PROBLEMS ASSOCIATED WITH CONDITIONS AND EXCLUSIONS OF MOTOR INSURANCE: Third Party Insurance In Focus

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Problems Associated with Conditions and Exclusions of Motor Insurance: ***Third Party Insurance In Focus***

A thesis submitted in partial fulfillment for the Award of Masters of Laws (LL.M) at the College of Law and Governance Studies, Addis Ababa University

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Declaration

I the undersigned, declare that the thesis is my original work and has not been presented for a degree in any other University and that all sources of materials used in the thesis have been duly acknowledged.

Declared by

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(May 2020)

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Acronyms

CTPM- compulsory third party motor insurance

Com. C. – Commercial Code

Civ. C. **-** Civil Code

COMESA - Common Market for Eastern and Southern Africa

TPFT- Third Party Fire and Theft

FFIC- Federal First Instance

FHC- Federal High Court

FSC- Federal Supreme Court

NBE- National Bank of Ethiopia

RTA- Road Traffic Act

VIATPR- Vehicle Insurance Against Third Party Risks

Contents

Abstract

Insurance is a means whereby the losses of the few are distributed among the many. It is a pool to which a large number of persons contribute and out of which those who suffer misfortune are compensated. Apart from insurance laws, the process of compensation is regulated by insurance policies, which hold a lot of terms and conditions as well as exclusions. In the terms of insurance policies, there might be confusions and misunderstandings regarding the application of conditions and exclusions among the insurer and the insured as well as third party victims, which finally lead to complications in the insurance compensation process. Mainly, the validity and effect of exclusions and conditions towards the insured and third party victims seems to be confusing practically. In addition, the rule of interpretation of policy conditions and exclusions is not clearly noted in the Ethiopian insurance laws, which hinders the uniform application of insurance policies and laws in the judicial system.

The central objective of this study is to examine and identify the major legal and practical problems of conditions and exclusions of compulsory third party motor insurance (henceforth "CTPM") policy. The paper will try to explore the confusion created between exclusions and conditions of third party motor insurance policies. It tries to examine the validity and effect of conditions and exclusions of motor compulsory third party liability insurance towards the insured and third party victims. It also analyzes the rule of interpretation of insurance contracts and the necessity of extension clauses in motor insurance policies.

In doing so, the researcher tried to use various data sources. Among these, interviews, court cases, insurance policies and other secondary sources are the basic ones. Finally, the thesis will try to recommend legally acceptable solutions so as to resolve the problems stated hereof.

CHAPTER ONE

INTRODUCTION

1.1.BACKGROUND OF THE STUDY

Any introduction to insurance requires a clear understanding of the concept of risk. Risk is the uncertainty contingent upon the happening of an unwanted event. The happening of the event may result in human and economic loss of one form or another to a person or organization exposed to risk.[1] Insurance is the commonest and most important method of risk management.[2]

Central to the concept of insurance is the idea of risk-distribution and risk-transfer. There are a lot of mechanisms of risk management, such as risk retention and risk avoidance. Whereas, insurance, i.e. risk-distribution and risk- transfer, is the most popular risk management technique among others. What is distributed and transferred is not the physical risk, but the economic consequences of that risk.[3] Insurance, as a risk transfer mechanism, has developed over several hundred years in both developed as well as developing economies in response to highly difficult and complicated risk. For the effective distribution and transfer of risks, different countries implemented modern insurance business as a tool.

Modern insurance was introduced in Ethiopia as far back as 1906 when the Bank of Abyssinia transacted fire and marine insurance as representative of a European insurance company. Later on, there were nine insurance companies in the country in 1954 which were either branches or agents of foreign companies except for the Imperial Insurance Company of Ethiopia that was established in 1951. The insurance companies and their businesses were subject to the Commercial and Maritime Codes of the country of the time and there was no restriction on the extent of foreign ownership of the insurers.[4]

The country, however, enacted a new proclamation in 1970 and required the insurers to be domestic companies with fully subscribed share capital. Of course, the proclamation did not prohibit foreigners from engaging in insurance business.[5]

[1]Lawrence Tshuma, *The legal regulation of compulsory motor vehicle insurance in Zimbabwe,* 8-9, Zimb.L.R.31(1992)
[2] . Id
[3] . Id
[4] . SOLOMON A. YIMER, financial market development, policy and regulation: the international experience and Ethiopia's need for further reform, (unpublished PhD. thesis, University of Amsterdam) (2011), at 13 (Oct, 2015) http://dare.uva.nl/document/216843
[5] Id

The country, however, pursued a socialist policy of banking and insurance after 1974. The military government nationalized and merged all the private insurers and formed the single Ethiopian Insurance Corporation in 1975 and the Ethiopian Insurance Corporation was acting as the only commercial insurer until 1994.[6] The country has reformed its financial sector following the economic policy change in 1991. It has re-established the National Bank of Ethiopia (NBE) as central bank and financial market regulator and opened the insurance sectors for domestic private investment by enacting Licensing and Supervision of Insurance Business Proclamation No. 86/1994.[7] Currently, the governing insurance business proclamation is proclamation No. 746/2012, which repealed the previous proclamation.

The NBE has, accordingly, licensed 16 private insurers in addition to the Ethiopian Insurance Corporation until December 2019. The number of insurance companies now is 17, of which 16 are private owned companies.[8] The licensed insurers in Ethiopia are now producing a lot of insurance policies, which are grouped in to two broad categories. These are General insurance and life insurance. Among the general insurance category, motor insurance is the basic one.

All the private and state owned insurance companies in Ethiopia are now transacting a lot of insurance products depending on the nature and kinds of risks. Apart from other insurance products, motor insurance is one solution to manage risks posed by the transport industry and a means to ameliorate damages arising from accidents and other mishaps. With compulsory insurance in place financial risks arising from the operations of motor vehicles can be better managed.[9]

Third-party motor insurance in Ethiopia covers only the legal liability for the damage that, the insured motor vehicle may cause to a third party - bodily injury, death and damage to third party property, while using the motor vehicle. Third party cover does not pay for repair of damage to the insured motor vehicle or if the insured suffer any car-related injuries.

Before the enactment of the first compulsory Vehicle Insurance against Third Party Risks Proclamation No. 559/2008, there were no specific laws that govern CTPM insurance in Ethiopia. Of course, the 1960 Ethiopian commercial code has some few legal provisions regarding general liability insurance, which may include third party motor insurance, though not compulsory.

[6] Id, at 14
[7] Id
[8] National Bank Of Ethiopia, annual report 2016/2017
[9] EDOSA G. TEARA, Motor insurance industry and its role in road safety in Ethiopia,(2014) (unpublished MSc. Thesis Mekele University, Ethiopia), at 2

Currently, the governing third party compulsory motor insurance law in Ethiopia is Vehicle Insurance Against Third Party Risks Proclamation No. 799/2013 (henceforth *"**VIATPR proclamation**"*)[10]. According to Article 15 of the proclamation, third party motor insurance coverage is compulsory.

In the third party insurance policies there is an insuring clause which describes the type of cover and its scope. Then there are conditions which sets out any responsibilities the insured has to comply and finally, there are exclusions. Exclusion clauses identify any specific circumstances, events or types of losses that will absolve the insurer of their obligation to indemnify the insured. In this regard, there are various practical and legal problems in relation with conditions and exclusions of CTPM insurance in Ethiopia. Hence, the main focus of this paper is identifying the major problems related with conditions and exclusions of CTPM insurance.

1.2. STATEMENTS OF THE PROBLEM

An insurance contract, specifically motor insurance, generally contains three main things. There is an insuring clause which describes the type of cover and its scope. Then there are conditions which set out any responsibilities the insured has to comply with. Finally, there are exclusions, which identify any specific circumstances, events or types of losses that will exonerate the insurer of their obligation to indemnify the insured.[11] The ***VIATPR proclamation*** which governs the compulsory one, among the various motor insurance policies provides the terms of conditions and exclusions, boldly as parts of the insurance policy. The standard CTPM insurance policy issued by all insurance companies operating in Ethiopia, also states explicitly the terms of conditions and exclusions separately in their terms of application.

However, when we see various decisions of the Ethiopian federal courts, there seems to be some confusion between conditions and exclusions of CTPM insurance policies regarding their validity and effect as well as their application towards the insured and third party victims. Some lawyers and judges understand conditions and exclusions of CTPM insurance policies as one and the same, while others strictly argue that they have different application and effect. In Some decisions the courts decided that the breach of conditions and exclusions of CTPM insurance policies have a valid effect against third parties, while others decided against it. Besides, the validity and effect of additional exclusion clauses found in the standard CTPM insurance policies is still controversial in courts; apart from the exclusion clauses found in the ***VIATPR proclamation***.

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[10] Vehicle Insurance Against Third Party Risks proclamation No. 799, Negarit Gazeta, Article 3 (2013) (*Hereinafter VIATPR proclamation)*

[11] . Craddock Murray Neumann Lawyers Pty Ltd, *Exclusion Clauses in Insurance Contracts,* (Oct. 03, 2014) *http//www.craddock.com.eu*

The other problem associated with conditions and exclusions is relating to the rule of interpretation of terms of insurance contracts in general and CTPM insurance policies in particular. The majority of states recognize insurance policies as contracts of adhesion, in which the applicant must either accept the terms of the policy as written by the insurance company or reject the terms and accept similar terms from another insurance company.[12] In order to balance this unequal bargaining power states have adopted rules of interpreting insurance contracts.[13] In some jurisdictions, courts rely on the interpretation rule of *Contra proferentem*, *which* grants coverage to an insured by construing ambiguous policy language against the insurance company, whereas in other jurisdictions the Courts follow the *doctrine of reasonable expectations*, which grants coverage when the insured has an objectively reasonable expectation of coverage even in the absence of ambiguous insurance policy language.

When we try to see the Ethiopian Federal Courts jurisprudence, it is very doubtful whether they have been following any rule of interpretation in construing insurance contracts. This by itself hardly creates uniformity among courts and leads to inconsistency in the interpretation of insurance contracts. Based on the above stated problems the following central research questions are forwarded.

1. What would be the effect and validity of conditions and exclusion clauses of CTPM insurance policies towards the insured and third party victims?
2. What would be the legal effect of additional exclusion clauses of the standard CTPM insurance policies as compared to the exclusions found in the ***VIATPR proclamation***?
3. Whether there is any difference of application between conditions and exclusions of CTPM insurance policies towards third party victims?
4. What is the applicable rule of interpretation of motor insurance contracts, especially CTPM insurance policies in Ethiopia?

1.3.OBJECTIVES OF THE STUDY

General objective- Examine and analyze the major legal and practical problems of conditions and exclusions of CTPM insurance.

Specific objectives:-

1. Exploring the legal and practical confusions regarding conditions and exclusions of CTPM insurance.
2. Identifying the appropriate rule of interpretation of motor insurance contracts in Ethiopia.

[12] Randy D. Henry, *an Analysis of Interpretation of Insurance Contracts: Common Law versus Strict Contra Proferentem*, 36-1, JIR-ZA. 1(2017)
[13] Id

3. Closely analyzing the legal provisions regulating the conditions and exclusions of CTPM insurance in Ethiopia and make a comparison with the current changes in the world when necessary.
4. Portraying the strong interaction among conditions and exclusions of CTPM insurance policies.

1.4. SIGNIFICANCE OF THE STUDY

The study will focus on the problems associated with conditions and exclusions of CTPM insurance and the recommended solutions. Hence, it may hopefully contribute much for the forthcoming amendment of the ***VIATPR proclamation***. The findings of the study besides their academic significance are hoped to give some lesson and reliable information to the law makers, judges, academicians, and lawyers in creating awareness, and for insurers who issue CTPM insurance cover. The study will also serve as an important stepping stone to further studies and may call the attention of those who want to conduct further research in the field. Finally, it may serve as a reference material in the academic sphere.

1.5. SCOPE OF THE STUDY

The scope of the study is limited to the major legal and practical aspects of conditions and exclusions of CTPM insurance in Ethiopia. However, though not in detail, the study will also include problems related with other motor insurance exclusions and conditions, which have close relation with CTPM insurance. Stated otherwise, the mode of compensation and other terms of the third party motor insurance are entirely beyond reach of the study. Domestic and foreign Laws governing the matter as well as literatures are analyzed to see the compatibility of Ethiopian Laws with the recent changes in the world.

1.6. LIMITATION OF THE STUDY

In conducting this research paper the author faced with some problems, which have their own impact on the quality of the paper. The first problem I faced with was the absence of local literatures written on the area of exclusions and conditions of insurance policies. The other problem I have encountered with was finding adequate court decisions. Searching for court decisions in the courts archive is very hard, since they are not organized and recorded based on the types of the cases. In addition, translating all the cases from Amharic to English language by itself is tiresome and time consuming. The other limitation is related with the insurance companies. They are not willing to give the real insurance policies rather they gave me the specimen of the policies, which cannot show the real practical problems and I tried to solve this problem using some insurance policies presented before the court proceedings. The last but not the list limitation was time constraint. As the author is working as a judge in the FFIC, where the work load is very high; it was very cumbersome to conduct the research intensively.

1.7.RESEARCH DESIGN AND METHODOLOGY

1.7.1. Research design

The study employed qualitative methodology. The study is qualitative in that devoted on the reasons, justifications or logical arguments on legal provisions of the selected proclamations, regulations and insurance policies and federal court decisions. Cases have been analyzed so as to show the practical problems on conditions and exclusions of CTPM insurance. Besides, the data which has been gathered through interviews, collected from documented reports as well as some types of texts that are relevant to this study also analyzed.

1.7.2. Sampling technique and data gathering instruments

In selecting the concerned interviewees, the researcher employed purposive sampling method based on the participant's experience, expertise, and other attributes to acquire general information vital to address the research questions. In this regard, among the interviewees, two of them are judges from Federal First Instance Court and one judge from Federal High Court. Five underwriters have been interviewed from five insurance companies.

In doing so, the researcher employed the following techniques. There are only three specialized benches of banking and insurance in the Federal First Instance Court, out of which I selected two judges based on seniority. In the Federal High Court, there is only one appellate and one trial banking and insurance bench. Hence, I interviewed one of the two High Court judge. The underwriters in the insurers, which are part of this study, are also selected by random sampling technique. There are 17 insurance companies in Ethiopia and I selected 1/3rd of them and interviewed their underwriters randomly. I also collected the insurance company's comprehensive and CTPM insurance policies. Moreover, a qualitative data collection technique involving one-to-one interviews with selected respondents also conducted.

The data has been collected from primary and secondary sources. Primary data has been gathered mainly through in depth semi-structured interviews, legislations, motor insurance policies and survey. The secondary sources are domestic and foreign literatures related to the study. Finally, comparative and analytical approaches have been employed in the study.

1.8.LITRATURE REVIEW

Unlike the riches of literature regarding conditions and exclusions of insurance contracts outside Ethiopia, not much is written in connection with these terms of insurance policies in Ethiopia. There are only some unpublished research papers that focus on aspects of the existing mechanisms of compensation by insurers in case of motor accidents without treating the problems regarding conditions and exclusions of motor insurance.

Among the research studies conducted outside Ethiopia, Matthew R. Channon[14] briefly discusses validity and effect of exclusion clauses against third parties in motor insurance policies. In the paper he tries to analyze the effect in using exclusion clauses on third party claims and it further examines the effect on exclusion clauses of general contractual and insurance contract regulation on third party victims based on the UK law. The main difference between the theses of Matthew and this paper is he only focuses on exclusions and their validity and effect on third parties, whereas this paper tries to examine problems on CTPM insurance conditions as well. Unlike the paper of Matthew, this paper is not limited only to the validity and effect of exclusion clauses rather it incorporates other legal and practical problems related with conditions and exclusions. Besides, this paper tries to analyze the effect of exclusions and conditions of CTPM insurance towards the insured, in addition to third parties.

Randy D. Henry,[15] in his article tries to discuss the major rules of interpretation of insurance contracts. The article analyses ***strict contra proferentem*** rule of interpretation in one hand and doctrine of reasonable expectation on the other hand. This paper also tries to examine the applicable rule of interpretation of CTPM insurance contracts in Ethiopia considering the court jurisprudence and the applicable insurance laws.

JP van Niekerk,[16] in his article discussed the application of extension clauses in motor insurance policies. The article mainly explains about extension clause in a motor vehicle insurance contract which is a stipulation between the insurer and the insured owner in favor of the authorized driver as a third party. This paper also tries to analyze whether there is any law that allows the stipulation of extension clauses in the motor insurance policies and the practice relating to.

There are also some unpublished materials in Ethiopia. Among these, Alebachew Shiferaw[17] in chapter one of his writing dealing with conditions in general discusses what constitutes a condition, classification of conditions, conditions and warranties distinguished and related issues. His paper focuses only in the conditions of insurance policies and even it includes the conditions of all insurance policies. However,

[14] MATTHEW R. CHANNON, Validity and Effect of Exclusion Clauses Against Third Parties in Motor Insurance (2017) (unpublished Ph.D. thesis, University of Exeter, UK)
[15] Henry, *Supra note* 11
[16] JP van Niekerk, *Extension clauses in motor-vehicle insurance policies*, vol. 15-2, JBL (South Africa, 2007)
[17] ALEBACHEW SHIFERAW, Condition in Ethiopian Insurance law and the practice relating thereto: (1991) (unpublished LLB. Thesis, Addis Ababa University, Ethiopia)

this paper tries to discuss both exclusions as well as conditions of CTPM insurance policy. In addition, it focuses mainly on third party compulsory motor insurance.

Maretha Belete,[18] even though her paper focused on third party compulsory motor insurance, she discussed only the mechanisms of compensation, the way that the insurers are discharging their duties of compensation and it doesn't have any relation with conditions and exclusions.

Shimelis Tesfaye,[19] also in his MPMP thesis, tried to assess the implementation of compulsory third party motor insurance and analyze stakeholder's level of awareness towards CTPM insurance. His thesis was mainly focused on how the compulsory motor insurance is implemented in Ethiopia. However, it was not dealing with conditions and exclusions of CTPM insurance. Besides, the paper is not law related, rather it was written for the partial fulfillment of the requirements for the degree of master in public management and policy, which is purely a business field. Therefore, Shimelis`s paper doesn't have direct relation with this paper. This study takes advantage of the gap and is conducted through the following:

- Review of the studies available in Ethiopia;
- Analysis of the existing insurance policies and laws of motor insurance in the country;
- Use of data from official reports and unpublished records of the financial institutions, the regulators and related institutions in the country, including insurance companies, National Bank of Ethiopia, federal courts and others.
- Literature study of the laws and regulatory practices of countries outside Ethiopia;

[18] MARTHA BELETE, Mechanisms of compensating automobile accident victims: a case for third party compulsory motor insurance (2003) (unpublished LLB. Thesis, Addis Ababa University, Ethiopia)
[19] SHIMELIS TESFAYE, The implementation of compulsory motor insurance in Ethiopia, (2015) (unpublished MPMP. Thesis, Addis Ababa University, Ethiopia)

CHAPTER TWO

THE LEGAL REGULATION OF MOTOR AND *CTPM* INSURANCE IN ETHIOPIA

2.1. THE STRUCTURE OF THE POLICY

An insurance policy is a contract that defines the obligations of both the insured and the insurer. Besides providing coverage, policies also assign certain responsibilities to the insured.[20] Many insurance policies have five parts: *declarations, insuring agreements, definitions, exclusions* and *conditions.* In addition to the basic policy form, an insurance policy frequently contains several attached forms and endorsements modifying the coverage.[21]

- **Declarations**

The Declarations or ***dec*** page is usually the first page of the policy. It summarizes key information specific to the policy. The ***dec*** page shows the insured's name and address, the policy dates, a brief description of the business, coverages provided, coverage limits, premiums, and the forms applicable to the policy.[22]

- **Insuring agreements**

The insuring agreements specify what the insurance company has agreed to pay for or to provide in exchange for the premium. Often a policy contains a section clearly marked *insuring agreements*, although there may be additional agreements buried in the policy.[23] In the insuring agreement, the insurer agrees to do certain things such as paying losses for covered perils, providing certain services, or agreeing to defend the insured in a liability lawsuit.[24]

- **Definitions**

Insurance policies contain many common words that have special meaning within the context of insurance. The policy identifies these words usually by bold print or quotation marks. Most policies contain a section entitled *definitions* where they explain the special meaning of the designated words.[25]

- **Exclusions**

Every insurance policy has ***exclusions*** that eliminate coverage for specified exposures. *Exclusions* serve as a way to clarify the coverages granted by the policy. Most policies have a section entitled Exclusions. However, an exclusionary provision can be anywhere in the policy.[26]

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[20] Nonprofit risk management center, *Coverage, Claims & Consequences: An Insurance Handbook for Nonprofits*, www.nonprofitrisk.org.
[21] J. FRANCOIS OUTREVILLE, THEORY AND PRACTICE OF INSURANCE, (Jan, 1998) at 140
[22] Nonprofit risk management center, *supra note* 19
[23] Id
[24] Id
[25] Id

- **Conditions**

Conditions within an insurance policy qualify the various promises made by the insurance company. The insurer does not promise to cover all losses. The company will impose certain requirements or conditions on the insured, such as premium payment or duties to follow after a loss.[27]

- **Endorsements**

Most policies also contain ***endorsements.*** Endorsements are policy forms that modify the main coverage form. Endorsements can add coverage or they can modify the coverage by revising a definition. Lastly, an endorsement can restrict or exclude coverage, such as an endorsement that excludes claims from pending and prior litigation.[28]

2.2. ASSESSMENT OF MOTOR INSURANCE POLICIES IN ETHIOPIA

When we assess motor insurance policies in Ethiopia, definitely there are differences among the insurers according to the types of cover they are giving.[29] Bearing in mind the basic pertinent policies in the market, motor insurance essentially comes in three covers namely; comprehensive insurance, third party fire and theft and lastly third party insurance. For the purpose of this paper the writer tried to assess the structure of comprehensive and compulsory third party motor insurance policies of some insurance companies in Ethiopia. All policies issued in those insurance companies have more or less the same structure. They have four parts.

The first one is the ***schedule***, which is the separate page of the policy. It specifies the name and full address of the insured, the district/branch of the insurer and the policy No., period of insurance, the type of covers given, the description of the motor vehicle/s and other similar particulars. The schedule in Ethiopia seems to be similar with the name *declaration* used in other jurisdictions as it includes all the necessary information related with the insured.

The ***insuring clause*** is the second part of the policy, which provides the risks covered by the policy. Usually the coverage given by insurance companies in most jurisdictions is two types: *all risks coverage* and *named peril coverage*. However, the insurance companies in Ethiopia are giving named peril coverage. The comprehensive motor insurance cover in all insurance companies is named peril coverage as it specifically covers accidental collision or overturning, fire, external explosion etc…and except those

[26] Id
[27] Id
[28] Id
[29] *See, e.g.,* the motor insurance policies of Tsehay Insurance S.C. you could find own damage, third party, fire theft and third party, fire and theft, motor trade (motor trade comprehensive, motor trade premises, motor trade road risk) insurance policies.

named perils the insurer will never cover any risks. The CTPM insurance cover also providing named peril coverage as the ***VIATPR proclamation*** by itself specifically named the perils.[30]

Exclusions are the third part of an insurance policy in Ethiopia. Under the exclusions part the insurers specify exceptions which may alleviate them from liability. There are exclusions, which would be discussed in the next chapter.

Finally, there are also ***conditions*** in all insurance policies as insurance by itself is a conditional contract. Similarly, in the comprehensive and CTPM insurance policies, there are conditions, which are provisions, rules of conduct, duties and obligations required for coverage.

In general, the structure of motor insurance policies, especially CTPM insurance policies in Ethiopia have four parts, which are the ***schedule, insuring clause, exclusions and conditions***. Unlike, the structure of motor insurance policies in other jurisdictions, the definitional part is missing in the motor insurance policies issued by Ethiopian insurers. Having a look at to these insurance policies indicate that they are not providing the definitions of complex words of the insurance business. According to the interview made with Mr. Abebe[31] and Mr. Elias[32] shows that, they don't know the reason why the motor insurance policies are not defining at least the complex words known only in the insurance business. This issue needs further study and as it is beyond the scope of this paper the author didn't go through it.

2.3.THE REGULATION OF *CTPM* INSURANCE IN ETHIOPIA

2.3.1. Who is Obliged To Insure And Which Liabilities Must Be Insured?

Compulsory motor vehicle insurance is governed by ***VIATPR proclamation***. Article 3 and 30 thereof provides that it is an offence to use a motor vehicle on a road unless it is determined by the Ministry of Transport regarding motor vehicles to be driven and to be used on a road without requiring motor vehicle insurance coverage against third party risks. Failure to comply with the above provision is an offence punishable by a fine from Birr 3,000 up to Birr 5,000 or with imprisonment from one year up to two years.

The operative word in Article 3 is the word "use". The word is not defined in Article 2 of the definition part of the proclamation. Of course, it is not only the word "use" that is found in the provision, rather it also overwhelms the words drive, use or cause or permit. The word "use" is wider than the word "drive". There may be situations where it may be said a person is not driving a motor vehicle but where it may be

[30]. *VIATPR proclamation, supra note* 10, Article 15.
[31]. Interview with Mr. Abebe Assefa, principal customer care officer in Ethiopian Insurance Corporation, in Addis Ababa, EIC building (Nov. 21, 2018)
[32]. Interview with Mr. Elias Siyoum, manager, marketing and branch operation department in Nile Insurance S.C, in Addis Ababa, Nile Insurance building (Nov. 24, 2018)

said he is using it. Obvious example of using but not driving a motor vehicle are carelessly opening the driver's door after stopping and leaving an unlighted vehicle on the roadway at night. The above example involves an element of controlling and operating the vehicle without necessarily driving it.

The wording of Article 3 demonstrates the intention of the Legislature to ensure that the user of a motor vehicle on a road is liable and obliges the user to make sure that the motor vehicle he/she uses is being insured for the third party legal liability. The intention is illustrated by the word "use" which has been given a wider meaning than drive and the imposition of a criminal sanction for non-compliance with the provisions of the proclamation. Thus, every person who controls or operates a motor vehicle or who permits another, whether expressly or impliedly, to control or operate a motor vehicle is obliged to insure against third party liability.

Regarding the liabilities which should be insured, Article 4 (2) of the proclamation is the pertinent provision. It provides that a statutory policy shall cover liability which may be incurred in respect of the death of or bodily injury to any person and damage to property caused by or arising out of the use of the motor vehicle concerned on a road. It is important to stress that in the third party insurance the insured must secure insurance coverage for liabilities arising from the perils named: a) collision, fire or explosion caused by the insured vehicle; b) the fall of objects carried by the vehicle, its accessories or tools being used in connection with the vehicle, and c) any damage resulting from the movement of the vehicle.[33]

However, there are some risks which shall not be covered, named exclusions[34], which would be discussed in the next chapter.

2.3.2. The Amount of Compensation to be Covered by the *VIATPR proclamation*

The amount of compensation to be covered by the ***VIATPR proclamation*** are: (a) not be less than 5,000 birr and a maximum of 40,000 birr in respect of the death of one person (although in some developed countries it is unlimited e.g. UK [35]); (b) an amount not exceeding 40,000 birr in respect of bodily injury of one person which also includes medical expenses incurred for the injured person and costs related to other compensations etc.); or (c) an amount not exceeding 100,000 birr in respect of damage to property.[36] It is also important to stress that the person who is entitled to compensation above the limit stated above also have the right to claim same from the insured person or from other having legal liability in accordance

[33] *VIATPR proclamation, supra note* 10, Article 15
[34] Id, Article 8
[35]. CHRIS PARSONS, THE CHARTERED INSURANCE INSTITUTE OF UK, INSURANCE LAW, (study text, 2016), at 12/21, *see also* The 1988 RTA of UK,
[36] *VIATPR proclamation, supra note* 10, Article 16(1)

with the relevant law.[37] The Council of Ministers is also empowered to amend the extent of limit of liability provided above.[38]

Undeniably, the amount of compensation that can be paid for the injury or death of human beings is not worth the value of human life. It seems embarrassing to state that the life value of an Ethiopian is not more than 40,000 birr in the case of third party insurance, though it needs a separate study to this effect. The reason why the ***VIATPR proclamation*** limited the liability of liability insurer to the maximum of 40,000 birr seems because it is directly copied from Article 597 of the Com. Code, which governs the liability limit of carrier's. The author leaves this issue to other researchers as it is beyond the scope of this paper.

Due to the above practical problem related with limit of liability, the insurance companies are now endorsing extension clauses in the CTPM insurance policies in Ethiopia. This can be considered as a new form of extension clause as the interviewees responded.[39] Even though the maximum extent of limit of liability provided by the ***VIATPR proclamation*** for bodily injury and death is birr 40,000 and birr 100,000 for property damage,[40] insurance companies-in their policies, are extending the limit of liability provided by the law.

Though the issue pointed on the legality of the extension of limit of liability is untouched, most insurance companies in Ethiopia are giving coverage by extending the legal limit. According to the information gathered from interviewees, some insurance companies like Nile Insurance S.C, Nib Insurance S.C and Tsehay Insurance S.C extend the limit of liability for property damage up to 500,000 Ethiopian birr (i.e. 100,000 (the standard limit)+400,000 (extension)),[41] whereas the Ethiopian Insurance Corporation extends up to 200,000 Ethiopian birr (i.e. 100,000 (the standard limit)+100,000 (extension)). Again, for bodily injury and death it extends up to 70,000 Ethiopian birr (i.e. 40,000 (the standard limit) + 30,000 (extension)).[42] Hence, the practical advancement of insurance companies in extending the limit of liability

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[37] Id, Article 16(3), *see also* the extra-contractual liability provisions of the civil code, which give the right for the victims to claim compensation from the tortfeasors. *E.g*. Article 2081(about strict civil liability), 2082(2)(about fault based liability), and 2124 and the following provisions (about vicarious liability).
[38] Id, Article 16(5)
[39] Interview with Mr. Endalkachew, manager of the underwriting department in Tsehay Insurance S.C, in Addis Ababa, Tsehay Insurance building (Nov. 27, 2018), *see also* Interview with Mrs. Serkalem, *infra note* 41
[40] VIATPR proclamation, *supra note* 10, Article 16(1)
[41] Interview with Mrs. Serkalem, manager of the underwriting department in Nib Insurance S.C, in Addis Ababa, Nib Insurance building (Nov. 28, 2018), and Interview with Mr. Endalkachew, manager of the underwriting department in Tsehay Insurance S.C, in Addis Ababa, Tsehay Insurance building (Nov. 27, 2018), *see also* Interview with Mr. Elias Seyoum *supra note* 32
[42] Interview with Mr. Abebe *supra note* 31, *see also,* the policy No. 3093112020022115, a comprehensive commercial motor insurance policy issued by Ethiopian Insurance Corporation for the insured Ato Fisha G/Silassie.

signifies that the amount of compensation to be covered by the VIATPR proclamation should be revisited.

2.3.3. Who Is Third Party Victim?

Since the paper focuses on CTPM insurance, it is better to understand the meaning and scope of third party victim. The proclamation under Article 2 (10) defines the term “third party” by way of technical elimination instead of giving the direct meaning. It eliminate the insured person, members of the insured`s family, the driver and employee of the insured person from the scope of third party. Even though the proclamation defines “third party” by way of elimination, it also broadens the scope by providing a statement ‘any person to which an insurance policy applies at the time when motor vehicle accident occurred, giving rise to liability under such insurance policy’. Therefore, according to the definition given by the proclamation “third party” could be any person to whom an insurance policy applies excluding the insured, the insured`s families and employees.

Obviously, the term third party directly refers the victim, who suffered harm owing to motor vehicle accident for the purpose of CTPM insurance. Nevertheless, the scope of third party victim, have caused more controversy among the legal practitioners in the insurance law. Some argue that, the definition of third party victim includes those who would not normally be a victim, such as a business, or where an insurer is claiming against another through subrogation.[43]

On the other hand, others argue that third party victim refers only the ‘injured’ taking the purpose of the proclamation as their legal ground, which is facilitating compensation for third party victims. Of course, the main issue raised regarding the clause “third party” is whether it should be widen to include insurers who are claiming compensation using their subrogation right? In other words, can a subrogated insurer directly sue a third-party liability insurer even though neither it nor its subrogated insured have any direct contractual link with that party?

Under the English law, in an exception to the principle of privity of contract, the Third Parties (Rights against Insurers) Act 2010 has made it easier for a third party to pursue a claim directly against liability insurers if the defendant insured is or becomes insolvent.[44] If the insured is not insolvent, the third party will have the duty to establish liability of the insured. In addition, according to section 151 of the 1988 RTA of UK third parties are obliged to obtain a judgment against the insured before they directly institute an action against the liability insurer.

[43] CHANNON, *supra note* 13 at 31
[44] *Third parties (Rights against Insurers) act* 2010, UK, s 1, 5

The same procedure is required for third parties in the Alberta insurance act. In Alberta[45], third party accident victims have a direct right of action against an automobile liability insurer. To exercise this right, third parties must obtain a final judgment against the insured.[46] This judgment can then be relied on to claim payment directly from the insurer. The rights of creditor's provision thus relieve third parties of the burden of proving liability as against the insurer itself.

In Ethiopia, similar to the common law doctrine of privity of contract, the Ethiopian contract law under Article 1952 of C.C. provides that contracts shall produce effects only as between the contracting parties. Again, like that of the English position, the ***VIATPR proclamation*** also provides the circumstances in which third parties can claim insurers directly. However, the provision in our proclamation is not as such clear whether it gives third parties, the right to institute a legal action against the insurers before the regular courts and whether subrogated insurers are considered as third party victims. Moreover, the proclamation doesn't provide a precondition of obtaining judgment against the insured. Of course, the proclamation under Article 18[47] talks about the execution of final judgment rendered against the insured, though it is not stated as a precondition for third parties legal action towards the liability insurer. This is because, had the intention of the legislator been stating a precondition for third parties, it might be provided under Article 17 of the proclamation. Anyhow, it is better to discuss the issues regarding third party victims separately as follows:

2.3.3.1.Can third party victims directly sue third party insurers?

Article 17(2) of the proclamation says "any third party entitled to compensation may submit his claim, together with supporting evidences, directly to the insurer." From this provision the phrase ***"may submit his claim"*** is argumentative among lawyers. In the response found to the interview made with Judge Duro Milkeso[48] and Rosa Abebe[49], there are serious court litigations regarding the applicability of the legal phrase "***may submit his claim***". According to them, the phrase is not clear and as to their court experience in the insurance bench, they encounter with different arguments. Some lawyers argue that the phrase should be interpreted in such a way that, any third party can only present his/her claim to the insurer`s claim department without going to the court, they said.[50] So, in this line of argument the *"may submit his claim"* phrase is only refers the third party`s right of claiming compensation from the insurer out of court

[45] It is one of the provinces of Canada
[46] *Insurance Act*, RSA 2000, c I-3, s 579
[47] VIATPR proclamation, *supra note* 10
[48] Interview with Duro Milkeso, Judge at Federal First instance Court, in Addis Ababa, Federal First instance Court, Kirkos division building (March. 20, 2019)
[49] Interview with Rosa Abebe, Judge at Federal First instance Court, in Addis Ababa, Federal First instance Court, Lideta division building (March. 18, 2019)
[50] Id

litigation. According to the interviewees, the proponents of this argument said that, the proclamation doesn't give any right of legal action to third parties as the word ***'submit'*** can in no way substitute suit and the word ***'claim'*** also should be interpreted in the economics sense of the term, referring compensation.

The judges also answer back to the questions regarding the other counter argument, which they support. The other line of argument is third parties can institute a legal action against the third party liability insurers. The proponents of this position argue that, the word ***'submit'*** refers the submission of the case to the court, whereas the word ***'claim'*** connotes the institution of legal action before the court. Therefore, while the law says ***'any third party… may submit his claim…directly to the insurer'***, it definitely refers that third parties can directly sue third party liability insurers before the court, they argue.[51]

Nevertheless, the Ethiopian federal courts seem to establish precedents in support of the second line of argument. In the case between ***Nile Insurance SC. v. Nib Insurance S.C.*** the FSC cassation division rendered a decision that the third party has the right to directly sue the third party liability insurer. The court ruled out as follows:

> "*The third party has got the right to directly sue the current claimant (the third party insurer) based on Article 17(2) of Vehicle Insurance Against Third Party Risks Proclamation No. 799/2013"*[52]

Similarly, the FFIC hold the same position in different cases compatible with the decision of FSC cassation division. In the case between the ***Africa Insurance S.C. v. Ato Adugna Abdi***[53]**,** the court decides that the plaintiff (subrogated third party insurer) have the right to sue the third party liability insurer.

This position of the courts by itself creates a fertile ground for third party victims as they would never fade away in searching for the tortfeasors. They simply institute an action against liability insurers once they aware of who has given the CTPM insurance coverage to the tortfeasor. As long as the main objective of the ***VIATPR proclamation*** is establishing and facilitating a system of compensation for third party victims, the precedent seems to be in support of this objective. On the other hand, it is highly discouraging for third party liability insurers as they are possibly sued by third parties, whom they don't know. Even, sometimes third parties are instituting a legal action against third party liability insurers without any *prima facie* evidence, just only based on the information collected from the tortfeasor. It is a

[51] Id
[52] *Nile Insurance S.C. v. Nib Insurance S.C,* No.146042 FSC. (Jul. 7, 2018)
[53] *Africa Insurance S.C. v. Adugna,* No. 51314 FFIC K.D. (Jul. 11, 2018)

surprise for third party liability insurers and they raised an objection of no cause motion against the third party as they don't have any contractual relationship with the tortfeasor.

There are some practical cases which can clearly show this problem. In the case between ***Hibret Insurance SC. vs. Ato Dereje Tafese et al***[54], decided by the FFIC kirkos division, the plaintiff was a subrogated insurer claiming its subrogation right against the tortfeasor (the first defendant) and the second defendant-third party liability insurer, which the plaintiff claimed it as the insurer of the tortfeasor. In the proceeding, the second defendant raised a defense of no case motion, claiming that it hasn't given any coverage to the tortfeasor. The court finally decided that the second defendant has no liability to the subrogated insurer as it hasn't given any third party insurance coverage to the tortfeasor. Even though, it was finally decided that the second defendant free from liability, it has suffered a lot due to the headaches of the proceeding.

Hence, one thing is clear that Article 17 (2) of the ***VIATPR proclamation*** is still debatable. However, considering the experiences of other jurisdictions and the objectives of the ***VIATPR proclamation*** the precedence developed recently in the Ethiopian courts seems to be acceptable. Of course, the ambiguity revealed in Article 17 (2) of the proclamation is still needs some sort of phrasal amendment to this effect.

2.3.3.2.Are subrogated insurers considered as third party victims?

As stated above the proclamation doesn't give any clear definition whether insurers are included in the scope of third party victim. However, it is better to see from the concept of subrogation as it is the right of insurers having indemnified the insured to take over all rights of the insured against the tortfeasors. In view of the fact that, the insurers step in to the shoes of the 'insured' in taking action against the tortfeasors pursuant to Article 683 of the Com. C; one can argue that the subrogated insurer could be a third party victim as the subrogee[55] has the same right with the subrogor.[56]

Another legal provision that supports this argument could be Article 17(2) of the proclamation. It says any third party entitled to compensation may submit his claim… directly to the insurer. This phrase seems to signify any entitled third party. Among these entitled third parties, injured third parties and subrogated insurers could be the main principals apart from others. Hence, the proclamation seems to adopt the broad

[54] *Hibret insurance SC. v. Dereje,* No.48505 FFIC K.D. (Mar 01, 2019)

[55] A subrogee is the one who is substituted for another in having a right, duty, or claim. An insurance company frequently becomes a subrogee after paying a policy claim, as a result of which it is then in a position to sue a tortfeasor who injured the insured or otherwise caused harm. *See*, BRYAN A. GARNER, BLACK'S LAW DICTIONARY (8th ed. 2004) at 4476

[56] A subrogor is the one who allows another to be substituted for oneself as creditor, with a transfer of rights and duties. Id at 4477

meaning of third party victim as it permits any entitled third party to claim compensation against the third party liability insurer.

Nevertheless, while interpreting the law, the Ethiopian federal courts have rendered controversial decisions regarding the circumstances in which third parties can sue the third-party insurers directly. The first case is between ***Ethiopian Insurance Corporation v. Ato Tsigab Gebru et al.*** It was started in the Tigrai Regional State North West zone High Court, where the current defendants were plaintiffs, whereas the current claimant was a defendant. The four plaintiffs have had their own separate claims, while they had filed the case jointly. The claim of the first plaintiff (the owner of the motor vehicle) was the maintenance cost of the motor vehicle and consequential loss suffered. The second and the third plaintiffs had claimed compensation for the death of their son, who was a passenger in the damaged insured motor vehicle. The fourth plaintiff had also claimed compensation for the death of their son, who was the driver. Based on the claim presented to it, the lower court decided in favor of the plaintiffs. Then the Regional State Supreme Court also approved the decision of the High Court.

However, the FSC cassation division reversed the decisions of the Tigrai Regional State courts, that the joint action against the current claimant is not procedural. In its judgment analysis the cassation court ruled out that:

> *"… Basically, the owner of the vehicle which the damage was caused by is the 1st plaintiff. Based on the relevant provisions of the civil code the 2nd, 3rd and 4th plaintiffs can only sue the owner of the motor vehicle for the compensation they claim and it is not possible to institute action against the claimant (insurer). If there is no law that supports them to sue the claimant separately, it will also not procedural to institute an action against the claimant. Even though there is an insurance coverage given by the claimant for the damage caused by the insured vehicle, the 2nd, 3rd, and 4th plaintiffs cannot directly sue the claimant"*[57]

From the above judgment we can easily understand that the court seems to strictly apply the doctrine of privity of contracts, disregarding other possible exceptions. The wordings of the judgment signify that, as long as there is no any legal relationship between the current claimant and defendants, the latter could not have the right to sue the claimant directly. Of course, the court didn't specifically mention the doctrine of privity of contracts in its decision. The court didn't even cite the provisions of the ***VIATPR proclamation***. Therefore, based on the above decision the FSC cassation division creates precedence, that the injured third parties cannot directly sue the third party liability insurers.

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[57] *Ethiopian Insurance Corporation v. Tsigab*, 20 FSC. 328 (2016)

The second case was between ***Nile Insurance SC. v. Nib Insurance S.C.*** It was started in the FFIC, where the current defendant was a plaintiff and the claimant was the 3rd defendant. The plaintiff sued three defendants jointly, which are the owner of the motor vehicle, the driver and the third party liability insurer (current claimant). The current claimant was sued based on Article 17(2) of the proclamation, which permits third parties to claim compensation directly from the third party liability insurers. The then 3rd defendant (the current claimant) objected the suit on the reason that the plaintiff doesn't have any cause of action to directly sue the insurer. Finally, the court decides in favor of the plaintiff that the subrogated insurer has the right to institute an action against the third party liability insurer. The FHC and FSC cassation division also confirmed the decision of FFIC.

While affirming the decision of the lower court, the FSC cassation division declares another precedent in the following manner:

> "*From the content and spirit of Article 683 of the Com. C. and based on the provisions from 1968-1975 of the C.C, we can understand that the current defendant insurer (who was a plaintiff in FFIC) after compensating his client (the insured) has the right of reimbursing his costs from those who are liable…. And there is no legal reason to blame the defendant insurer who included the current claimant (who was a defendant in the FFIC) in the suit by joining with the tortfeasor using his subrogated right, since he got the right to directly sue the current claimant (the third party insurer) based on Article 17(2) of Vehicle Insurance Against Third Party Risks Proclamation No. 799/2013"*[58]

Similarly, in the case between ***Tsehay Insurance S.C. v. Ethiopian Insurance Corporation*** the federal first instance court kirkos bench decided in favor of the claim of subrogated insurers against third party liability insurer.[59]

The last two preceding cases cited above seem to pursue the broad meaning of third party as long as the courts regarded subrogated insurers as third party by interpretation in the ambit of Article 17(2) of the proclamation, whereas the first case was decided in conformity with the oldest doctrine of privity of contracts. Therefore, so long as there are extreme rulings of cassation decisions regarding the scope of third party, it is impossible having consistent precedence in Ethiopia, regarding the right of subrogated insurers to institute direct action against third party liability insurers. Of course, the second cassation decision seem to clearly addressed the issue regarding third party`s right to sue against third party liability insurers and also it is the recent decision, so that it might be an overriding decision.

[58] *Nile Insurance S.C. v. Nib Insurance S.C.*, No.146042 FSC at 154

[59] *Thehay Insurance S.C. v. Ethiopian Insurance corporation*, No.59662 FFIC K.D. (Jan. 23, 2019) *see also National Insurance Corporation of Ethiopia. v. Ahmed Hussien*, No.49093 FFIC K.D. (May. 10,2018)

In addition, Article 17 (2) of the ***VIATPR proclamation*** looks like a statutory protection for the victim prescribed by the law, taking the compulsory nature of the law in to account. This right of third parties could be considered as an example of legislative interference with the general principles of contract. Under the general principles of contract, the third party would be met with the argument that he is not a party to the contract and therefore cannot claim under it. To expedite the claims process and to ensure that third parties are not prejudiced in their rights by insured's act, the legislature saw it fit to give third parties rights enforceable against insurers. This again underlines the importance attached to compensation for injury, death or property damage arising out of motor vehicle accidents.

CHAPTER THREE

CONDITIONS AND EXCLUSIONS OF CTPM INSURANCE

3.1. CONDITIONS OF *CTPM* INSURANCE POLICY

The insurer`s promise to indemnify the insured is subject to a number of conditions enumerated at the end of the policy. Most of these conditions are common to all types of motor insurance policies and relate mainly to the rights and duties of the insurer.[60] Conditions of an insurance contract in general are of two types, namely, express and implied. Implied conditions are those which are implied by law to apply to every contract of insurance irrespective of any specific inclusion or reference to them in the contract.[61] Express conditions may be explicitly expressed in the policy or may be excluded or modified by the express conditions. Express conditions are those which are expressly stated or set forth in the policy.[62]
All conditions express or implied are, as the operative clause of the policy recites, broadly expressed in the form of (a) condition precedent to the validity of the policy[63], (b) condition subsequent to the validity of the policy[64], and (c) conditions precedent to the liability of the insurer.[65]

3.1.1 Effect of Breach of conditions

The above three forms of conditions are found in all motor insurance policies and if a condition precedent is not fulfilled, the policy will be void or voidable from its inception, whereas if a condition subsequent is broken the policy ceases to be operative from the date of the breach. On the other hand, the breach of a condition precedent to the liability of the insurer prevents the insured from recovering indemnity for the loss. The breach, however, does not affect the validity of the policy and it continues in force.[66] Nevertheless, the effect of policy conditions regarding third parties has been a little bit different in the case of CTPM insurance policies, since its nature is different from other motor insurance policies.

To this effect, the ***VIATPR proclamation*** came up with a new approach as regards the applicability of conditions towards third parties as per Article 6 of the proclamation. The legal provision tries to show the variation created by the law regarding the effect and validity of conditions towards first party[67] and third

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[60] Dr. AVTAR SINGH, PRINCIPLES OF INSURANCE LAW, (7th ed. 2002, New Delhi, India) at 250
[61] Id at 56
[62] Id
[63] *See e.g*. the standard VIATPR policy issued by all insurance companies in Ethiopia, which have the same terms, conditions and exceptions. For instance (1) the statements made in the proposal must be true and complete.
[64] Id, *See e.g*. a condition that the insured shall take all reasonable steps to maintain the insured motor vehicle in efficient and road worthy condition.
[65] Id, *See e.g*. the insured must give notice of the loss to the insurer immediately upon its occurrence.
[66] SINGH, *supra note* 60 at 250
[67] The clause First-party is interrelated with first party policies. First party policy is a policy that applies to an insured or the insured's own property, such as life insurance, health insurance, disability insurance, and fire insurance.

parties. The effect and validity of conditions of CTPM insurance policies is two dimensional. The first dimension is associated with the effect of breach of conditions towards third parties.

The second dimension is linked with the effect of breach of conditions towards the insured, albeit the effect is not similar with the effect of conditions in the first party policies. First party policies are not compulsory and are for the insured to protect themselves or their property if they are at fault for an accident (the not at fault driver is already protected by the at fault driver's policy).[68] Anyhow, it is better to analyze the two dimensional effects of breach of conditions of CTPM insurance policies separately.

3.1.1.1 The effect of breach of conditions towards third party victims

As stated under Article 6 of the ***VIATPR proclamation***, any condition in a policy providing an escape of liability in the event of some specified thing being done or omitted to be done after the happening of an event giving rise to a claim should be of no effect in respect of such claim towards third parties. This does not, however, prevent the insurer from recovering its costs from the insured.

In addition to the right to recover direct from the insurer, the third party is further protected in the ***VIATPR proclamation***, that if he/she proceeds against the insurer directly, no condition in a statutory policy purporting to restrict the insurance of the persons insured or the indemnification of the person's indemnified there under shall be of any force or effect. For example, an insurer cannot escape liability on the basis that the insured didn't notify the accident and that there is an express provision in the policy excluding liability under such circumstances. The FSC cassation division also rendered a decision supporting this stand of the proclamation in the case of ***Nile Insurance S.C.*** [69] In this case, the court ruled out that:

> *"Us we can understand from the preamble of the proclamation, the basic objective of the law is not letting third party victims uncompensated... According to Article 6(1) of the proclamation the argument presented by the claimant, who said, we are not liable since our client didn't notify the accident within ten days is not acceptable"*

Hence, Article 6 (1) of the ***VIATPR proclamation*** is another instance of legislative intervention in contractual relations in the interests of third parties. The risk of loss arising out of an injury, death or property damage caused by the negligent use of a motor vehicle justifies a departure from the generally accepted doctrines of freedom and sanctity of contract. Through statutory regulation, those conditions in a policy which would defeat a third party's claim are rendered invalid in circumstances where the third party is claiming direct from the insurer. Therefore, the practical effect of Article 6 is that an insurer must

[68] CHANNON, *supra note* 13 at 31
[69] *Nib Insurance S.C.*, No.146042 FSC at 154

meet the third party liability, despite a breach of one or more of the prohibited restrictions or conditions precedent to liability, albeit there is a right of recovery against the policy holder, which we will see in the next section.

3.1.1.2.Effect of breach of conditions towards the insured

Even though the conditions in CTPM insurance policies are being invalid towards the claim of third parties based on Article 6(1) of the ***VIATPR proclamation,*** they are still valid as regards the claim of the insured. The contractual relationship created between the insurer and the insured would be governed by the law of insurance and general principles of contract. Among those relevant insurance laws, the governing law as regards the relationship between the insured motorists and third party liability insurers is the ***VIATPR proclamation.***

Based on the ***VIATPR proclamation,*** the effect of breach of conditions doesn't immediately give the right to cancel the policy; it rather gives the insurer the right of recovery from the insured. According to Article 6(2) of the ***VIATPR proclamation*** the insurer has the right to require the insured to repay to the insurer any sum which the latter may have compensated to the satisfaction of third parties based on the terms of the policy. Hence, the right to recovery may include the right to institute an action against the insured before the court and claiming repayment out of the court. A lot of decisions have been rendered by courts supporting the insurer's right of recovery.

For example, in the case between ***Birhan insurance S.C v. Ato Girma Meselu***[70]***,*** the court decided that the defendant has to repay the sum of birr 100,000(one hundred thousand birr) to the plaintiff since the defendant (insured) breached the condition precedent to the liability of the insurer, which is the duty of notifying the accident to the insurer within ten days upon the occurrence of the accident. Therefore, the effect of breach of conditions of CTPM insurance towards the insured brings the insurer`s right of recovery of compensation, which has been paid to the satisfaction of third parties.

3.2. EXCLUSIONS OF *CTPM* INSURANCE POLICY

Exclusion is a policy provision that eliminates coverage for some types of risks. Exclusions narrow the scope of coverage provided by the insuring agreement. In many insurance policies, the insuring agreement is very broad. Insurers utilize exclusions to carve away coverage for risks they are unwilling to insure.[71] Of course, the exclusions in CTPM insurance policies are set by the law as a standard.

[70] *Birhan insurance S.C. v. Girma,* No.50561 FFIC. K.D. (Jul 5, 2018), *see also Ethio- life and General insurance S.c. v. Serara* , No. 48207, FFIC. K.D. (Jul 6,2018)
[71] Marianne Bonner, *The Purpose of Insurance Exclusions* (Feb, 2018), https://www.thebalancesmb.com/ insurance- exclusions-462464

An obvious place to look for policy exclusions is in the section entitled *exclusions*. A policy that provides more than one type of coverage may contain multiple lists of exclusions. A separate list applies to each type of coverage.[72] Some policies that provide multiple coverages contain separate exclusions for each type of coverage *and* common exclusions that apply to all coverages.[73]

3.2.1. Reasons to Exclude Risks

Exclusions serve various purposes. There might be various reasons to exclude some perils from coverage. Among these reasons the following categories could be the most cited ones in different insurance policies.[74] These are: **Catastrophic[75], Covered Elsewhere[76], Easy To Control[77], Not Accidental[78], Maintenance Issues[79], Illegal[80], Insurable for a Price[81]** All these reasons of exclusions may or may not be reflected at the same time in a single insurance policy. If someone closely looks at the standard CTPM insurance policies, he/she may recognize the above reasons behind the exclusions.

3.2.2. Lists of CTPM insurance policy exclusions

3.2.2.1.Permanent lists of CTPM insurance policy exclusions

Under the ***VIATPR proclamation,*** there are permanent statutory exclusions which would never be covered by the policy. Apart from these, additional exclusions are also included in the standard CTPM insurance policy issued by insurance companies, which we will try to see in the next topic. There are 6 (six) permanent statutory exclusions expressed in the ***VIATPR proclamation*.**

1. death or bodily injury or damage to property of the insured person or member of the insured person's family;[82]
2. collision or death or bodily injury or damage to property caused to a person hired by the insured person and occurred in the course of such employment;[83]

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[72] Id
[73] *See, e.g.* the commercial and private vehicle policies of EIC, Nile Insurance S.C, Tsehay Insurance S.C
[74] Bonner, *supra note* 71
[75] Some risks are uninsurable because they are likely to affect a huge number of policyholders at once. An example is war. *See e.g.,* Tsehay Insurance S.C. commercial vehicle policy.
[76] Many risks are excluded under one type of policy because they are covered under another. S*ee, e.g.* the standard VIATPR policy, where work men's compensation is excluded.
[77] Some risks are excluded because they are easily controlled by the policyholder. An example is damage to the personal property of insured person, *see also*, *VIATPR proclamation, supra note* 10, Article 7 (5)
[78] Most insurance policies cover fortuitous events. Thus, they exclude losses the insured caused intentionally. *See also,* The Commercial Code of Ethiopia, *supra note* 10, Article 663 (3)
[79]Some risks are not practical to insure because they occur naturally. An example is wear and tear. *See, e.g.* the EIC commercial vehicle policy.
[80] Many policies exclude losses that result from violations of the law or criminal acts. *See e.g.,* Nile Insurance S.C. commercial vehicle policy.
[81] Some risks are insurable if the insured is willing to pay an additional premium. BSG (bandits, shiftas and guerrillas) coverage is an example. *See e.g.,* the EIC commercial vehicle policy.
[82] *VIATPR proclamation, supra note* 10, Article 7(1)

3. damage to the insured vehicle;[84]
4. liability in respect of damage to goods carried on the insured vehicle on the basis of rent or payment;[85]
5. liability in respect of damage to the personal property of insured person covered by insurance policy or damage to property under the control or responsibility or custody of the insured person;[86]
6. Liability in respect of vehicle accident occurred outside the territory of Ethiopia;[87]

When we see the nature of these exclusion clauses we may ask a question whether this statutory list could really be a list of exclusions. In the interview made with Judge Duro Milkeso, he said, they should not be considered as exclusions as the lists found in Article 7 of the ***VIATPR proclamation*** are out of the domain, concept and meaning of third party from the very inception. The honorable judge explained further that the death or injury of the insured need not be excluded by the law, since it has never been construed under the sphere of third party from the very beginning. Excluding damage to the insured vehicle also doesn't make sense, as the insured vehicle can in no way be considered as the property of third party initially.

The wordings used to explain those exclusions in the RTA 1988 of UK seems to support the Judge`s argument. The original source of Article 7 of ***VIATPR proclamation*** seems to be section 145 (4)[88] of RTA 1988, since it comprises all the above 6 statutory exclusions. However, section 145[89] of RTA 1988 uses the clause "Requirements in respect of policies of insurance" in expressing the insuring clause and it also uses the clause "the policy not required" in expressing the above six exclusions of the law.

On the other hand, one may argue that the word "exclusions" used in Article 7 of ***VIATPR proclamation*** is an appropriate word in light of the reasons of exclusions. As it is stated above one of the reasons to exclude risks might be because they are covered elsewhere. The fact that certain risk is covered or has the possibility to be covered by another separate insurance policy; it might be excluded here in a policy at hand. This can be one reason of exclusions among many reasons. For example, the damage on the insured motor vehicle is excluded in the third party motor insurance policy, because the insured's motor vehicle

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[83] Id, Article 7(2)
[84] Id, Article 7(3)
[85] Id, Article 7(4)
[86] Id, Article 7(5)
[87] Id, Article 7(6)
[88] *See*, RTA 1988 Section 145 (4)- The policy shall not be required—

(a) to cover liability in respect of the death, arising out of and in the course of his employment, of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment…

has the possibility to be covered by comprehensive or own damage motor vehicle insurance policy. Hence, naming the provisions of Article 7 of the ***VIATPR proclamation*** as 'exclusions' could be appropriate, since most of the exclusions are excluded because they are covered elsewhere.

3.2.2.2.Additional exclusions listed in the standard CTPM insurance policy

The additional exclusions expressed in the standard CTPM insurance policy are issued by insurance companies operating in Ethiopia. Apart from the above permanent statutory exclusions, there are additional contractual exclusions found in the CTPM insurance policy. Some of these additional exclusions are: -; Any accident, loss, or liability caused , sustained or incurred Whilst the driver of the insured motor vehicle is under the influence of intoxicating liquor or drug; Death, bodily injury or damage to property caused by sparks or ashes from the insured motor vehicle; Any form of liability arising whilst the insured motor vehicle under this policy is being driven by any person who has no driving license permitting him to drive the insured motor vehicle or is disqualified from holding or obtaining such license etc.[90]

These exclusion clauses are found under the CTPM insurance policy issued by insurance companies as additional exclusions. The main issue raised here is that, whether it is permitted for insurers to insert these additional exclusion clauses in their CTPM insurance policy? In other words, do the exclusion clauses stipulated under Article 7 of ***VIATPR proclamation*** are illustrative? Again in order to answer these issues, it is better to see the prohibited exclusion clauses under Article 5 of the ***VIATPR proclamation.***

3.2.2.3.Lists of Prohibited Exclusion clauses under the *VIATPR* proclamation

The most substantial regulation of motor insurance exclusion clauses is found in the ***VIATPR proclamation***. The proclamation remains fundamentally the same as its predecessor, the 2008 ***VIATPR proclamation***. The list of prohibited exclusion clauses in Article 5 of the ***VIATPR proclamation of*** 2013 is identical to those found in Article 5 of the 2008 proclamation. It is, however, questioned in the absence of an exhaustive list from the legislature, whether these lists of prohibited exclusion clauses are exhaustive, and the extent to which other exclusion clauses are permitted under the ***VIATPR proclamation***.

As stated above the prohibited exclusion clauses stated under the original ***VIATPR proclamation*** No. 559/2008 have not changed, and are currently stated in the ***VIATPR proclamation*** No***.*** 799/2013.[91] These are: the age or physical or mental condition of persons driving the vehicle,[92] the condition of the vehicle,[93]

[90] *See also*, the standard VIATPR policy issued by all insurance companies in Ethiopia
[91] VIATPR proclamation, *supra note* 10, Article 5
[92] Id, Article 5(1)

the number of persons that the vehicle carries,[94] the weight or physical characteristics of the goods that the vehicle carries,[95] the horsepower or cylinder capacity or value of the vehicle,[96] the carrying on the vehicle of any particular apparatus,[97] the time at which or the areas within which the vehicle is used.[98] These prohibited exclusion clauses were directly copied from section 148 of the 1988 Road Traffic Act of UK. So, Article 5 of the ***VIATPR proclamation*** is the verbatim copy of section 148 of the 1988 RTA of UK. These prohibited exclusion clauses found in Article 5 have rarely been examined by the courts or academics and it is hard to find cases as regards.

3.2.3. Are Additional Exclusion Clauses prohibited under the VIATPR proclamation?

The main issue regarding prohibited exclusion clauses is whether additional exclusion clauses can be used against third parties in Ethiopian law, other than the prohibited exclusion clauses in Article 5 of the ***VIATPR proclamation***, has rarely been discussed in Ethiopian Courts. This may be because of its limited importance to the majority of third parties or insurers, as the insurer would usually need to handle the claim and pay compensation anyway due to ***Article 6(1)*** of the ***VIATPR proclamation*****.** However, there are some cases in UK addressing the issue whether prohibited exclusion clauses are exhaustively listed or not. Before discussing those cases it is better to see the arguments in the Ethiopian judicial practice.

The proponents of the first line of argument said, the wordings of Article 7 of the ***VIATPR proclamation*** by itself seems to denote that, it is an exhaustive list as there are no indicators of illustration. They also stated that Article 7 of the ***VIATPR proclamation*** is an exhaustive list as there are no indicating words which signifies the illustrational nature of the provisions, though insurers practically insert additional exclusion clauses in their CTPM insurance policy. In the court room, this argument is mainly raised by third party victims; as the insertion of additional exclusion clauses is detrimental to the interest of third parties, the interviewees said.[99]

On the other hand; based on the data collected from interviewees, third party liability insurers argued otherwise in the court. The list of prohibited exclusion clauses under Article 5 of the proclamation seems to have a connection with this issue, they argued. They also added, the a`*contrario* reading of Article 5 of the ***VIATPR proclamation*** implies the presence of other legitimate exclusion clauses. Since, Article 5 lists only few prohibited exclusions; it is possible to say that other unprohibited exclusions are allowed.

[93] Id, Article 5(2)
[94] Id, Article 5(3)
[95] Id
[96] Id
[97] Id
[98] Id, Article 5(4)
[99] Interview with Duro, *supra note* 48, Interview with Rosa, *supra note* 49

Based on this logic it has to be permitted to include additional exclusion clauses under Article 7 of the ***VIATPR proclamation,*** they concluded.[100]

Certainly, the close looking of Article 7 of the ***VIATPR proclamation*** does not seem to allow the insertion of additional exclusion clause as it is an exhaustive legal provision. Hence, the first line of argument seems to be in line with the law. The practice however, is to the contrary. One can easily understand from the apparent observation of CTPM insurance policies of all insurance companies in Ethiopia, that a lot of additional exclusion clauses are included. The reason why insurers inserted additional exclusion clauses in their policies is mainly, because they want to secure themselves economically by expanding their right of recovery against the insured; as they cannot raise policy exclusions as a defense against third parties.

Despite the practice is contrary to the law, still the issue is not settled when we think of damage caused by deliberate criminal acts and their effects towards third parties. Even though, insurance companies inserted other unprohibited exclusions in their CTPM Insurance policies, the question is what about the effect of claims following the damage caused by intentional criminal acts? There are some intentional criminal acts which are prohibited by law such as *deliberately caused damage.*

Since it is hard to find a decision regarding the prohibited exclusions of the ***VIATPR proclamation*** in Ethiopia, the writer finds it better to analyze some cases decided by UK courts. This is because, the law applied by the UK courts regarding CTPM insurance is the RTA 1988, from which various provisions of the ***VIATPR proclamation*** is directly copied. Hence, the author believes that it would never be strange citing the decisions of UK courts to analyze the issues raised regarding prohibited exclusion clauses, as there are a lot of similarities existed between UK and Ethiopia laws

The first case that has been directly dealt with this issue is **Bristol Alliance Partnership v Williams.** The case was analyzed by Matthew R. Channon[101], in his doctoral dissertation. In ***Bristol Alliance***, the driver of the motor vehicle, when attempting to commit suicide, deliberately drove into a certain house shop, Bristol causing over £200,000 damage with no personal injury caused.[102] The driver's insurance policy embodied the following exclusion clause:

> "*We will not pay…any loss, damage, death or injury arising as a result of a 'road rage' incident or deliberate act caused by you or any driver insured to drive your motor vehicle*"

[100] Id
[101] CHANNON, *Supra note* 13
[102] Id, at 76

The shop recovered reparation costs from their property insurers, and the property insurers therefore applied to subrogate the claim to the motor insurers, who refused to refund the property insurers. This was due to the clear breach, by the driver, of the exclusion clause in his policy. Consequently, the shop received compensation to fix the damage caused by the driver, with the losses remaining with the property insurers, who took the matter against the motor insurers to the High Court. What followed, therefore, was a dispute between two insurers as to the payment of damages.[103]

Clauses which exclude '*deliberately caused damage'* are not listed under ***Section 148 RTA***[104], and therefore the courts were asked to decide whether the list of prohibited exclusion clauses was exhaustive. If ***Section 148 RTA*** was exhaustive, then the property insurers could not recover, whereas if other exclusion clauses were prohibited also, the property insurers could potentially recover against the motor insurers. In relation to UK law, the judges paid attention to a line of cases which concentrated on the issue of public policy which prohibits payment of compensation for illegal acts (*ex turpi causa non oritur action* (henceforth '*ex turpi causa'*[105]), and its relationship with the duty to provide compensation to all injured third parties of road accidents under the ***RTA 1988***.[106] These cases will now be examined.

In addition, in the ***Hardy v Motor Insurers' Bureau***[107] case similar issue was raised. In this case, though the lower court judges decided in favor of the plaintiff with majority vote, Court of Appeal, however, unanimously held that because there was no contract to construe, despite the driver's illegal act and although the driver could not recover from his own insurers, the victim was entitled to recover from the driver's insurers as a separate cause of action. Consequently, the Court of Appeal considered that the public policy of the ***RTA***s, which is fundamentally aimed at protecting the innocent victim by ensuring that they receive compensation, overrides the public policy from previous case law, in relation to the non-compensation of illegal acts.[108]

Rix LJ, a judge in the Court of Appeal, however, took a different approach, in the case between ***Charlton v Fisher*** [109] by stating that despite there being a '*respectable'* argument in allowing the third party to recover, technically the cause of action upon which the third party sues is the insured's cause of action, albeit transferred into the hands of the third party. Consequently, the policy approach that third parties

[103] Id
[104] Section 148 of RTA 1988 of UK has the same provisions with Article 5 of the ***VIATPR proclamation.*** So, the clause which excludes '*deliberately caused damage'* is also not listed under Article 5 of the ***VIATPR proclamation.***
[105] *ex turpi causa'* is a shortened form of the maxim ex turpi causa non oritur actio ("from an immoral consideration an action does not arise"), expresses the principle that a party does not have a right to enforce performance of an agreement founded on a consideration that is contrary to the public interest. See GARNER, *supra note* 63
[106] CHANNON, *Supra note* 13 at 77
[107] Bristol Alliance Ltd Partnership v. Williams, 2011 EWHC. QB, 1657.
[108] Id
[109] Charlton v Fisher, EWCA Civ 112 (2001)

should always be compensated is largely irrelevant. Further, the third party cannot take the rights under a contract separately from its defenses and is therefore tainted with the disability given to the insured.[110]

Apart from the above UK cases, the FFIC kirkos division in ***Ethiopian Insurance Corporation v. Tirunesh Teraji***[111] also examined the issue, although this was *obiter*. In this case the motor vehicle of the plaintiff`s client (insured) was injured by the first defendant`s motor vehicle, which was driven by the second defendant and insured by the third defendant under the CTPM insurance policy. The judge ruled out that the third defendant (the third party insurer) was not liable for the accident. This is because; at the time of the accident the second defendant did not possess a currently valid driving license. The court in addition pointed out that, driving a motor vehicle with an invalid driving license is illegal as per Proclamation No. 600/2000.[112] Hence, the insurer do not have the duty to cover the third parties' loss as the insured (second defendant) breached the exclusion clause by holding improper driving license. It is, however, unclear whether the court declared that, third parties are prohibited from claiming compensation for the purpose of public policy.

Overall, despite the UK Rix LJ's and the Ethiopian FFIC kirkos division's dictum to the contrary, it is evident that the consensus is public policy related with *ex turpi causa* does not automatically restrict the third party from claiming. Although, the issue of *ex turpi causa* is not directly relevant to exclusion clauses; it is an important issue indirectly. This is because; if public policy prevented third parties from claiming, this would arguably reinforce that the third parties' right to gain compensation under the ***VIATPR proclamation*** is not absolute. Additionally, those insurers can avoid liabilities through exclusion clauses. This issue, however, is not settled; there is no clear legal regulation as to whether victims should be entitled to compensation, or whether public policy prevails in relation to the drivers' criminal and dangerous acts.

The forgoing discussions regarding public policy concern is very important as it helps to discourage crime actors. However, the ***VIATPR proclamation*** has its own public policy, which is mainly compensating innocent third party victims. Preventing third parties from claiming compensation for the purpose of public policy concern is by itself overlooking the public policy injected in the ***VIATPR proclamation.*** Hence, absolute protection to third parties would better realize the objectives of the ***VIATPR proclamation,*** while the stuff of discouraging intentional criminal actors by other legislations and bylaws remains intact.

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[110] CHANNON, *Supra note* 13, at 80

[111] *Ethiopian Insurance Corporation .v. Tirunesh*, No. 44973 FFIC. K.D, (Nov 27,2018)

[112] Driver's Qualification Certification License proclamation No. 600, Negarit Gazeta, Article 21 and 24 (2008). Recently this proclamation has been amended by 1074/2018

3.2.4. Effect of Breach of exclusion clauses

Similar with policy conditions, policy exclusions might also be breached by the insured. Time and place do not permit a detailed analysis of breach of each exclusion clauses of CTPM policies. Yet an attempt is made here to analyze and focus on the effect of breach of exclusion clauses exemplifying with some court cases. As stated above in section 3.5.1 of this chapter the effect of breach of conditions is two dimensional. Similarly, the effect of breach of exclusion clauses also two dimensional: the effect towards the insured and towards third parties. Therefore, it is better to analyze these effects separately.

3.2.4.1.Effects of breach of exclusion clauses towards third party victims

In analyzing the effect of breach of exclusion clauses, it is better to see Article 6 and 7 of the ***VIATPR proclamation***, which provide policy conditions and exclusions respectively**.** There are two-way arguments concerning whether the effects of breach of exclusion clauses are addressed in the proclamation. Judge Duro[113] argued that Article 6 of the proclamation, which specifically deals about the effect of policy conditions, shall also apply to policy exclusions. Judge Seble Kinfe[114] and Judge Rosa[115] argue differently, that Article 6 of the ***VIATPR proclamation*** can never be related with policy exclusions, so that the breach of exclusion clauses can oblige third party victims.

The caption of Article 6 says conditions of insurance policy and it doesn't seem to discuss about policy exclusions, as Article 7 separately talks about statutory exclusions. Of course, Article 7 of the ***VIATPR proclamation*** simply lists the statutory exclusions and it doesn't provide the validity and effect of exclusions. That is why some argued that it is better to refer back to Article 6 of the proclamation to construe the validity and effect of exclusions. The main problem we encountered here is that, how can we use Article 6 for the validity of exclusions as it talks about policy conditions?

On the other hand, the close look at to the wordings of Article 6 implies the validity and effect of both conditions and exclusions towards third party victims, though the caption talks about policy conditions. The first provision, Article 6 (a) of the proclamation says "*no liability may arise under such policy*" and such kinds of expressions are commonly used in policy exclusions. So, it is possible to say this provision is designed to show the effect of policy exclusions towards third parties. The second provision, Article 6 (b) says "*any liability so arising shall cease in the event of some specified thing being done or not to be done after the happening of the event giving rise to a claim under the policy*" and such kinds of expressions are more of related with policy conditions. Hence, this provision shows the effect of policy

[113] Interview with Duro, *supra note* 48
[114] Interview with Seble knife, Judge at Federal High Court, in Addis Ababa, Federal High Court, lideta division building (May. 24, 2019)
[115] Interview with Rosa, *supra note* 49

conditions. Therefore, the wordings of Article 6 of the ***VIATPR proclamation*** seem to signify the validity and effect of CTPM insurance policy exclusions as well, despite the caption of the provision talks about conditions of insurance policy. These two-way arguments are analyzed using different decisions of federal courts as follows;

In the case between ***Ethiopian Insurance Corporation v. Tsigab***[116]**,** the FSC cassation division held that:

> *"The basic aim of the exclusion clause is to avoid the insurer`s liability when a loss is caused by untrained driver, who has never had proper driving license. Since overturning was occurred when the motor vehicle was driven by a driver who holds a forged driving license, which was never authenticated by the appropriate authority, there is no legal reason to make the insurer liable"*[117]

In the judgment, the court set the insurer free from any liability. As stated above in the brief, there are different identified plaintiffs in the case, who are the insured and third parties. Had the judgment was made against the insured, it might not have any problem in applying the exclusion clause, as the relation between the insured and the insurer is governed by the terms of the policy. However, the decision of the cassation bench is ambiguous whether the "invalid driving license"[118] exclusion clause has valid effect both against the insured and third party victims. Of course, the final order of the court signifies that the "invalid driving license" exclusion clause has a valid effect towards third party victims, as it avoids the liability of the insurer by ordering third party victims to bring a separate claim against the owner of the motor vehicle, i.e. the first plaintiff.

Hence, the judgment of the cassation bench seems to show the valid effect of exclusion clauses against third party victims, though the court didn't base its judgmental analysis in accordance with the relevant provisions of ***VIATPR proclamation***.

The other case decided by FSC cassation bench related with the exclusion clause is between ***Ato Amare Ansa vs. Ethiopian Insurance Corporation.***[119] The case was started in the FFIC, where the subrogated insurer, *Ethiopian Insurance Corporation* sought the recovery of the compensation it has paid to the unlucky insured, whose motor vehicle was damaged. The defendants were the faulty driver and the owner of the motor vehicle at fault, who, the latter in turn called his third party liability insurer as a 3rd party defendant to join the proceeding pursuant to Article 43(1) of the civil procedure code. However, the 3rd

[116] *Tsigab*, 20 FSC. at 110
[117] Id
[118] *See e.g.* the standard VIATPR policy issued by all insurance companies in Ethiopia
[119] *Amare Ansa v. Ethiopian Insurance Corporation,* No. 154960 FSC (Jul 23,2018)

party defendant (third party liability insurer) claimed that it has no liability by referring the "invalid driving license" exclusion clause in the policy, as the faulty driver didn't hold the proper driving license, while the accident was occurred. The court held that the third party liability insurer has no liability towards third party victims (the subrogated insurer) as the risk is excluded by the improper or invalid driving license exclusion clause inserted in the policy. The appellate FHC also affirmed the decision of the FFIC with no reservation.

However, the FSC cassation bench reversed the decisions of the lower courts by interpreting Article 43(1) of the civil procedure code. The court ruled out that:

> "*Insurers are the principals among third party defendants, who are called to join the proceeding pursuant to Article 43 of the civil procedure code. After joining the proceeding, if third party defendants claimed that they don't have any liability together with the defendant within the scope of the insurance policy, such kinds of litigation shall be entertained in a separate trial...''*

The cassation bench condemned the joining of the third party liability insurer to the proceeding in the lower court, by which it shall only the owner of the motor vehicle and the faulty driver being liable to the subrogated insurer. Hence, according to the decision of the cassation bench, third party victims including subrogated insurers cannot directly claim compensation from third party liability insurers, simply because the latter claimed non-liability by referring one of the exclusion clauses in the policy.

However, the court, in its decision, didn't interpret the relevant legal provisions of the ***VIATPR proclamation***; therefore, it is not possible to say the court defined whether the breach of exclusion clauses has a valid effect against third party victims. Of course, the message we got from the cassation decision signifies the valid effect of exclusion clauses towards third party victims as it avoids the liability of third party liability insurer.

On the other hand, the FFIC and FHC seem to hold a position that the breach of exclusion clauses by the insured has a valid effect against third party victims. Consequently, the above two cases of FSC didn't sufficiently create concrete precedence whether the exclusion clauses of CTPM insurance policies have a valid effect towards third parties.

However, there are some court decisions to the contrary. ***The Nile Insurance S.C. v. Tsehay Insurance S.C***[120] case can show this. The case was entertained in the FFIC, where the plaintiff (the subrogated insurer) claimed the reimbursement of the compensation paid to maintain the damaged motor vehicle,

[120] *The Nile Insurance S.C. v. Tsehay Insurance S.C,* No. 50486 FFIC K.D (Jun 11, 2018)

which belongs to the insured. The second defendant, who was the third party liability insurer, claiming no liability as the faulty driver was not holding the proper driving license during the accident. However, the court finally decided in favor of the plaintiff by making the third party liability insurer liable up to 100,000 Ethiopian birr. This decision of the court indicates that third party liability insurers cannot bring exclusion clauses as a defense against third party victims and they are always liable to third parties irrespective of any pre-condition.

The other case, ***Kifetew Mengistu vs.Kibebew Kebede***,[121] which was decided by FHC in its appellate jurisdiction, also avoided the application of exclusion clauses of CTPM insurance policies towards third party victims. First, the FFIC made the third party liability insurer free from liability by giving a valid effect for the exclusion clause. However, the appellate FHC made the third party liability insurer (*the fifth defendant*) severally liable with other defendants (usually, the owner and the at fault driver). The exclusion clause raised by the liability insurer was an exclusion clause related with the carrying capacity of the motor vehicle, where the vehicle at fault was causing damage to passengers, while the vehicle was carried on passengers beyond its carrying capacity.

3.2.4.2. Effects of breach of exclusion clauses towards the insured

The effect of breach of exclusion clauses towards the insured is always valid as the relation between the insured and the insurer is governed by the terms of the insurance policy made between them. Once liability insurers have been paid compensation to and based on the claims of third parties, they can claim reimbursement from the insured using their insurance policies recovery clause. It is only when the insured breached exclusion clauses stated in the policy that the liability insurer can claim recovery. Article 6(2) of the ***VIATPR proclamation*** signifies that there must be a contractual term in the CTPM insurance policy to claim recovery from the insured.

This statutory ability of CTPM liability insurers to recover third party liability payments from their own insured can be conceptualized as a form of subrogation. A fundamental concept of insurance law, subrogation is the principle under which the insurer gains the right to "step into the shoes" of the insured and pursue the party legally responsible for the loss.[122] Strictly speaking, an insurer's ability to recover payments from its own insured does not satisfy this definition; through subrogation, the insurer acquires only the rights possessed by the insured, and clearly, the insured would not sue his or herself.[123] Despite this technical inaccuracy, subrogation is conveniently used to describe the "insurer v. insured" cause of

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[121] *Kifetew Mengistu vs.Kibebew Kebede*, No. 196262 FHC. L.D, (Nov 27,2018)
[122] KENDAL GUMMER, *subrogation in the rear-view: Evaluating Alberta's current approach to automobile liability insurance for impaired drivers***,** vol. 51-3, ALR (Canada, Alberta 2014) at 602
[123] Id

action. In this context, the prior ability of liability insurers to recover payments made to third party victims from their own at-fault insureds has been described as an exception to the rule that an insurer cannot subrogate against its own insured.

There are some decisions of Ethiopian federal courts that support the above assertion. The case between ***Nib Insurance S.C. vs. Abebe Mola et al.***[124] can be cited. In this case the plaintiff claimed the recovery of payments made to third parties against the defendants. The first defendant was the driver at-fault and the second defendant was the insured. Though the case was conducted with ex-parte proceeding, the court decided against the insured (second defendant) based on the plaintiffs subrogation right and setting the driver free from liability. It was because the plaintiff didn't have any subrogation right against the at-fault driver that the latter freed from liability. The case shows that there is always a valid effect of breach of exclusion clauses towards the insured as there is contractual relationship between the insurer and the insured.

3.3. INTERPRETATION OF POLICY TERMS

The majority of states in the world recognize insurance policies as contracts of adhesion, in which the applicant must either accept the terms of the policy as written by the insurance company or reject the terms and accept similar terms from another insurance company.[125] Different states have adopted special rules interpreting insurance contracts to balance unequal bargaining power. One common alternative to traditional contract law is ***strict contra proferentem***, which interprets ambiguous terms against the drafter without reviewing extrinsic or parol evidence. A second alternative, known as the common law ***reasonable expectations doctrine***, interprets an ambiguous policy language using the reasonable person standard.[126]

The essential difference between general rules of contract interpretation (***reasonable expectations doctrine***) and ***strict contra proferentem*** is the consideration of extrinsic evidence to clarify an ambiguity. In the former, when the ambiguity remains after reviewing extrinsic evidence i.e., prior negotiations, conduct after policy issuance and industry standard practices, the court construes the ambiguous term in favor of the insured. Contract law gives the insurer a second shot to provide a reasonable interpretation. In the latter, when the court finds a term ambiguous, it construes the term without reviewing extrinsic

[124] *Nib Insurance S.C. vs. Abebe Mola et al*, No. 56562 FFIC. K.D, (Jan 15, 2018), *See also, Awash Insurance S.C. vs. Nesru Temesgen,* No. 51597 FFIC. K.D, (Jul 17, 2018)
[125] Henry, *supra note* 11, at 1
[126] Id

evidence. ***Strict contra proferentem*** jurisdictions give no additional opportunity for insurance companies to clarify their unclear policy terms.[127]

When we see the commercial code of Ethiopia and other insurance laws, there is no specific legal provision which tries to adopt any special interpretation rule of insurance policy terms. Even the Ethiopian courts rarely addressed this issue. If there is no special rule adopted by insurance laws and court practices in Ethiopia, one may say that, insurance contracts are interpreted based on the general principles of contract law. As long as, Article 1 of the Commercial code cross-referring to the Ethiopian Civ. C; the general principles of the civil code may be applied to fill the gaps seen in the provisions of the Com. C. Again, Article 1676 (2) of the Civ. C by itself extends the application of the general provisions of the law of contract to commercial code. Based on this way of interpretation it is possible to say that, insurance policies are interpreted using the general principles of law of contract.

However, as insurance contract is an adhesive contract, various countries are adopting a special rule of interpretation for insurance contracts. Hence, in assessing the applicable doctrine in Ethiopia the author tries to see in light of one published FSC cassation bench decision related with interpretation of policy terms, especially interpretation of policy exclusions.

The case was between ***Global Insurance S.C. v. Ato Fitsum lakew.***[128] The case was started in the Oromiya Regional State, Adama Speial Zone High Court, where the plaintiffs Ato Fitsum and W/ro Biskut Zeleke sued the insurer--Global Insurance S.C. based on the terms of the comprehensive motor insurance policy to indemnify the damage occurred to the insured motor vehicle. The defendant-insurer argued that the risk has been excluded and it has no liability to indemnify the insured plaintiffs, as the number of persons carried by the insured motor vehicle exceeds its seating capacity when the damage was occurred. In the proceedings, the court found out that the cause of the damage was not the excessive carriage by the motor vehicle; rather it was excessive speed and sleep of the driver, which was not excluded by the policy. Eventually, the High Court held that, since the cause of the damage was not the excessive carriage of passengers on the motor vehicle, the insurer is liable to indemnify the insured.

The Oromiya Regional State Supreme Court also affirmed the decision of the High Court. Finally, the FSC cassation division reversed the regional High Court and Supreme Court decisions. In reversing the decisions of the lower courts the FSC cassation division ruled out that:

[127] Id
[128] *Global Insurance S.C and Fitsum lakew*,20 FSC 410 (2013)

"The property insurance policy made between the applicant and the defendants is legal. However, legal contract shall not be made to gain worthless benefits by committing what is prohibited by law. Since the vehicle of the defendants is a public transport motor vehicle, it shall follow the transport laws, regulations and directives. But, during the accident the motor vehicle carried on 7 extra passengers beyond the exact capacity of the vehicle, which should be 11 passengers. …It is clear from the proceedings that among the total 18 passengers carried on the vehicle, 14 of them were died of the accident. Hence, as long as the passengers carried on the motor vehicle exceeded the carrying capacity permitted by transport laws, the lower courts made fundamental error of law in deciding against the applicant; to pay a sum of money as an indemnity to the current defendants."

The basic difference created between the decisions of lower courts and FSC cassation division explained above is because of the inconsistency in interpreting policy terms. The exclusion clause susceptible for interpretation here in the case is: -

"*Any loss, damage or liability caused by overloading or strain or the number of persons exceeding the seating capacity of the insured motor vehicle as specified in the ownership booklet issued by the reverent licensing authority"*

Based on the facts found in the course of the proceedings, the lower courts confirmed that the cause of the accident was excessive speed and sleep of the driver, which is not excluded in the policy. They also confirmed that cause of the accident was not the excessive carriage of passengers. Due to these facts, the lower courts were favoring the insured, while interpreting the exclusion clause. They interpret the exclusion clause in such a way that, unless the damage shall necessarily be caused by the excessive carriage of passengers, the insurer cannot escape liability. The exclusion clause presented for interpretation is not as such ambiguous, though it is debatable whether damage shall necessarily be caused by the excessive carriage of passengers or not. Apparently, the lower courts seem to follow the ***strict contra proferentem*** rule of interpretation, albeit hard to say they are adopting ***strict contra proferentem*** rule of interpretation.

On the other hand, the FSC cassation division seems to hold a position that the above exclusion clause is not in conformity with the country`s transport laws. However, it is not clear whether the court concluded that, any exclusion clause inconformity with the country`s transport laws shall be null and void. Of course, the final decision of the cassation bench connotes that, the transport laws overrides the exclusion clauses of motor insurance policies. The cassation bench didn't interpret the respective exclusion clause.

Hence, the cassation bench adopted neither ***strict contra proferentem*** nor ***reasonable expectations doctrine.***

3.4. CONCLUSION AND RECOMMENDATIONS

3.4.1. CONCLUSION

The introductory chapter of this thesis posed five research questions to which subsequent chapters and sections of the preceding discussion targeted to provide analytical answers. To address these questions different literatures and other primary sources are reviewed to deal with terms of exclusions and conditions of CTPM insurance policies and some practical matters in general.

Besides, the paper tries to discuss the legal regulation of motor and CTPM insurance, since they are the bench mark in order to expound the issues related with exclusions and conditions of insurance. In chapter two and three the paper tries to address the basic research questions stated in the first chapter. The first question is what would be the effect and validity of conditions and exclusion clauses of CTPM insurance policies towards the insured and third party victims? The author used different factors to analyze this question.

The first factor related with the rights of third parties to institute an action against third party liability insurers and the situation where subrogated insurers considered as third party victims. The problem whether third parties directly institute a legal action against third party liability insurers emanates from Article 17 (2) of the ***VIATPR proclamation,*** which says third parties may submit their claims together with their supporting evidences directly to the insurer. Again, the FSC cassation division decided some controversial decisions for and against the stand of the proclamation, though in its recent decisions tries to accommodate subrogated insurers in the wide scope of third party victim. According to the data the federal courts seems to have a firm stand of permitting third party victims to institute legal action against third party liability insurers before the court of law, though the argument against it remains intact.

The second factor is the effect and validity of breach of conditions of CTPM insurance policies. The effect and validity of conditions of CTPM policies is two dimensional pursuant to Article 6 of the ***VIATPR proclamation.*** The first dimension is associated with the effect of breach of conditions towards third parties, where the breach of conditions by the insured will not have any valid effect on third party victims. The second dimension is linked with the effect of breach of conditions towards the insured, where the breach of condition is valid and it gives the insurer the right of recovery of compensation, from the insured, which has already been paid to the satisfaction of third parties.

The third factor is the effect and validity of breach of exclusions of CTPM insurance policies. Similarly, the effect of breach of exclusion clause is bi-dimensional like that of conditions. The effect of breach of exclusion clauses of CTPM insurance policies is always valid towards the insured as there is direct contractual relationship between the insurer and the insured. However, the validity of effect of breach of exclusion clauses towards third party victims is contesting. The data gained, from various court decisions show that there is no uniform stand regarding the effect of exclusion clauses towards third party victims, among federal courts. Even, the FSC cassation division has been given different contradictory rulings regarding the effect of exclusion clauses. In one hand, the courts made invalid the effect of breach of exclusion clauses of CTPM insurance policies by making third party liability insurers liable to the claims of third party victims. On the other hand, they made third party liability insurers free from liability to the claims of third party victims, which by itself shows the validity of effect of breach of exclusion clauses towards third parties.

The second research question is what would be the legal effect of additional exclusion clauses of the standard CTPM insurance policies as compared to the exclusions found in the ***VIATPR proclamation***? Again, the author tries to see in light of two important factors. The first factor is evaluating the legal effects of statutory exclusions, additional policy exclusions and prohibited exclusions. The other factor related with these exclusion clauses is the evaluation whether they are exhaustively listed or not. Though the close looking of Article 7 of the ***VIATPR proclamation*** seems to be an exhaustive legal provision, insurance companies intentionally and contrarily inserted additional exclusion clauses in their policies so as to benefit from their right of recovery against the insured. The issue related with the principle of ***ex turpi causa*** also discussed and unlike the UK courts, the Ethiopian courts didn't specifically address such issue. However, as long as the ***VIATPR proclamation*** has its own public policy concern; which is facilitating the compensation system for third party victims, it is not appropriate to apply other public policy principle against it.

The third research question is more or less related with the first two research questions. It is mainly related with the effect and validity of exclusion clauses towards third parties. The problem emanates from Article 6 of the ***VIATPR proclamation*** which seems to talk only about conditions of insurance policy**.** However, the close look at to the provision seems to suggest the application of both conditions and exclusions towards third party victims. Hence, the spirit of the law seems to implement similar application of conditions and exclusions of CTPM insurance policies towards third party victims.

Nevertheless, the ambiguousness observed on the legal provisions; lead the federal courts to give contradictory decisions regarding the application of exclusions towards third party victims. Even the FSC cassation bench has been decided contradictory decisions. Therefore, it is possible to sufficiently conclude that the ambiguous drafting of Article 6 (1) of ***VIATPR proclamation*** creates inconsistency among the decisions of federal courts concerning the application of conditions and exclusions of CTPM insurance policies towards third party victims.

The fourth research question is what is the applicable rule of interpretation of motor insurance contracts, especially CTPM insurance policies in Ethiopia? There are two well-known rules of interpretation of insurance contracts applicable indifferent jurisdictions. These are; ***the doctrine of contra proferentem*** and ***the doctrine of reasonable expectations***. The Ethiopian insurance law regime as well as the judicial system didn't adopt any one of the rules of interpretation of insurance contracts. Even though, there was the possibility to adopt any one of the rules of interpretation, the FSC cassation bench missed it and focuses on other legal issues raised in ***Ato Fitsum lakew's*** case. Therefore, it is possible to conclude that there is no legally and judicially adopted rule of interpretation of insurance contracts in Ethiopia.

3.4.2. RECOMMENDATIONS

Based on the findings of the study and the conclusions stated above, the author recommends the following solutions in order to curtail the problems raised;

1. The rights of third parties to institute a legal action against third party liability insurers is not clearly guaranteed under the ***VIATPR proclamation.*** Even Article 17 (2) of the proclamation is highly susceptible to interpretation as it seems to confer the right of third party victims to claim compensation outside the court. Therefore, it is better to amend Article 17(2) of the proclamation so as to convey third party victims, the right to institute an action before the court.
2. Until the amendment to the ***VIATPR proclamation*** is conducted, the FSC cassation bench shall better review its contradictory decisions and give concrete precedence in a way to incorporate subrogated insurers in the scope of third party victims and conferring third party victims to institute a legal action before the court.
3. Article 6 of the ***VIATPR proclamation*** is better to be amended so as to incorporate the legal effects of breach of exclusions as well, since the provision only implies the effect of breach of conditions.
4. Since invalidating the effect of breach of exclusion clauses towards third parties is necessary to compensate third party victims at any instance, the FSC cassation bench shall better rule out a concrete precedence concerning this issue. The contesting decisions ever made by the FSC cassation bench shall better be changed by the new precedence, which enables third party victims to be compensated at any instance without any effect of breach of exclusions and even conditions.

5. Since there is no legally and judicially adopted rule of interpretation of insurance contracts in Ethiopia, the FSC cassation division shall better to adopt one of the two rules of interpretation of insurance contracts. The author specifically recommends adopting the civil law doctrine of ***contra proferentem*** rule of interpretation as the Ethiopian legal system has more of civil law nature. Again, the author recommends incorporating this rule of interpretation while the Com. C. is coming to be amended.
6. The ***VIATPR proclamation*** is better to be amended in a way to permit the endorsement of extension clauses in the CTPM insurance policies
7. Though the limit of liability specified under Article 16 of the ***VIATPR proclamation*** is limitative, insurance companies are extending the limit in their CTPM insurance policies. To avoid this outlawing by insurance companies, it is better to amend the law in a way permitting insurance companies to extend the limit of liability together with allowing premium loading as well.
8. Even though the ***VIATPR proclamation*** won't be amended or the amendment won't include the above recommendation, insurance companies shall intensively endorse extension of limit of liability to satisfy the interests of their clients and improve the development of extension clause in the insurance business.

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