

Limitation issues in insolvency – the Third Parties (Rights against Insurers) Act 2010



It is well-established that time stops running for limitation purposes when a company goes into liquidation, but not when a company is in administration.

The County Court has recently held (*Rashid v Direct Savings Ltd* [2022] 8 WLUK 108 (16 August 2022) (District Judge Gosnell)), however, that the limitation period also continues to run in claims against liability insurers under the Third Parties (Rights against Insurers) Act 2010 (2010 Act). Prior to the enactment of the 2010 Act the position was that the pause on limitation when a company is in liquidation also applied to claims against an insolvent insured's liability insurers under the Third Party (Rights against Insurers) Act 1930 (1930 Act).

The difference in the treatment of limitation under the 2010 Act versus 1930 Act stems from the requirement under the 1930 Act for the claimant first to establish the liability of the insolvent insured. Until this pre-requisite had been fulfilled, neither the insured nor the third party claimant had a right to recover under the insurance policy. Once liability had been established, the claimant could then prove in the insolvency for any uninsured losses, which would be a claim in the liquidation and therefore (the court previously held) could not be treated differently for limitation purposes.

With the advent of the 2010 Act, however, which applies where either the liability under the insurance policy or the insolvency occurred on or after 1 August 2016 (If both the liability under the insurance policy and the insolvency occur before 1 August 2016, the 1930 Act will continue to apply.), the third party can bring a claim directly against the insurer before establishing liability against the insolvent insured, and without needing to join them as a party. The insured company or individual must be the subject of formal insolvency proceedings, and the third party cannot enforce any claim i.e. recover any insurance monies, until the insurer's liability is



established. Once the third party proves that the insurer is liable or potentially liable they can ask the court (or arbitral tribunal) for a declaration to that effect.

As the 2010 Act gives the third party a free-standing direct right to claim against the insurer, the insurance policy is not an asset in the insolvency of the insured. The claim against the insurer is therefore outside the liquidation and subject to the same limitation period as any 'normal' (i.e. outside insolvency) claim.

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