

Dispute Resolution Department

MIBI ordered to honour Setanta Insurance Claims Customers

High Court orders the MIBI to honour Setanta Insurance claims

In a recent judgment of the High Court found there is an obligation to protect innocent victims of uninsured drivers and also found that current legislation contemplates a liability of the MIBI regarding insolvent insurers.

In *The Law Society of Ireland .v. The Motor Insurers' Bureau of Ireland* ("MIBI") [2015] IEHC 564 the MIBI was ordered to pay unpaid claims made upon Setanta Insurance Company ("Setanta") by and against policyholders.

Background

On the 16 April 2014, Setanta Insurance had surrendered its insurance business licence. On the 30 April 2014 a liquidator was appointed to Setanta; the company had approximately 1,750 claims by and against policyholders.

All 75,000 motor insurance policies were cancelled with effect from 29 May 2014 and the question arose, who was liable to honour these claims, the MIBI or The Insurance Compensation Fund ("ICF").

The MIBI was established to deal with claims involving uninsured or untraced motors involved in accidents in Ireland. They argued that they should only become involved where there is an uninsured or untraced claim.

The ICF is primarily designed to facilitate payments to policyholders in relation to risks in the State where an Irish authorised or an EU authorised non-life insurer goes into liquidation and the approval of the High Court has been obtained for such payments.

In such a case, the party held liable is particularly relevant as a claim under the ICF is capped at 65% of the claim or €825,000, whichever is the lower. There is no such cap on a claim on the MIBI.

Facts

The Law Society argued that the question for the court to answer was whether the MIBI Agreements obliged the MIBI to pay out in respect of claims against persons who were insured by an insurer which has since become insolvent. It was claimed by the Law Society that the MIBI had previously made such payments in respect of Equitable Insurance Company, who became insolvent and entered into liquidation in 1963.

The MIBI argued that insolvent insurers are not the same as uninsured persons or companies and insured drivers do not come within the scope of the MIBI Agreements. They argued that if they were held liable for insured drivers, in an insolvent insurance company, they would effectively be responsible for underwriting the liabilities of every motor insurer who is writing risks in the jurisdiction. The MIBI further argued that this potential responsibility would include insurers from the European Union that may have been transferred - without regard to what model of risk they adopted or how they priced their policies.

The MIBI submitted that the court should have regard for the entire scheme which existed (the MIBI and the ICF) and that the legislation specific to the ICF made that body responsible for insolvent insurers. By way of example, the MIBI pointed to the ICF's support of the administrators of PMPA Insurance plc in 2011.

Conclusion

In its judgment, the court held that the MIBI was liable to pay in respect of claims against persons who were insured with Setanta at the time of their entering into liquidation, i.e. 30 April 2014. The court decided that they could not approve payments under the ICF unless it appeared that the MIBI is unlikely to meet the claim, notwithstanding its obligation to do so.

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