

## Introduction

In this week's edition of the Monday Morning Dispatch, we thought we would cover the Third Parties (Rights Against Insurers) Act 2010 and how we utilise the legislation to assist our clients with establishing liability against an insurer where the insured has gone insolvent.

### What is the Third Parties (Rights Against Insurers) Act 2010?

The Third Parties (Rights Against Insurers) Act creates a statutory right for third parties to an insurance contract to claim against insurance companies where the insured has gone insolvent. Its main aims were to address the shortcomings of the 1930 Act, an example of one of those shortcomings being that in the 1930 Act the third party first had to establish the insured's liability in separate proceedings. This is no longer the case as the third party only needs to bring one set of proceedings now. Another is that a claimant had to restore a dissolved company to the register of companies and obtain permission from the court to bring proceedings against them.

When using this act, our clients can essentially step into the shoes of the insured and have the insured's right to claim transferred to them. For example, if your business is in the leasing of vehicles, and your customer has hired or leased a vehicle from you on their own insurance policy, and during that hire period the vehicle is damaged beyond economical repair and the hirer becomes insolvent before you are paid for the damages, you can then have their rights in their insurance contract transferred to you and claim on their vehicle insurance for compensation.

For this legislation to apply the insured/policyholder must be dissolved, not just in liquidation or administration.

The Act can be applied to any form of insurance a defendant may have had in place at the time liability arose which might cover the type of claim, this is not limited solely to vehicle insurance for repair costs.

### How Acclaim use this Act to help you

Here at Acclaim, we use the Act to help our clients gain compensation where they thought they would have no other option due to the insured being insolvent.

Acclaim work with several clients in the motor trade business, who before the assistance of Acclaim, used to write off these types of insolvent cases.

In assisting you with claiming under the Act, Acclaim will first write to the insurer on your behalf, setting out your rights and their liability to you under the Act. To ensure we have enough information to hand from the outset, we will serve notice on the insurer to provide us with full information relating to their policy with the insolvent debtor. This allows you to make an informed decision on next steps in the event indemnity is initially refused.

A claimant who relies on the Act has a right pursuant to s.11 and Sch.1 of the Act to serve notice on an insurer requesting information about matters including the terms of the insurance and what they have said to the insured about the insurance. The Act provides a statutory time-limit of 28 days for the insured's response to the notice.

Sch.1, 1[3] of the Act states that the following is the information that falls within the scope which can be requested under the notice:-

- (a) whether there is a contract of insurance that covers the supposed liability or might reasonably be regarded as covering it;*
- (b) if there is such a contract:-*
  - (i) who the insurer is;*
  - (ii) what the terms of the contract are;*
  - (iii) whether the insured has been informed that the insurer has claimed not to be liable under the contract in respect of the supposed liability;*
  - (iv) whether there are or have been any proceedings between the insurer and the insured in respect of the supposed liability and, if so, relevant details of those proceedings;*
  - (v) in a case where the contract sets a limit on the fund available to meet claims in respect of the supposed liability and other liabilities, how much of it (if any) has been paid out in respect of other liabilities;*
  - (vi) whether there is a fixed charge to which any sums paid out under the contract in respect of the supposed liability would be subject.*

#### Legal update under the Act

- In *BAE Systems Pension Funds Trustees Ltd v Royal & Sun Alliance Insurance plc and others* [2017] EWHC 2082 (TCC), the High Court considered an application to join an insurer as co-defendant under the Third Parties (Rights Against Insurers) Act 2010. It looked at what effect a coverage dispute between the insurer and the insured has on the application of the Act.

The claimant [BAE] applied, under the Third Parties (Rights Against Insurers) Act 2010, to join the respondent insurer [RSA] as co-defendant to a claim arising out of the design and construction of a property. RSA insured the third defendant, who was responsible for the design and construction of the steel fibre reinforced concrete slab at the property.

The third defendant company had been placed in administration and the administrators informed BAE of the existence of the insurance policy.

O'Farrell J considered that section 2(1) of the Act was engaged, even where there was a dispute as to whether or not the policy covered the claim in question.

O'Farrell J referred to the wording of section 2(1) of the Act and found that the claimant need only claim that it has such rights and did not have to establish those rights first. (Nonetheless, before it receives an indemnity the third party must prove the insured and insurer's liability.)

The decision is important as it confirms that a coverage dispute will not prevent an insurer from being joined to proceedings under the Act. Depending on the nature of the coverage dispute, insurers may consider applying to strike out the claim against them or applying for coverage to be determined as a preliminary issue. Claimants should therefore be cautious of bringing proceedings against insurers where there is a potential coverage issue and should first be confident of an arguable case in relation to coverage under the policy, as it is likely insurers will apply for the claim to be struck out.

## Contact

If you require assistance with debt recovery against an individual or business that is now insolvent, but you believe had an insurance policy in place at the time liability arose, you can contact a member of our team below:

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