



Scottish Law Commission

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

NOT FOR PUBLICATION OR BROADCAST

BEFORE 0001 HOURS 31 JULY 2001

THIRD PARTIES - RIGHTS AGAINST INSURERS

THE LAW COMMISSIONS RECOMMEND REFORM OF THE LAW GOVERNING THE RIGHTS OF THIRD PARTY CLAIMANTS AGAINST INSURERS

The Law Commission and the Scottish Law Commission will be publishing a joint report (Law Com No 272/Scot Law Com No 184) on 31 July 2001. The report recommends the repeal of the Third Parties (Rights against Insurers) Act 1930 and its replacement with a new Act (a draft Bill is published with the report).

THE 1930 ACT

Where an insured defendant becomes insolvent or gets into financial difficulties, the 1930 Act is designed to enable the claimant to proceed directly against the insurer. This not only saves time and expense, but also ensures that the claimant receives the full benefit of the insurance payments, which might otherwise become part of the funds available to general creditors in any insolvency. The Act extends to all forms of monetary claims, ranging from damages for personal injuries, and professional negligence, to losses of high-value commercial property, and shipping claims.

PROBLEMS WITH THE CURRENT LAW

It has long been recognised that the 1930 Act is seriously flawed. A central problem is that the third party (the claimant is referred to as the "third party" in the legislation as he or she is not a party to the insurance contract) has to establish the claim in proceedings against the defendant, before obtaining any rights against the insurer. This can lead to wasteful duplication and delay. Third parties are also hampered by the fact that the 1930 Act rarely

entitles them to details of the insurance position before they issue proceedings. A number of other problems, arising from developments in insolvency law and insurance practice, have recently come to light. Some examples can be given from decided cases:-

- (1) Mrs Bradley suffered from a lung disease, and wished to claim against her ex-employer, D Ltd. As D Ltd had been wound up some years previously, her only hope was a claim under the 1930 Act against D Ltd's insurer. However, this claim failed. She could not sue the insurer until she had proved her claim in proceedings against D Ltd. For this, she had first to apply to restore D Ltd to the register of companies. As the law then stood, her application to restore was out of time. Although these time-limits have since been extended, the problem of multiple proceedings remains. *Bradley v Eagle Star Insurance* [1989] 1 AC 957
- (2) A Building Society sued surveyors for a negligent valuation relating to a secured loan. The surveyors went into insolvent liquidation, and the society wished to evaluate its prospects of success in a future action against the insurers under the 1930 Act. It asked the court to require the liquidator, and the insurer, to supply documents relating to the insurance policy. The court refused, holding that the 1930 Act did not entitle the Woolwich to any documents, before it had established what it was owed. *Woolwich Building Society v Taylor and another* [1995] 1 BCLC 132
- (3) Tarbuck were solicitors for a claimant, Mrs Nicholson, in litigation against her landlord. She had legal expenses insurance. Before the solicitors had been paid, she was declared bankrupt. They sued the insurers under the 1930 Act, but failed. The judge held that the Act only applies to insurance for wrongdoing. It does not cover insurance for voluntary liabilities, such as the unpaid fees due from an otherwise blameless insolvent client. The same reasoning would apply to medical fees, covered by health insurance. (This case is subject to appeal.) *Tarbuck v Avon Insurance plc* [2001] 2 All ER 503
- (4) Sea Voyager Maritime Inc had a claim in negligence against Mr Bielecki over his role in negotiations for the purchase of a ship. By the time of the hearing, Mr Bielecki had entered into a "voluntary arrangement" with creditors, under which the creditors were obliged to accept less than the original value of their debts. Sea Voyager was held to be bound by the voluntary arrangement, with resulting difficulties for its claim against the insurers. *Sea Voyager v Bielecki* [1999] 1 All ER 628

REFORM PROPOSALS

Some of the key reforms in the draft Bill are:

- **A new streamlined procedure to avoid wasteful litigation**

Under the draft Bill, a third party is entitled to resolve all issues relating to his or her claim in a single set of proceedings against the insurer.

- **Improved rights to information about the insurance policy**

The original purpose of the right to information in the 1930 Act was to enable third parties to assess the value of their new insurance rights before they resort to the law. However, as the *Woolwich Building Society* case illustrates, the 1930 Act has not worked in this way. Third parties often face the stark choice of embarking on litigation or abandoning their claim, in ignorance of any details of the insurance policy on which their hopes rely. Under the draft Bill, third parties are entitled to information concerning the insurance policy from the outset.

- **Legal expenses and health insurance covered**

The omission of legal expenses insurance from the scope of the 1930 Act represents a serious obstacle to the government's aim that such insurance should play a wider role in the funding of litigation. In *Tarbutck* (above) Toulson J drew attention to some of the difficulties which might flow from the current law and called for reform. Under the draft Bill therefore a third party may claim directly against an insurer even if the insurance covers liabilities voluntarily incurred by the insured.

- **Voluntary procedures properly catered for**

It is not right that third parties faced with insureds who become involved in voluntary arrangements should be obliged to make, and involve other creditors in, expensive and time consuming applications to court. Under the draft Bill, a third party with rights against an insurer is not bound by a voluntary procedure to the extent of those rights.

The Bill also makes a number of detailed changes to improve or clarify the working of the 1930 scheme.

The Chairmen of the Commissions, Mr Justice Carnwath CVO and Lord Gill, said today:

"Our proposals will bring the 1930 Act up to date, improve the rights of victims and reduce litigation, expense and delay."

NOTES TO EDITORS

1. The Scottish Law Commission and The Law Commission were set up by the Law Commissions Act 1965 to promote the reform of the law.
2.

THE SCOTTISH LAW COMMISSIONERS	THE LAW COMMISSIONERS
The Hon Lord Gill (<i>Chairman</i>)	The Hon Mr Justice Carnwath CVO (<i>Chairman</i>)
Mr Patrick Hodge QC	Professor Hugh Beale
Professor Gerard Maher	Mr Stuart Bridge
Professor Joseph Thomson	Professor Martin Partington
Professor Kenneth Reid	Judge Alan Wilkie QC
3. The paper may be viewed at www.scotlawcom.gov.uk or www.lawcom.gov.uk or purchased from The Stationery Office Bookshops (£16.95).



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