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Third Party (Rights Against Insurers) Act 2010

The commencement date for the Third Party (Rights Against Insurers) Act 2010 ("the Act") was mooted to be 06 April 2011, but has yet to be confirmed. When it comes into force it will make it easier and more cost-effective for claimants to obtain compensation from the insurers of defendants that have suffered an insolvency event. Its impact will assist claimants, impose duties on defendants and their office holders, and potentially spark a rise in successful claims against insurers.[1]

Modern interpretation of "insolvency event"

Neither the Act nor the current legislation apply to defendants that are simply insolvent. The defendant must have suffered an "insolvency event" for their provisions to apply. The definition of that event has been modernised in the Act to include individual and company voluntary arrangements as well as more obvious events such as bankruptcy orders, winding up and the like.

Claimants entitled to a remedy in one set of proceedings

Under the current legislation, significant delay and expense is often caused because presently, in order for a claimant claiming against a defendant to recover from the defendant's insurer, the claimant has to:

1. Prove the defendant's liability to it by obtaining a judgment against the defendant; and

2. Subsequently and separately establish that the insurer is liable to pay the claim under the insurance policy.

The Act will allow the claimant to proceed directly against the insurer and establish, in one set of proceedings, both the defendant's liability and the insurer's obligation to pay under the policy.

Further, defendant companies struck off the register of companies will not need to be restored to the Register of Companies for a compensation claim to be brought against the insurer.

The claimant's right to insurance information

The Act will greatly expand the claimant's right to information concerning the defendant's insurance cover. A claimant who reasonably believes that he has a right to receive compensation from an insurer will be entitled to obtain information about the defendant's insurance cover from anyone that holds that information; e.g. the insurer, brokers, the defendant or the insolvency practitioner appointed over the defendant or its assets.

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[1] The matters set out in this Bulletin do not apply to reinsurance policies.

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The new process for obtaining insurance information, which may extend to matters such as the identity of the insurer, the policy terms and the question of whether liability has been conceded or payments already made, will be as follows:

- The claimant will send a written notice, including reasons why he believes he is entitled to the insurance information, to the holder of the information;
- The holder will have 28 days from the date of the notice to respond to the request; and
- Should the holder fail to respond, the claimant will be entitled to apply to the court for an order enforcing the appropriate disclosure.

Scope of insurer's technical defences reduced

The new Act will enhance the claimant's rights against the insurer by preventing insurers from relying upon certain technical defences. For example, when conditions of insurance cover, such as claim notification, should expressly be met by the defendant, they will be deemed to have been met if the claimant meets them itself, for example by notifying the insurer of its claim. Further, if the defendant has been dissolved and that precludes requisite information being provided to the insurer, that is no longer a bar to the claim.

Jurisdiction

The Act will clear up pre-existing "does the legislation apply" jurisdictional problems. If the defendant entered insolvency proceedings in the UK, the Act will apply.

Voluntary arrangements catered for in the Act

The Act improves the position of the claimant's compensation claim where the defendant company is subject to a voluntary insolvency arrangement because the claimant will be able to claim directly against the insurer.

Implications of the Act

The Act's principal purpose is to simplify a claimant's ability to bring a claim against insurers of defendants that have suffered an insolvency event. It may be presumed therefore that more claims will be brought and with the removal of some defences of the insurer that more will be successful. On the other hand, insurers may find it advantageous to have earlier conduct of the defence of a claim and may also appreciate the costs savings of the streamlined process.

A wider although less profound impact will be on the "holders of information" that will face an application to Court if they do not respond promptly to a request for information. They will include insurers, brokers, directors, bankrupts and insolvency practitioners. They may wish to review their systems for responding to such requests and factor in their cost. The matter of who will bear the cost is not made clear in the legislation.

Paul Cooper is a partner at Blake-Turner & Co who focuses on giving commercially driven advice to businesses, individuals and professionals with a view to efficiently obtaining the best solutions for his clients. He runs the corporate/commercial department with Peter Blake-Turner and is also an experienced commercial litigator.

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