

What should companies do if they have claims against a bankrupt tortfeasor?

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Section 95(2)

Example 1

Example 2

What can businesses do?

What should a company do if it has a claim against a bankrupt tortfeasor? This article provides options for companies and discusses Section 95 of the Insurance Contracts Act, which gives creditors the right to raise a claim directly against a tortfeasor's insurer. However, this right is forfeited if the applicable deadlines are not met.

Section 95(2)

Pursuant to Section 95(2) of the act, a claim for compensation may be raised directly against a tortfeasor's liability insurer if the tortfeasor has gone bankrupt or the equivalent:

The injured party also enters into the insured's right against the company if the injured party's claim for compensation is covered by the insured's bankruptcy, compulsory composition or debt restructuring.

The provision implies that the creditor (injured party) enters into the right that the tortfeasor had towards its insurer. Therefore, the injured party must respect the cover which the tortfeasor has taken out, which typically affects the sum insured and the deductible.

Example 1

Company A has, by an unfortunate error, caused damage to objects belonging to Company B. Company A has taken out liability insurance with Company F. Company B then raises a claim for compensation against Company A.

Immediately after the damage, Company A reported the accident (and the claim for compensation from Company B) to Company F.

Company A then goes bankrupt.

Section 95(2) means that in this situation, Company B is entitled to payment of compensation from Company F. The compensation is limited by the insurance agreement that Company A entered into with Company F.

Example 2

This example takes the same premise as above, but at the time of Company A's bankruptcy, it has not reported the accident (and the claim for compensation from Company B) to Company F.

As professional liability insurance is not mandatory, for Company F to be able to pay compensation to Company B, the accident and claim must have been reported.

Section 95(2) fortunately means that Company B intervenes in Company A's rights with regard to Company F. Therefore, in this situation (where Company A has gone bankrupt), Company B obtains the right to report the claim to Company F.

What can businesses do?

If a business has a claim against a bankrupt tortfeasor, its right to report its claim directly to the insurer lapses within a period specified in the insurance conditions for the liability insurance taken out. As the company may

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not know these insurance terms, it should:

- contact the tortfeasor's bankruptcy estate (trustee) as soon as possible and ask for information regarding the liability insurance. The trustee's contact information can often be found at www.cvr.dk;
- examine the notification deadline in the insurance conditions for the liability insurance;
- notify the insurer in question before the deadline;
- act quickly (the deadline is often three to six months from the time of the bankruptcy); and
- ask the insurer to state the applicable sum insured and deductible (these may vary from the information that the company may have received from the trustee).

Finally, companies should seek counsel for assistance on how to best secure their claims.

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