REMUNERATION OF DOCTORS UNDER THE MOTOR VEHICLE INSURANCE ACT

1. The responsibility of insurance companies for the direct payment of certain incidental expenses (including medical expenses) incurred by an injured 'third party' is governed by Section 12 of the Motor Vehicle Insurance Act, 1942, as amended, which, prior to its last amendment late in 1959, read as follows:

'If the cost of the accommodation of any person in a hospital or nursing home, or of any treatment of or service rendered or goods supplied to any person is included in any compensation for which a registered company is liable under section eleven, the company shall, unless that cost has already been paid, pay that cost direct to the person who is entitled to payment therefor and the said person shall be entitled to recover that cost from the company without any cession of action.'

2. This section of the Act (Section 12) provides that if the cost of the accommodation of any person in a hospital or nursing home, or of any treatment of or service rendered or goods supplied to any person is included in any compensation for which a registered company is liable, the company must, unless that cost has already been paid, pay that cost direct to the person who is entitled to payment therefor and such person is entitled to recover that cost from the company without any cession of action.

3. The words 'the person who is entitled to payment therefor' refer to the person in the position of, for example, a doctor, nurse, proprietor of a nursing-home or chemist (who, for convenience, may be termed 'the supplier'), to whom the injured person is indebted for the cost of medical treatment, nursing, nursing-home accommodation or medicines respectively. Normally at common law the injured person sues for his damages *in toto*, and includes in his claim these medical and other 'incidental' expenses for which he is liable. The legislature has provided that such expenses shall be paid by the company direct to the 'supplier' but only if such expenses are included in the compensation for which the company is liable under Section 11. 'Liable under Section 11' means liable to compensate a person who has suffered loss or damage as a result of bodily injury to himself or the death of or bodily injury to any person. The 'supplier' is not a person who has suffered such 'loss or damage'; he is merely 'entitled' by his contract with the injured person to payment by the latter for the treatment, services, etc.

4. The words 'and the said person shall be entitled to recover that cost from the company without any cession of action' contained in Section 12 clearly give the 'supplier' the right to recover the incidental expenses direct from the insurer without any cession of action.

5. There are, however, 3 requirements that must be satisfied before the 'supplier' can recover the incidental expenses direct from the insurer:

(i) The cost of the incidental expenses must be 'included in any compensation for which a registered company is liable'.

(ii) It must be shown that the insurer 'is liable under Section 11' for compensation, i.e. there *must be a decision of a court* (at the instance of the injured party or, if he does not sue, at the instance of the doctor) or *an admission* by the insurer that the injury or death was due to the negligence or other unlawful act of the driver or of the owner or his servant.

(iii) The 'supplier' must not already have been paid by the third party or by anyone else.

6. There is, of course, nothing to debar the third party from incorporating the cost of these incidental expenses in his own claim against the insurer and this is usually done. If he does so, however, and the court gives judgment in his favour, then the insurer must pay such cost direct to the 'supplier' unless such 'supplier' has already been paid.

7. If the third party accepts a compromise payment from the insurer without actually taking the insurer to court, it does not affect the "supplier's" right to recover his full fees direct from the insurer, provided the 3 requirements mentioned in paragraph 5 are complied with. It should here be remembered that a doctor, by virtue of his contract with his patient, always has the right to recover his fee direct from the patient regardless of whether or not an insurance company eventually pays the claim.

8. The main difficulty experienced in connection with the working of the Motor Vehicle Insurance Act, which was framed for the protection of an injured third party, has always been that a decision of a court is essential to determine liability and that in the majority of cases the injured third party is usually not in a financially strong enough position to be able to institute legal proceedings.

The insurance companies themselves, however, in order to avoid as far as possible the expenses involved in litigation, frequently offer the injured third party an *ex gratia* payment without admitting liability and this practice is supported by the Minister, who has always regarded the Act as a sort of social security measure.

9. It is usually this action of the insurer in effecting a compromise (*ex gratia*) payment to the third party, usually without the knowledge of the 'supplier' and without admitting liability or being taken to court, that has led to dissatisfaction amongst 'suppliers' in general and doctors in particular; because, when the 'supplier' ultimately gets to hear about the *ex gratia* payment and attempts to recover his fee from the third party, this party often claims that medical expenses were not included in the payment. Although the 'supplier' as stated in paragraph 7, is still entitled to independently sue the insurer for his fee, he is loath to do so because of the legal expenses involved, and also because of the uncertainty of the success of his action. It must here also be remembered that the third party, having accepted the *ex gratia* payment from the insurer, is naturally very reluctant or even completely unwilling to cooperate and, without the cooperation of this key witness in his case, the chances of the doctor's legal action being successful are, of course, very limited.

10. The Association has, for some years, made representations to the Department of Transport in respect of the dissatisfaction existing amongst doctors because of the non-payment of their fees by insurance companies when making *ex gratia* payments to injured third parties. The Association submitted that if it was competent for an insurer to be held responsible for the direct payment of a doctor's fees when there was a decision of the court establishing the liability of the insurer (see paragraph 5) it should also be obligatory for the insurer, on behalf of the injured third party, to pay directly to the doctor these fees when making an *ex gratia* payment without admitting liability. The Association further submitted that Section 12 of the Act should be amended so as to provide for the protection of the interests of all persons, who either rendered a service or supplied goods to an injured third party.

11. The representations made by the Association, although sympathetically received, could not be *entirely* agreed to for various reasons which were eventually accepted by Federal Council as being reasonable as well as valid.

The representations were, however, partially successful in that the Minister, with the prior approval of Federal Council, agreed to amend Section 12 of the Act so as to make it compulsory for the insurance companies, when making *ex gratia* payments, to pay the accounts of 'suppliers' direct, but limiting their liability in respect of all these accounts to £100.

12. The new Section 12 of the Act, which came into operation on 1 December 1959 reads as follows:

'*Section 12:*

1. Where—

(*a*) the compensation for which a registered company is liable under section *eleven* includes the amount of any costs incurred in respect of the accommodation of any person in a hospital or nursing home or of any treatment of or service rendered or goods supplied to any person; or

(*b*) a registered company has agreed to make any payment in settlement of a claim for compensation under that section, and the compensation claimed could, if the company were liable for the payment thereof, have included such costs, the registered company shall, subject to the provisions of sub-section (2) and (3), pay any amount which may be due in respect of such costs direct to the person to whom that amount is due, and that person shall be entitled to recover such costs from the company without any cession of action: Provided that the total amount payable in respect of such costs under the circumstances described in paragraph (*b*) shall not in any case exceed one hundred pounds.

'2. A registered company shall not be liable for the payment under the circumstances described in paragraph (*b*) of sub-section (1) of any amount alleged to be due in respect of costs referred to in that sub-section unless a claim for the payment thereof is lodged with the company within thirty days after the date on which it has in the manner prescribed by regulation given notice

that it has agreed to make any payment contemplated in that paragraph in settlement of the claim for compensation in which such costs could, if the company were liable for the payment of such compensation, have been included.

'3. If claims whereof the amounts are not in dispute and exceed in the aggregate the sum of one hundred pounds, are lodged with a registered company under sub-section (2) by two or more persons, the company shall pay to each claimant an amount which bears the same ratio to the sum of one hundred pounds as the amount of his claim bears to the amount representing the aggregate of the amounts of all such claims.'

13. It is stressed that the liability of insurance companies for the direct payment of accounts of all 'suppliers' is limited to £100 only when these companies make *ex gratia* payments. Where the company either admits liability or is declared to be liable by a decision of a court, it is liable for the direct payment of the accounts of 'suppliers' *in full*.

14. The regulations subsequently framed under the Act make it compulsory for insurance companies who intend making an *ex gratia* payment to publish such intention in the *Government Gazette*. Medical practitioners are therefore advised to watch the *Government Gazette* in the future as it will be seen from sub-section (2) of Section 12 of the Act (see paragraph 12) that all 'suppliers' (including doctors) must lodge their claims with the company within 30 days after the date of publication.