

(14) It is an express term and condition of all proceedings pursuant to the provisions hereof and of every reference to arbitration as aforesaid—

(a) That no award shall be made in favour of the claimant unless the claimant first proves to the satisfaction of the arbitrators all the matters referred to in clause (2) hereof, and that he has complied with the provisions of clauses (3) to (7) hereof inclusive, so far as applicable, and failing such proof as aforesaid the arbitrators shall have no power or jurisdiction to make an award in favour of the claimant:

(b) That all such defences may be set up to the claim as would be available in an action in a Court of law against the driver, the owner, or any other person alleged to be liable in respect of the accident.

(15) It is an express term and condition of all proceedings pursuant to the provisions of Part I hereof, and of every reference to arbitration as aforesaid, that no award shall be made in favour of the claimant in respect of any claim against which an insurance company would not be liable to indemnify the owner of the vehicle under Part V of the Transport Act 1949 and any amendments thereof if the vehicle were identifiable and the arbitrators shall have no power or jurisdiction to make an award in favour of the claimant in any such case.

(16) Where the claim is made in respect of the death of any person, the amount (if any) that is awarded shall be divided among such persons in such shares as the arbitrators shall by their award determine and where any such person is an infant the arbitrators shall by their award direct that the share of such infant shall be paid by the Commissioner to such person or corporation as they shall by their award appoint and that such share shall be held by such person or corporation upon such trusts as they shall by their award define and declare.

(17) Notwithstanding anything herein contained, the arbitrators shall have no power or jurisdiction to make awards for an amount exceeding £7,500 (inclusive of any sum that the arbitrators may award in respect of party-and-party costs) in respect of any claim or claims by way of damages indemnity or otherwise arising out of the death of or bodily injury to any one person.

(18) If, within the time limited by clauses (3) and (4) hereof, claims by way of damages indemnity or otherwise in respect of the death of or injury to more than one person arising out of the same accident are made and the total amount of the awards (including party-and-party costs) in respect of all such claims exceeds the sum of £75,000 then there shall be payable in respect of each such award only an amount bearing the same proportion to the amount awarded as the sum of £75,000 bears to the total amount of such awards to the intent that, without prejudice to anything contained in clause (17), the total liability of the insurers in respect of the aggregate of all the claims arising out of any one accident or disaster shall not exceed in any event the sum of £75,000 (including party-and-party costs).

(19) If within the time limited by clauses (3) and (4) hereof more than one claim by way of damages indemnity or otherwise arising out of the same accident or disaster is made in respect of the death of or injury to any person by or on behalf of persons who are relatives of each other within the meaning of the definition of the term "relative" contained in section 2 of the Workers' Compensation Act 1956 (or in any enactment passed in amendment thereof or in substitution thereof) then whether or not such claims relate to the death of or to bodily injury to more than one person if the total amount of the awards (including party-and-party costs) in respect of all such claims exceeds the sum of £7,500 there shall be payable in respect of each such award only an amount bearing the same proportion to the amount awarded as the sum of £7,500 bears to the total amount of such awards to the intent that without prejudice to anything contained in clauses (17) and (18) the total liability of the insurers in respect of the aggregate of all the claims made by or on behalf of persons who are relatives of each other as hereinbefore defined, arising out of any one accident or disaster shall not exceed in any event the sum of £7,500 (including party-and-party costs).

(20) After the publication of any award made pursuant to and under the provisions hereof, the claimant and the other persons (if any) for whom and on whose behalf the claim is made shall execute an agreement with the Commissioner as trustee and agent for the insurers and for the driver, owner or other person mentioned in clause (7) hereof that they and each of them will, if at any time thereafter called on by the Commissioner so to do, execute in favour of the driver, owner or other person mentioned in clause (7) hereof (and whether the identity of such driver, owner or other person is then known or not) a release (in such form as may be required by the Commissioner) of all such claims or demands as are referred to in the said clause (7). Where any money is payable by the Commissioner under any such award the Commissioner shall not make any such payment unless he previously obtains such agreement as aforesaid. In cases where no money is payable by the Commissioner under any such award the Commissioner shall require execution of such agreement as soon as possible after the publication of the award.

PART II—VEHICLE UNINSURED

(21) When any action or actions by way of damages, indemnity, contribution, or otherwise is or are brought in New

Zealand arising out of the death of or bodily injury to any person caused by or through or in connection with the use of a motor vehicle in New Zealand owned by an Uninsured Defendant who has insufficient means to pay the amount of any judgment or judgments and if having regard to the exceptions provided in subsection (4) of section 70 of the Transport Act 1949 the Uninsured Defendant would have been indemnified if he had obtained Motor Vehicle (Third Party) Insurance under the Transport Act 1949 the Insurers will (subject to the provisions hereinafter appearing) pay to any person entitled (hereinafter called "the Claimant") the amount of such judgment or where a part of the amount of such judgment has been recovered from an Uninsured Defendant the balance of such judgment provided that the total amount payable by the Insurers shall not exceed £7,500 (inclusive of costs) in respect of any such claim or claims arising out of the death of or bodily injury to any one person and if necessary the amount payable hereunder to each claimant shall abate proportionately to the extent necessary to keep the total of all payments to the sum of £7,500 and provided further that the total amount payable by the Insurers in respect of all claims arising out of one accident or disaster shall not exceed £75,000 in all and if necessary the amount payable hereunder to each claimant shall abate proportionately to the extent necessary to keep the total of all payments to the sum of £75,000 and provided further that in any case where a part of the judgment has been recovered from the Uninsured Defendant the said maximum amount of £7,500 or £75,000 payable by the Insurers shall be reduced by the amount so recovered.

(22) It shall be a condition precedent of any payment by the Insurers in terms of clause (21) hereof that the claimant shall have given three months written notice (to be sent by Registered Post) to the Commissioner of Transport of his intention to commence proceedings stating the following:

(a) The full name, address and occupation of the claimant.
(b) The full name, address and occupation of the uninsured defendant.

(c) The date, time and place of the accident giving rise to the action to be brought by the claimant.

(d) That the claimant wishes to avail himself of the benefits conferred by these Articles of Agreement and that in consideration of the Insurers receiving the application the claimant agrees to be bound by the provisions of these Articles of Agreement.

(e) That the claimant agrees that the Insurers may elect within the period of notice to accept responsibility for the claim as if the motor vehicle owned by the defendant were currently insured by the Insurers and to settle the claim subject always to the limitations as to amount provided in clause 21 hereof or to defend the claim on behalf of the defendant.

(23) It shall be a condition of any payment by the Insurers in respect of any claim for which the Insurers have accepted responsibility and have agreed to settle that the Insurers may at any time should they so desire take any proceedings in the name and on behalf of the Claimant to recover damages against the person alleged to be under a legal liability in respect of such death or bodily injury provided however that in that event the Insurers shall indemnify the Claimant against all costs and expenses of and incidental to any such proceedings. The Claimant shall sign all documents papers and authorities as the Insurers require for the purpose of enabling the Insurers to take such proceedings and have the conduct and control thereof.

(24) If the Insurers shall recover in any such proceedings any sum in excess of the moneys paid by the Insurers to the Claimant and the costs and expenses incurred by the Insurers (hereinafter called the surplus moneys) then the Insurers will pay the said surplus moneys to the Claimant or to his her or its executors administrators or legal successors.

(25) The Insurers shall not be under any obligation to take any such proceedings nor shall such Insurers be liable for any failure to enforce any judgment obtained.

(26) If the Insurers elect not to accept responsibility for and settle the claim and the claimant obtains judgment against the uninsured defendant the claimant shall send by Registered Post to the Commissioner of Transport the following:

(a) A certified copy of the judgment obtained by the claimant against the defendant:

(b) A statutory declaration stating the following:

(i) What amount (if any) has been recovered from the Defendant in respect of the said judgment;

(ii) That the Defendant is an Uninsured Defendant within the meaning of these Articles of Agreement;

(iii) That according to the best of the Claimant's knowledge, information and belief the Defendant is unable to pay the said judgment (or the balance owing in respect of the said judgment) from the Defendant's own moneys or assets;

(iv) That the Claimant wishes to avail himself of the benefits conferred by these Articles of Agreement and that in consideration of the Insurers receiving the application the Claimant agrees to be bound by the provisions of these Articles of Agreement and the Claimant is accordingly prepared to assign the said judgment to the Insurers.

(27) In any case where the Claimant takes action and obtains judgment against an uninsured defendant without giving notice in the manner prescribed by clause (22) hereof the Insurers will pay to the Claimant the amount of such judgment provided the total amount payable by the Insurers