German Federal Supreme Court Rules on Jurisdiction over US Credit Rating Agency

In a decision of 13 December 2012 the German Federal Supreme Court had to deal with the question (among others) of whether (and under what conditions) German courts have jurisdiction to hear claims of German investors against American based US credit rating agencies for losses suffered in the aftermath of the 2008 financial crisis. In the case at hand a German citizen with habitual residence in Germany had filed a lawsuit against the American based US credit raging agency Standard & Poor's. Relying on the defendant's favourable ratings he had purchased Lehman securities from a Dutch Lehman subsidiary in March 2008 and had suffered a loss of € 30.000,00 when Lehman became bankrupt in September 2008.

The court of first instance, the Landgericht Frankfurt am Main, declined to hear the case for lack of jurisdiction over the US based defendant. The Court of Appeal, the Oberlandesgericht Frankfurt am Main, in contrast, found that German courts were competent to hear the case based on § 23 of the German Code of Civil Procedure. According to this provision a person or company may be sued in the place where assets belonging to that person or company are located – provided that these assets are not negligible and provided that there is a sufficient connection to Germany. The court held (1) that the defendant had assets in Germany because it made a yearly six-digit profit out of German subscription contracts and (2) that there was a sufficient connection to Germany because the plaintiff had his habitual residence in Germany (and was a German citizen). In its decision of 13 December 2012 the German Federal Supreme Court essentially followed the Court of Appeal (in view of the issue of jurisdiction). It emphasized that § 23 of the German Code of Civil Procedure was meant to protect local plaintiffs and, therefore, allowed plaintiffs with habitual residence in Germany to sue foreign persons or companies with assets in Germany without further requirements.

The full decision can be downloaded here (in German).