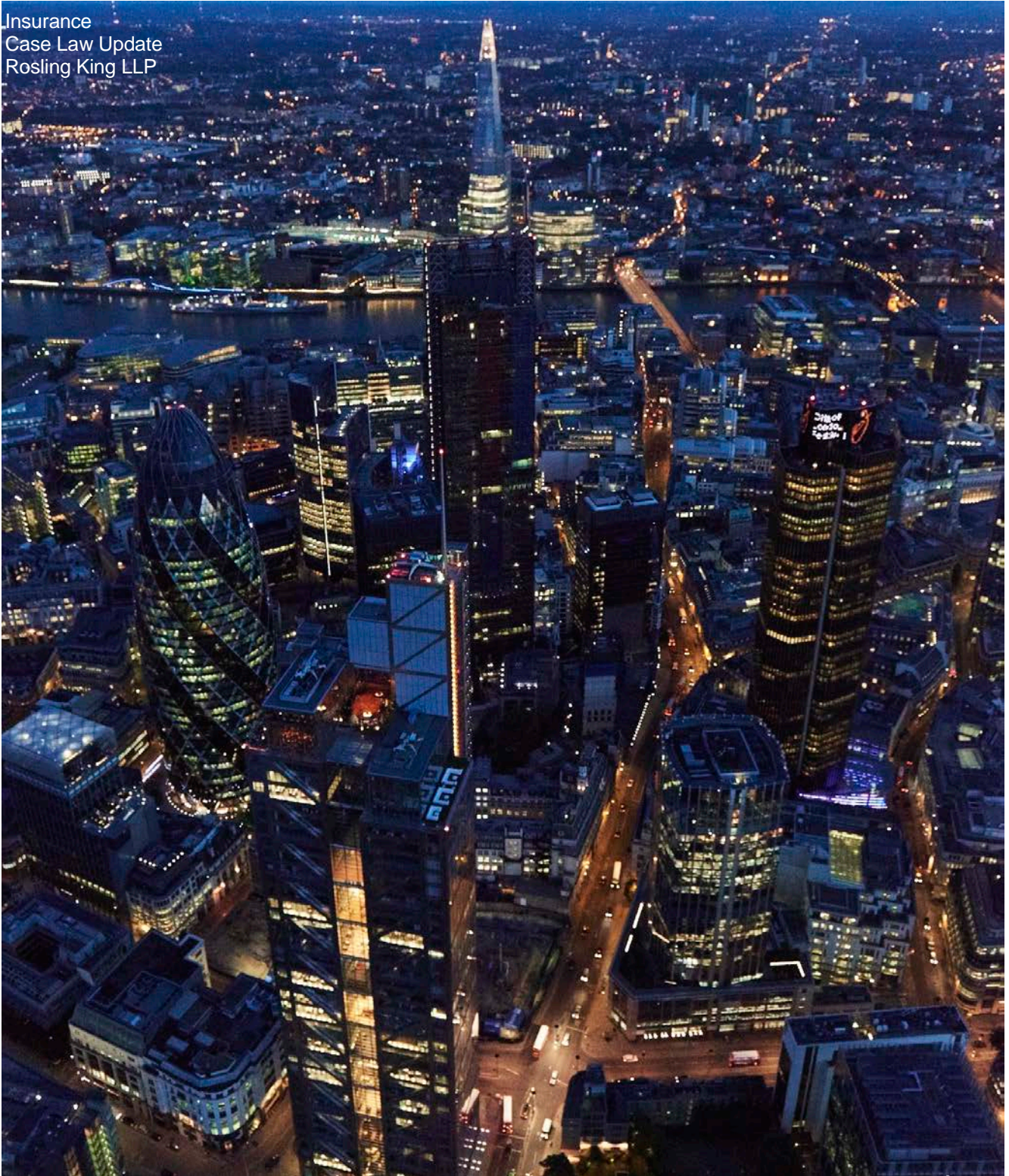


Insurance
Case Law Update
Rosling King LLP



May 2016
Page 2

The Commencement Order for the Third Parties (Rights against Insurers) Act 2010 (the “2010 Act”) was made on 28 April 2016, bringing in to force the 2010 Act on 1 August 2016 (the “Enforcement Date”). The 2010 Act introduces a less complex and potentially cheaper procedure for third parties to claim directly against the insurer of an insolvent individual or corporate insured.

The current position under the 1930 Act

The 2010 Act repeals and replaces the Third Parties (Rights against Insurers) Act 1930 (the “1930 Act”).

Under the 1930 Act, a third party is required to establish liability of an insolvent insured before they can pursue the insurer, which is often difficult and therefore costly. Requirements on the third party, such as having to restore dissolved companies to the register where necessary, can make establishing liability of an insolvent insured a very lengthy process. It is also very difficult for third parties to obtain information from unwilling insurers, which often adds to the cost.

Although the 1930 Act entitles potential claimants to obtain information about the insurance policy, these rights only arise after a third party has successfully established liability against the insolvent insured. Consequently, in bringing a claim under the 1930 Act establishing liability is not the only risk facing third parties. There also remains the risk that coverage may be declined by the insurer. There are therefore instances where a third party has incurred the expense of establishing liability against an insolvent insured, only for the insurer to then decline cover. There is always a risk to a third party that, having gone to the expense of establishing liability, it is then faced with a situation where an insurer raises a defence, or where cover has been exhausted.

Changes implemented by the 2010 Act

The 2010 Act will enable parties to pursue a claim against the insurer directly, with the intention that this will save time and cost for third parties.

Under the 2010 Act the third party’s rights are greatly increased allowing them to obtain information about the policy and its operation from not only insurers, but also brokers, insolvency practitioners, and former officers and employees of dissolved insureds. If a request is made for the information the person or body complying with the request must apply the same level of diligence in providing the information as would be expected in standard civil proceedings, and must provide the information within 28 days of receiving the notice. The information obtainable will include:

- the insurer’s identity;
- the terms of the insurance policy;
- whether cover has been declined previously;
- details of any other ongoing proceedings;
- the limit of funds available to meet a claim and;
- if there is a fixed charge to be paid prior to sums being paid out.

Under the 2010 Act, third parties may begin claims against an insurer whilst the matter of the insured's liability to the third party is still being established. However, third parties will need to have established this liability by the time they are actually looking to enforce their rights under the insurance policy. Establishing liability of an insured will require a third party to establish both the existence of the insured's liability, and the amount in which the insured is liable. The 2010 Act allows liability to be established by way of declaration of the court, as well by obtaining a judgment, settlement, arbitration award or an admission.

Once liability has been established and a third party is seeking to enforce his rights under the policy, an insurer can no longer rely upon policy terms entitling them to avoid liability under the policy based on failure of the insolvent insured to provide information and assistance. Furthermore, the 2010 Act provides third parties the opportunity to fulfil conditions and obligations held by the insolvent insured under the policy to ensure that the policy is not breached and in turn declared void.

Commentary

The purpose of the 2010 Act is to reflect the reality that claims involving legal liability insurance held by a defendant are often handled by their insurers. It also prohibits the insurer from increasing the litigation risk against a third party bringing a claim, as it requires insurers to provide relevant information to third parties from the outset.

It is likely that the 2010 Act will reduce time and expense incurred by third parties pursuing claims against insolvent insureds. It has been over a decade since the revisions to the 1930 Act were first proposed, but only time will tell how significant the changes brought about by the 2010 Act will be.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.