

08 November 2007

Elizabeth Waller  
Law Commission  
Conquest House  
37-38 John Street  
Theobalds Road  
London  
WC1N 2BW

**Re: Insurance contract law: misrepresentation, non-disclosure and breach of warranty by the insured**

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

We note that the Law Commission is currently consulting on misrepresentation, non-disclosure and breach of warranty in relation to insurance contracts. We are responding specifically to the commission's invitation for views regarding third party claims contained in proposal 12.42 rather than the whole consultation.

Third party claims include those made by people injured as a result of an insured person's negligence, such as an employee making a claim against his employer.

As the commission has identified, motor insurers are obliged to meet third party claims where a policy has been avoided for misrepresentation or non-disclosure by the policyholder. This obligation does not fall on insurers who sell other types of policies.

We believe that this obligation should be extended to insurers selling other types of policy, particularly in certain circumstances. There is a strong case for this obligation to be applied in cases concerning employers' liability insurance, and we believe the other recommendations the Law Commission makes as a result of this project may warrant a change in the law concerning other insurance policies.

### **Employers' liability insurance**

Employers' liability insurance is compulsory for the vast majority of employers (a limited number such as government departments, family businesses and companies employing only their owner are exempt) as a result of the Employers' Liability (Compulsory Insurance) Act 1969. Employers are also required to display their certificates of employers' liability insurance, for employees to see.

If an employer displays an appropriate certificate which demonstrates to its employees that it has adequate employers' liability insurance, we believe that its employees are entitled to assume that such cover is in place. An employee can not know what disclosures his employer was required to make, and/or did make, in the course of obtaining the policy.

We believe that employees should be able to rely on the certificate of insurance as confirmation that their employer will be insured in the event that they need to make a claim. The most effective way of ensuring this is to extent Road Traffic Act style protection to employers' liability insurance.

We note the commission's sympathy with the view that where insurance is compulsory, insurers should be required to indemnify third parties in the event of misrepresentation by the policy holder, but that the commission thinks that enforcement of this provision is best left to professional and similar bodies. Whilst this position may be sufficient protection in some cases, particularly where it is the professional body which places the requirement upon their members to have such insurance, it is not appropriate in the case of employers' liability insurance.

The requirement for employers' liability insurance is imposed by statute, and therefore statute should offer a remedy to those employees who innocently suffer from their employer's misrepresentation. There is no other body which can impose such a requirement on all employers' liability policies.

We therefore urge the Law Commission to reconsider its position on this issue.

### **Other recommendations the Law Commission may make as a result of this project**

We believe that any changes that are made as a result of this consultation in respect of the policy holders' rights should be extended to third parties. This change will be necessary to avoid anomalies in the law, and to prevent injustice.

If the proposed changes are made in respect of policy holders only, a situation could arise where an innocent or irrelevant misrepresentation or non-disclosure by a policy holder results in the policy holder being covered by the insurance policy in question, but not innocent third parties. This would clearly be inequitable and we therefore hope the Law Commission will consider this when it makes its recommendations.

I hope the above is of use to the Law Commission in its further considerations of insurance contract law. Please do not hesitate to contact APIL if you wish to discuss this matter further.

Helen Anthony  
Legal Policy Officer