

International jurisdiction for direct claims: recent developments in EU private international law

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Relevant Sources of Law

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 **on jurisdiction** and the recognition and enforcement of judgments **in civil and commercial matters (“Brussels I^{bis}”)**

Chapter II – Jurisdiction

Section III - Jurisdiction in **matters relating to insurance**

Art. 13 (2)

2. Articles 10, **11** and 12 shall apply to actions brought by the **injured party** directly against the insurer, **where such direct actions are permitted.**

Art. 11 (1) lit. b

1. An insurer domiciled in a Member State may be sued:
(b) in another Member State, in the case of actions brought by the **policyholder, the insured or a beneficiary**, in the **courts for the place** where the **claimant is domiciled;**



Case 1

(*FTBO Schadeverzekeringen NV ./. Jack Odenbreit*
(**C-463/06**) of 13 Dec 2007)

- Traffic accident in the **Netherlands**
- Tortfeasor & Motor Liability Insurer: **Netherlands**
- Applicable law, both in tort and insurance: **Dutch law**
- Injured Party: **Germany/Aachen**
 - ✓ „The reference in Article 11(2) [= *new Article 13(2)*] is to be interpreted as meaning that the injured party may bring an action directly against the insurer before the courts for the place in a Member State where that **injured party is domiciled**”.
 - ✓ Intl. & local jurisdiction of court in **Aachen**



Case 2

(*KABEG v. MMA IARD SA* (C-340/16) of 20 July 2017)

- Accident in **Italy**
- involving an **employee** domiciled in **Austria**
- with its **employer** also domiciled in **Austria**
 - ✓ “**employer**, ..., which continued to pay the salary of its employee absent as the result of a road traffic accident and **to which have passed the employee’s rights with regard to the company insuring the civil liability** resulting from the vehicle involved in that accident” → **legal** assignment of rights (“subrogation”)
 - ✓ employer = **injured party**
 - ✓ Intl. & local jurisdiction: court at domicile of **employer** (*in casu*: Klagenfurt/Austria)



Case 3

(*Vorarlberger Gebietskrankenkasse* ././ WGV-Schwäbische Allgemeine Versicherungs AG (**C-347/08**) 17 Sept 2009)

- Accident in **Germany**
- Injured party: **Austria**
- Social health insurer: **Austria**
- **legal** assignment of rights ("subrogation") [= KABEG case]
 - ✓ **but:** „no special protection is justified where the parties concerned are **professionals** in the **insurance sector**, none of whom may be presumed to be in a weaker position than the others"*
 - ✓ VGKK is a social health insurer = professional
 - ✓ Chapter II, Section 3 **does not apply** (= no jurisdiction of Courts in Austria/Vorarlberg)
 - ✓ General rule - Art. 4 (1): *actor sequitur forum rei*

* This principle was established in *GIE Réunion européenne and Others* (C-77/04) (concerning reinsurance).



Case 4

*(CNP spółka z ograniczoną odpowiedzialnością
v. Gefion Insurance A/S (C-913/19) of 20 May 2021)*

- Accident in **Poland**
- Injured party: **Poland**
- Motor Liability Insurer: **Denmark**
- **CNP** (plaintiff): **Polish** undertaking buying insurance claims professionally
- chain of **contractual** assignments: injured → repair shop → CNP
 - ✓ CNP = **professional** in the **insurance sector**
 - ✓ Chapter II, Section 3 **does not apply** (rather: general rules)
 - ✓ Most interesting: court expresses its view that a **contractual** assignee would, in principle, enjoy protection provided by Chapter II, Section 3
 - ✓ My view:
 - ↔ *Maximilian Schrems v. Facebook Ireland Limited*, (Case C-498/16)
 - ↔ contractual assignee is **not** an injured party (Art. 13 (2))



Case 5

*(BT v. Seguros Catalana Occidente, EB
(C-708/20) of 9 Dec 2021)*

- Not dealing with a traffic accident, but relevant also for traffic accidents
- Accident in **Spain**
- Liable person: **Republic of Ireland**
- Liability insurer: **Spain**
- Injured party: **UK**
- Injured party sues liability insurer & **liable person** in UK
- Argument: Art. 13 (3)

*If the law governing such direct actions provides that the policyholder or the insured may be **joined as a party to the action**, the **same court** shall have jurisdiction over them.*



Case 5 (*continued*)
(*BT v. Seguros Catalana Occidente, EB*
(*C-708/20*) of 9 Dec 2021)

- ✓ Action brought against liable person is an action in tort and/or contract and **not a matter relating to insurance**
→ Art. 13 (3) and the whole Section 3 of Chapter II inapplicable
- ✓ Injured party is **not a weaker party** as compared with the liable person (both parties being non-professionals in the insurance sector)
- ✓ **Jenard Report** on Brussels Convention 1968 only mentions that the insurer may join the policyholder or insured and does not mention the injured party
- ✓ **circumvention** of rules on jurisdiction in tort must be avoided



Reference

Further information on jurisdiction in matters relating to insurance:

HEISS in: Magnus/Mankowski (eds.), *European Commentaries on PIL, Brussels I^{bis}*, Chapter II, Section 3: Jurisdiction in matters relating to insurance, 2nd edition (2022) *forthcoming* (July 2022)

