

Third Parties (Rights against Insurers) Act 2010: in force from today

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Replacing the Third Parties (Rights Against Insurers) Act 1930, the 2010 Act removes the need for multiple sets of proceedings by allowing a third party to issue proceedings directly against a liability insurer, where its insured is or becomes insolvent (or has been dissolved) and to resolve all issues (including both the insured's and insurer's liability) within those proceedings. By removing the need for the third party to sue the insured, the 2010 Act eliminates the hurdle of restoring a corporate insured to the register of companies where it has been struck off.

The 2010 Act also improves a third party's access to information about the insurance policy, allowing them at an early stage to obtain information about the rights transferred in order to enable an informed decision to be taken about whether or not to commence or continue litigation. The Act widens the category of people who can be asked for the information (which in practice is likely to be insurers and brokers) and places a time limit of 28 days on their response.

The information to be provided is whether there is a policy which might reasonably be regarded as covering the liability, and if so:

- Who the insurer is
- What the terms of the policy are
- Whether the insured has been advised that the insurer claims it is not liable under the policy in respect of the insured's liability to the third party
- Whether there have been any proceedings between the insured and the insurer regarding the insured's liability to the third party
- Whether there is any limited fund for the liability and other claims, and if so how much has already been paid out, and
- Whether there is a fixed charge to which any payment in respect of the liability would be subject.

The question of whether there is a policy covering the liability is not as straight-forward as it may seem. Policies which do not name all insured parties such as group policies or policies which extend to subcontractors of any tier would be caught by the requirement to provide information. If the person against whom the third party is pursuing a claim is not named as an insured but falls within one of these categories, insurers and brokers may not readily be able to locate the relevant policy. Similarly any change of name may render a search of policies less than reliable.

If insurers or brokers are unable to provide the information sought, they must explain why. The Act makes it clear that a person is only to be regarded as being able to obtain information if it can be obtained 'without undue difficulty' from documents within its control. Failure to provide the information required will allow the third party pursuing the claim to apply for a court order for the information. The usual sanctions for contempt of court would apply for a failure to comply with an order.

So what can insurers do? When an insured is facing financial difficulty, finding anyone to provide information is a challenge. Finding someone to provide an up to date list of subcontractors of any tier or all name changes throughout the group of companies may well prove impossible. Whilst enquiries may go to brokers in the first instance, they can effectively pass the enquiry on to insurers if the information is not within their control. Best practice may well include requesting regular updates of the names of all parties engaged on a project which is covered by a policy, and updates of any changes to the names of companies within an insured group, and crucially inputting this information into a searchable database as soon as it is received.

James Deacon, partner, said *"The 2010 Act will finally come into force and avoid the need for expensive and time-consuming legal proceedings. However, insurers are likely to see an increase in both claims and requests for information which will have associated costs and time pressures. 28 days to provide information about policy cover is not a long period of time when, in cases of insureds who are not named within the policy, it may take some time to ascertain who is covered by the policy."*

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