

**Turning out their pockets
John Ward, August 2007**

When insurers return to the courts after the summer break, they are likely to find that their negotiating position has changed significantly since their last visit. This follows Justice Irwin's judgment in *Harcourt v Griffin & Ors* [2007] EWHC 1500 (QB), under which parties to litigation may now be obliged to reveal details about their insurance cover.

In September 2004, the claimant Harcourt suffered serious personal injuries at a gym run by the defendants. Judgment by consent on liability had been entered, with interim payments of £1m on account of damages and £300,000 on account of costs being ordered. There was speculation that the claim might be worth between £6m and £7.5m – after a deduction for contributory negligence – plus costs on a conditional basis, which were estimated to be upwards of £1m.

The claimant served a request under Part 18 of the *Civil Procedure Rules* for details of the nature and extent of the defendants' insurance cover. The claimant wanted to know four things: the amount of such cover, whether it included claimant costs, whether it included defendant costs and whether it covered orders for periodical payments. The claimant put forward a Part 18 request on the simple basis that if the insurance cover was inadequate to meet the potential award of damages and costs, then it would be wasteful and wrong to engage in contested quantum litigation where the damages award might not be satisfied. The claimant also said that if there was ample insurance cover, then they would carry on.

The Judge held that CPR Rule 18 should be interpreted liberally and in a way that ensures litigants have all the information that they need to deal efficiently and justly with the matters that are in dispute between them. He had no hesitation in finding that CPR Rule 18 is broad enough to cover the information requested by the claimant's solicitors and ordered the defendants to provide the information.

There was some argument in the case about what matters the court has to take into account in ordering periodical payments in personal injury claims, but it is clear that the judgment is not based on that issue.

Tactical advantage

The Judge accepted that there may well be cases where revealing the limit of indemnity would bring a tactical advantage to the claimant, and said the court ought to listen to any argument about prejudice. However, it is difficult to see how this argument can be reconciled with the judge's decision that it was important for a claimant to have this information in order to decide whether or not to go on with the litigation. The Judge also recorded that no argument had been made to him to suggest that the defendants in this particular case would suffer any prejudice as a result of revealing their insurance information.

The judge said that disclosure of this kind of information should only be ordered where a claimant - or, where the situation arises, any other party - can demonstrate that there is a real basis for concern that a realistic award in the case may not be satisfied. He added that there must be a real basis for suggesting that disclosure is necessary, in order to determine whether future litigation will be useful or simply a waste of time and money.

It seems that most claimants - and possibly other parties - will be able to satisfy such a test where a damages claim is very large, and the claimant does not know the limit of indemnity available to the defendant.

Hard decision

Deciding whether or not to reveal the indemnity limit in claims where the limit might be exceeded is always very difficult, and obviously involves the insured as well as insurers. There are often strong arguments against revealing it, because it makes such claims much more difficult to settle except on the basis that the full limit of indemnity is paid in settlement. It is quite possible to settle such claims within the limit of indemnity, but this is more likely where the limit of indemnity has not been revealed.

The case also opens up the possibility of making such requests of co-defendants or third parties (part 20 defendants) to litigation.

As a postscript to the *Harcourt* case, somewhat ironically, the defendant's solicitors had accidentally revealed a certificate of insurance, which appeared to show a £5m limit of indemnity – clearly inadequate to meet the claim. It looks as if the application was an attempt to establish whether or not that was the total insurance available to the defendants.

Common occurrence

Requesting details of insurance cover could now become common place in large claims. Any claimant will easily be able to satisfy the test laid down by Justice Irwin in *Harcourt* by suggesting that disclosure of this information is necessary in order to determine whether further litigation will be useful or simply a waste of time and money. Where the insurer's position has been reserved, or cover refused, that information would also have to be revealed, and could equally well be used to negotiate lower settlements with claimants. It may also lead to more claimants seeking to take over the rights of policyholders in such circumstances.

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