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Court of Appeal Decision in Desai

Introduction

The July 2025 Court of Appeal judgment in **Dilip Desai & Anor v Paul David Wood & Anor (EWCA Civ 906)** addresses a fundamental question in professional indemnity insurance (PII) claims: whether third-party claimants have a direct entitlement to insurance proceeds paid to an insured company prior to its liquidation. The Court held that, absent an express contractual or statutory provision, third-party claimants do not acquire a proprietary right or trust over insurance proceeds once paid to the policyholder company, meaning they cannot bypass ordinary insolvency rules to claim such funds directly.

This article analyses the Court's reasoning, compares the position under insolvency and insurance law, considers practical implications for professionals, insurers and claimants, and recommends contract drafting approaches to mitigate the risks highlighted by this decision.

Factual and Procedural Background

Mr Dilip Desai and Mr Paresh Shah (the claimants) appointed Boscolo Ltd, a professional interior design and project management company, to advise on an extensive property refurbishment. Boscolo negligently advised that listed building consent was not required, resulting in substantial financial loss to the claimants. Boscolo held a PII policy with Royal & Sun Alliance (RSA) with a £250,000 indemnity limit.

Upon a claim being made, RSA paid the full indemnity limit directly to Boscolo. Shortly afterwards, Boscolo entered voluntary liquidation. The claimants argued that the insurance proceeds should be ring-fenced and paid to them rather than forming part of the general assets of the insolvent company. Both the first instance court and the Court of Appeal ruled against the claimants.

Legal Issues

The key legal issues included:

The proprietary nature of insurance proceeds: Whether there is an implied term or constructive trust in the contract making insurance funds held by the policyholder liable to third parties.

Application of insolvency principles: Typically, upon liquidation, a company's assets—including insurance proceeds paid to it—form part of the insolvent estate, subject to distribution under insolvency law.

Rights under the Third Parties (Rights Against Insurers) Act 2010: Whether claimants have statutory rights to pursue insurers directly in place of a policyholder's insolvency.

Court of Appeal's Reasoning

The Court confirmed that insurance proceeds paid to the insured company become part of the company's general assets, barring express contractual provisions to the contrary. It declined to imply a term or impose a constructive trust over the insurance proceeds for the benefit of the claimants in the absence of clear agreement.

Key points of the Court's reasoning included:

The PII policy indemnifies the insured entity, not directly the claimant, offering protection against liability rather than a fund earmarked exclusively for specific claimants.

The benefit to claimants is indirect, flowing from the company's ability to pay claims from insured funds, not from a proprietary right in the insurance money.

Courts are reluctant to imply obligations or trusts that circumvent insolvency law principles regarding asset distribution.

Had the insurer not paid Boscolo prior to liquidation, the claimants could have relied on the Third Parties (Rights Against Insurers) Act 2010 to pursue RSA directly, thus avoiding the insolvency distribution regime.

Accordingly, the Court dismissed the appellants' arguments and upheld that insurance proceeds do not constitute trust property accessible to claimants outside the liquidation process.

Practical and Legal Implications

This ruling has significant consequences for professionals, insurers, and claimants:

1 For claimants: Recovering losses under PII policies once proceeds have been paid to a company prior to insolvency is difficult. Without express contract terms, claimants risk being unsecured creditors in liquidation, with diminished recovery prospects.

2 For professionals and service providers: There is no automatic or implied trust of PII funds for clients. Professionals must understand their contractual and insolvency risk exposures.

3 For insurers: Paying insured entities before insolvency limits insurers' direct liability to third parties claiming against proceeds, clarifying risk boundaries.

4 For insolvency practitioners: The judgment reaffirmed that standard insolvency principles govern distribution of insurance proceeds once paid to the company.

Contractual Precautions and Recommendations
Clients commissioning professional services should consider negotiating:

Proprietary rights or security interests: Service agreements could expressly confer proprietary interests or charges over the provider's rights under their PII policy, giving clients priority if insolvency occurs.

Direct rights against insurers: Contracts might permit clients to claim directly against insurers or mandate assignment of insurance proceeds to clients in specified scenarios.

Escrow or segregated accounts: Payment structures that isolate funds intended for client protection, safeguarding against insolvency risk.

Specific insolvency provisions: Clear clauses addressing insurance and insolvency contingencies.

Given the consequences of Desai, such contractual protections will likely become market standard.

Interaction with the Third Parties (Rights Against Insurers) Act 2010

The Court emphasised that the Act entitles third parties to pursue insurance proceeds only if the insured company has not been paid or becomes insolvent leaving insurance rights unpaid. In Desai, the insurer discharged its liability pre-liquidation, extinguishing residual claimant rights under the Act.

Thus, while the Act enables claimant access in certain insolvency circumstances, it does not override the fundamental insolvency principle that funds paid to the policyholder company belong to the insolvent estate.

Conclusion

The Court of Appeal in Desai v Wood has decisively affirmed that third-party claimants cannot claim proprietary rights over professional indemnity insurance proceeds once paid to an insured company prior to its liquidation, except where expressly provided. The ruling highlights the critical importance of contract drafting for clients commissioning professional services who seek protection in provider insolvency scenarios.

Legal advisers should ensure robust contractual risk allocation on insurance and insolvency matters. Absent such terms, clients face the risk of uninsured loss.