

Insolvencies and claims under Third Parties (Rights Against Insurers) Act 2010

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The last few years has seen the construction industry suffer. First there was the collapse of Carillion, then claims arising from the tragedy of the Grenfell fire, and finally numerous financial challenges, including the inflationary impact of COVID-19, the war in Ukraine, higher interest rates and of course the impact of the budget in October 2024 (most obviously the increases to employer national insurance contributions (NIC)).

All of this has led to not only an increase in the cost of projects, but an increasing number of contractors going into administration or liquidation, which in turn has led to insurers' coverage files turning into claims directly against them under the Third Parties (Rights Against Insurers) Act 2010 (the Act). We consider below the extent to which the heat might come out of this market in 2025.

Unfortunately, cash-flow remains a problem for many companies, with some high-profile projects continuing to cause problems. Whilst some consultants initially predicted a return to significant growth in 2025, later forecasts were more pessimistic, suggesting (with the notable exception of data centres) limited growth – although this may change if planning reforms free up housing projects and/or the government's recent waving through of 150 major projects ignites that sector.

As a result, following some notable casualties in 2024 (Buckingham and ISG), the industry appears set to remain under pressure in 2025, and it may be that we see another big-name company enter administration or liquidation. Whilst this would give rise to obvious immediate challenges for those involved on the project itself, those in the wider industry will be giving thought to how similar future events can be mitigated (e.g., by way of including extension of time provisions in contracts). In the meantime, there is likely to be an increased number of disputes, as contractors and consultants seek to leverage the contracts for existing projects to provide much needed cash flow, both in terms of seeking to recover the increased NIC (whilst amending future contracts to clarify the same) and more generally.

Increased insolvencies will also likely result in a continued rise in claims brought under the Act. Whilst case law regarding this legislation remains relatively scant, there were some important decisions in 2024, some of which are problematic for insurers. The most obvious example of this is *Scotland Gas Network PLC v QBE UK* in Scotland, where the Scottish Inner House confirmed that if a third party obtains a default judgment against a policyholder, the Act does not permit insurers to dispute the policyholder's liability under that judgment to the third party, highlighting the risks for insurers should an insured facing insolvency fail to defend a claim in full, or at all. We await to see if this will be appealed to the Supreme Court. Regardless, in the meantime numerous issues remain uncertain, including questions relating to limitation, and the obligations under the Act to provide information, all of which is likely to increase the duration, and therefore costs, of such claims.

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