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High Court clarifies position of insurance policies and claims on liquidation of Irish insurer

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The High Court recently delivered a judgment which will be of interest to insurance and insolvency practitioners alike, in the matter of CBL Insurance Europe DAC ("**CBL**").

CBL was authorised as a non-life insurance undertaking by the Central Bank of Ireland and, after encountering financial difficulties went into administration, followed by liquidation. CBL's main business consisted of construction-related credit and financial surety insurance, with the majority of its business being "long-tail" policies with claims notification periods of up to 10 years.

The High Court considered a number of issues arising from the liquidation which had not previously been decided upon by the Irish courts. Following detailed consideration of the issues and related English case law, the key decisions of the Court were:

1. CBL's insurance policies were terminated on the making of the winding-up order by the High Court (not the withdrawal of authorisation by the Central Bank).
2. The winding-up order terminated CBL's insurance policies by way of repudiatory breach of contract, as the order rendered CBL unable to fulfil the terms of its contracts.
3. The insurance policies were not discharged or terminated by way of frustration upon the withdrawal of CBL's authorisation by the Central Bank.
4. Claims under policies of insurance were provable in the winding-up of CBL based on an "*obligation incurred*", and the date on which the "*obligation*" was "*incurred*" was the date upon which the insurance policy was entered into, not the date on which the insured event occurs. Therefore, the entry into of insurance policies by CBL resulted in CBL immediately incurring a contingent liability in respect of such policies, which arose by reason of the "*obligation incurred*" thereunder.
5. Accordingly, the liquidators were obliged to admit proofs of claims in the winding-up under CBL's insurance policies, including in respect of events insured under such policies where the event occurs after the date of the winding-up order.
6. The liquidators were also obliged to admit to proof in the winding-up claims under CBL's insurance policies which relate to insured events under such policies which had not occurred by the date of the winding-up order but which may occur and be notified to CBL at some point in the future. Valuation of such claims would generally require the liquidators to make a "*just estimate*" of those claims similar to the treatment of other contingent claims.
7. A claim for the return of unearned premium paid under an insurance contract which has been terminated or discharged by virtue of the winding-up would be treated as an "*insurance claim*"

under the Solvency II regulations and therefore afforded precedence with respect to the assets representing technical provisions of CBL over all other claims (save expenses of the winding-up).

8. Similarly, a claim for return of premiums paid where the insurance policy was not concluded or cancelled before the opening of the winding-up proceedings is also an "*insurance claim*" for these purposes.

For any further details or information on the implications of this decision for Irish insurers, please contact Stephen D'Ardis, Ken Dixon or your usual Arthur Cox contact.