

**A Slippery Slope**  
**Rachel Barnes, July 2008**

Consultants and their professional indemnity insurers were dismayed last year by the implications of Mr Justice Irwin's decision to order a party to reveal details about its insurance cover. They were concerned that this could lead to prejudice against the party that has to reveal this information in any further negotiations.

*Harcourt vs Griffin & Ors* concerned a claim for serious personal injuries at a gym run by the defendant. There was speculation that the claim might be worth between £6m and £7.5m – after a deduction for contributory negligence – plus costs, which were estimated to be more than £1m.

The claimant requested, under Part 18 of the civil procedure rules (CPR), details of the defendant's insurance, including the amount of cover and whether it included costs. Its reason was that if the insurance cover was inadequate to meet the potential award of damages and costs, then it would be wasteful to engage in litigation. It said that if there was ample insurance cover they would carry on.

The judge held that the CPR rule should be interpreted in a way that ensured litigants had all the information that they needed to deal efficiently and justly with the matters in dispute. He had no hesitation in finding that the rule was broad enough to cover the information requested by the claimant and ordered the defendant to provide it.

The judge said that disclosure of insurance information should be ordered only if the requesting party could demonstrate that there was a real basis for concern that a realistic award may not be satisfied and that disclosure was necessary to determine whether litigation would be useful or a waste of time and money.

However, it seems that most claimants would be able to satisfy such a test if the damages claim was large and the limit of the defendant's professional indemnity insurance was not known.

There was a concern, therefore, that requesting details of insurance cover could become commonplace in large claims.

Concern may be assuaged, however, for the time being, by a judgment in the commercial court on 9 June 2008.

In the case of *West London Pipeline & Storage vs Total UK* a request was made for insurance details to be revealed, but in this case the court rejected the request.

The case arose out of the explosion at Buncefield in 2005. The defendant, Total, was seeking a contribution towards a pay-out from another company, TAV Engineering, as it had supplied a switch that failed to operate, leading to an overflow of fuel and hence the explosion. The claims amounted to more than £700m.

Total argued that TAV's financial statements revealed that it did not trade and had limited assets. In these circumstances, its ability to contest the proceedings and pay any damages was entirely dependent on its liability insurance. Therefore, Total contended that, as in *Harcourt vs Griffin*, disclosure of the insurance position was necessary to find out whether continuance of the litigation served a purpose.

The judge considered what had been said in *Harcourt vs Griffin*, but was firmly of the view that the court had no jurisdiction to order the disclosure sought. He referred to two earlier cases that had not been brought to the judge's attention in *Harcourt vs Griffin* to illustrate his position.

The judge did, however, express some regret that such information should not be available to claimants in the modern age of “cards on the table”, despite the potential for prejudice against the defendant and its insurers. Possibly more will be heard on the issue from the Court of Appeal or there may be moves to change the rules to make it possible to order such disclosure.

A compromise may be for defendants and their insurers to provide sufficient information about the insurance cover to enable the claimant to decide whether it is worth pursuing the claim, but without providing full details.

For further information, please contact:

E: [Rachel Barnes](#)

T: +44 (0) 20 7240 3474

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