

BRIEFING

Insurance Bill

2015 promises to be an eventful year in insurance law, as the much heralded Insurance Bill makes its way through Parliament.

We have previously commented on the Law Commission's consultation on changing the law relating to insurance contracts. In July 2014, the Law Commission published its report accompanied with the draft Insurance Bill ("the Bill"), which has since been subjected to various modifications. Several months on from the Bill's first incarnation, we examine some notable amendments.

Terms Not Relevant to the Actual Loss

On 15 December 2014, a Special Public Bill Committee consulted on the insertion of a new Clause 11 entitled, 'Terms Not Relevant to the Actual Loss'. The clause, if enacted, would prevent insurers from repudiating claims where there is no causal link between the breach of a term or warranty and the ensuing loss.

.By way of an example, imagine a scenario where an insured has a policy which covers his premises for loss occasioned by flooding as well as theft. The policy contains a clause which places the insured under a duty to fit five-lever mortise locks to all external doors but the insured fails to comply with this clause. If a burst water pipe was to cause flood damage to the premises, the insurer – under Clause 11 – would not be able to deny liability under the policy on the basis that the insured has failed to comply with the terms of his policy i.e. he has failed to equip all external doors with five-lever mortise locks. In this situation, the insured's breach is irrelevant to the flood damage suffered.

It is hoped that Clause 11 will attract sufficient support from the Government to be included within the Bill, although the lobbying power exerted by the insurance industry must call that prospect into question.

Third Parties (Rights against Insurers) Act 2010

The Third Parties (Rights against Insurers) Act 2010 received Royal Assent in March 2010, but is still not in force. The Act seeks to simplify the process for a third party to pursue an action directly against the insurers of an insolvent insured. The Bill has introduced an amendment to this Act so that it can be brought into force.

Damages for Late Payment

The Law Commission and the Scottish Law Commission sought to remedy a longstanding anomaly in the law by recommending that damages should be payable in circumstances where the insurer has unreasonably refused to pay a claim or paid it after an unreasonable delay. Concerns were raised by various stakeholders regarding the proposed change and the relevant sections were deleted from the Bill.

It now appears unlikely that a more restricted clause providing for damages for late payment could be re-introduced at a later date, given the timeframe and seemingly controversial nature of such a clause.





Contracting Out

It is worth bearing in mind that, in the context of non-consumer insurance contracts, insurers may contract out of many default provisions of the legislation, if enacted. If an insurer is minded to opt out and includes a term within the policy which puts the insured in a worse position, however, the insurer must comply with certain 'transparency requirements'. Specifically, the insurer must take sufficient steps to draw the disadvantageous term to the insured's attention before the contract is entered into or the variation agreed.

The Bill continues to pass through the House of Lords with the next step of the Parliamentary process being Report stage which is anticipated to take place in early January 2015.

A copy of the Bill, incorporating amendments made to it, is available at:
www.services.parliament.uk/bills/2014-15/insurance/documents.html.

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