JONES DAY

COMMENTARY

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Time Is Money: A Remedy For Delay in Settlement of Commercial Insurance Claims in the UK

IN SHORT

Background: English law suffered a recognized gap in remedies for valid insurance claims not settled in a timely manner.

What's Happening? Terms requiring timely settlement will now be implied into English insurance policies.

Looking Ahead: Insurers will be required to pay any sums due in respect of a claim within a "reasonable time" or will be answerable to a claim for damages.

We have previously highlighted the fundamental changes in insurance law (and benefits for policyholders) introduced by the UK Insurance Act 2015. On 4 May 2017, the final policyholder-friendly provision comes into effect.

Section 13A of the Insurance Act 2015 ("Section 13A") implies a term into insurance policies issued or varied after that date that requires insurers to settle claim sums due within a "reasonable time". This new provision could significantly improve the policyholder's lot when a claim is being settled.

Background

Students of insurance law in England and Wales are familiar with the Court of Appeal decision in *Sprung v Royal Insurance* ((1997) C.L.C.70), wherein a policyholder was denied the opportunity to seek to recover damages from his insurers for losses he alleged they had inflicted upon him when his business closed during the time it took them to settle his property damage claim.

English law simply did not recognise such a cause of action. The Law Commission thereafter recommended a remedy for what it saw as a legitimate expectation of a policyholder (i.e., that claims be adjusted promptly, or else a legal remedy would follow), but this was not immediately approved.

More than 20 years after *Sprung*, UK law will finally address this shortcoming via Section 13A.

Detail

The Act allows parties to contract out of Section 13A, but this would seem to hold no advantage to policyholders, and therefore insurer requests for the same must be carefully scrutinized.

How might this new implied term affect claim settlement?

What constitutes a "reasonable time" is not defined and will doubtless be considered on a case-by-case basis.

Section 13A makes clear that insurers must be allowed time to investigate and assess a claim, and recent English case law suggests that the courts may consider periods of two to five months to be "reasonable" periods in which to do this.

Section 13A also makes clear that in the event of a disputed claim, the conduct of the insurer in handling that claim may be a relevant factor in deciding whether (and if so, when) Section 13A has been breached.

Insurers in the United Kingdom are already required by their regulator to treat policyholders fairly when dealing with claims, but Section 13A gives a policyholder's position teeth.

It gives the policyholder, for the first time, a right of action if it is

> Where a business has suffered a loss such as fire or flood it is likely to rely heavily on insurance. Any unnecessary delay in payment can have a significant impact.... The law should incentivise insurers to pay as promptly as is

wronged through delay.

As with all contractual damages claims, in order to succeed, a claimant will need to satisfy both the test of causation (that is, prove the loss and that it has been caused by the delay) and the test of remoteness (that is, prove that the loss was foreseeable).

It will also have to fit within the very short limitation period for bringing any claim for breach of Section 13A. Such action may not be brought after just one year from the date on which the insurer has paid all sums due in respect of the claim. It appears that time does not begin to run for a late payment damages claim under Section 13A unless/until payment is actually made—but, as with all limitation issues, specific advice must be sought on a case-by-case basis.

FOUR KEY TAKEAWAYS

1. English law policies issued/revised from 4 May 2017 will have a legally implied term whereby the policyholder is given the right to sue an insurer for damages caused by wrongful delay in the settlement of its insurance claim.

2. If the insurer is found to be in breach of this implied term, it faces damages that are not restricted by policy limits. This will be a new dynamic for the insurance industry in the United Kingdom.

3. Subject to the transparency rules imposed by the Insurance Act 2015, insurers are entitled to seek to contract out of Section 13A in commercial insurances. Policyholders should beware of any attempts to do so.

4. With a one-year limitation period, policyholders may wish to consult with their legal and other advisors at a very early stage if delay occurs.

reasonable and give policyholders a legal right to enforce this.

— UK Department for Business Innovation Skills, introducing the new law

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