Third Parties (Rights against Insurers) Act 2010
– Provision of information and disclosure obligations

On 25 March 2010, the Third Parties (Rights against Insurers) Act 2010 (“the Act”) received Royal Assent. Although the Act was expected to come into force in April 2011, this has not happened to date.

One of the key changes implemented by the Act is the clarification of the regime governing a Claimant’s ability to seek information from an insurer in the event that their insured company is in liquidation.

The following article outlines what information a Claimant can request under the Act, and how an insurer must respond to such a request for information, when the Act does come into force.

New Rights to information

The Act gives Claimants new rights to obtain certain information relating to the insolvent insured’s insurance both before and after the issue of proceedings. If it can be established that there is a contract of insurance that covers, or might reasonably be expected to cover, the supposed liability, the insurer is then obliged to provide certain information to the Claimant.

Schedule 1 of the Act provides a list of disclosable information, which a Claimant can obtain by providing written notice to the insurer or any other person (most likely a broker) who is able to provide the information.

Specifically, a Claimant can now request information on whether there is an insurance policy in place which covers, or might reasonably be regarded as covering, the Claimant’s claim. If such a contract exists, information can then be obtained as to the identity of the insurer, the terms of the policy, whether there are or have been proceedings between the insurer and the insured in respect of the supposed liability, whether the insurer has previously denied cover for the claim, whether there is an aggregate limit of indemnity and, if so, how much (if anything) has been paid out on other claims, and whether there are any fixed charges which would apply to any sums paid out.

Insurer’s obligation to provide information

An insurer who receives a notice requesting any of the above information is obliged to provide as much of the information specified as it can within 28 days and, if it cannot be provided, to state why and provide details of any other person who might be able to supply the information. The Claimant can apply to the court for an order compelling compliance if the insurer fails to respond to the request.

It should be noted that the duty to disclose will arise only upon the potential Claimant’s request, and there is no continuing duty on the disclosing party to monitor information relevant to the Claimant’s claim. Further, the insurer will be required to disclose specified information but will not be required to provide any documents.

Conclusions

The new Act is designed to facilitate claims by third parties (or their insurers) against liability insurers in insolvency situations. Insurers should therefore anticipate an increase in requests for information under the Act in the coming months. Such requests will undoubtedly impose an administrative burden on insurers due to the relatively short time limit for compliance (28 days) and the fact that most requests are likely to be directed straight to them. At the same time, however, it is hoped that third parties will be deterred from pursuing spurious claims against insurers in light of the information to which they will now have access.
For more information please contact Paul Redfern p.redfern@beale-law.com or Joe Eizenberg j.eizenberg@beale-law.com.

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