Norwegian Court of Appeals on the Lugano Convention Article 8 nr.2

The Norwegian Court of Appeals (Borgarting lagmannsrett) recently handed down a decision on the Lugano Convention Art 8 pursuant to the notion "insurer". The decision (Borgarting lagmannsrett (kjennelse)) is dated 2007-02-13, was published in LB-2007-8743, and is retrievable from here. Following is a brief note on the case.

Parties, facts, contentions, court instances and conclusions

The plaintiffs, Hege Skarprud and Kristine Larneng, both domiciled in Norway, served the defendants, the insurance agent Euro Accident Insurance AB, domiciled in Sweden, and the general insurance agent Pinnacle Forsäkring AB, domiciled in Sweden, with a subpoena in a Norwegian court (Oslo tingrett).

The plaintiffs' object of action was to ask the court to give a judgment on the defendants' obligation to pay compensation in accordance with an insurance against accidents, which the sports club "Bekkelaget", as policy holder, had made for its members, including the plaintiffs. Bekkelaget had entered into the insurance agreement with the insurer Pinnacle Insurance plc, domiciled in England, but the agreement was entered into through the insurance agent Euro Accident Insurance AB, whereas Pinnacle Forsäkring AB, a subsidiary of Pinnacle Insurance plc., had acted in Sweden as the general insurance agent for the insurer Pinnacle Insurance plc.

The plaintiffs asserted both the agent and general agent, first, acted under the authorization of the insurer, and, second, outward represented the insurer towards co-contractors, and, third, could establish legal obligations, rights and responsibilities on behalf of the insurer. Therefore, both the agent and general agent must be identified with the insurer. With this in view, the plaintiffs further maintained that since the objective of the Lugano Convention Articles 7-12 is to protect the policy-holder, who is deemed as the weaker party, against the insurer, who is deemed as the stronger party, it must be possible, first, for everyone with an insurance claim to sue the insurer where the policy-holder is domiciled in accordance with Art 8 nr.2 of the Convention, and, second, to sue the agent and

general agent, both of which can receive the subpoena and be sued on behalf of the insurer.

The defendants asserted the court must reject to hear the case and subsequently dismiss the case from becoming a member of the Norwegian adjudicatory law system based on lack of Norwegian adjudicatory authority, since neither the agent nor the general agent can be qualified to count as the "insurer" in accordance with the notion of "insurer" in the Lugano Convention Art 8. The notion of "insurer" cannot be given so wide an interpretation as also to encompass the agent and general agent of the insurer.

The decisions of the court of first instance (Oslo tingrett), in its decision on 13 November 2006 (TOSLO-2006-142186) (case number 06-142186TVI-OTIR/09) excluded adjudicatory authority to Norwegian courts. The Norwegian Court of Appeal agreed with the lower instances on lack of adjudicatory authority for Norwegian courts, and subsequently rejected to hear the case.

Legal basis

The relevant provision for determining the adjudicatory authority of Norwegian Court was the Lugano Convention Art 8. That provision reads:

> *An insurer domiciled in a Contracting State may be sued:*
> *2. in another Contracting State, in the courts for the place where the policy-holder is domiciled…*

In general, the legal basis for conferring, delimiting (and thus both attribute and exclude adjudicatory authority to Norwegian courts) is regulated by chapter 2 of the Norwegian Civil Procedural Law of 13 August 1915 nr. 6 (Lov om rettergangsmaaten for tvistemaal) where § 36a decides that the Norwegian Civil Procedural Law Chapter 2 is limited by "agreements with a foreign state". Such an agreement is the Lugano Convention, which was ratified by Norway on 2 February 1993 and adopted and implemented by incorporation as law of 8 January 1993 nr. 21 (Luganoloven). The law entered into force on 1 May 1993 and regulates international civil and commercial matters between persons domiciled within EFTA-States, and between persons domiciled in an EFTA-State and an EU-State.

The decision of the Norwegian Court of Appeals

First, the Court understood the Lugano Convention Art 8 so as the insurer can be sued in the courts where the policy-holder is domiciled. Second, the Court, referring to the author Rognlien, p. 164, found no legal basis for interpreting the notion of “insurer” so wide as to encompass agents and general agents, and further that the Lugano Convention Articles 7-12 contain an exhaustive set of rules of adjudicatory jurisdiction as already stated in the judgment of the Norwegian Court of Appeals (22 August 1996 (LB-1995-2372)). Second, the Court gave emphasis to the plaintiffs´ interests, which the Lugano Convention Art 8 was meant to protect, were well attended to since the plaintiffs in the courts of their domicile, in accordance with the Lugano Convention Art 8, could sue the insurer Pinnacle Insurance plc. Hence, the Court lacked adjudicatory authority and dismissed the case.