



THE THIRD PARTIES (RIGHTS AGAINST INSURERS) ACT 1930

Re: OT Computers [2004] EWCA Civ 653

A BETTER INTERPRETATION?

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Introduction

1. Two issues are discussed in this paper:
 - 1.1. The purpose and structure of the Third Parties (Rights Against Insurers) Act 1930 (“the 1930 Act”); and
 - 1.2. The impact of the decision of the Court of Appeal in re OT Computers (in Administration); First National Tricity Finance Ltd v OT Computers Ltd; Nagra v OT

Computers Ltd [2004] EWCA Civ 653; [2004] Ch 317;¹ Jonathan Parker, Longmore and Maurice Kay LJJ. OT Computers was an appeal from the decision of Sir Andrew Morritt V-C.² Permission to appeal to the House of Lords has been refused.³

2. In addition, the impact of the recent decision of the Court of Appeal in Centre Reinsurance International Co v Freakley; Centre Reinsurance International Company v Curzon Insurance [2005] EWCA Civ 115; [2005] 1 Lloyd's Rep IR 303;⁴ Chadwick, Latham and Arden LJJ is also adverted to. Centre Re v Freakley was an appeal from the decision of Backburn J.⁵ Leave to appeal to the House of Lords has been given.
3. The decision in OT Computers affected the interpretation of the 1930 Act in three areas, specifically:
 - 3.1. When rights under the contract of insurance pass from the insured to the third party pursuant to the 1930 Act.
 - 3.2. When the third party acquires the right to seek disclosure of details of the insurance from the insurer under the 1930 Act.
 - 3.3. The scope of the 1930 Act.
4. The correct interpretation of the 1930 Act (according to the judgment in OT Computers) is that:
 - 4.1. Rights under the contract of insurance pass from the insured to the third party on the insured's insolvency. If the third party has not obtained judgment against the insured then the rights that pass are inchoate⁶ only.
 - 4.2. The third party acquires the right to seek disclosure of details of the insurance from the insurer on the insured's insolvency.

¹ Also reported at [2004] 3 WLR 886; [2004] 2 All ER (Comm) 331 and [2004] Lloyd's Rep IR 669.

² [2003] EWHC 2490; [2004] 1 All E.R. (Comm) 320; [2004] B.P.I.R. 195

³ [2004] 1 WLR 2854

⁴ Also reported at [2005] All ER (D) 172 (Feb).

⁵ [2004] EWHC 200 (Ch); [2004] Lloyd's Rep IR 22

⁶ i.e. rights which have not yet been made complete, certain, or specific / not yet perfected / crystallized.

4.3. The 1930 Act extends to all liability insurance.

The purpose and structure of the 1930 Act

5. The 1930 Act was considered necessary as a result of the rise in use of the motor car in the 1920s. It was passed by parliament just before the requirement for compulsory third party motor insurance was introduced, and for similar reasons.
6. The common law position was that where the victim of a road traffic accident (the third party) obtained a judgment against an insolvent tortfeasor (the insured) the proceeds of any insurance went into the general pot to be distributed amongst the insolvent insured's creditors.⁷ This was obviously unfair: the creditors received an unexpected windfall as a result and at the expense of the injuries to an innocent third party. Further, the innocent third party received no or significantly diminished compensation for his injuries, undermining the scheme of compulsory third party insurance.
7. The 1930 Act safeguarded the third party's compensation by transferring the rights of the insured tortfeasor (hereinafter "the insured") under the insurance contract to the injured victim (hereinafter "the third party").⁸ After obtaining judgment against the insured the third party is entitled, under the 1930 Act, to proceed directly against the insurer.
8. The right to proceed against the insured is of limited use without an ability to discover the terms of the insurance. Therefore, the 1930 Act provided a mechanism by which the insured could obtain details of the insurance policy.
9. The brief facts of OT Computers are set out below. Thereafter the transfer of rights; the right to obtain disclosure and the scope of the 1930 Act will be dealt with in turn.

⁷ See *In re Harrington Motor Co Ltd, Ex p Chaplin* [1928] Ch 105 and *Hood's Trustees v Southern Union General Insurance Co of Australasia Ltd* [1928] Ch 793 and the discussion of these cases at para 31 of *Centre Re v Freakley*.

⁸ It should be noted that the rights transferred to the third party are no more or less than those of the insured. So for example, if the insurer can avoid (for whatever reason) against the insured, the insurer will have the same right to avoid against the third party. If the insured was bound to arbitrate before commencing proceedings, the third party will be so bound. As Harman LJ put it (in pre CPR language), the third party cannot "pick out the plums and leave the duff behind": *Post Office v Norwich Union Fire Insurance Society* [1967] 2 QB 367 at 376

Brief facts of OT Computers

10. OT Computers and Tiny, its subsidiary, sold computers to consumers under the “Tiny” brand name. OT Computers/ Tiny offered an option to consumers to purchase extended 3 or 5 year warranties including various on-site repair options.
11. First National provided purchasers with credit facilities to enable them to buy the computers. First National therefore became jointly and severally liable to the consumers for any breach of contract by the supplier (OT Computers/ Tiny) pursuant to section 75 of the Consumer Credit Act 1974.⁹
12. In January 2002 OT Computers and Tiny went into administration. The next day their businesses were sold free of their liabilities under the warranty scheme. First National was left to fulfil the liabilities under the extended warranty schemes (and did so).
13. The administrators informed First National that OT Computers and Tiny had taken out insurance in relation to their liability under the extended warranties, but neither the administrators nor AXA (the insurers) would give First National any further information.
14. Amongst other matters, First National sought
 - 14.1. an order for disclosure of information in the hands of the administrators to ascertain whether any rights against the companies’ insurers had been transferred to and vested in customers by the 1930 Act, or
 - 14.2. leave¹⁰ to commence and prosecute proceedings against OT Computers and Tiny for enforcement by way of subrogation of the rights of customers in respect of breaches of contract by OT Computers and Tiny which had been remedied at First National’s expense.

⁹ Section 75(1) Consumer Credit Act 1974: “If the debtor under a debtor-creditor-supplier agreement ... has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”

¹⁰ under section 11(3)(d) of the Insolvency Act 1986

15. At first instance Sir Andrew Morritt V-C refused to make either of the orders sought. First National appealed. Longmore LJ, giving the judgment of the Court of Appeal ordered disclosure. The second issue was deferred to another time.
16. First National had brought a subrogated claim in the name of one of OT Computers/ Tiny's customers. They had not obtained any judgment against OT Computers/ Tiny and therefore were in the position where:
 - 16.1. the insured (OT Computers/ Tiny) was insolvent; but
 - 16.2. the insured's liability to the third party (the customer/ First National) had not yet been established.

Transfer of rights

The statutory provision: section 1(1)

17. Under the 1930 Act the transfer of the insured's rights to the third party is effected pursuant to section 1(1). Section 1(1) provides that:

"Where under a contract of insurance a person (hereinafter referred to as the insured) is insured against liabilities to third parties which he may incur, then

- (a) *in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors; or*
- (b) *in the case of the insured being a company, in the event of a winding-up order being made, or a resolution for a voluntary winding-up being passed, with respect to the company, or of the company entering administration, or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge or of a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 being approved under that Part;*

his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any Act or rule of law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred."

18. Section 1(1) is long and relatively unwieldy because of the need to identify all the events of insolvency or bankruptcy which give rise to operation of the act. For ease, the material parts of section 1(1) are set out below. It should be noted that just as in the presentation, the term insolvency will be used to include the happening of all the events of insolvency/ bankruptcy type situations identified in the 1930 Act and should be read to that effect hereinafter.¹¹

19. The material parts of section 1(1) provide that:

“Where under a contract of insurance a person (hereinafter referred to as the insured) is insured against liabilities to third parties which he may incur, then... [in the event of the insured becoming insolvent] ...his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any Act or rule of law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred.”

20. The happening of two events is required for the insured’s rights to pass to the third party:

20.1. The insolvency of the insured; and,

20.2. The insured to incur liability to the third party, whether by judgment, arbitration award or settlement.

Time of transfer of rights

Where an insured’s liability to a third party HAS been ascertained before the insured becomes insolvent

21. An insured’s liability to the third party is ascertained when a third party has (i) obtained judgment against the insured or (ii) obtained an arbitration award against an insured or (iii) reached a settlement with the insured. In such circumstances where the insured’s liability to the third party is ascertained, if the insured then becomes insolvent the insured’s rights pass to the third party immediately on the happening of the insolvency. Both the two events set out above have occurred. Prior to insolvency the insured has incurred a liability to the third party against which he is insured but the third party has no rights to proceed

¹¹ It should be noted that OT Computers / Tiny were in administration, but it has proved easier to use insolvency as the inclusive term.

directly against the insurer under the 1930 Act.¹² Once the insured becomes insolvent both the events required for a transfer of rights under section 1(1) have occurred and so the rights transfer immediately upon the insured's insolvency.

Where an insured's liability to a third party HAS NOT been ascertained before the insured becomes insolvent (the situation in *OT Computers*)

22. First National (the third party) sought disclosure of the details of the insurance immediately upon OT Computers and Tiny's insolvency but before their liability to First National had been established. The issue for the court was when First National (the third party) acquires rights under the 1930 Act where the insured becomes insolvent but liability between the third party and the insured has not been ascertained.
23. The pre- *Cox v Bankside* / *OT Computers* interpretation was that there is no transfer of rights until the insured incurs liability to the third party, i.e. on judgment, arbitration award or settlement.
24. However, the interpretation preferred by Longmore LJ, giving the judgment of the Court of Appeal in *OT Computers* was that there is a transfer of inchoate or contingent rights on the insured's insolvency. The inchoate or contingent rights crystallize when there is an ascertained liability between the third party and the insured. The Court of Appeal held that there was a transfer of inchoate rights to First National as at the date of OT Computers/ Tiny's insolvency. The inchoate rights would become complete/ perfected when First National obtained judgment against OT Computers/ Tiny.
25. The Court of Appeal's reasoning was:
 - 25.1. The 1930 Act makes no reference to any need to establish the insured's liability before any transfer takes place.
 - 25.2. In *Cox v Bankside Members Agency* [1995] 2 Lloyd's Rep 437, Saville LJ (at 467) and Phillips J at first instance (at 443) both considered that inchoate rights

¹² Although it may be that a third party could be successful on a pre-action disclosure application.

transferred from the insolvent insured to the third party at the date of the insured's insolvency.

- 25.3. In Bradley v Eagle Star [1989] AC 957 the submission was made that inchoate rights passed on insolvency. This submission was accepted as correct by Lord Templeman at 967F giving a minority dissenting judgment. In Longmore LJ's view, Lord Brandon of Oakbrook, giving the majority judgment, did not reject that aspect of Lord Templeman's reasoning.¹³
- 25.4. Lindsay J in Woolwich Building Society v Taylor [1995] 1 BCLC 132 also considered that inchoate rights transferred on the date of the insolvency (although the rest of his decision was overruled in OT Computers).
- 25.5. In Curzon Insurance v Centre Reinsurance International Company [2004] EWHC 200 (Ch); [2004] 2 All ER (Comm) 28; Blackburne J at first instance¹⁴ accepted similar reasoning to that set out by Longmore LJ.
26. At least in Longmore LJ's view, after OT Computers the:
- “question of the date of transfer to the third party of the rights of insured against the insurer should now, in my judgment, be regarded as conclusively determined, at the level of the Court of Appeal, in favour of the view that the transfer takes place on the event of insolvency”* (para 46 at 334-5).
27. This view was definitively confirmed by the Court of Appeal in Centre Re v Freakley per Chadwick at paras 34 and 35.

Implications of transfer on insolvency for insurers

28. Where an insured is insolvent it may well be that that insured is in no position to properly defend the matter. An insurer may apply to be added to the action as second defendant to ensure that the third party's action against the insured is properly defended: Wood v Perfection Travel [1996] LRLR 233.

¹³ Barbara Dohmann QC, sitting as an Official Referee considered otherwise in Nigel Upchurch v Aldridge Estates. Nigel Upchurch v Aldridge Estates has been overruled.

¹⁴ It should be noted that there was a hearing in the Court of Appeal in this matter last October and judgment is awaited.

29. It is settled law that the third party, like any insured has no right to demand payment from the insurer before obtaining judgment against the insured: Post Office v Norwich Union [1967] 2 QB 363, CA.
30. The decision in Carpenter v Ebbelwhite [1939] 1 KB 346 has been cited as authority for the principle that an insurer will not be allowed to be added as a defendant in a negligence action where there is no dispute between him and the other defendants, and the only claim against the insurer is for a declaration of liability to satisfy the claimant's claim. However, Carpenter v Ebbelwhite was decided long before the CPR and at a point where (if it had been considered at all) it would have been generally considered that the third party had no rights at all until the insured's liability to the third party was ascertained.
31. In the light of OT Computers it's clear that the third party has inchoate rights which are perfected once judgment is obtained. If an insured faces a claim under a liability policy which an insurer denies (so that there is a genuine dispute to be resolved between the insured and the insurer) the insured may bring proceedings for a declaration. In my view, there is a reasonable prospect that a court would consider that a third party is now in the same position:
- 31.1. the details of the insurance are disclosed;
 - 31.2. the third party may request the insurer to state whether it will indemnify the insured; if not
 - 31.3. why not bring proceedings for a declaration at the same time?
32. This appears consistent with the dicta of Lord Denning MR in Post Office v Norwich Union at 374 that:

"Under the section it is clear to me that the injured person cannot sue the insurance company except in such circumstances as the insured himself could have sued the insurance company. The insured could only have sued for an indemnity when his liability to the third person was established and the amount of the loss ascertained. In some circumstances the insured might sue earlier for a declaration, for example, if the insured company were repudiating the policy for

some reason. But where the policy is admittedly good, the insured cannot sue for an indemnity until his own liability to the third person is ascertained."

It is apparent from this passage that Lord Denning considered the third party to be in the same position as the insured. Salmon and Harman LJJ made similar observations.

33. It would be consistent with the criteria of CPR r.19.2(2)(b), to hear all related proceedings at the same time.
34. It appears to be the law in Scotland: see para 4.27 of the Law Commission paper on the 1930 Act.
35. Further, it would be consistent with the decision of Langley J in *Chubb v Davies and Black* [2004] EWHC 2138 (Comm); CAT of 23/09/2004 where he allowed a third party to join an action for a declaration by an insurer against an insolvent insured so that the third party's interests were properly defended.
36. For this reason, an insurer should consider the policy position in relation to the third party's claim as early as possible.
37. A third party should consider attempting to bring proceedings for a declaration at the same time as the action against the insured is heard, at least where an insurer has been joined already as second defendant.

Disclosure

38. First National, in common with most third parties, wished to obtain disclosure of the insurance details in order to know whether it was worth proceeding against OT Computers/ Tiny. If OT Computers/ Tiny were uninsured or the insurance would not respond then there would be no point bringing proceedings against the insolvent companies.

The statutory provision: section 2(1)

39. Section 2 sets out the "*Duty to give necessary information to third parties*". Section 2(1) provides that:

“In the event of any person becoming bankrupt or making a composition or arrangement with his creditors, or in the event of the estate of any person falling to be administered in accordance with an order under section 421 of the Insolvency Act 1986, or in the event of a winding-up order or an administration order being made, or a resolution for a voluntary winding-up being passed, with respect to any company or of a receiver or manager of the company’s business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge it shall be the duty of the bankrupt, debtor, personal representative of the deceased debtor or company, and, as the case may be, of the trustee in bankruptcy, trustee, liquidator, administrator, receiver, or manager, or person in possession of the property to give at the request of any person claiming that the bankrupt, debtor, deceased debtor, or company is under a liability to him such information as may reasonably be required by him for the purposes of ascertaining whether any rights have been transferred to and vested in him by this Act and for the purposes of enforcing such rights, if any, and any contract of insurance...”

40. Again it is useful to reproduce just the material elements of section 2(1):

“In the event of any person becoming [insolvent]...it shall be the duty of [the insolvent insured] to give at the request of any person claiming that [the insolvent insured] is under a liability to him such information as may reasonably be required by [the third party] for the purposes of ascertaining whether any rights have been transferred to and vested in [the third party] by this Act and for the purposes of enforcing such rights, if any, and any contract of insurance...”

41. Section 2(2) of the 1930 Act imposes the same duty of disclosure as set out in section 2(1) above on an insurer, if the information already provided under section 2(1) above:

“...discloses reasonable ground for supposing that there have or may have been transferred to him under this Act rights against any particular insurer...”

42. Section 2(3) sets out the width of the duty of disclosure:

“The duty to give information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.”

43. Before OT Computers, the position as determined by two first instance authorities was that the third party was not entitled to disclosure until after judgment had been obtained against the third party. The two authorities were:

- 43.1. Nigel Upchurch v Aldridge Estates [1993] 1 Lloyd's Rep 535, Miss Barbara Dohmann QC; and
- 43.2. Woolwich v Taylor [1995] 1 BCLC 132, Langley J.

Both these authorities were overruled in OT Computers.

44. The Court of Appeal held in OT Computers that the third party was entitled to disclosure of the insurance details immediately upon the insolvency of the insured (see para 53(2)).
45. The reasons of the Court of Appeal given by Longmore LJ were:
 - 45.1. Inchoate rights transferred on the insolvency of the insured, therefore it was consistent for the third party to be entitled to disclosure at this point.
 - 45.2. What a third party needs to know is whether the person he is claiming against is insured and on what terms.
 - 45.3. The words "*if any*" appear in section 1(2). The words of the section anticipate that no rights may have in fact been transferred.
 - 45.4. Further, it is also important that the wording of section 2(1) is such that the person entitled to the insurance details is the "*person claiming that the ... company is under a liability to him*", not the '*person who has established that the company is under a liability to him*' (para 36).
 - 45.5. He also relied on the wording of section 2(2) which provides that details of the insurance must be disclosed by the insurer when the information already disclosed pursuant to section 2(1) discloses reasonable grounds for supposing that "*there have or may have been transferred*" rights to the third party. There is no point including "*may have been transferred*" unless the third party is entitled to that information even where such rights have not been transferred.¹⁵

¹⁵ This argument, like many in the judgment can be turned around the other way: why use the phrase "have been" unless the issue is not whether or not rights might be transferred because there may be no liability but rather whether

- 45.6. He rejected the reasoning of Langley J in *Woolwich v Taylor* that it was impossible to know if liability was incurred by the insured to the third party before judgment was obtained so that information could not be given to an unidentifiable third party under the 1930 Act.
46. Longmore LJ was also clearly aware of the views both of the Law Commission and Sir Jonathan Mance¹⁶ that the previous view was unhelpful and probably incorrect in any event.
47. Perhaps the most convincing reason is that early disclosure of the insurance is entirely consistent with the cards on the table approach of the CPR. From the point of view of obtaining justice quickly and effectively, it makes sense for the third party to receive early disclosure. Indeed, it has proved possible to argue for disclosure of the insurance policy and details even pre- OT Computers based on section 33(2) of the Supreme Court Act 1981 (“the SCA 1981”) and CPR r.31.16. There is no authority directly on the point – all the applications I am aware of were heard before Masters – but it is clear that such an application is correct. In my view, it is worth including reliance on section 33(2) SCA 1981 and CPR r.31.16 as an extra reason for any pre judgment application for disclosure.

Section 33(2) of the Supreme Court Act 1981 and CPR r.31.16

48. A full discussion of pre-action disclosure is outside the scope of this paper. The power to order pre-action disclosure arises out of section 33(2) SCA 1981, as amended in by the Civil Procedure (Modification of Enactments) Order 1998 pursuant to the Civil Procedure Act 1997 so as to extend the power from cases in respect of personal injury or death to all cases. The procedure is governed by CPR 31.16.
49. Section 33(2) provides as follows:

“On the application, in accordance with rules of court, of a person who appears to the High Court to be likely to be a party to subsequent proceedings in that court, the High Court shall, in such circumstances as may be specified in the rules, have

or not rights would have in fact been transferred on judgment being received if there was an appropriate insurance policy.

¹⁶ “*Insolvency at Sea*” [1995] LMCLQ 34

power to order a person who appears to the court to be likely to be a party to the proceedings and to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise out of that claim –

- (a) to disclose whether those documents are in his possession, custody or power; and*
- (b) to produce such of those documents as are in his possession, custody or power to the applicant...”*

50. CPR r.31.16 provides as follows:

- “(1) This rule applies where an application is made to the court under any Act for disclosure before proceedings have started.*
- (2) The application must be supported by evidence.*
- (3) The court may make an order under this rule only where –*
 - (a) the respondent is likely to be a party to subsequent proceedings;*
 - (b) the applicant is also likely to be a party to those proceedings;*
 - (c) if proceedings had started, the respondent’s duty by way of standard disclosure, set out in rule 31.6, would extend to the documents or classes of documents of which the applicant seeks disclosure; and*
 - (d) disclosure before proceedings have started is desirable in order to –*
 - (i) dispose fairly of the anticipated proceedings;*
 - (ii) assist the dispute to be resolved without proceedings; or*
 - (iii) save costs...”*

51. There are essentially two parts to an application under CPR r. 31.16. First, there is a threshold test as to whether:

- 51.1. the respondent and the applicant are likely to be parties to subsequent proceedings; and, if proceedings had started,
- 51.2. the respondent's duty by way of standard disclosure would extend to the documents or classes of documents of which the applicant seeks disclosure.
52. "Likely" implies that the parties "may well" be parties to subsequent proceedings, not that it is more likely than not. An insurer and third party are likely (where an insured is insolvent) to be parties to proceedings under the 1930 Act. In such proceedings the details of the insurance and the policy documentation would be disclosed as part of standard disclosure.
53. If the threshold test is met the court exercises its discretion to order disclosure where it is "desirable" to do so. In my view all three of the criteria set out in CPR r.31.16(3)(d) are made out. Early disclosure of the insurance policy is likely to assist the fair disposal of the anticipated proceedings (both third party and insurer can assess their positions early and both will need such disclosure); it likely to either assist the parties to resolved the dispute without proceedings either because the insurers will decide to offer an indemnity or because the third party will discover it is not entitled to such an indemnity and early disclosure is likely to save costs all round.
54. The principles are conveniently set out in Black v Sumitomo Corporation [2001] EWCA Civ 1819, [2003] 3 All ER 643.

Implications of disclosure on insolvency for third parties

55. Third parties should be greatly assisted by earlier disclosure. They will be able to discover the existence and terms of any insurance before proceeding against the tortfeasor. If it appears that tortfeasor is uninsured or the insurance will not respond or it appears that the insurer can avoid the policy, then the third party can decide not to proceed against the tortfeasor at an early stage and before incurring large sums in costs.
56. In a CPR world it is clear that the interpretation of the 1930 Act set out in OT Computers is an improvement on the pre-OT Computers interpretation.

Implications of disclosure on insolvency for insurers

57. In my view, the insurer should also consider policy issues and/or avoidance earlier. When policy documentation is disclosed to the third party and the third party informs the insurer that a claim will be made, there may be issues of waiver or estoppel which arise unless the insurer makes the position on the policy clear before allowing the third party to proceed to obtain judgment against the insured.

Scope of the 1930 Act

58. Although the 1930 Act was passed in order to remedy perceived injustice arising out of third party motor insurance and insolvency, section 1 of the 1930 Act is expressed to apply to all liabilities without restriction. One of the submissions made by the insurers in OT Computers was that the 1930 Act was confined to liability which was tortious and contractual liability akin to tortious liability.
59. The previous authorities of Tarbuck v Avon Insurance plc [2002] QB 571 and T&N Ltd v Royal and Sun Alliance plc [2003] 2 All ER (Comm) 939 supported this contention. The Court of Appeal stated that neither of these authorities should be followed and that the 1930 Act extended to all liability insurance.
60. The reasoning of the court was that:
- 60.1. The wording does not place any restriction on the types of liability insurance subject to the 1930 Act.
- 60.2. The Law Commission in 1998 when it published its consultation paper on possible reforms to the 1930 Act considered that the 1930 Act applied to all liability insurance: see Law Commission Consultation Paper No 152, paras 11.9 and 11.19.
- 60.3. The dichotomy between liabilities imposed and liabilities assumed, identified in Tarbuck was a false one. There was no practical difference between the two.

- 60.4. There was also no difference to be drawn between contractual liabilities and contractual liabilities akin to tortious liabilities.

Implications

61. When setting the premium for the insurance of potential contractual liabilities, insurers should take account of the impact of the 1930 Act.
62. Potential third parties should consider insisting on appropriate forms of insurance to protect themselves from another's default through insolvency on contractually assumed liabilities.

The Law Commission proposals

63. Much of the decision of OT Computers follows suggestions as to the reform of the law suggested in the Law Commission Consultation Paper No 152. To that extent, the decision in OT Computers may be considered to be a good thing. Certainly, early disclosure of the insurance details is a sensible change.
64. Further proposals, for example allowing a third party to proceed directly against an insurer, remain to be implemented. However, that is likely to be a matter for Parliament rather than the Court of Appeal.