

Third Parties (Rights against Insurers) Act 2010

Introduction

The Third Parties (Rights against Insurers) Act 2010 (“the 2010 Act”) comes into force on 1 August 2016. The 2010 Act follows on from the 1930 Act of the same name which allows claimants to bring proceedings directly against an insurer where the insured has become insolvent.

The 2010 Act

The 2010 Act was enacted to rectify perceived defects in the 1930 Act. Whilst the 2010 Act preserves the fundamental rule that allows a statutory transfer of the insured’s rights arising under a policy of insurance to a third party, significant changes have been made to bring the 1930 Act up to date:

- A third party can now bring proceedings directly against an insurer without first having to establish the liability of the insured thereby avoiding multiplicity of proceedings. Under the 1930 Act the third party was required to establish the insured’s liability prior to bringing proceedings against the insurer.
- Dissolved companies will no longer need to be reinstated to the register prior to the issue of proceedings.
- Insurers, brokers and former directors of the insured (amongst others) now have a statutory duty to provide policy information to a third party. The purpose is to allow a third party to establish what rights can be transferred to them under the policy of insurance prior to the issue of proceedings.
 - The requisite information is prescribed in S.1 (3) of Schedule 1 and includes the identity of the insurer, the terms of the contract and whether there are or have been any proceedings between the insurers and the insured in respect of the alleged liability.
 - The insurer or others with knowledge of the insolvent party’s insurance have only 28 days within which to respond to a third party request for information. Should the information not be provided within the prescribed timescale, the third party may apply to court for an order compelling compliance.

Transitional Provisions

The following table will assist in determining which Act applies to your claim:

1.	Did the insolvency process commence on or after 1 August 2016?	Yes	2010 Act applies
		No	Go to question 2
2.	Was liability incurred on or after 1 August 2016?	Yes	2010 Act applies
		No	1930 Act applies

Defences and set off

Under the 1930 Act, insurers can successfully defend a claim where the insured failed to provide sufficient notice of the claim, irrespective of the third party providing notice. The 2010 Act removes this avenue of defence by allowing the third party to notify the insurer and satisfy any policy conditions in place of the insured.

That said, insurers can still rely on all other policy defences that would be available against the insured (subject to the limitation above), applying them to the third party claim. However, insurers cannot rely on a defence of breach of duty to provide information if the insured has been dissolved or died. In addition, the insurer's right of set off is transferred.

It is also worth noting that the 2010 Act does not apply to reinsurers.

Comment

What is clear is that the 2010 Act reduces the number of defences available. However, the trade off is an increase in the savings on third party and own costs. This is because third parties will not need to incur the additional costs of restoring a dissolved company to the register and issuing proceedings against that company to establish their liability prior to being able to commence proceedings against the insurer (as would have been required under the 1930 Act). This allows the separate issues of the insured's liability and the insurer's indemnity to be dealt with under one set of proceedings with the potential to reduce the overall cost of successful actions. However, a removal of such requirements could arguably see an increase in the volume of this type of claim as the removal of such expense and procedures would make it easier for a third party to bring a claim. Whilst a reduction in the red tape generated by these claims is welcomed by some, there is an apparent potential for an increase in the volume of such claims.

In order to deal with statutory requests for information within the short timescale provided by the 2010 Act, good diary systems and processes will need to be introduced to avoid applications being made for a compliance order. Whilst the 2010 Act does not specifically provide for the costs of such an application, it seems inevitable that an insurer failing to provide information within the required timescale will be likely to face sanction from the court in the absence of a reasonable excuse.

The circumstances of each case will need to be examined carefully, in particular the date when the insured's liability arose and its entry into a formal insolvency process, to determine whether the claimant has applied the correct legislation and named the correct defendant.

As the new legislation is not retrospective, the transitional provisions will apply for many years to come for the majority of disease claims. It is not uncommon under the current 1930 Act for insurers to agree not to raise the issue if proceedings are commenced against an insolvent company without restoring the company to the Companies register to avoid further expense and there is no reason why such tactical decisions should not continue in cases where the 1930 Act applies.

Can we help?

Should you wish to discuss this in more detail, or would like assistance with any other matter, please do not hesitate to get in touch.



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Weightmans LLP July 2016

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