

Contribution Claims and the Third Parties (Rights Against Insurers) Act 2010

***Riedweg v HCC and others* [2024] EWHC 2805 (Ch)**

The Question:

Can an insurer, sued under the Third Parties (Rights Against Insurers) Act 2010, bring a claim in contribution against a third party whom they assert is responsible, alongside their insured, for the claimant's loss?

The Facts:

The Claimant was the intended purchaser of a property that she alleges was overvalued by a firm of valuers. The valuers having gone into liquidation, the Claimant brought a claim against the valuers' professional indemnity insurers under the Third Parties (Rights Against Insurers) Act 2010. The insurers in turn alleged that the Claimant's solicitors had been negligent in advising on the purchase and applied to bring a Part 20 claim against the Claimant's solicitors in contribution. The solicitors opposed that claim on the basis that the insurers and the solicitors were not liable to the Claimant in respect of the same damage, and so no contribution claim was possible.

The Answer:

The application came before Master Brightwell in August 2024 and his judgment was handed down on 11 November 2024.

For the purposes of the application, it was common ground that if the valuer had been sued by the claimant, the valuer would at least potentially be liable for the same damage as the solicitor (i.e. for the financial loss caused by the claimant's entry into the transaction which she alleges she would not have entered absent the alleged breaches of duty).

The insurers argued that the liability of the insurer was coterminous with the liability of the valuer and so a claim in contribution was available, and it was irrelevant that the cause of action against the valuer and insurer was different.

The solicitors argued that the insurers were not in the same position as the underlying valuer because if the insurer had simply indemnified the valuer, then the insurers would have no contribution claim against the solicitors (*Bovis Construction Ltd v Commercial Union Assurance Co Ltd* [2001] 1 Lloyd's Rep 416) and the position was not changed by the Third Parties (Rights Against Insurers) Act 2010. Under the 2010 Act, the insurer does not stand in the role of the insured for the purposes of allowing claimants to bring claims under the Act; instead, the Act transfers the insured's rights under the insurance policy to the Claimant, and accordingly the Act does not assist.

Master Brightwell accepted the solicitors' analysis. At paragraph 31, he held that the key consideration was:

"... the analysis in Bovis Construction, as approved by Lord Steyn in Royal Brompton Hospital, that an insurer does not inflict damage on anyone, and that the only damage it is capable of inflicting is in refusing to meet its obligations under the policy of insurance. That would, conceptually, be damage to [the valuer], which is potentially liable to the claimant regardless of whether or not [the insurer] has grounds to repudiate the insurance policy. I do not consider that it follows from the fact that [the valuer] would, if a defendant, have the right to seek a contribution from third parties that an insurer ... has that right. For the reasons given by Mr Pilsbury and summarised above, I consider that the purpose of the 2010 Act is to provide a mechanism for a claimant to pursue an insurer directly in respect of the liability of its insured, and for the claimant to stand in the insured's place for that purpose. The insurer's liability is still that which flows from its obligations to the insured, which can only be to indemnify the insured against its liability to a third party. The insurer does not become liable to the third party for the damage caused or allegedly caused by its insured, which it did not inflict."

Accordingly, Master Brightwell held that the insurer was not potentially liable in respect of the same damage as that for which the solicitors may be liable and refused the insurer's application to join the solicitors as Part 20 Defendants.

Master Brightwell has, however, given permission to appeal since *“The point arising is of some practical importance and not the subject of previous reported authority. I consider that it merits the consideration of an appeal court.”*

Joshua Munro appeared for the applicant insurers

Nicholas Pilsbury, instructed by Will Sefton and Richard Seymour of RPC, appeared for the respondent solicitors

13th November

Disclaimer: this article is not to be relied on as legal advice. The circumstances of each case differ and legal advice specific to the individual case should always be sought.