



LITIGATION AND DISPUTE RESOLUTION

Liability Insurance. Do Third Party Rights Against Insurers Exist in Ireland?

by **Ian Lavelle**

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With a growing number of UK insurers establishing in the Republic of Ireland for Brexit-related reasons, Ian Lavelle and Sinead Byrne have had a look at the differences in the rights of third parties against insurers in each jurisdiction.

In England and Wales, the Third Parties (Rights Against Insurers) Act 2010 provides for the enforcement of rights against an insolvent policyholder's insurer. A plaintiff or claimant who has a claim against an insolvent, but insured defendant should be protected by this Act through the transfer of the insured's rights under the insurance policy to the plaintiff or claimant (the third party). If, for example, a construction worker brings a claim against his insolvent employer, the Act enables the employee to pursue his employer's liability insurers directly.

In contrast, the law in Ireland does not generally afford a person who is not a party to an insurance contract any rights of redress against the insurer. Section 62 of the Civil Liability Act 1961 provides a limited exception to that rule. It ring-fences monies payable under the terms of an insurance policy for the benefit of a third party in the event of the insolvency of the insured. The Irish Supreme Court has interpreted this section as conferring a right of action on the third party against the insurers of the insolvent insured.

The table below sets out the main differences between these jurisdictions in this area.

Comparison:

	England & Wales	Ireland
Extent of a third party's rights against an insurer	All of the rights of the insolvent insured under the insurance policy are automatically transferred to the third party.	No equivalent transfer of rights but the Irish Supreme Court has given a strong indication that a third party has a right to sue the insurers of an insolvent defendant to effect compliance with Section 62 of the Civil Liability Act 1961 (<i>Dunne v PJ White Construction Company</i> [1989] 1 ILRM 803). The third party has no right to challenge any repudiation of liability under the policy (<i>Hu v Duleek Formwork Ltd (in liquidation) and Aviva Direct Ireland Limited</i> [2013] IEHC 50).
Liability and Quantum	Proceedings can be brought against insurers prior to a judicial determination of the issues of liability and quantum in the third party's claim against the insolvent insured. So only one set of proceedings is required.	Liability of the insured must be established and quantum determined prior to proceedings being taken against the insurer. This results in at least two sets of proceedings.

	England & Wales	Ireland
Access to information	A third party who believes they have a right of action against an insurer is entitled to information, including the identity of the insurer and terms of the insurance contract.	There is no express obligation on an insurer to disclose policy details to a third party, although section 62 could be interpreted as imposing such an obligation.
Costs and time	It is less expensive and less time consuming for third parties to pursue insurers as only one set of proceedings is required and more information is available to the third party. This more accessible procedure could lead to an increase in the number of claims against insurers.	As at least two sets of proceedings are required, the process will take longer and cost the third party more. It is likely that the third party will attempt to pass the costs of both sets of proceedings onto the insurer.

UK insurers established in the Republic of Ireland should be aware that, despite the absence of legislation equivalent to the Third Parties (Rights Against Insurers) Act 2010, an Irish court could interpret the existing law as conferring some similar rights on third parties. Insurers should consider any intimation of claims against insolvent insureds or requests for information in relation to their insurance position with this in mind and seek legal advice as necessary.

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