Insolvent insurers – Claims on the Irish Insurance Compensation Fund

A recent decision\(^1\) has confirmed that a claimant will not be able to make a claim on the Irish Insurance Compensation Fund unless the insolvent insurer which is liable to make the payment has previously been granted an authorisation by the Central Bank. This relates to claims which arose prior to the enactment of the Insurance Act 2011.

**Facts**

The applicant’s husband was killed on a construction site in November 2000. Judgment was entered by Irvine J. in July 2012 in favour of Ms. Guiney against MJ Manning Construction Company Limited, the construction company, in the amount of €794,795. However, the construction company ceased trading and was therefore unable to satisfy the judgment. Furthermore, the construction company’s insurer, Independent Insurance Company Limited (IICL), a UK company, was in liquidation.

**Legal Position**

Ms. Guiney was not entitled to make a claim in respect of the UK Financial Services Compensation Scheme as the death occurred in Ireland. As a result Ms. Guiney sought to make a claim against the Insurance Compensation Fund in Ireland, established under the Insurance Act 1964. However, she was denied access to the fund as the Accountant of the Court of Justice, who administers the fund, deemed that he was unable to make such payment under the powers conferred upon him under the Insurance Act 1964.

The Act established a compensation fund for policy holders and other creditors of insurers who became insolvent. However, this was confined in its operation to Irish based insurers who commenced winding up proceedings in the Irish High Court.

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\(^1\) Guiney v Accountant of the Courts of Justice [2014] IEHC 426
The statutory scheme became complex following a series of statutory amendments and statutory instruments. A distinction was ultimately drawn between insurers who were granted authorisations by the Minister (and subsequently the Central Bank following the handover of such power to the Central Bank) and insurers who were authorised to provide insurance under the law of another EU/EEA State. Only the former were deemed “insurers” for the purpose of accessing the compensation fund under the 1964 Act. This was the case until the Insurance Act 2011 liberalised the law in this area. However, this act was deemed by Hogan J. to have prospective effect only.

The net effect of the above is as follows:

**Position Pre-2011 Act**

In order to gain access to the Insurance Compensation Fund:

i. The claim must relate to an insurer in liquidation. However, “insurer” for the purposes of the 1964 Act has been construed as meaning an Irish based insurer which has commenced winding up proceedings in the Irish High Court after 1 January 1963.

ii. There must be a sum due to a person under a policy issued by the insurer in liquidation.

iii. It must relate to a risk in the State.

**Position Post – 2011 Act**

The 2011 Act came into force on 30 September 2011. The same criteria as outlined above apply. However, the scope of access to the fund has been extended as “insurers” now includes foreign based insurers who operate in Ireland. However, it imposes certain obligations on such foreign based insurers, including the obligation to pay rateably into the Fund in the same manner as Irish based insurers have done since its establishment.

As this case involved matters which occurred before the enactment of the 2011 Act, Hogan J. stated he was bound to interpret the law against Ms. Guiney. This was because neither of the two conditions prescribed by the 1964 Act (as amended) were satisfied. IICL was not an “insolvent insurer” for the purposes of the 1964 Act as it was a foreign based insurer. In addition, it was not a Company for which proceedings for its winding up in the Irish High Court were commenced after 1 January 1963 as the winding up of IICL took place the High Court of England and Wales. Therefore, Hogan J. was bound to deny access to the fund to Ms. Guiney.
Conclusion

The 2011 Act has closed off the anomaly which resulted in Ms. Guiney being denied access to the fund for similar cases in the future. Should such facts arise post 2011, access to the fund should be available. However, as noted above, the 2011 Act has prospective effect only. Therefore any claim involving matters which occurred prior to September 2011 will be judged on the pre-2011 Act criteria set out above.

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For further information please contact:

Sarah Conroy
Partner
T: +353 (0) 1 775 9510
E: s.conroy@beale-law.com

Tomás MacGearailt
Solicitor
T: +353 (0) 1 775 9587
E: t.macgearailt@beale-law.com