

Cover Confidential
John Ward and Nick Gillies, July 2008

Insurers will take some comfort from Steel J's judgment in *West London Pipeline & Storage Ltd & Anor v Total UK Lts & Ors* (9 June 2008).

Eyebrows were raised in 2007 when Irwin J in *Harcourt v Griffin* ordered the defendants to reveal details about their insurance cover. However, that case was not followed in *West London Pipeline*, meaning there are now conflicting decisions on the issue.

Harcourt was considered by one of the authors last year (*Turning out their Pockets*, 30 August 2007). In summary, the case concerned a successful claim - possibly worth between £6m and £7.5m plus costs - for serious personal injuries. The claimant made a request under Part 18 of the Civil Procedure Rules for details of the defendants' insurance on the basis that if cover was inadequate to meet the potential award, it would be wasteful and pointless to engage in contested quantum litigation.

The Judge agreed, concluding that Part 18 was broad enough to cover such information – albeit that disclosure of this kind should only be ordered where there is a real basis for concern that a realistic award may not be satisfied and that disclosure is necessary in order to determine whether future litigation will be useful or simply a waste of time and money.

It seemed, however, that most claimants would 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. There was concern, therefore, that requesting details of insurance cover could become commonplace in large claims, and this is indeed what happened in *West London Pipeline*.

West London Pipeline arose out of the explosion at Buncefield. The defendants, Total, are seeking a contribution from TAV Engineering Ltd. Total alleges that TAV produced a switch that failed to operate resulting in an overflow of fuel which led to the explosion. The claims total over £700 million.

TAV's financial statements show that it is not trading and has very limited assets, rendering its ability to contest the proceedings and pay any damages entirely dependent on its liability insurance. In those circumstances Total argued that disclosure of TAV's cover was necessary in order to know whether continuing the litigation would be worthwhile - just as in *Harcourt*.

The judge considered what had been said in *Harcourt*, but was firmly of the view that no matter how liberally Part 18 is interpreted, the court had no jurisdiction to order disclosure of TAV's insurance details. The information did not support or adversely affect either party's case, was not relevant to the issues in dispute and did not constitute documents that may lead to a train of enquiry enabling one party to advance its own case or damage the other's.

Steel J therefore declined to follow *Harcourt*, which he considered had been wrongly decided. Among other factors, he noted two cases and a Law Commission paper that had not been brought to the court's attention in *Harcourt*.

Nevertheless, Steel J reached this conclusion "*with some considerable hesitation*" and implied that an adjustment to the rules might be appropriate. He regretted that such information should not be available to parties in the modern age of 'cards on the table' litigation, despite the potential for prejudice to the defendant and its insurers. He also felt that the prospects of an effective recovery should be taken into account when allocating court resources to a case.

This is unlikely to be the last word on the issue. Possibly more will be heard from the Court of Appeal or maybe, as Steel J impliedly advocated, there will be moves to change the rules to make it possible to order such disclosure.

It ought to be possible, in some situations, for defendants and their insurers to provide sufficient information about the cover to allow a claimant to decide whether it is worth pursuing a claim, but without providing full details, which could unfairly prejudice defendants and their insurers in negotiations. The challenge for lawmakers is finding that compromise. In the meantime, it seems that insurance details are likely to remain a private matter between a litigant and its insurer.

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