

**PRESENTATION OF A PERSONAL INJURY CLAIM:
ROLE OF THE MANITOBA PUBLIC INSURANCE
CORPORATION†**

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The purpose of this article is to draw to the attention of practitioners the role of The Manitoba Public Insurance Corporation in motor vehicle accident cases involving Manitoba residents. Of necessity, reference must be made to the governing legislation, namely, *The Manitoba Public Insurance Corporation Act*¹ (formerly *The Automobile Insurance Act*) and Regulations 332/74 and 333/74 made thereunder², but it ought to be borne in mind that the intention here is merely to highlight those aspects of the legislation which practitioners are likely to encounter most frequently. Needless to say, therefore, in order to obtain a greater insight into the statutory provisions, resort must be made to the Act and Regulations themselves.

The Manitoba Public Insurance Corporation (or The MPIC) is a Crown corporation structured to provide and administer a plan of universal compulsory automobile insurance in our province. The role of the Corporation becomes evident in virtually every claim arising out of a motor vehicle accident occurring in Manitoba or in mishaps outside the province but involving a Manitoba licenced driver or a Manitoba owned vehicle.

The substantive provisions of the governing legislation relating to the terms and conditions of coverages offered under the plan are contained in Regulations 332/74 and 333/74. The former Regulation essentially deals with drivers' certificates, owners' certificates and insurance rates while Regulation 333/74 contains the substantive law relating to coverage. Practitioners will likely find it necessary to refer frequently to the Act and, in particular, Regulation 333/74, in order to obtain a proper appreciation of the provisions of the insurance plan.

The insurance plan is a hybrid of non-fault insurance and tort liability insurance. The former is encompassed in Parts II and III of Regulation 333/74 while Part IV thereof relates to liability insurance.

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1. S.M. 1970, c. 102 (A180) (hereinafter referred to as *The MPIC Act*). See *Ward v. Manitoba Public Insurance Corp.*, [1974] 5 W.W.R. 566 (Man. Q.B.), rev'd. [1975] 2 W.W.R. 53 (Man. C.A.) (s. 29(1)(0) and Reg. 3 (3)); *Cunningham v. Manitoba Public Insurance Corp.*, [1977] 4 W.W.R. 341 (B.C.S.C.) (s. 31(4) A); *Huggins v. Hauff* (1974), Unreported (Man. Q.B.) (s. 33(2)).

2. See *Wilts v. Stannick* (1974), Unreported (Man. Q.B.) (s. 22(1)(d)); *Buckingham v. Manitoba Public Insurance Corp.*, [1975] W.W.D. 182 (Man. Q.B.); (s. 27); *Canadian Indemnity v. Manitoba Public Insurance Corp.* (1974), Unreported (Man. Q.B.) (s. 29); *Luckwell v. Manitoba Public Insurance Corp.*, [1977] 6 W.W.R. 577 (Man. Q.B.) (s. 29(c)). Additional cases are cited when specific sections are discussed *infra*.

Part II Benefits

Part II provides first party coverage, regardless of fault, to the extent whereby the following benefits may be derived by anyone injured in a motor vehicle accident in Manitoba:

- (a) Weekly indemnity payments of \$75.00 for totally disabled persons,³ including housewives,⁴ for the duration of their total disability;
- (b) Weekly indemnity payments of \$25.00 for partially disabled persons, for up to 104 weeks in the case of employed individuals⁵ and up to 12 weeks for partially disabled housewives.⁶

In addition, regardless of fault, injured persons may qualify for a single payment benefit for a permanent impairment of mental or bodily function. The amount of the payment is calculated on the basis of a schedule in Part II whereby a certain percentage of permanent disability is applied to a maximum benefit of \$6,000.00. For example, loss of an entire foot is assessed as a 30% permanent impairment with the result that an \$1,800.00 impairment benefit is payable after applying that percentage to the \$6,000.00 maximum. In the case of the loss of an entire arm, the impairment is rated at 85% and will result in a \$5,100.00 impairment benefit.

Part II coverage (regardless of fault) is also available for medical expenses up to \$2,000.00 where such costs are not covered by a compulsory health scheme.⁷ It should be noted, however, that while Part II accident benefits extend to anyone injured in a motor vehicle accident in Manitoba, it is essentially Sections 5 and 19 of Regulation 333/74 that govern in terms of who can qualify. Those two sections contain certain exclusions; for example, no accident benefits shall be paid (a) to anyone who operates a motor vehicle if he is not qualified and authorized by law to do so or (b) to a passenger of an unqualified and unauthorized driver, unless that passenger believes upon reasonable and probable grounds that the driver is qualified and authorized.⁸

The "forfeiture" section of *The MPIC Act* is also relevant in this area to the extent that it deprives certain persons of non-fault benefits in specific circumstances involving breaches of the insurance plan. Section 32 of the Act is the relevant provision in this respect.⁹

It is noteworthy, as well, that coverage under Part II of Regulation 333/74 is extended to Manitoba licenced drivers or Manitoba

3. Man. Reg. 333/74, s. 9(1). See *Manitoba Public Insurance Corp. v. Claughton*, [1971] 1 W.W.R. 563 (Man. Q.B.); *McQuarrie v. Manitoba Public Insurance Corp.*, [1974] 5 W.W.R. 481 (Man. Q.B.). (concerning the equivalent section of the earlier regulation, Man. Reg. 120/71, s. 43(1)). See *Fussey v. Manitoba Public Insurance Corp.* (1975), Unreported (Man. Q.B.).

4. Man. Reg. 333/74, s. 9(3).

5. Man. Reg. 333/74, s. 9(2).

6. Man. Reg. 333/74, s. 9(4).

7. Man. Reg. 333/74, s. 6(1).

8. Man. Reg. 333/74, s. 5(2).

9. This section primarily covers material misrepresentations or frauds by the insured.

vehicle owners and their passengers who sustain injuries in accidents occurring beyond the boundaries of Manitoba¹⁰ and that under Part II, certain death benefits are available regardless of fault. Section 8 of Manitoba Regulation 333/74 sets forth the basis for payment of death benefits and these include \$5,000.00 to a primary dependent such as a surviving widow of an insured and \$1,000.00 to each of the secondary dependents such as children under 18 years of age. The overall maximum coverage here is \$10,000.00 in respect of the death of one individual. Funeral expenses, in addition, are covered to the extent of \$500.00.¹¹

From a practical point of view, upon being consulted by a client with respect to an injury claim arising out of a motor vehicle accident, counsel ought to:

- 1) Apprise the client of the non-fault benefits available;
- 2) Emphasize the non-fault aspect of the plan;
- 3) Advise the client to attend immediately at the nearest Claim Centre to report the accident to the M.P.I.C. and to make the application for benefits under Part II of Regulation 333/74;
- 4) Advise the client to seek immediate medical attention with a view to having a Physician's Report submitted in support of the Part II application.

It may well be that the client has already taken those preliminary steps in which case counsel's role will likely initially be merely to assist the client in completing the accident benefits application form and in obtaining the necessary physicians' reports to be submitted in support of the application to the Corporation. It should be noted that Section 22(5) of Part II of Regulation 333/74 requires notice of such claims to be given to the M.P.I.C. within 30 days of the accident and the application, itself, must be filed with the Corporation within 90 days of the mishap.

On a final point regarding Part II benefits, practitioners are urged to bear in mind that payments under the non-fault provisions operate as an automatic release *to the extent of such payments* in favour of a Manitoba insured motorist in respect of whose tort liability indemnity is paid under Part IV of Regulation 333/74 on account of damages for the claimant's injuries. In fact, Section 33(5) of *The MPIC Act*¹² goes so far as to reduce the liability of a motorist at fault under Part IV, by the total amount of non-fault benefits which would have been otherwise payable to an injured third party even if there is a failure by the third party to claim those benefits. In other words, injured parties must be urged to claim non-fault benefits where entitlement to such benefits exists. This is especially so when a

10. Man. Reg. 333/74, s. 5(3).

11. Man. Reg. 333/74, s. 10.

12. See *Boyko v. Zebrinski* (1975), Unreported (Man. Q.B.); *Krainicuk v. Trudeau* (1975), Unreported (Man. Cty. Ct.).

law suit for damages over and above those benefits is to be expected. The reason is, of course, that a failure to claim will still release the motorist at fault, to the extent of the benefits that would have been paid had they been claimed.

Part III Coverage

Part III of Regulation 333/74 deals with "all perils" or "collision" coverage for accidental damage or loss to insured vehicles. Compensation subject to a deductible is for the cost of repair or in the event of a constructive total loss, for the actual cash value of the vehicle at the time of the mishap. For the purpose of this exposé, suffice it to state that from a practical point of view, the legal advisor ought to know and be able to advise a client that in the event of a dispute over the value of the loss or damage to the vehicle after a report to the nearest Claim Centre, provision in Part III is made for binding arbitration. Further, in disputes over responsibility for the mishap in terms of whether a client must pay his deductible, practitioners ought also to be able to guide the client on Small Debts Court procedure to attempt to collect his deductible from the other motorist involved. On a final note regarding "collision" coverage, it should be borne in mind that the reduction of liability provisions previously mentioned in respect of Part II accident benefits also apply to Part III losses, either paid or forfeited.

On leaving the non-fault features of the plan and before delving into the question of public liability and property damage coverage, Part IV of Regulation 333/74, it should be noted that all coverages are subject to certain stipulated terms and conditions. A breach can effectively deprive a person of the benefit of some and, in certain instances, of all aspects of the insurance plan.

In this respect it is essential that practitioners be familiar, at least in general terms, with what does and what does not constitute a breach. Dealing with the question of an impaired driving breach, for example, a breathalyzer conviction is no longer considered as a breach under Part IV (public liability and property damage coverage) but rather only under Part II (accident insurance benefits)¹³ and Part III ("collision" coverage).¹⁴ An impaired driver will therefore be denied accident benefits and his collision loss but he will still be covered for third party liability to the extent of his policy limits. To illustrate, if an impaired driver negligently causes his vehicle to collide with the rear of another vehicle resulting in damage to both vehicles and injuries to himself and the other driver, the impaired driver cannot recover accident benefits under Part II and he will be

13. Man. Reg. 333/74, s. 22(1)(f).

14. Man. Reg. 333/74, s. 29(b)(iii).

denied coverage under Part III for his collision loss but he will be afforded indemnity coverage under Part IV for liability for damages on account of the injuries sustained by the innocent third party driver.

Liability Coverage under Part IV

Let us now consider the salient provisions of Part IV of Regulation 333/74 being the public liability and property damage coverage, as well as the related sections of *The MPIC Act*. For the benefit of the practitioner, emphasis upon the less obvious features of the third party liability coverage is also warranted for the simple reason that from a pragmatic viewpoint they may not arise too often but it is essential not only that counsel be aware of their existence but also that he has at least a general idea of the procedure to be applied when circumstances requiring resort to those provisions do exist.

The coverage provided under Part IV is indemnity for third party liability. The non-fault provisions of the plan end here, as it is the question of fault that brings this aspect of the plan into operation.¹⁵

The basic liability coverage is stipulated to be \$50,000.00¹⁶ but of course that can be increased to a maximum of \$2,000,000.00 by the purchase of extension insurance which, incidentally, is the subject of Part V of Regulation 333/74.

The definition of an "insured" under Part IV¹⁷ can be summarized as being:

- (a) The holder of a valid and subsisting owner's certificate, or
- (b) A Manitoba licenced driver or an out-of-province licenced driver who operates a vehicle designated in a valid and subsisting owner's certificate with the consent of the holder of that certificate.

Coverage is extended¹⁸ to a Manitoba licenced driver who operates a motor vehicle not otherwise insured for third party liability if:

- 1) He believes on reasonable and probable grounds that the vehicle is insured and
- 2) The vehicle is not owned by the driver, his spouse, or by a person who ordinarily resides in the same dwelling unit as the driver.

Coverage is for liability imposed by law for bodily injuries or death of a third party or in respect of property loss or damage of a third party arising out of the ownership, use or operation of an insured's vehicle by an insured. Certain exclusionary clauses are contained in Section 31(3) of Part IV of Regulation 333/74 with the result that, for example, no coverage exists for liability of a motorcyclist for injury sustained by his passenger.¹⁹ Furthermore, a number of conditions appear in Section 37 of Part IV and the breach

15. Man. Reg. 333/74, s. 31(1). See *Vergata v. Vergata and Manitoba Public Insurance Corp.* [1976] 3 W.W.R. 544 (Man. Q.B.); rev'd. (1976), 67 D.L.R. (3d) 527, [1976] 4 W.W.R. 373 (Man. C.A.); rev'd. [1978] 1 S.C.R. 289, 76 D.L.R. (3d) 470, [1977] 4 W.W.R. 491. See also *Prudential Assurance Co. v. Manitoba Public Insurance Corp.* [1976] 4 W.W.R. 182 (Man. C.A.).

16. Man. Reg. 333/74, s. 32.

17. Man. Reg. 333/74, s. 30(a). See *Vergata v. Vergata*, *Supra* n. 15.

18. Man. Reg. 333/74, s. 31(2). See *Vergata v. Vergata*, *Supra* n. 15.

19. Man. Reg. 333/74, s. 31 (3)(i).

of any of those will give rise to a denial of coverage, *e.g.* operating a motor vehicle when one's driving privileges are suspended.²⁰

When acting for plaintiffs, practitioners are undoubtedly aware of the fact that if liability coverage of the proposed defendant does exist, then the MPIC adjusting staff in the Bodily Injury Unit will initially attempt to negotiate a settlement of the clients' personal injury claims. If that cannot be achieved at that level, the defence will be taken up by the Legal Department of the Corporation.

If it is ascertained that the proposed defendant was in breach of the terms of his liability coverage at the time of the mishap giving rise to a third party injury claim, then by reason of the "absolute liability" provisions contained in Section 34 of *The MPIC Act*, again the same Corporate departments will become involved in defence of the claim. However, a solicitor for the insured in breach may intervene to take part in settlement discussions or at trial, if necessary, since his client will ultimately be faced with a reimbursement demand by the MPIC for the amount paid out by it to a successful claimant under the "absolute liability" provisions. In passing, it ought to be noted that with respect to the "absolute liability" provisions, the MPIC exposure is not limited to \$50,000.00 as was the case in the private insurance days but rather by the policy limits of coverage carried by the insured motorist in breach.

Practitioners are likely to be familiar at least in principle with the less obvious provisions of the plan but it may well be beneficial to touch briefly on the procedures involved in the following situations: (1) Unidentified motorists, *i.e.* "hit and run"; (2) Uninsured motorists; and (3) Claims payable upon judgment *i.e.* equivalent of the former Unsatisfied Judgment Fund applications.

Unidentified Motorist — "Hit and Run" Coverage

Section 38 of Regulation 333/74 is relevant. The unique aspect, from a procedural point of view, is that it is necessary to make a preliminary application to a Judge in Chambers, on Originating Notice of Motion, for an Order permitting the injured party to name the MPIC as nominal defendant in an action for damages.²¹ Generally speaking, such an order will issue if the Court is satisfied by a preponderance of evidence that the requirements of Section 38 have been met.²² It should be noted that only damages for bodily injuries

20. Man. Reg. 333/74, s. 37(b)(ii).

21. Man. Reg. 333/74, s. 38(1). See *Reimer v. Penner*, [1974] 2 W.W.R. 62 (Man. Q.B.); *Rowes v. Manitoba Public Insurance Corp.*, [1978] 5 W.W.R. 300 (Man. C.A.); *Leuter v. Manitoba Public Insurance Corp.* (1978), Unreported (Man. Q.B.).

22. Man. Reg. 333/74, s. 38(2). See *Porteous v. Manitoba Public Insurance Corp.* (No. 1) (1973), Unreported (Man. Q.B.); *Porteous v. Manitoba Public Insurance Corp.* (No. 2) (1974), Unreported (Man. Q.B.); *Rybachuk v. Manitoba Public Insurance Corp.* (1976), Unreported (Man. Q.B.).

or death are compensable under this aspect of a plan.²³ Property damage is not. Notice of all the relevant facts must be given to the MPIC within 14 days of the accident or if that is not reasonably practicable, then as soon as it becomes reasonably practicable.²⁴ The MPIC is then given the right to settle claims²⁵ brought against it in such cases and its exposure is limited to \$50,000.00.²⁶ In the event a settlement cannot be achieved by reason of a dispute over liability or quantum of damages or both, then at an ensuing trial for the determination of those issues, MPIC counsel will defend the action which is tried like any other personal injury claim.

Uninsured Motorist Provisions

Section 39 of Regulation 333/74 and Section 33.1 of *The MPIC Act* apply here. These situations arise where the vehicle causing personal injury or death or property damage is either simply not insured *i.e.* not designated in a valid and subsisting owner's certificate, or, if so designated, was operated without the owner's consent.

Procedurally, there are two possible routes to follow in advancing claims under the uninsured motorist provisions:

- (a) Administrative, *i.e.*, application to the Corporation in the form prescribed;²⁷
- (b) Court action followed by settlement or Assignment of Judgment, both of which result in subrogation attempts by the Corporation.

In either procedure, the Corporation, after notice to the uninsured driver or owner, can usually be expected to be defending the claim unless the uninsured motorist retains his own counsel.

Unsatisfied Judgments

The *Unsatisfied Judgment Fund Act* is inapplicable to accidents which occurred in Manitoba after July 1, 1972. The governing legislation in such matters is now *The MPIC Act* and in particular, Section 40 of Regulation 333/74 made thereunder. Procedurally, once a claimant has proceeded to obtain judgment, in order to obtain satisfaction thereof by the Corporation, the following steps must be taken:

- (a) Application must be made to the MPIC in the form prescribed;²⁸
- (b) All relevant information concerning the details of the claim must be supplied;
- (c) The judgment must have been given in an action that was brought against all persons against whom the applicant may reasonably be considered as having had a cause of action;²⁹
- (d) Full details must be provided concerning the inability of the applicant to collect on the Judgment *e.g.* transcript of examination of judgment debtor, "nulla bona" return on a Writ of Fieri Facias.

23. Man. Reg. 333/74, s. 38(1), *See Supra* n. 21.

24. Man. Reg. 333/74, s. 38(3).

25. Man. Reg. 333/74, s. 38(4).

26. Man. Reg. 333/74, s. 38(5).

27. Man. Reg. 333/74, s. 39(1).

28. Man. Reg. 333/74, s. 40(1).

29. Man. Reg. 333/74, s. 40(4).

The MPIC will then either make payment in exchange for an Assignment of the Judgment or, alternatively, within 30 days of receipt of the application, give notice to the applicant of its objection to payment.³⁰ In the latter case, the applicant can apply to the Court in the cause in which Judgment was rendered for a determination of the issue raised by the MPIC in its objection.³¹

The attention of practitioners is also drawn to the fact that there are specific exclusions which stipulate that the MPIC is not liable under the unidentified motorist, uninsured motorist or unsatisfied judgment provisions, to reimburse another insurer or the Workers' Compensation Board for monies paid by them.³² Also, the liability of the Corporation under those three aspects of the plan is excluded for hospital or medical services paid for under compulsory medical or hospital insurance legislation *e.g.* Manitoba Health Services Commission.³³ The effect, of course, is to allow more of the \$50,000.00 coverage to be available for general damages.

It is hoped that the foregoing resumé of the salient features of the automobile insurance plan in force in Manitoba is sufficiently demonstrative of the inevitable role The Manitoba Public Insurance Corporation can be expected to play in personal injury claims involving Manitoba residents. The more important purpose of this article, however, is to provide practitioners with a summary of the legislative provisions which presumably will frequently become relevant in their day-to-day legal practice. The writer is grateful for the opportunity of presenting this article which hopefully will be of some benefit to his colleagues at the Bar.

30. Man. Reg. 333/74, s. 40(2).

31. Man. Reg. 333/74, s. 40(2).

32. Man. Reg. 333/74, s. 42. See *Public Trustee of Manitoba v. Manitoba Public Insurance Corp.*, [1974] 6 W.W.R. 9 (Man. Q.B.).

33. Man. Reg. 333/74, s. 42.