parties.

(c) The majority of the Court of Appeal erred in not considering or applying the definition of 'driver' and/or the definition of 'licence' contained in the policy of insurance issued by the Appellant to the First Respondent when addressing their minds to the question whether or not the Appellant could pray in aid the said exclusion clause.

(d) The majority of the Court of Appeal failed to properly construe the exclusion clause in the context of the policy as a whole, resulting in an unduly restrictive interpretation that contradicted the clear language and

intent of the clause, thereby undermining the contractual agreement between the parties.

(e) The majority of the Court of Appeal improperly applied the principles of contract interpretation, particularly the doctrine of *contra proferentem*, without sufficient justification, given the clarity and unambiguity of the exclusion clause.

(f) The majority of the Court of Appeal did not give due regard to the contractual freedom of the parties, especially the insurer's right to limit its liability under specific conditions, as expressly stated in the exclusion clause. The Court of Appeal erred in law by misinterpreting section 43(1) of the Road Traffic Act and failing to adequately weigh the public policy interest in upholding the requirement for drivers to possess a valid driver's license, which is essential for maintaining road safety and legal compliance.

(g) The majority of the Court of Appeal erred in applying the facts to the law in interpreting section 43(1) of the Road Traffic Act and by finding that section 43(1) required the Appellant to pay the judgment debt of the Second Respondent.

[14] The relief sought by the Appellant was that the appeal be allowed and the orders of the trial judge and the Court of Appeal be set aside; declarations that the Appellant was not liable to indemnify the First Respondent in respect of any legal liability arising out of the death of the deceased and therefore not liable to satisfy any judgments obtained by the Second Respondent in respect of the death of the deceased; and costs at all three levels of court.

[15] There were cross-appeals by both Respondents which asked this Court to affirm the orders on the Court of Appeal on grounds other than those relied on by that court. The primary ground of appeal was that the Court of Appeal erred in law in

concluding that the First Respondent's licence was not retrospectively regularised in accordance with the provisions of the Road Traffic Act and in impliedly overturning the learned trial judge's finding that '[i]nvalidity must mean more than a mere failure to pay a required fee, which can be paid to cover the period after expiration'. The relief sought was the dismissal of the appeal and the affirming of the orders of the Court of Appeal and costs.

[16] These grounds of appeal and the cross-appeal were adequately supplemented by written and oral submissions. However, as it seems to me, the essential question for determination is whether, on a proper construction of the insurance policy in light of the RTA, the Appellant is liable to indemnify Mr Stevenson for the loss he caused to the deceased third party while driving on an expired licence in circumstances where the insurance policy excludes coverage for drivers who do not hold a valid licence, and, as a corollary, whether the estate of the deceased may recover from the insurer. The related question raised in the cross-appeal of whether the renewal of the expired licence after the accident is curative and takes retroactive effect to make the licence valid at the time of the accident also requires attention. Accordingly, it is proposed to examine the following four central issues:

i. Whether s 43(1) of the Road Traffic Act grants freedom to the parties to an insurance contract to determine terms excluding liability under the policy;

ii. Whether the exclusion clause in the policy was prohibited by s 48 of the Road Traffic Act providing for avoidance of restriction on scope of policies covering third-party risks;

iii. Whether the principle of *contra proferentem* applies to this case; and

iv. Whether the late renewal of the driver's licence retrospectively validated the licence to the date of expiry of the licence.

[17] Before considering these issues, it is necessary to outline the relevant provisions in the RTA, a statute which was enacted in 1981, and which has been subsequently amended on several occasions. Some of these provisions must be quoted in extenso. For now, it suffices to summarise the provisions in ss 37(1), 38, 40(1)-(2), 43(1)-(2), 48(1) and 76(3).

[18] Section 37(1) of the RTA makes it compulsory for persons who use or who cause or permit others to use a motor vehicle on the road, to ensure that there is in force a policy of insurance in respect of third-party risks that complies with the requirements of the RTA. Contravention is an offence liable to punishment by fine or imprisonment or both. Section 38(1) requires the policy to insure against personal injury or death of third parties, and property damage up to the maximum amounts specified in the Act: $10,000,000 in respect of the death or bodily injury to one person; $30,000,000 in respect of death or bodily injury in aggregate to any number of persons in any one accident; and $50,000 in respect of property damage. Section 38(7) requires that the policy of insurance must contain particulars of any conditions subject to which the policy is issued.

[19] Section 40(1) insulates third-party claims from certain conditions in a policy relating to exclusion of liability, and s 40(2) preserves the right of the insurer under any provision in the policy to recover from the insured any sums that the insurer is liable to pay in satisfaction of a third-party claim, where the insured is in breach of such a provision.

[20] Section 43(1) is pivotal to this appeal and is set out in full below. In summary it provides that an insurer is required to satisfy a judgment obtained by a third party against an insured provided that: (1) a certificate of insurance has been issued by the insurer to the insured under s 38(7); (2) a judgment has been obtained by the third party against the insured in respect of any liability required to be covered by a policy under s 38(1); and (3) the liability is covered by the terms of the policy. Section 43(1A), inserted in 1983, allows a third party to recover the full amount of

the judgment from the insurer notwithstanding that the liability covered by the policy was not required to be covered under the Act.

[21] Section 48(1) lists nine circumstances where terms in the policy purporting to restrict the scope of the policy covering third-party risks are void. Section 76(3) concerns the fees payable in relation to the renewal of a driving licence.

**Whether s 43(1) of the Road Traffic Act Grants Freedom to the Parties to an Insurance Contract to Determine Terms Excluding Liability under the Policy**

[22] It is now necessary to set out the provisions of s 43(1) in full:

> 43. (1) Where, after a certificate of insurance has been issued under section 38(7) in favour of the person by whom a policy has been effected, judgment in respect of any liability required to be covered by a policy under section 38(1), (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to this section and to any limitations on the total amount payable under the policy in consequence of that subsection, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.
>
> (1A) Where a third party obtains judgment against a person who is insured under a policy of insurance that is required by virtue of section 37(1) and that third party is not a party to the contract and the liability covered by the policy is not required to be covered under the Act, then, notwithstanding any enactment or rule of law to the contrary, the third party may recover the full amount of the judgment from the insurer.

[23] It is not disputed that a certificate of insurance was granted by the Appellant to the First Respondent, that the liability was required to be covered by the insurance policy under s 38(1), or that a judgment was obtained by the Second Respondent

against the First Respondent. The Appellant contends that it has no obligation to indemnify the First Respondent and pay the judgment debt under s 43(1) of the RTA because of the exclusion clause in the policy referenced above. In other words, the Appellant contends that the liability incurred by its insured, the First Respondent, was not covered by the terms of the policy.

[24] The orthodox view has long been that the words in brackets in s 43(1) 'being a liability covered by the terms of the policy' enabled the parties to exclude liability under the policy provided the exclusion clause was not unreasonable or unfair (as those terms are now defined by statute) and did not fall within the restrictions specifically imposed by the RTA. The insurance industry in Barbados and in much of the Caribbean has been based upon this understanding. It has already been seen that the judicial finding that the exclusion clause in this case was not unreasonable or unfair under the Consumer Protection Act was not appealed to this Court. We shall later consider whether the exclusion clause is contrary to the restrictions on such clauses imposed by the RTA.

[25] For now, it is necessary to consider an issue which took on new life during the hearing. This concerns whether s 43(1) has the effect of creating what may be called 'automatic' liability on an insurer and in favour of a third party once the requisite certificate of insurance had been delivered to the insured and the third party had obtained judgment against the insured. The Appellant strongly opposed such a view in its grounds of appeal, but the First and Second Respondents were supportive of it in their submissions. A great deal turns on the meaning of the phrase in s 43(1) 'being a liability covered by the terms of the policy'; a statutory provision which must be given some reasonable meaning that does not render it superfluous. With the knowledge and consent of the parties, this Court consulted the parliamentary debates preceding the passage of the Act as reported in Hansard. I did not find that Hansard provided clear guidance on the interpretation of the provision.

[26] There are several decided cases which are relevant. One decision that may be said to support the proposition of 'automatic' insurance is that of the Privy Council in *Matadeen v Caribbean Insurance Co Ltd.*[2] In that case Matadeen had been injured in a road accident and sought damages from the company which was the employer of the driver of the vehicle responsible for the accident. He was successful at the High Court and was awarded damages, but the employer of the driver subsequently went into liquidation. In a second action brought under s 10 of the Motor Vehicles Insurance (Third-Party Risks) Act, Chap 48:51 ('MVIA') (which is equivalent to s 43(1) of the RTA), Matadeen obtained judgment that Caribbean Insurance Co Ltd, as the insurer of the vehicle, was liable to pay the judgment he had obtained in the previous action. The appeal by Caribbean Insurance Co Ltd was unsuccessful, but due to the limit on the damages recoverable from the insurer, the bulk of the judgment debt remained unsatisfied.

[27] Matadeen brought a third action against the Caribbean Insurance Co Ltd pursuant to s 17 of the MVIA (the equivalent to s 44 of the RTA) which provides for the transfer of the rights of the liquidated insured to an injured third party. Much of the discussion in the case centred around whether the action under s 17 of the MVIA was an action under contract in which case the limitation period would be 4 years; or was an action on a specialty where the limitation period would be 12 years. The Privy Council held that a s 17 cause of action derived from the insurance policy and all that the section did was to transfer contractual rights. This did not turn a contractual right of action into an action on specialty. Accordingly, the limitation defence prevailed except in respect of the claim which arose within four years of the suit.

[28] In coming to this decision, the Board delivered comments which on their face appear consistent with the argument for 'automatic' insurance. At [9], it said, in respect of the equivalent of s 43(1) of the RTA:

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[2] [2002] UKPC 69, (2002) 61 WIR 535 (TT).

> So, in short, s 10(1) of the Act makes the insurer liable to meet any judgment obtained by an injured party 'in respect of any such liability as is required to be covered by a policy under s 4(1)(b)...'. The only condition precedent to the right of the injured party to claim under s 10(1), apart from the obtaining of the judgment, is that the requisite certificate of insurance had been delivered to the insured.

[29] It will be noted that the quotation in this passage entirely omits the critical phrase in parentheses 'being a liability covered by the terms of the policy'. Clearly, in specifying the condition precedent to recovery by the insured, their Lordships were not addressing their minds to the aspect of the statutory regime which subjects liability to the terms of the policy. This is illustrated by their Lordships' reasoning at [47]:

> The s 10 cause of action is sui generis. It requires that a certificate of insurance has been delivered and that a judgment has been obtained by the injured party against a person covered by the policy. Subject to those conditions precedent (and to the let-outs in sub-ss (2) and (3)), it allows recovery by the injured party against the insurer subject to a ceiling of the specified minimum. Contractual defences that would enable the insurer to resist claims by the insured are of no avail. The action is an action on the statute.

[30] Prior to the *Matadeen* decision, the Board had consistently interpreted provisions to like effect as s 10 of the MVIA and s 43(1) of the RTA in Barbados, as having limited the third-party claimant's right to recover from the insurance company for liabilities not covered in the policy. In the Bermuda case of *Suttle v Simmons,*[3] the exclusion clause exempted liability for injuries caused by an unauthorised driver. However, s 8(j) of the Bermudan Motor Car Insurance (Third-Party) Act 1943 rendered that exclusion clause ineffective insofar as it related to the statutory minimum that a third party was entitled to recover directly from the insurer. But for this statutory restriction the Board pointed out that the insurer would not have been liable to the third party:[4]

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[3] (1989) 37 WIR 133.
[4] ibid at 141-142.

> It is a special feature of the present case that the policy of insurance purported to exclude liability for damage to third parties arising out of use of the car by a person who was an authorised driver within the meaning of the relevant exception and the schedule. So, the insurers would have been under no liability but for section 8(j) of the Act of 1943.

[31] Similarly, in *Motor and General Insurance Co Ltd v Pavy*[5] the respondent was awarded damages in respect of a motor vehicle accident against a driver who was insured by the appellant. The respondent successfully recovered from the appellant the unpaid judgment debt under s 10(1) of the MVIA 1974 of Trinidad and Tobago and this was upheld by the Privy Council. However, the Board noted[6] that the words '*being a liability covered by the terms of the policy*' meant a liability covered by the policy and which would continue to be so covered unless the insurer either was entitled to avoid or cancel the policy or has done so. On the facts of that case the insurer was not entitled to avoid or cancel the policy as the event giving rise to liability was one covered by the policy.

[32] Pronouncements by the Privy Council after *Matadeen* have affirmed the principle that the insurer's liability is defined by the terms of the policy, subject to any statutory restrictions. *Presidential Insurance Co Ltd v St Hill*[7] concerned the insurer's attempt to avoid liability because of a clause in the policy which expressly limited coverage to the policyholder and a named relative of the policyholder. The accident and injury to the third party were caused by someone driving with the consent of the policyholder but who was not the named relative. The insurer's defence invoking the clause that limited coverage was struck out by both the High Court and Court of Appeal of Trinidad and Tobago based on s 4(7) of the MVIA, which as amended in 1996 provided:

> Notwithstanding anything in any written law, rule of law or the Common Law, a person issuing a policy of insurance under this section shall be liable to indemnify the person insured or persons driving or using the vehicle or licenced trailer with the consent of the person insured specified in the policy

[5] [1993] UKPC 47, [1994] 1 WLR 462 (TT).
[6] ibid at 471-472 (emphasis added).
[7] [2012] UKPC 33, [2013] 3 LRC 7 (TT).

in respect of any liability which the policy purports to cover in the case of those persons.

[33] In considering the meaning of s 4(7) the Privy Council had recourse to the wording of the subsection prior to the 1996 amendment and consulted reports of the relevant parliamentary debates preceding the amendment. The Board gained no assistance from these sources to support the view that the 'quite radical' effect accepted by the courts below were understood or intended when the 1996 amending Act was passed. Having regard to the construction of s 4(7) and to the scheme of the amended Act, the Privy Council held that s 4(7) did not intend to override policy language by obliging insurers to meet liability not covered by the policy. To interpret section 4(7) as requiring insurers to meet liability expressly excluded under the policy would mean that insurers would face an open-ended exposure. The Privy Council opined that an amendment of s 12 of the MVIA (equivalent to s 48 of the RTA of Barbados) would be the more natural section on which to build the intention to provide compulsory insurance cover.

[34] *Presidential Insurance Co Ltd v Mohammed*[8] also concerned the MVIA of Trinidad and Tobago and interrogated whether the Mohammeds, as third parties who suffered property damage caused by a motor vehicle (maxi-taxi) could obtain indemnity from the vehicle owner's insurers when the driver, Mr Rampersad, who caused the damage, was not authorised by the insurance policy to drive the vehicle. The third parties obtained a default judgment against the insured and the owner of the vehicle, Mr Kocher, and then brought proceedings pursuant to s 10 of the MVIA to enforce that judgment against the insurer. Although the insurance company had initially agreed orally to indemnify the insured in respect of the loss by property damage caused (either by them or their agent) to the third party, the company later repudiated that agreement alleging that the claim for indemnity was fraudulent, since it stated that Mr Kocher was the driver as opposed to Mr Rampersad. The company filed a defence and counterclaim to that effect, which was struck out by

[8] [2015] UKPC 4 (TT).

the Court of Appeal relying on its own decision in *Presidential Insurance v St Hill*. Again, the Privy Council found that the Court of Appeal erred when it struck out the insurer's defence and counterclaim. The Act did not prevent the insurer from arguing (a) that the terms of the policy did not cover the Mohammeds' claim and (b) that the Mohammeds' alleged involvement in Mr Kocher's fraud in the presentation of the claim allowed it to avoid the contract to fund the reinstatement of their damaged property and indemnify them against their losses. The Board made clear that s 10 of the MVIA of Trinidad and Tobago (the equivalent of s 43 of the RTA of Barbados) does not preclude an insurance company from raising the defence that a claim or event is not covered by the policy. It stated:

> 16. Section 10(1) also does not alter the fundamental position set out in section 4(1). The reference in section 10 to section 4(1)(b) and the words in parenthesis, '(being a liability covered by the terms of the policy)', make it clear that the section *does not prevent an insurance company from pleading successfully the defence that the claim is not covered by the terms of the policy*. The subsection prevents the insurer, which has had timely notice of the action against its insured, from avoiding or cancelling the policy, eg on ground that the insured obtained the policy by non-disclosure or through misrepresentation of a material fact. But Presidential does not seek to do so. Further, Mr Hosein for the Mohammeds conceded that section 10(1) did not prevent the insurer from seeking to set aside the judgment against the insured if that judgment had been obtained by fraud. Otherwise, section 10(2) and (3) set out the circumstances in which the insurer, whose policy covers the relevant liability of the insured, can resist a claim to satisfy the judgment against the insured. Subject to those circumstances, *if the insured's liability is covered by the policy*, the insurer must pay.[9]

[35] Subject to the statutory restrictions, to which I will come shortly, the weight of Caribbean authorities is also decisively in favour of the view that s 43(1) allows an insurer to limit its liability to third parties. In addition to the decision of the Court of Appeal in the present appeal the following may be added: *Gilharry v Belize International Insurance Co Ltd;*[10] *Willis v Globe Insurance Co of Jamaica Ltd;*[11] *Cadette v St Lucia Motor & General Insurance Co Ltd*.[12] The view of 'automatic'

[9] ibid at [16] (emphasis added).
[10] *Gilharry* (n 1).
[11] JM 2015 CA 64 (CARILAW), (19 June 2015).
[12] LC 2021 CA 2 (CARILAW), (22 February 2021).

insurance attributed to *Matadeen* was expressly rejected in *Willis* by Panton JA.[13] Phillips JA stated emphatically that it would 'be wrong to impose on an insurer a liability that the insurance policy did not purport to cover' and that in order for the third party to benefit from the indemnity provided by the insurer, 'the liability must be one that is covered by the insurance policy.'[14] The availability of the contractual defence led Phillips JA to issue the following impassioned call:[15]

> [81] The injuries suffered by the appellant are serious and substantial and it is most unfortunate that no facility exists in Jamaica to satisfy the judgment in this claim. The Privy Council in *Presidential Insurance Co Ltd v Mohammed and Others* has highlighted the step taken by Great Britain's legislature to protect innocent third parties from the actions of uninsured drivers with the creation of the Motor Insurer's Bureau (Compensation of Victims of Uninsured Drivers) Agreement. This agreement provides that if judgment in respect of any relevant liability is obtained against any person in any court in Great Britain, whether or not the person is covered by a contract of insurance and any such judgment is not satisfied in full within seven days the Bureau will pay or cause to be paid the said sums in full with costs. While I recognize that unfortunately there is no institution of this type in Jamaica, the Jamaican legislature ought to take the crucial and novel step of being the first in the region to implement such a scheme in order to cure the social evil created when unlicensed drivers cause personal injury, property damage or death to innocent third parties for which there is no compensation.

[36] This recommendation remains as relevant today as when it was issued a decade ago and one that is worthy of consideration by all Caribbean legislatures. The fact remains, however, that existing legislation which expressly permit insurers to contractually exclude liability should not be ignored or interpreted by the Court to impose essentially compulsory insurance and thus fill the gap created by the absence of an institution equivalent to the Motor Insurers' Bureau of the United Kingdom. Neither can the problem be resolved by referring in general terms to public policy considerations or to the purpose of the RTA. In my view the public policy considerations cited cannot override the express terms in the statute.

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[13] *Willis* (n 11) at [21].
[14] ibid at [82].
[15] ibid at [81].

[37] In my respectful view it follows that under s 43(1) the exposure of the insurer is restricted to liability covered by the terms of the policy. Under s 43(6) this means 'a liability covered by the policy of insurance or which would be covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy'. This reinforces that the contractual defences are available to the insurer. It may be that the insurer is entitled to rely on statutory defences, apart from any provision contained in the policy, to avoid liability on ground of non-disclosure of a material fact or by false representation, provided certain procedures relating to time for commencement of proceedings are observed (s 43(3)). The latter possibility was not argued and does not appear to be an issue in this case.

**Whether the Exclusion Clause Was Prohibited by the Restrictions under s 48 of the Road Traffic Act on the Scope of Policies Covering Third-Party Risks**

[38] Section 48 concerns the circumstances in which restrictions imposed by the contractual defences may be avoided. Section 48(1) provides as follows:

> 48. (1) Where a certificate of insurance has been issued under section 38(7) in favour of the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any of the following matters:
>
> (a) the age or physical or mental condition of persons driving the vehicle;
>
> (b) the condition of the vehicle;
>
> (c) the number of persons that the vehicle carries;
>
> (d) the weight or physical characteristics of the goods that the vehicle carries;
>
> (e) the times at which or the areas within which the vehicle is used;
>
> (f) the horse-power or value of the vehicle;

(g) the carrying on the vehicle of any particular apparatus;

(h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by this Act; or

(i) persons named in the policy who may or may not drive a vehicle, is void as respects the liabilities required to be covered by a policy under section 38(1).

[39] Section 48(1)(a) to (i) are therefore existing statutory provisions that impose express contractual constraints upon the ability of insurers to avoid liability by inserting certain exemption clauses in the insurance contract. In the Court of Appeal, counsel for the CGI submitted that the exclusion clause was not rendered void by virtue of s 48(1) since it did not fall within the restrictions prohibited by that section. The submission was implicitly accepted by the Court of Appeal and whilst the matter was raised it was not seriously challenged in this Court. Of course, it remains open to the Parliament of Barbados to adjust the statutory restrictions on exclusion terms that may be included in a motor vehicle insurance policy, even outside of those considered to be unfair or unreasonable under the Consumer Protection Act. It may be assumed that any such adjustment would be in the interest of advancing the objectives of the RTA in the context of the financial and regulatory environment of the industry.

**Whether the Principle of *Contra Proferentem* is Applicable in this Case**

[40] Having affirmed that the RTA allows the insurer to contractually exclude liability to indemnify the insured against third-party claims and it having been accepted that the exclusion clause in this case was not unfair or unreasonable and was not contrary to s 48 of the RTA, the question remains as to whether reasonably construed, the exclusion clause clearly and unambiguously entitled the Appellant to avoid liability to the Second Respondent. In other words, the question arises as

to whether there was ambiguity or obscurity in the wording of the exclusion clause and if so, whether that is sufficient to apply the *contra proferentem* rule.

[41] The *contra proferentem* rule may be traced to the classical period of Roman law[16] and is now well-established in insurance law. It is customary for the policy to be written and presented to the insured by the insurers. Therefore, the courts have consistently held that it is the responsibility of the insurers to ensure that precision and clarity are attained in the wording of the policy terms. If the insurers fail to do so, then, in the words of Halsbury's Laws of England[17] 'the ambiguity will be resolved by adopting the construction favourable to the insured.' Halsbury adds that the rule only becomes operative where the words are truly ambiguous, '…it cannot be invoked with a view to creating a doubt. Therefore, where the words used are free from ambiguity in the sense that, fairly and reasonably construed, they admit of only one meaning, the rule has no application.'[18]

[42] This Court has repeatedly accepted the principle of *contra proferentem* as being part of Caribbean jurisprudence and one that is applicable in a wide range of litigation including but not restricted to insurance policies. The rule has been discussed by this Court in relation to provisions in a lease,[19] ambiguous provisions in governmental regulation,[20] employment contracts,[21] and banking contracts.[22]

[43] This Court's most recent decision on the principle was in *Insurance Corp of Belize Ltd v Kahtal Resorts International Ltd,*[23] which involved an exclusion clause in an insurance contract. In that case the Respondent brought a claim for damage sustained to their parasailing boat during a thunderstorm. The policy which insured the vessel contained an exception clause for loss or damage sustained while the vessel was moored unless such loss or damage resulted from collision with another

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[16] *Speednet Communications Ltd v Public Utilities Commission* [2016] CCJ 23 (AJ) (BZ), BZ 2016 CCJ 3 (CARILAW) at [40].
[17] *Halsbury's Laws of England* (5th edn, 2023) vol 60, para 79.
[18] ibid.
[19] *Sea Haven Inc v Dyrud* [2011] CCJ 13 (AJ) (BB), (2011) 79 WIR 132 at [29].
[20] *Speednet Communications* (n 16) at [40].
[21] *Sandy Lane Hotel Co Ltd v Cato* [2022] CCJ 8 (AJ) BB, BB 2022 CCJ 2 (CARILAW) at [54].
[22] *Caye International Bank Ltd v Rosemore International Corp* [2023] CCJ 4 (AJ) BZ, (2023) 104 WIR 74 at [102].
[23] [2024] CCJ 5 (AJ) BZ, BZ 2024 CCJ 3 (CARILAW).

vehicle. The vessel had sustained the damage while it was docked afloat at Tom's Boatyard, San Pedro, Belize. In delivering the majority judgment of the Court, Burgess J held that the term 'moored' in the exclusion clause should be given a technical meaning, as the ordinary meaning would lead to commercial absurdity by removing the very indemnity the insurance policy sought to provide. The dissent considered that the exclusion clause was clearly intended to cover the incident which occurred.

[44] In concurring with the majority, Jamadar J noted that an alternative basis for the decision was the application of the *contra proferentem* principle. The Judge conducted a comprehensive review of the principle, noting the responsibility of the party who had created the ambiguity to bear the consequence of the failure to express themselves more clearly. In his opinion:

> … the application of the rule can be especially important in insurance contracts which, in Caribbean contexts and as is well known, are characteristically pre-written by insurers, and which can contain general and technical terms, not always clearly defined, or explained. Its deployment also comes into the spotlight where exclusion clauses in insurance contracts are to be interpreted, such as exclusion clause 15 in this case.[24]

[45] The principle of *contra proferentem* is confirmed in the Consumer Protection Act of Barbados which provides, separate and apart from the question of unfair terms, that written contract terms, defined in the Act as terms in a consumer contract that have not been individually negotiated, must be clear and intelligible. Section 6 provides as follows:

> 6. (1) A supplier shall ensure that any written contract term is expressed in plain, intelligible language.
>
> (2) If there is doubt about the meaning of a written contract term, the interpretation that is most favourable to the consumer shall prevail.

[24] ibid at [65].

[46] In the present case, the Court of Appeal appears to have based its decision largely (but not entirely) on *contra proferentem*. The crux of the view of the court is expressed at [34]-[36] and is worth quoting in full:

> [34] We agree with Mr. Haynes SC that the policy embodies the contract between the insured and the insurer, who is entitled to include terms limiting and restricting the use of the vehicle, and to include terms which entitle the insurer to avoid liability where these terms are breached. Such terms commonly include the use of the vehicle for personal rather than commercial purposes, or for hire or reward, or for racing. The purpose of such provisions is to restrict the use of the vehicle, where such use impacts or increases the risk undertaken by the insurer. It is entirely reasonable and permissible for insurers to include provisions in the policy that are material to and circumscribe the risks that they have agreed to cover.
>
> [35] We also agree with Mr. Haynes SC that the intention of the parties to a contract are to be gathered from the words of the contract, and where the words are precise and clear admitting of one construction only, the *contra proferentem* rule cannot be applied. However, in finding the intention of the parties from the plain words used in the contract one must have regard to practical reality and common sense. In including the exclusion clause the words 'the driver does not hold or is disqualified from holding a valid driver's licence ...' the clear intention of the insurer is that the driver of the vehicle must have undergone the prescribed tests carried out by the Licensing Authority, must have satisfied that Authority that he possesses the requisite skill to manage a motor vehicle on the road so as not to present a danger to other users of the road, and that he possesses sufficient knowledge of the rules and regulations pertaining to the use of a vehicle on the road. If a person is disqualified from holding or obtaining a driver's licence, that is a clear indication that such a person has been found by the authorities to be unfit, or incompetent, or has satisfied the authorities that his conduct poses a danger to other users of the road. A person who has obtained a driver's licence but who fails to pay the prescribed fee to renew it must be viewed differently to someone who has never obtained a driver's licence, or one who is disqualified from holding one.
>
> [36] In our view, in order to make commercial sense, the exclusion clause should be construed so as to apply to persons in the latter two categories. Unlicenced drivers and disqualified drivers clearly impact the risk undertaken by the insurer. A licenced driver who

> fails or neglects to renew his licence, does not materially affect the risk undertaken by the insurer, so there is no commercial basis for excluding him from coverage ....

[47] The court drew support for this line of thinking from the case of *Gilharry v Belize International Insurance Co Ltd*[25] a first instance decision of the Supreme Court of Belize. In that case the policy covered the policy holder and any person driving on his order or with his permission, 'Provided that the person driving holds a licence to drive such vehicle or has held and is not disqualified by order of a Court of law or by reason of any enactment or regulation in that behalf [from] holding or obtaining such a licence'. The attempt by the insurer to avoid liability on the basis that the driver's permit had expired at the time of the accident was rejected. Cotran CJ found that the policy clearly extended cover to the holder of a driving permit or to a person who held a driving permit and was not otherwise disqualified, and that the expiry of the period of the permit as provided in the Motor Vehicle and Road Traffic Ordinance did not per se remove the cover nor entitled the insurer to avoid coverage. The proviso did not contain the word 'valid' but Cotran CJ nevertheless opined that the word 'valid' meant that the person holding the permit must have obtained it by valid means i.e., not by forgery, fraud, misrepresentation or deceit or in a manner otherwise than in accordance with the legislation. He concluded:

> A permit holder whose permit expired does not commit the offence created by section 29 'driving without a permit'... The *raison d'etre* of the Motor Vehicle Insurance (Third Party Risks) Ordinance would be defeated if third party rights are extinguished by the mere failure of a permit holder to renew his permit on his birthday.[26]

[48] The majority in the court below agreed with this view which justified their construction of the exclusion clause as applying to persons who were unlicenced or disqualified from driving but not to a licenced driver who fails or neglects to renew his licence, since the latter did not materially affect the risk undertaken by the insurer.

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[25] *Gilharry* (n 1).
[26] ibid at 3.

[49] It is difficult to accept this framing of the issue by the Court of Appeal. Having affirmed the entitlement conferred by the RTA upon the parties to include terms which entitle the insurer to avoid liability it becomes difficult to insert restrictions which limit that entitlement to terms that are 'material to and circumscribe the risk' undertaken by the insurer. Materiality is normally discussed in relation to the duty of disclosure owed by the proposer for insurance to the insurer and this Court's decision *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd*[27] revealed deep divisions among members of this Bench regarding the test for deciding upon when a matter is to be deemed material, and the final determination of the issue was deferred to a future occasion. Materiality is not usually discussed in relation to validity of exclusion clauses in an insurance contract. Provided the exclusion clause is not contrary to the list of statutory restrictions and is not otherwise an unfair contract term, it ought not to be invalidated on the ground of materiality.

[50] For the foregoing reason, the *contra proferentem* rule cannot be invoked merely on the basis that the exclusion clause does not increase the physical risk to the insurer. I consider that Cumberbatch JA was entirely right to point out that this approach conflates the physical risk with the legal risk assumed by the insurer and that the latter depends purely on the contract between the parties. Nor does the invocation of public policy considerations advance the issue any further. Again, Cumberbatch JA was correct in drawing attention to an equivalent public policy or interest consideration in the freedom of entities to regulate their affairs through contract and that such contracts are valid and enforceable to the extent that they are not otherwise constrained by law. It cannot reasonably be said that to permit an insurer to avoid liability based on an exclusion clause that is not an unfair term of the contract nor inconsistent with the restrictions spelt out in the RTA would defeat the purpose of the legislation. Rather such a clause would appear to be consistent with the legislative regime.

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[27] [2024] CCJ 3 (AJ) BB, BB 2024 CCJ 1 (CARILAW).

[51] *Contra proferentem* can only be involved if there is ambiguity or uncertainty in the clause in question. In this regard, certain definitions in the policy issued to the insured in this case become important:

> 'Driver' is any person driving the insured vehicle on your order or with your permission provided that the person driving holds a valid licence or other permit to drive the insured motor vehicle.
>
> 'Licence' means a driving licence or other permit issued by or on behalf of the Licensing Authority *which is valid and currently in force* (emphasis added).

[52] Section II of the Policy provided for the circumstances in which the insurance company would indemnify the insured in respect of legal liability to third parties and has nine exclusions which apply to Section II. Number two of these exclusions is where, '[t]he driver does not hold or is disqualified from holding or obtaining a valid driver's licence or if the driver is entitled to indemnity under another policy.'

[53] The Appellant argues that the language of the definitions is clear, and the implication is unambiguous, that is, 'a driver must hold a valid and current licence or permit' to be entitled to coverage under the policy. But it will be noted that the actual definitions in the policy of 'driver' and 'valid driver's licence' in the exclusion clause do not contain any reference to the valid licence being 'currently in force'. They simply require that the licence be 'valid'. It is the case that the definition of 'licence' requires both that the licence be 'valid and currently in force'. However, rather than bringing clarity, this adds further to the uncertainty as to the intention of the exclusion clause. From the definition of 'licence', the insurance company was clearly alive to the distinction between what it references as a 'valid' licence and one that is 'currently in force'. In excluding coverage for certain risks, the insurer deliberately chose to exclude liability only with respect to a 'valid' licence and did not include the requirement that the licence be 'currently in force'.

[54] It is also the case that in terms of grammar and syntax it is conceptually awkward or even impossible, to read 'licence' in the exclusion clause as referring to 'a valid licence that is currently in force'. This is because the exclusion clause purports to exclude coverage to a driver who (a) does not hold a valid driver's licence, (b) is disqualified from holding a valid driver's licence, or (c) is disqualified from obtaining a valid driver's licence. The word 'valid' must necessarily bear the same meaning in all three of those scenarios. But there is little sense in stipulating exclusion of risks for a driver who is disqualified from 'holding or obtaining a valid driver's licence that is currently in force'. The normal stipulation would simply be disqualification from holding a valid driver's licence.

[55] For these reasons, I am of the view that there was sufficient doubt and ambiguity in the wording of the exclusion clause in the policy issued to Stevenson to invoke the *contra proferentem* rule. It was entirely within the province of the insurance company to explicitly and unambiguously provide that it would not cover a driver who did not hold 'a valid driver's licence that is currently in force'. Further to the statutory provision in s 43(1) allowing limitation of liability to terms covered by the terms of the policy, such a clear stipulation would be upheld by the court, assuming it fell outside of the s 48(1) restrictions and was not an unfair contract term, matters that have already been considered. Alternatively, and assuming the matter to be of sufficient importance to the insurer, there could have been inserted into the policy provisions for the cancellation of the policy upon the expiry of the policyholder's driver's licence, or a requirement for production of proof of renewal of the driver's licence as a condition for continuation of coverage under the policy. Having itself made the distinction between 'a valid licence' and one that is 'currently in force' what the insurer could not do, consistent with the *contra proferentem* principle, was to continue to accept or retain premium in respect of a period after the expiry of the policyholder's driver's licence and then to deny coverage except on the clearest of grounds that the exclusion extended to a driver's licence that was not 'currently in force' at the time that the risk was realised. It is certainly not unheard of in insurance for an insurance policy relating to private

motor vehicles to allow a driver who had once held a driving licence and was not disqualified to be covered even though his driver's licence might have expired: *Cheung Kwong-sui v R.*[28]

[56] I find support for this position from *Luk Bik-yu v Fong Wing-fook*[29] which involved an analogous proviso in a policy providing that the person is permitted in accordance with the licensing laws or regulations to drive the motor car, ... and is not disqualified by order of a court or by reason of any enactment or regulations. In construing this proviso, the court held:[30]

> Reading the proviso in the insurance policy I find that there has been an ambiguity. I resolve this ambiguity by holding that when a person has been permitted to drive he has been permitted by the "licensing or other laws or regulations" under the Road Traffic Ordinance. But he is not disqualified solely because his driving licence has expired. To disqualify him there must be a court order or by virtue of other enactments. An expired licence is not by itself a disqualification. I have no doubt that in order to relieve the insurance company from liability to indemnify, the driver who has been permitted to drive, must be a person who is disqualified by order of a court of law or by enactments or ordinances which disqualify him after certain events. An expiration of the licence is not a disqualification. Even if I am wrong in this, and I hold that where there is an ambiguity, the insurance company being the person who drafted the document and who issued the policy must have the interpretation of the document construed against the insurance company. For these reasons I am of the opinion that the defendant is entitled to be indemnified in all the damages he has to pay to the plaintiffs by the insurance company and the costs of this action.

[57] I would hold that upon a proper interpretation and application of the *contra proferentem* principle, the Appellant cannot rely upon the exclusion clause in the policy to avoid liability under the policy to indemnify the First Respondent in respect of his liability to the Second Respondent.

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[28] [1976] HKLR 871.
[29] [1978] HKLR 215.
[30] ibid at 221.

**Whether the Late Renewal of the Driver's Licence Retrospectively Validated the Licence to the Date of Expiry of the Licence**

[58] The conclusion that I have reached on the preceding issue makes it unnecessary to consider in any detail the cross appeals by the Respondents which allege that the Court of Appeal erred in failing to find that the effect of s 76(3) of the RTA was to retrospectively validate a licence which had lapsed through mere non-payment of the licence fee and that the driver's licence had been retrospectively validated by the late payment of the renewal fee.

[59] Section 76(3) provides as follows:

> (3) Where a driving licence is renewable under this section
>
> (a) before the expiry date specified in the licence, in calculating the fee payable on the renewal of the licence account shall be taken of the payment already made in respect of the unexpired period of the licence;
>
> (b) after the expiry date specified in the licence and the holder of the licence applies for renewal on the expiry date in pursuance of subsection (2), the holder shall be required to pay a licence fee calculated on the period commencing from the expiry date and ending on the last day of the month in which the holder was born; or
>
> (c) on a date prior to that on which the licence is presented for renewal, then subject to subsection (8), the licence shall be renewed and the holder given an expiry date falling in the month in which he was born; but the holder shall be required to pay a licence fee calculated on the period commencing from the expiry date specified in the licence when presented for renewal and ending on the expiry date given on renewal.

[60] The First and Second Respondent relied on obiter dicta in *Gilharry*[31] to the effect that failure to renew a driving permit timeously did not defeat third-party rights but that case did not explore whether it was the late payment of the renewal fee which

[31] *Gilharry* (n 1).

retrospectively validated the licence. There are other cases which focus on whether the renewal of the driver's licence was done without difficulty.[32]

[61] What is determinative is the statutory scheme and wording with which we are concerned in this case. The side note to s 76 indicates that the section is concerned with the duration and renewal of driving licences. It specifies how a licence should be renewed and how the corresponding renewal fee ought to be calculated. There is no indication in the provisions of s 76(3) that it is at all concerned with the retrospective validity of the driver's licence. I would accept the argument of the Appellant that the fact that the section does not pro-rate the licence fee does not in itself give retroactive effect to an expired licence upon payment of the renewal fee. I would add that late renewal certainly does not render the licence to be 'currently in force' at an earlier date when the risk was realised. The status of any regulatory offence that may or may not have been committed is not the subject of this litigation.

**Conclusion**

[62] I would dismiss the appeal and the two cross-appeals.

[63] Having considered the parties' submissions on costs in their respective case management checklists, I would award costs in the sum of USD22,500 (being 15 per cent of the value of the appeal) to each of the Respondents against the Appellant.

**RAJNAUTH-LEE, BARROW and JAMADAR JJ:**

**Introduction**

[64] On 29 November 2007 Sherleen Thomas, a pedestrian, was hit by motor vehicle L2393 on the Speightstown By-Pass Road in Barbados. Sherleen died as a

[32] *Kozel v Personal Insurance Co* 119 OR (3d) 55.

consequence. The First Respondent, Valentine Stevenson, was at the time the owner and driver of L2393. The Second Respondent, Vincent Thomas, is the administrator of the estate of the deceased. The Appellant, CGI Consumers' Guarantee Insurance Co Ltd ('CGI'), is an insurance company whose business included motor vehicle insurance.

[65] On 12 June 2006, CGI issued to Stevenson a policy of insurance covering third-party risks in respect of the use of L2393 on the road, as is required by law.[33] The policy was valid for 12 months and was renewed by CGI for a further year on 11 June 2007. It is not in dispute that CGI issued Stevenson a Certificate of Insurance in accordance with s 38(7) of the Barbados Road Traffic Act, Cap 295 ('RTA') which was current at the time of the accident. That is to say, *at the time of the accident there was a policy of insurance in force*, that CGI is seeking through these proceedings to avoid in relation to third-party coverage (emphasis added).

[66] On 30 June 2007, Stevenson's driver's licence expired, prior to the date of the accident. And, on 2 December 2007, the first working day after the accident, Stevenson renewed his expired driver's licence.

[67] In this appeal, CGI is seeking to overturn the decisions of the two lower courts and to have this Court determine that it is not liable to satisfy the judgment duly obtained by the administrator of the estate of the deceased for any loss caused by the death of Sherleen arising from the accident.

**Issues**

[68] There are two main issues that have been raised in this appeal. First, whether, on a proper construction of the RTA and of the relevant insurance policy, CGI is liable to satisfy the judgment duly obtained by the administrator of the estate of the deceased for the loss caused by the death of the third party (Sherleen), which

[33] Road Traffic Act, Cap 295 s 37.

occurred while Mr Stevenson was driving on an expired licence, in circumstances where the insurance policy excludes coverage for drivers who do not hold a valid licence. Second, whether the renewal of the expired licence after the accident is curative and takes retroactive effect; or whether it is prospective and if so, of no avail.

[69] The first issue involves two sub-issues: (i) whether for the purposes of the relevant insurance policy Stevenson was in fact and in law the holder of an invalid driver's licence, and (ii) whether, even if so, pursuant to the RTA liability nevertheless accrues pursuant to pt IV and s 43 of the RTA (third-party liability). If the first issue yields a determination that for the purposes of the relevant insurance policy, Stevenson was in fact and in law the holder of a valid driver's licence (or that invalidity has not been proven in this case), or that liability nevertheless accrues pursuant to pt IV and s 43 of the RTA (third-party liability), then the second issue is otiose.

**Disposition of Issues**

[70] This opinion accepts the reasoning disposing of sub-issue (i) of the first issue and as explained at [49] to [56] of the opinion of Anderson P and treats in detail with sub-issue (ii) of the first issue which we consider independently dispositive. In our view both sub-issues have been resolved against CGI, and there is thus no exploration of the second issue in this opinion.

**The Validity/Invalidity of the Driver's Licence**

[71] For the reasons given and based on an application of the *contra proferentem* rule, we agree that the Appellant CGI has not discharged the burden on it to establish that Stevenson was *not* the holder of a valid driver's license at the time of the accident for the purposes of excluding the liability of CGI. That is to say, on the facts of this matter the invalidity of Stevenson's driver's licence on 29 November

2007, has not been established for the purposes of the relevant CGI Motor Insurance Policy.

[72] Section II of the relevant CGI Motor Insurance Policy, which purports to deal with 'Cover for Your Legal Liability to Third Parties', states affirmatively:

> We will indemnify you subject to the limits of liability shown in the current schedule for legal liability for death of or bodily injury to any person and damage to property caused by of in connection with the following: the ownership, use or operation of the insured vehicle ….

[73] This aligns with the provisions of the RTA dealing with Third-Party Coverage (pt IV), particularly ss 38(1) and (6), and 43(1), which are set out below.

[74] However, the relevant CGI Motor Insurance Policy also contains an exclusion clause, which is stated as applicable to Section II of the Policy, as follows: 'The driver does not hold or is disqualified from holding or obtaining a valid driver's licence or if the driver is entitled to indemnity under another policy.' The failure of CGI to establish that Stevenson 'does not hold … a valid driver's licence', means that the exclusion clause is inapplicable, and *a fortiori* liability ensues.

**Third-Party Liability under the RTA**

[75] This appeal however also raises the very important issue of law: whether by virtue of the RTA liability nevertheless accrues pursuant to pt IV and s 43 of the RTA (third-party liability), even if it had been established that Stevenson's driver's licence was invalid on the date of the accident (and the terms of the Section II exclusion clause in the CGI Motor Insurance Policy had been met). In our opinion the determination of this issue is dispositive of the appeal.

**Statutory Framework**

[76] As explained, Section II of the relevant CGI Motor Insurance Policy, in compliance with the statutory requirements, duly provided 'Cover for Your Legal Liability to

Third Parties'. In resolving this issue, key provisions of the RTA which set out the overarching statutory framework, include the following:

> 37. (1) No person shall use or cause or permit any other person to use a motor vehicle on a public road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, a policy of insurance or such security in respect of third-party risks as complies with the requirements of this Act.
>
> …
>
> 38. (1) For the purposes of this Act, a policy of insurance is a policy that is issued by a vehicle insurer and, subject to subsection (2), insures the persons or categories of persons specified in the policy against
>
> *(a)* liability in respect of any sum to a maximum of
>
> (i) $10 000 000, which such persons or categories of persons shall become liable to pay in respect of death of or bodily injury to one person in any one accident; or
>
> (ii) $30 000 000, which such persons or categories of persons shall become liable to pay in respect of death or bodily injury in the aggregate to any number of persons in any one accident; and
>
> *(b)* any sum not exceeding $50,000 which such persons or categories of persons shall become liable to pay in respect of damage to property, arising out of the use of a motor vehicle on a public road.
>
> …
>
> 38. (6) Notwithstanding anything in any enactment, a person issuing a policy of insurance is liable to indemnify the persons or categories of persons specified in the policy in respect of any liability that the policy purports to cover in respect of those persons or classes of persons.
>
> …

> 43. (1) Where, after a certificate of insurance has been issued under section 38(7) in favour of the person by whom a policy has been effected, judgment in respect of any liability required to be covered by a policy under section 38(l), (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to this section and to any limitations on the total amount payable under the policy in consequence of that subsection, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

**Methods of Interpretation**

[77] Part IV of the RTA is a piece of social justice legislation, introduced in the Caribbean to address the particular issue of protecting third parties who suffer injuries and sustain damage in motor vehicle accidents, and to do so by making insurers compulsorily liable. It is a legislative intervention that seeks to circumvent the established legal policy-doctrine of privity of contract between an insured and insurer. As such it is subject to a particular juridical approach to interpretation and application.

**Hansard**

[78] In English common law, *Pepper v Hart*[34] significantly changed the approach to statutory interpretation, by permitting courts, in certain circumstances, to consider statements made in Parliament (as recorded in Hansard[35]) as an aid to interpretation. Anglo-Caribbean jurisdictions have also adopted this approach. Indeed, this Court has previously referred to *Pepper* and the Court's ability to refer to legislative

[34] [1993] AC 593.
[35] Barbados, *Hansard*, House of Assembly, 1st Session 1981-1986, (12 April 1983).

history, including parliamentary pronouncements, to determine parliamentary intention in enacting legislation.[36]

[79] This permission is generally limited to circumstances where: (i) the statute or section(s) to be interpreted are reasonably considered uncertain or ambiguous or obscure, or when a literal interpretation could lead to an absurdity, (ii) there are relevant statements made by the promoter(s) of the Bill that are on point, and (iii) the statements of the promoters are sufficiently clear and obvious, and shed light on the intention of Parliament and provide reliable evidence of the meaning(s) to be given to the statute and section(s) to be interpreted and applied.

[80] This approach and permissiveness align with this Court's use of a purposive and rights-centric methodology towards statutory interpretation, especially in cases of ambiguity or uncertainty.[37] Indeed, this permissiveness is particularly apt where social justice legislation is to be interpreted, as in this case. Statutes, and distinct parts or entire sections, must be read in their entire context, harmoniously with the scheme and objectives of the legislation (including its distinct parts), the intention of Parliament, and with due regard for grammatical sense. Legislative history is a part of statutory context, and its use supports a purposive approach. As do social context and consequentialist analyses.[38] And, in the case of remedial and/or protective legislation, like the 1983 amendments to the RTA under consideration, statutes must be responsibly interpreted in ways that further their purpose,[39] as this is in keeping with the separation of powers. Indeed, the application of the principle of the separation of powers in contemporary times, which encourages both mutual respect and cooperation, supports a more relaxed and open application of the principles relating to the use of Hansard in order to discover legislative intent.

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[36] See, for example *A-G of Belize v Zuniga* [2014] CCJ 2 (AJ) (BZ), (2014) 84 WIR 101 at [106].
[37] See, for example *Smith v Selby* [2017] CCJ 13 (AJ) (BB), (2017) 91 WIR 70; *Commissioner of Police v Alleyne* [2022] CCJ 2 (AJ) BB, [2022] 2 LRC 590.
[38]See, for example *Smith v Selby* [2017] CCJ 13 (AJ) (BB), (2017) 91 WIR 70. Considered extrinsic materials and generally avoided in textualist approaches.
[39] *Re Rizzo & Rizzo Shoes Ltd* [1988] 1 SCR 27.

[81] In this case there has been much debate on the meaning and application of s 43 of the RTA. As will be seen in the opinions of this Court, reasonable jurists differ on what the language of s 43 means. This is, indeed, and as will be seen, a fit case for resort to Hansard as an aid to interpretation. In any event, the use of Hansard has been readily, and commendably, agreed to by all parties.

[82] The relevant extracts for Hansard, agreed by the parties to be used as an aid to interpretation, evidence the following about the current RTA: (i) in May 1981 a Bill to revise and consolidate the law relating to road traffic was debated in the Senate; (ii) the Mover/Promoter (Senator B Trotman) explained that the Bill sought to both update the RTA as well as incorporate the provisions of the Motor Vehicles Insurance Act into a single piece of legislation, and (iii) that 'Part IV of the Act entirely replaces the Motor Vehicle Insurance Act.'

[83] In 1983 further amendments were made to pt IV of the RTA. Our reading of the relevant extracts from Hansard, read as a whole and taken in context with attention to key statements and connecting threads that reveal overall meaning and coherence (explained further in the section below on the interpretation of language in Caribbean spaces), brings to light several salient and overarching facts (even if not overtly linked to s 43). In April 1983, in the House of Assembly and on the second reading of the Road Traffic (Amendment) Act 1983, the following was explained by the Mover/Promoter (Hon V Johnson) in his opening statement: (i) 'the Road traffic Act was last amended in 1981, and the purpose of this new amendment is to bring the Road Traffic Act more in line with the current thinking of the present Government, that there needs to be a substantial re-organisation of the various bits of legislation … in order to place responsibility more squarely where that responsibility should fall', (ii) that 'the principal amendment that we seek … is the restructuring of the section of the Bill that has to do with vehicle insurance,' and (iii) that 'another intent behind the amendments of this particular Act is to *provide insurance coverage for third parties* … (and to) *expand the compulsory cover* …' (emphasis added). These statements of the Mover, made by reference to the

example of non-paying passengers, were described by him as 'new thinking' intended to 'look after a gap in our insurance practice in Barbados that has gone unchallenged for a long time.'

[84] The intention and purpose of the amendments explained by the Mover also applied to a wider cross section of persons than just non-paying passengers, as made clear by the Seconder/Promoter (Hon H Forde), 'certainly the changes being effected by this Bill have far-reaching consequences and will be beneficial to the public at large.' He explained that the amendments were intended to circumvent the principle of privity of contract and to allow injured third parties 'to get the benefit of a judgment … *once there is a policy in force*'. Indeed, he addressed the specific 'grey area … [that] the Government has taken positive steps to do something about', of 'the person who drives a motor vehicle on the road without having any policy of insurance or in contravention of the policy of insurance which he may have', while also acknowledging that the proposed amendments were not a complete solution. And referenced a particular matter of concern occurring in Barbados, of 'problems [that] have arisen because tourists come down, … they go and sign a contract, they have the main driver's clause against them, they find that one of their colleagues will use the car, an accident occurs, somebody is seriously damaged and the insurance disclaims liability in these circumstances.' In this context the Seconder unequivocally declared the intention and purpose of the amendment: '*Th[is] is being corrected by this Bill*.' (emphasis added).

[85] Anecdotally, and typical of Caribbean parliamentary rhetoric for ascribing meaning, the Seconder/Promoter in moving the amendment shared the following, which is an invaluable aid to interpretation in this case: 'One of the inspirations behind this Bill was a particular case, which I had the honour of doing at the Bar, where a young person was mowed down. It was impossible for his mother and children to get the benefits of their judgment against the particular insurance company…'. The similarity in circumstances to the instant matter is obvious, and the relevance self-evident.

[86] Indeed, MP King (first speaker, Opposition), in response to the Mover and Seconder (Promoters), would remark generally on the amendment as being 'hailed … as a *great piece of reformatory legislation*'. He would also state, in similar vein: 'I welcome the provisions which provide for *the minimisation of the exceptions for insurance companies for responsibility in cases of accidents*. I think those provisions which amend the law in that regard are welcome.' (emphasis added).

[87] Finally, in relation to the 1983 amendments to pt IV of the RTA that concern this appeal, Parliament was completely alive to the reality that the changes being introduced could affect insurance premiums. The Mover/Promoter stated: 'It is quite possible that, by extending the range of cover currently offered … it might be that the insurance companies may say that they will need to demand additional premiums for the additional risk that they take on.' Yet the Parliament pressed on, alive to 'the amount of tragedy and heartbreak that could result when people are innocently injured in a motor vehicle accident which does not by its nature provide for their protection.'

[88] The social context problem faced, and the overall legislative purpose intended by Parliament in passing the 1983 amendment to the RTA, in so far as these are pertinent to the issues in this case, are clear from these extracts from Hansard and from the speeches of the Promoters of the Bill. They are relevant, on point, and shed light on parliamentary purpose. They are therefore reliable and admissible sources of evidence that can assist in determining any uncertainties or ambiguities in the meaning of s 43 of the RTA, and its appropriate applications in this case.

**The Challenge of Language**

[89] Language can mean different things to different people. The uses, meanings, and purposes of language are contextual and culturally informed. As is the understanding of ideas and concepts expressed linguistically. In an Anglo-post-colonial Caribbean context, it is predictable that we do not always easily grasp how the meaning and uses of the English language can be different from its historically

normative uses. Yet, we in the Anglo-Caribbean often exist normatively in our uses of language, somewhere between full-blown varieties of pidgins and creole languages and the 'King's English'.

[90] The idea that, in the Caribbean, the English language is capable of a single universalising meaning, is therefore arguably fallacious. For example, the use of language and idiom in Barbados, may be very different from, say, in Saint Lucia, or Guyana, or Belize, or Dominica. For those of us who live in the region, this is a truism. In the interpretation and application of the law in post-colonial Caribbean states, we must be aware of this. How we read and interpret, say, parliamentary debates conducted in English but engaged in by post-colonial Caribbean locals, requires this discerning understanding. Parliamentary debates must be read and interpreted through the lenses of this broader language mind-set. If not, we may easily miss and/or misunderstand true legislative meaning and intent. The extracts from Hansard in this matter are illustrative, in our opinion.

[91] After all, Caribbean parliaments are democratically populated by Caribbean peoples of all walks of life, and it is their uses and meanings of English language that appear as law and that courts are called upon to interpret and apply (not the uses and meanings as may be assumed in Westminster). Indeed, there is no single 'Caribbean identity', but rather multiple and intersecting varieties of identities, poignantly evidenced in the myriad cultures and languages of the region. The analogous consequence is that, even as each state may introduce similar legislation, the parliamentary purposes may be nuanced. And this has been one of the great benefits of access to the Promoters' speeches in this matter.

[92] Indeed, this is one reason why the Caribbean Court of Justice is tasked with playing 'a determinative role in the further development of Caribbean jurisprudence through the judicial process.'[40] The assumption being that Caribbean jurists will

[40] Preamble to the Agreement Establishing the Caribbean Court of Justice (adopted 14 February 2001, entered into force 23 July 2002) 2255 UNTS 319.

understand the uses and meanings of the language of the law used in different Caribbean contexts.[41]

**Interpreting Caribbean Social Justice Legislation**

[93] How is Caribbean social justice legislation to be interpreted and applied in Caribbean constitutional and social contexts? Four general principles are apposite.

[94] First, social justice legislation is quintessentially legislative policy in action. Thus, it must be read, understood and applied in Caribbean social and constitutional contexts.[42] These contexts are vastly different from those that exist, say, in the United Kingdom where parliamentary supremacy prevails and/or other legislative and/or policy and/or regulatory regimes and social contexts may prevail. Interpretatively, this requires an understanding and interpretation through both traditional legislative methods, as well as through constitutional values and rights centric lenses (including preambular values and principles), filtered through the relevant Caribbean social contexts.[43]

[95] Second, a first principles methodological approach is apt. That is, an approach informed yet unburdened by precedent, that looks through and interprets constitutional and legislative language and purpose, to achieve stated and aspirational goals in practical and legislatively legitimate ways. The fact that this is social policy legislation is a governing interpretative paradigm. The language of the law must be read, understood, interpreted, and applied through Caribbean understandings and social realities, alive to local nuance.

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[41] What we Caribbean people may really need to free ourselves from is the uncritical acceptance of what may be described as the heuristic of Westminster. And in this case, the idea that the English law is still the pivotal point of departure for the development of Caribbean constitutional and common law. This mindset may need to be critiqued, if not abandoned. Having in common, for historical reasons, English common law, does not mean that it still synchronises with Caribbean common law. A Caribbean first principles methodological approach may be more apt. (See *A-G of Barbados v Joseph* [2006] CCJ 1 (AJ) (BB), (2006) 69 WIR 104 at [15]–[17] (Wit J). See also A R Carnegie, 'Floreat the Westminster Model? A Commonwealth Caribbean Perspective' (1996) 6 Carib L Rev 1).

[42] The Constitution is the supreme law. See Constitution of Barbados 1966, s 1.

[43] See *Marin v R* [2021] CCJ 6 (AJ) BZ, BZ 2021 CCJ 001 (CARILAW); *Commissioner of Police v Alleyne* [2022] CCJ 2 (AJ) BB, [2022] 2 LRC 590 at [23], [25]; *A-G of Guyana v Thomas* [2022] CCJ 15 (AJ) GY, (2022) 101 WIR 403 at [132], [135], [147], [168]; *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36 at [67], [71], [73], [74].

[96] Third, social justice legislation should, when appropriate, be interpreted and applied purposively, teleologically, and generously so as to give the fullest remedial protection to the intended beneficiaries. In this case, innocent third parties. Faced with multiple choices of meaning, a consequentialist policy analysis is applied and the interpretation that most aligns with discovered statutory intent and values is to be preferred. Alignment with relevant constitutional values and principles, and where appropriate applicable territorial international instruments, is also apt.[44] In this case, for example, where there is a tension between, say, the principles of privity of contract (between insurer and insured) and the legislative policy-intent (to compensate innocent third parties – here, one who has been killed in a motor vehicular accident), if a legitimate interpretative choice is to be made, the latter should prevail. Such a choice would also align with a right to life and the protection of the law[45] (effected in the legislative policy-intent to compensate innocent third parties).

[97] Fourth, social justice legislation should, when possible, be interpreted and applied practically, pragmatically, and with a fair measure of juridical common sense, carefully alive to current Caribbean contextual social, institutional, and economic realities. Statutory law may appear in books, but it exists and is intended to function in real life impacting real Caribbean people here and now. It is neither otherworldly, nor is it somehow universal – rather it is uniquely territorial - Barbadian, Guyanese, Belizean, Saint Lucian, Dominican, idiosyncratically and ideologically Caribbean. In this case, due deference must be paid by judicial officers in the interpretative process to the discoverable intention and purpose of Parliament as disclosed in relevant extracts from Hansard.

**Legislative Contexts: Interpreting pt IV and s 43 of the RTA**

[98] In our opinion, the Hansard provides ample evidence of (i) what was the mischief (the problem) in the law and in the society (including the pre-existing state of the

[44] See *Commissioner of Police v Alleyne* [2022] CCJ 2 (AJ) BB, [2022] 2 LRC 590 at [23], [25]; *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36 at [67], [71], [73], [74].
[45] Constitution of Barbados 1966, s 11.

law) that was being addressed by the amendments to pt IV of the RTA, (ii) what were the proposed and intended solutions, and (iii) why these were prescribed. The reach of those solutions, the remedy and reasons, are all made pellucid by the examples given of what is intended to be addressed and why. This is therefore quintessentially a case for the application of the conventional Mischief Rule of statutory interpretation (for which pre-existing statutory regimes also form part of the relevant legal context in modern times.)[46]

[99] In short, such an application and interpretation yield the following: but for certain specific statutorily prescribed procedures, conditions, and circumstances, there is to be compulsory and enforceable coverage for injured innocent third parties up to certain limits. This analysis is, in any event and independent of reliance on Hansard, supported by the structure, language and provisions that appear in pt IV and in s 43 of the RTA, read and interpreted in all relevant contexts.

**Section 43**

[100] Section 43 is at the heart of the social justice policy with which this appeal is concerned. The extracts from Hansard narrate the intention of Parliament and the purpose of pt IV and of s 43. Of significance are the amendments to s 43 that were effected in 1983.[47] From the marginal notes, these appear to be contained in 43(1A), (2), (3) and (4). Thus, post 1983, all of s 43 must be read together as a coherent legislative scheme to give effect to avowed parliamentary social policy. It is in this context that a court must discover the 1983 parliamentary intent and purpose of s 43.

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[46] See *Heydon's Case* (1584) 3 Co Rep 7a, 76 ER 637; the mischief rule, consider (i) the law before the legislative change, (ii) the mischief, defect or problem which the law did not address, (iii) the remedy and solution that Parliament has prescribed to address the issue, and (iv) the reason(s) for the proposed remedy and solution. In light of this analysis, interpret the legislation in a way that suppresses the mischief and advances the remedy. The policy behind the mischief rule is to fill any gaps in the law left by Parliament, to give effect to the true intentions of Parliament, and to ensure that the legislation is interpreted in such a way that prevents the harm that it is intended to be addressed.

[47] It would appear, by Act 30 of 1983.

[101] First, it is clear that marginal notes are not to be construed as part of an enactment and are inserted for convenience only,[48]and that a preamble shall be construed as a part of the enactment and is an aid to interpretation.[49] In this case the relevant preambular note indicates that pt IV of the RTA deals with 'Motor Vehicle Insurance'. Part IV begins at s 37. The marginal note which accurately reflects the overall intention and purpose of pt IV, as first introduced and stated in the Road Traffic Act 1981 (ie 'Users of motor vehicles to be insured against third-party risks'). The marginal note to s 43, which is at the centre of this appeal, also accurately summarises the purpose of s 43, and states: 'Duty of insurers to satisfy judgments against persons insured in respect of third-party risks.'

[102] Second, in the 1981 RTA enactment of pt IV (which completely replaced the Barbados Motor Vehicle Insurance Act), sub-ss 43 (1A), (2) and (3) did not exist in their current form. That is to say, these sub-sections were only introduced and/or amended by Parliament in 1983 by the Road Traffic (Amendment) Act 1983. The extracts from Hansard (above) explain: (i) the state of the law before the legislative change, (ii) the mischief, defect or problem which the law did not address, (iii) the remedy and solution that Parliament prescribed to address the issue, and (iv) the reasons for the proposed remedy and solution. These are aptly called 'the four considerations' and they inform the application of the mischief rule of statutory interpretation.

[103] Third, the judicial task in 2025 is to interpret and apply s 43 read coherently as a whole. And because of its legislative history, to do so firstly by applying the conventional canons of statutory interpretation, of which the mischief rule is apposite and of first importance. In this case the Hansard is an agreed aid to both interpretation and application. Thus, applying the four considerations stated above, s 43 must be interpreted in a way that suppresses the identified mischief and advances the remedy intended by Parliament. In this task the judicial function

[48] Interpretation Act, Cap 1, s 12(2).
[49] Interpretation Act, Cap 1, s 12(1).

permits, if required, filling any gaps in the law that may have been left by Parliament, so as to give effect to the true intentions of Parliament, and to ensure that s 43 is interpreted in such a way that prevents the harm that it is intended to address. In this task, it is permissible to both read in or read down words in the section, a permission for teleological modification.

[104] Fourth, given the above and applying the evaluative principles relevant to social justice legislation, s 43(1) is to be fundamentally understood and interpreted as follows. Firstly, there are three essential conditions to be satisfied for an insurer to be liable to third parties: (i) the *issuance of a certificate of insurance* in favour of a person by whom a policy of insurance has been effected (satisfied in this case), (ii) an *existing judgment* obtained by a third party against the policy holder (satisfied in this case), and (iii) the judgment must be in respect of *liability required to be covered* by the policy under s 38(1) of the RTA (also satisfied in this case) (emphasis added). Secondly, if these three conditions are met, the intention and purpose of s 43(1) is that:

> … notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, *the insurer shall*, subject to this section and to any limitations on the total amount payable under the policy in consequence of that subsection, *pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability* …. (emphasis added)

[105] Fifth, the issue raised in this appeal that we are addressing, arises in relation to the three essential conditions, and because of the following highlighted words which appear in brackets in s 43(1):

> Where, after a certificate of insurance has been issued under section 38(7) in favour of the person by whom a policy has been effected, judgment in respect of any liability required to be covered by a policy under section 38(l), (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, ….

[106] Taking s 43 as a whole and as it exists following the 1983 amendments, the words in parentheses '(being a liability covered by the terms of the policy)', read purposively, in context, and through the lens of parliamentary intentionality, and applying the mischief rule, are to be interpreted as follows. Firstly, to give effect to the true intention of Parliament, and to ensure that s 43 is interpreted in such a way that (i) prevents harm to innocent third parties involved in motor vehicular accidents and (ii) promotes insurance coverage to such persons. Secondly, and most importantly, in so far as the words are intended to introduce limitations on coverage, they are to be given the most restrictive, narrow, and limited interpretation that is permissible. This is to be emphasised, because the purpose of pt IV and s 43 is to provide for compulsory third-party protection. Limitations on this must be clearly and specifically prescribed statutorily.

[107] Sixth, the words in parentheses function to clarify and explain what precedes them, that compulsory third-party coverage applies where at the time of issuing the contract of insurance the terms of the applicable policy have *covered* liability as per the actual terms of policy coverage. That is to say, the three conditions are met once it is a liability *required* to be *covered* statutorily under s 38(1) and (as per the words in parentheses) it is also a liability that *was in fact covered* by the actual terms of the particular policy *at the time of its making* – both of which are satisfied in this case. The use of the past tense 'being a liability *covered* by the terms of the policy', permits this more restrictive reading as per the mischief rule, which is also consistent with the use of '*covered*' in relation to the statutory condition ('judgment in respect of any liability required to be *covered* by a policy under section 38(1)'). Thus, the argument that the word '*covered*' as used in the words in parentheses refers to coverage *at the time of the accident* is inconsistent with a purposive interpretation of s 43 (emphasis added).

[108] Seventh, s 43(6)(a) defines 'liability covered by the terms of the policy', as meaning 'a liability *covered* by the policy of insurance or which *would be covered but for the fact that the insurer is entitled to avoid or cancel*, or has avoided or cancelled,

the policy.' Again, a purposive interpretation, and applying the mischief rule, supports the reasoning above, that the words in parentheses concern a liability that *was in fact covered* by the actual terms of the particular policy *at the time of its making* (emphasis added).

[109] Eight, as a matter of fact, at the time of the accident third-party coverage was *covered* by the policy, only potentially subject to an entitlement to avoid or cancel the policy. However, s 43(1) explicitly states that notwithstanding such a possibility or eventuality: 'the insurer shall, subject to this section and to any limitations on the total amount payable under the policy in consequence of that subsection, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability…' The clear statutory intention is that the possibility or eventuality of avoiding or cancelling a policy which meets the three conditions, is of no avail to an insurer as a basis for avoiding third-party liability: subject to the exemptions stated in the section (and pt IV), and as highlighted below. All of which is consistent with reading s 43 as a coherent whole, in light of the 1983 amendments, and in alignment with an application of the mischief rule.

[110] Ninth, and following from the above, the words in parentheses are to be read as rationally connected to the other sub-sections in s 43 that permit exemptions from liability to third parties by insurers. Section 43(2) read in conjunction with s 43(1) exempts an insurer from third-party liability only if the procedural and substantive conditions of s 43(2) are satisfied. And this also applies to the additional 1983 insurer liability introduced by s 43(1A).

[111] Of note in relation to this case, is s 43(2)(c), which limits insurer liability on the basis of cancellation by virtue of a policy provision, only if that is effected *before* the happening of the event:

> (c) in connection with any liability, if *before the happening of the event* that was the cause of the death or bodily injury giving rise to the liability, *the policy was cancelled* by mutual consent or by virtue of any provision contained therein…(emphasis added)

[112] This further supports the reasoning that restricts the application of the words in parentheses as outlined above. That is to say, given that the policy was not cancelled before the fatal accident on the basis of a term in the policy, the insurers' liability is statutorily prescribed. It should also be noted that in relation to s 43(2)(c), there are further conjunctive requirements to be satisfied, that (i) the certificate of insurance is surrendered to the insurer, or (ii) has been lost or destroyed and the insurer has been duly notified of same, or (iii) the insurer has commenced proceedings in respect of a failure to surrender a policy (none of which apply in this case).

[113] Tenth, further exemptions for insurer liability to third parties are contained in s 43(3) and (4), which are also part of the 1983 amendments to s 43. In this instance, exemption requires court proceedings to be commenced by an insurer, and there are specific procedural requirements to be met (as to time and notice). The basis for exemption is a court declaration of avoidance of a policy on the basis of non-disclosure of a material fact, or false representation of a material fact/particular (none of which applies in this case). Again, this supports the reasoning that restricts the application of the words in parentheses as outlined above.

[114] What becomes clear when one reads s 43 as a whole, is that the intention of Parliament in 1983 was to only allow an insurer to avoid liability to innocent third parties, where the requirements of the specific statutory exceptions are met. Such an interpretation conforms with the conventional rule of statutory interpretation, *generalia specialibus non derogant* - the specific excludes the general. Moreover, it conforms with an application of the mischief rule as explained.

[115] Thus, the words in parentheses, read purposively and narrowly, refer to liabilities covered by the policy at inception (hence the use of parentheses) and not at the time of the incident/accident giving rise to the claim. To construe them otherwise is irrational: (i) given the procedural and the substantive requirements specifically provided for by s 43 to permit exemptions from liability by insurers with respect to third-party liability, and (ii) taken in the context of the intention and purpose of

Parliament as disclosed both in Hansard and the language of s 43 read coherently and purposively as a whole.

[116] Finally, applying a consequentialist analysis, which is appropriate for a policy evaluation, one first asks a predictive question - what are the competing/different consequences of the range of interpretative options? Then one undertakes an evaluative exercise - which of the competing options most closely aligns with the relevant underpinning intentions/values of the legislation (in this case, s 43 and pt IV of the RTA). If the words in parentheses are given the meaning argued for by CGI, the protection of injured innocent third parties is potentially more limited. If the reasoning in this opinion is adopted, then that protection is potentially enlarged. This latter option more closely aligns with the intention of Parliament and the objectives that it is trying to achieve by way of the legislative policy enacted in s 43. Therefore, on a consequentialist analysis, it is the preferred option.

**Further Support**

[117] We have demonstrated how an analysis based on text, intent, and policy, grounded in the social context of Barbados, underpinned by the evidence found in Hansard, supports our reasoning and conclusions. What of precedent? For an apex court, the policy of vertical *stare decisis* does not prevail. In any event, what are precedents, but the opinions, esteemed as they may be, of judicial officers about the meaning, purpose, and interpretation of legislation and legal principles applied to particular factual scenarios.

[118] In this matter there are precedents that may be considered supportive of competing opinions. Their weight and value are limited. Certainly, having access to Hansard allows this Court a unique window into why Barbados introduced s 43 in 1981 and amended it in 1983, and the remedies proposed to address the prevailing issues. The 1983 amendments were introduced to address Barbados' special social context circumstances in relation to injured innocent third parties. As explained, social

justice legislation is quintessentially legislative policy in action and a first principles methodological approach that is informed yet unburdened by precedent is apt.

[119] Nevertheless, there are precedents that support this opinion. First, there are the decisions of the High Court and Court of Appeal in this matter. Local judges are presumed to know the local territorial conditions even more intimately than a regional apex court. In this case the Court of Appeal, by majority, was clear that: 'In our judgment, the public interest requires that insurers strictly comply with their statutory responsibility to satisfy judgments obtained by third parties in accordance with the provisions of section 43 (1) of the RTA.'[50] The Court of Appeal was also clear about the intention informing s 43, which is that 'the whole purpose of the legislation, … is to ensure that innocent third parties are compensated for personal injury, loss of life, and property damage when they go about their business on the public roads.'[51]

[120] The Belizean decision in *Gilharry v Belize International Insurance Co Ltd*[52] was also cited by the Court of Appeal,[53] and relied on in part for its articulation of the legislative purpose of the Belizean equivalent of s 43, to wit: 'The *raison d'etre* of the Motor Vehicle Insurance (Third Party Risks) Ordinance would be defeated if third party rights are extinguished by the mere failure of a permit holder to renew his permit on his birthday.'[54]

[121] Second, there is the 2002 decision of the Privy Council in *Matadeen v Caribbean Insurance Co Ltd.*[55] This was the third in a trilogy of cases by which Matadeen was trying to recover from insurers damages and costs awarded to him as a result of a motor vehicle accident in which he was an injured innocent third party. The

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[50] *CGI Consumers' Guarantee Insurance Co Ltd v Stevenson* (BB CA, 11 January 2024) at [45].
[51] ibid.
[52] *Gilharry* (n 1).
[53] *CGI Consumers' Guarantee Insurance* (n 50) at [42].
[54] *Gilharry* (n 1) at 3 (Cotran CJ).
[55] *Matadeen* (n 2).

litigation was originally anchored in the Trinidad and Tobago Motor Vehicles Insurance (Third-Party Risks) Act (MVIA), s 10, which is equivalent to s 43 of the RTA.

[122] This third action was however based on an action in contract pursuant to s 17 of the Trinidad and Tobago MVIA, to try and recover damages that were beyond the statutory limits prescribed for third-party injuries under s 10. The Board, in undertaking a comparative analysis between ss 10 and 17, opined as follows in relation to s 10:[56]

> *The s 10 cause of action is sui generis.* It requires that a certificate of insurance has been delivered and that a judgment has been obtained by the injured party against a person covered by the policy. Subject to those conditions precedent (and to the let-outs in sub-ss (2) and (3)), it allows recovery by the injured party against the insurer subject to a ceiling of the specified minimum. *Contractual defences that would enable the insurer to resist claims by the insured are of no avail*. The action is an action on the statute.

[123] This reasoning aligns seamlessly with our reasoning as detailed in this opinion and is supportive precedentially. Note that the compulsory compensation to injured innocent third parties is subject only to meeting the statutorily prescribed s 10 (and thus equivalent s 43(1)) preconditions and 'let-outs'. One of which is that the insured's liability is in fact covered by the actual terms of the particular policy *at the time of its making.*

[124] The subsequent 2015 decision of the Privy Council, in *Presidential Insurance Co Ltd v Mohammed,*[57] and its statements at [16][58] properly read in context, are not at

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[56] ibid at [47] (emphasis added).
[57] *Presidential Insurance* (n 8). An appeal against an order striking out a defence.
[58] ibid at [16]: Section 10(1) also does not alter the fundamental position set out in section 4(1). The reference in section 10 to section 4(1)(b) and the words in parenthesis, '(being a liability covered by the terms of the policy)', make it clear that the section does not prevent an insurance company from pleading successfully the defence that the claim is not covered by the terms of the policy. The subsection prevents the insurer, which has had timely notice of the action against its insured, from avoiding or cancelling the policy, eg on ground that the insured obtained the policy by non-disclosure or through misrepresentation of a material fact. But Presidential does not seek to do so. … Otherwise, section 10(2) and (3) set out the circumstances in which the insurer, whose policy covers the relevant liability of the insured, can resist a claim to satisfy the judgment against the insured. Subject to those circumstances, *if the insured's liability is covered by the policy, the insurer must pay* (emphasis added).

odds with the earlier statements of the Board in *Matadeen*. The key point that is made, consistent with our analysis and reasoning in this opinion, is that the words in parentheses, '(being a liability *covered* by the terms of the policy)', make it clear that the section requires that the claim is *covered* by the terms of the policy. As [16] unequivocally states and subject only to the statutory exceptions that are alluded to: '… *if the insured's liability is covered by the policy, the insurer must pay*.' As we have explained in this opinion, in s 43 of the Barbados RTA '*covered*' must be read purposively to mean, in fact covered by the actual terms of the particular policy *at the time of its making* (emphasis added).

**Section 48 of the RTA**

[125] In so far as s 48 of the RTA may be considered relevant to resolving this issue differently, we do not agree. First, s 43(1) deals with an insurer's duty to satisfy judgments obtained by third parties against an insured - which are the material circumstances in this matter. Section 48 addresses aspects of an insurance policy that seek to restrict the insurance of an insured and which are deemed statutorily void.

[126] Second, because s 48 specifically deems certain restrictions in a policy void, does not mean that an insurer can avoid s 43 liability otherwise than as prescribed therein. Notably, s 43 makes no reference to s 48, when that could easily have been done if s 48 was somehow considered relevant to the interpretation of s 43(1) and in particular the words in parentheses in s 43(1). That omission speaks to legislative intent consistent with our interpretation of s 43. In any event, such a reading of unreferenced provisions, that further restrict the ambit of s 43(1), would be contrary to a purposive interpretation of s 43 and an undermining of the application of the mischief rule as explained.

[127] Finally, even in s 48(1)(i), it is clear that restrictions on liability based on 'persons named in a policy who may or may not drive', are considered void for the purposes

of that section. A fortiori, and arguendo, a restriction on a person who is named as a driver but by reason of an invalid licence 'may not drive' for the purposes of insurance coverage and insurers liability, may be contrary to the policy of the RTA.

**Conclusion**

[128] Given (i) the social context and social justice policy of pt IV and s 43 of the RTA, (ii) a first principles methodological approach that gives primacy to legislative intent and language in social justice legislation, (iii) a consequentialist approach to statutory interpretation that is purposive and teleological, (iv) the application of the mischief rule as a canon of statutory interpretation that is apt in this case, and (v) the value of juridical common sense applied to the judicial function in understanding and interpreting Hansard and Caribbean legislation in determining appropriate meaning, the arguments of CGI in relation to the first issue are rejected and this appeal is dismissed. As cited, there is precedential support in Barbados, Belize, and from the Privy Council for the approach and analysis in this opinion. Which is not to deny the existence of contrary precedents.

[129] It is also important to note, that this outcome aligns with the core constitutional values in Barbados of the right to life and the protection of the law.[59] If life is sacrosanct, then in a liberal democratic society that values life, the unlawful loss or wrongful taking of life is reasonably to be compensated. Section 43 of the RTA seeks to achieve this in relation to innocent third parties injured in motor vehicular accidents. It does so by statutorily allocating compulsory responsibility to insurers up to prescribed limits, while also providing for statutorily prescribed exemptions. Thus, the enforcement of s 43 to achieve its legislative purpose and intent is also now a part of the protection of the law for the benefit of this category of persons.

[130] Concerns expressed about 'increased insurance premiums', if the interpretation of s 43 contained in this opinion is adopted, are speculative and an overreach of

[59] Constitution of Barbados 1966, s 11.

judicial function. This is so, given the legislative policy of s 43 to protect innocent third parties subject to the stated exceptions. In any event, as demonstrated in Hansard, Parliament was alive to this issue and nevertheless pursued its legislative policy.

[131] Part IV of the RTA, as amended in 1983, is a piece of social justice legislative reform intended to address a particular problem that was of special concern in the social context of Barbados – the non-compensation of injured innocent third parties who are involved in motor vehicle collisions. As is said colloquially: for Parliament (in passing this law) 'the juice is worth the squeeze'. It is therefore not for the judiciary to second guess or unjustifiably circumscribe such a policy by limiting textual interpretations. In any event, the third-party statutory limits for compensation are prescribed and known, thus predictively insurable, and are no doubt already included in premiums as a matter of pragmatic insurance common sense (as third-party coverage is mandatory).[60]

[132] Looked at through a social justice lens, this legislative approach achieves a balancing of competing interests. Protection for innocent third parties up to statutorily prescribed compensation limits, and protection for insurers, permitting exemption in statutorily prescribed circumstances. Pragmatically, the legislative trade-off of envisaged increased insurance premiums to provide for limited compensation for innocent third parties, is what the Parliament in Barbados considered the most practical solution to the problem that it was trying to resolve.

[133] Having determined the first issue, on both aspects, against the Appellant and as explained above, there is no need to address the second issue.

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[60] RTA (n 33) s 37.

**Disposition and Order**

[134] The appeal and the two cross-appeals are dismissed. The orders of the Court of Appeal are affirmed.

[135] Based on the proposals on costs submitted in the parties' respective case management checklists and with reference to r 17.15 and sch 2 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2024, costs in the sum of USD22,500 (being 15 per cent of the value of the appeal) is awarded to each of the Respondents against the Appellant.

/s/ W Anderson

**Mr Justice Anderson (President)**

/s/ M Rajnauth-Lee

**Mme Justice Rajnauth-Lee**

/s/ D Barrow

**Mr Justice Barrow**

/s/ P Jamadar

**Mr Justice Jamadar**

/s/ C Ononaiwu

**Mme Justice Ononaiwu**