

IIB – PRESENTATION ON THE “ROAD TRAFFIC ACT”

“TO WHOM DOES THE ROAD BELONG”

By Brian Self, FCII

Leaving aside the more obvious and simplistic answer – “Everyone” – such an answer clearly has severe limitations as was brought out in both the presentations of Ms. Cheryl Whyms and myself.

I hope that both the legal and insurance considerations addressed at the Seminar made clear to all that the RTA of the Bahamas (and in most Territories around the World) may be considered “supplementary to “Common Law” – even if (in a number of areas) overriding/reinforcing Common Law considerations.

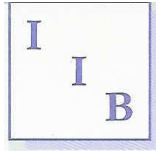
It is essential that all participants in this Seminar appreciate that every member of almost every Society has a basic right to “Life” which incorporates the expectation that if anyone threatens or creates death, injury or damage to that member then either Criminal and/or Civil actions (or both) for penalties/damages may arise.

Historically specific laws such as the RTA were created (shortly after the advent of “dangerous” motor vehicles!) to afford “stricter” legal protection of all people who might use or be affected by said vehicles. This is not to say that such laws reduced or minimized or removed the common law obligations of everyone namely – “to act “reasonably” in all circumstances”.

When a person acts unreasonably or without prudence in their dealings with others then they may well be considered “Negligent”. Such negligence allows an injured person to seek legal redress for damages against the person who has committed the negligent act or omission, whether these arise from motor vehicles or any other factors involved in day to day life.

The RTA reinforces this position and provides a number of Regulations relating to the ownership/use of motor vehicles which can additionally impose “criminal” laws which, if broken, can result in both fines and/or imprisonment – without in any way diminishing the “Civil” actions or liabilities mentioned earlier,

I think it is fair to say that a great deal of ignorance exists both within the insurance industry and in society generally (police and lawyers included!) all over the World. I say this not to be offensive or rude but because of what I have observed over 45 years in the industry in numerous countries all over the World! Indeed as I gave in a “local” example we have a situation where society openly supports the ignoring of traffic signals at certain times of the day (or night!)



I also gave an example in the presentation, albeit criticizing our industry, of an attitude adopted which says we face no liability if our Insured's do not report (to us) a claim or allege innocence (sometimes supported by police reports!) in an accident! Equally there are some of us who would argue policy terms and conditions to avoid meeting potential claims.

Let us be clear on this vital issue.

- 1. No one can dictate to an injured Third Party whether or not they can claim, where they can claim (subject to issues of Jurisdiction) or how much they can claim for!**
- 2. Whether a civil or criminal claim succeeds depends largely on the facts and circumstances of the accident – ultimately (and if necessary) as interpreted by a Court of competent jurisdiction.**
- 3. Policy terms and conditions may be of no effect in certain circumstances or if deemed so by specific legislation (see Section 14 of the RTA).**

NO MATTER WHAT “WE” MAY THINK TO THE CONTRARY!

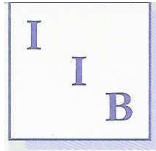
It should be remembered that (Act only policies excepted) our policies cover both RTA Law and Common Law and indemnify our Insured's in respect of judgments awarded against them.

Also please remember that Common Law does not simply “disappear” in favour of the RTA! Indeed where the RTA is silent or does not specifically address any issue (e.g. Pedestrians or non fare paying Passengers or Property Damage) then Common Law rulings (i.e. “Case Laws”) will apply.

One of the questions raised and hopefully dealt with satisfactorily concerned the question of “Public” roads. Post presentation and in accordance with these notes the audience will appreciate that whilst the RTA may not apply to accidents occurring on “Private” roads this will not absolve a negligent driver who causes death, injury or damage from guilt under Common Law or our policies!

An important feature which must be recorded in these notes (as it was in the presentation) is the question of Certificates and Temporary Cover Notes since these give rise to issues on a regular basis and are specifically mentioned in the Regulations (see Section 24) of the RTA – even to the point of giving examples of the “format/content” of such documents!

A “Temporary Cover Note” is in fact a temporary Certificate of motor insurance the existence and presentation of which is stated in the RTA. No one Cover Note may be issued for a period of greater than 90 days nor more than two such Cover Notes in any one period of insurance (i.e. 180 days total). Insurers are bound to this document as they are the Certificate and may not be back dated!



The Certificate of motor insurance is deemed to be evidence that cover – in accordance with the RTA requirements - has been issued by an authorized insurer for the period indicated in the Certificate.

On mutual, or otherwise, cancellation of the policy/cover the legitimate holder of the Certificate is legally required to return same or tender a Declaration of loss/damage to insurers who in turn are obligated to advise the Controller of Road Traffic of same. (NB failure to do so renders the holder liable to criminal prosecution).

Unless insurers follow the procedures laid down in the RTA they may find themselves still liable under the RTA for loss, damage, death or injury as prescribed under the RTA – AFTER the policy has been cancelled.

In the same way it must be appreciated that notwithstanding policy terms, conditions and exceptions or the non reporting of claims by our Insured's the Third Party is granted the legal right (death / injury only) to claim directly against insurers.

I hope the foregoing more clearly demonstrates where the RTA supersedes Common Law although it should be noted that under Common Law insurers would still be required to prove that their position had been materially prejudiced by any delay, action or non disclosure on the part of the Insured to deny a Third Party claim.

In conclusion I also wish to make clear that I am NOT denying insurer's rights nor their need to carry out thorough investigations so as to determine the FACTS / CIRCUMSTANCES of all claims. This is both necessary, prudent and Professional. We as insurers however must ensure we remain mindful of the ever increasing rights and obligations faced in respect to Third Parties (and not only in respect to motor vehicles) and constantly supported or reinforced by legislation such as the RTA and the Courts.

I thank you all for your attendance and interest and extend an invitation to all to contact me should you have any further questions.

April 9, 2007