

THIRD PARTIES (RIGHTS AGAINST INSURERS) ACT 2010

INTRODUCTION

We have recently issued a Bulletin detailing the significant changes to insurance law which will be brought into force by the Insurance Act 2015 ([see Bulletin Insurance Act 2015](#)). In addition the Insurance Act 2015 is being used as a vehicle to make some minor amendments to the Third Parties (Rights Against Insurers) Act 2010 (“the 2010 Act”) prior to that finally coming into force.

BACKGROUND

The 2010 Act is intended to remedy some of the problems which have been encountered by third parties seeking to pursue their rights under the original 1930s legislation, the Third Parties (Rights Against Insurers) Act 1930 (“the 1930 Act”). The 1930 Act enables a third party who has a claim against an insolvent or defunct person, to sue that person’s insurer directly where that claim is insured. This has proved difficult in practice for a number of reasons. One of the main problems has been that the third party cannot issue proceedings against an insurer without first establishing liability against the insured. In the absence of an admission of liability the third party must therefore first bring a claim against the insured. Where the insured is a company which has been dissolved it needs to be restored to the Register of Companies so that liability can be established. All of this can be a long and expensive process and a third party will be reluctant to embark on it without establishing whether it has a reasonable prospect of making a recovery from the insurer. Obtaining sufficient information about the insurance cover available can prove yet another hurdle, if the insurer chooses to be uncooperative.

The deficiencies in the 1930 Act were highlighted in a Law Commission report which recommended a number of reforms. These culminated in the 2010 Act which received Royal Assent on 25th March 2010.

CHANGES MADE BY 2010 ACT

- Claims can be brought directly against insurers without a requirement first to bring proceedings against the insured to establish liability. This avoids the need for insured companies which have been dissolved to be restored to the Register of Companies, so that liability can be established against them.
- The right to obtain information about the insured’s insurance cover has been clarified, the categories of people who can be required to provide information has been widened and time limits have been imposed for those people to respond.
- Insurers cannot rely on conditions of the policy requiring the insured to pay first and then recover sums from insurers, or on any failure of a dissolved insured company to provide information or assistance in accordance with any policy terms.
- Third parties have the right to fulfil policy conditions, such as notifying claims to insurers, themselves.

CURRENT POSITION

Despite having received Royal Assent in 2010, the 2010 Act has been awaiting a further statutory instrument to bring it into force ever since. In the intervening period it became apparent that there were some areas that needed minor amendment. These minor amendments have now been enacted in the Insurance Act 2015 and a statutory instrument is expected to be passed shortly to finally bring the 2010 Act into force.

RISK MANAGEMENT MESSAGE

It is unlikely that the 2010 Act will have a major impact on Members, but it is possible that details of policies placed by Members will be requested by third parties in the event of insolvency of the insured.

Members should be aware that the entitlement of third parties to details of an insurance policy is restricted to the circumstances set out in the 2010 Act (i.e. insolvency) and does not provide a more general means of side stepping the confidentiality that protects the dealings of an insured with its agent broker. Members need to be aware of the restriction and must treat any request for information about a client's insurance arrangements with great care. The Managers will always be pleased to offer assistance.

This bulletin is for general information purposes only and does not provide a comprehensive or complete statement of the law relating to the issues discussed nor does it constitute legal advice. In addition, by its nature, this bulletin may be superseded by subsequent regulatory or legal developments. Professional advice should be sought where appropriate in relation to any particular circumstances.

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