



The City of London Law Society

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Response to the targeted consultation by the Ministry of Justice on the *Third Parties (Rights Against Insurers) Bill*

The City of London Law Society (CLLS) represents over 13,000 City lawyers, through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response to the consultation by the Ministry of Justice on the *Third Parties (Rights Against Insurers) Bill* has been prepared by the Insurance Law Committee. The members of the Committee are Ian Mathers of Allen & Overy (Chairman); Martin Bakes of Herbert Smith; Christian Wells of Lovells; Michael Mendelowitz of Norton Rose; Stephen Lewis of Clyde & Co; Geoff Lord of Kennedys; Kenneth McKenzie of Davis Arnold Cooper; Martin Mankabady of Mayer Brown; Richard Spiller of Edwards Angell Palmer & Dodge; Paul Wordley of Holman Fenwick & Willan; Glen James of Slaughter & May; Terry O'Neill of Clifford Chance; Michelle Bramley of Freshfields; Catherine Hawkins of Berrymans Lace Mawer; Charles Gordon of DLA Piper; Anna Tipping of Linklaters; David Wilkinson of Dewey & Le Boeuf and Emily Benson of Barlow, Lyde & Gilbert.

We refer to the above consultation concerning the *Third Parties (Rights Against Insurers) Bill* (the "Bill") attached to the Law Commission and the Scottish Law Commission's Report of July 2001 on third parties' rights against insurers. We support the introduction of the Bill to Parliament and have only the following comments to offer.

First, we assume that you are aware of the developments in the case law since the Report. We have very briefly reviewed the cases but have not identified any points arising from them that require amendments to the Bill. The most important is the Court of Appeal's decision in *Re OT Computers Ltd* [2004] EWCA Civ 653. In that case, the Court departed from earlier authority (considered in the Report) in determining that:

- a third party may make a request for information under section 2 of the 1930 Act before liability has been established, and
- the Act extends to liabilities of the insured in contract as well as in tort.

The effect of the Bill, in particular, will be to confirm this view.

Secondly, there are a couple of provisions in the Bill that might benefit from clarification:

- The Committee was not sure whether the reference in clause 4(2) to “provide information” was necessarily wide enough to cover the giving of a mere notice (of a claim) to the insurer which might not contain any information as such. (If, indeed, it was intended to cover the giving of such notice.)
- The Committee was also not sure whether the reference in clause 6(1) to “a provision ...” which “... purports to avoid the contract or to alter the rights of the parties under it” was wide enough to cover a provision which does no more than terminate the cover. The argument might be that if the policy, from the outset, contains a provision for termination on say the insolvency of the insured, that is as extensive as the rights of the parties under it have ever been; termination is neither an avoidance nor an “alteration” of the rights as they existed at the time the policy incepted.

Third, we have noted that there was some difference of opinion among the original consultees as to whether the Bill should apply only to cases where the insured has been made bankrupt or wound up in England and Wales or Scotland, as provided in clause 1. We believe that there is an argument for a wider measure of application, notably where insurance proceeds are payable in this country. However, it is helpful that clause 18 contains a power to amend clause 1 should experience bear out this concern.

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