Jurisdiction of Greek courts in insurance matters – A follow up on FBTO Schadeverzekeringen NV (C-463/06)

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A number of rulings of the Greek Supreme Court have been rendered within the last five years on the issue of jurisdiction in matters relating to insurance, as stipulated in Regulation 44/2001, Arts 9(1)(b) and 11(2). To be precise, seven decisions of Areios Pagos have applied the findings of the ECJ in the case *FBTO Schadeverzekeringen NV v Jack Odenbreit*. In a nutshell, the line of the European Court, according to which "*the reference in Article 11(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to Article 9(1)(b) of that regulation 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, provided that such a direct action is permitted and the insurer is domiciled in a Member State*", has been followed literally, unlike 1st & 2nd instance decisions, where motions to declare the court as lacking jurisdiction had prevailed (see Athens CoA 5419/2007, Theory & Practice of Civil Law 2008, 956, Athens CoA 392/2008, Hellenic Justice 2009, 838, Athens CoA 7270/2007, 5152/2008, 6364/2009 & 2352/2010 [unreported]). Admittedly, for some of the instance rulings, it was not possible to take into account the fresh news coming from Luxemburg, given the fact that they were tried or published before December 13, 2007 (the publication date of the ECJ ruling).

The Supreme Court took a firm stance on the matter, starting from 2009. In a series of decisions (2163/2009, Civil Procedure Law Review 2010, 68, 599/2010, unreported, 640/2010, Commercial Law Review 2010, 640, 487/2011, Civil Procedure Law Review 2011, 468, 37/2012, Chronicles of Private Law 2012, 449,

and 442/2013, not yet reported) the Court reiterated the ruling of the ECJ and reversed all 2nd instance decisions. The exception to the rule was the decision Nr. 379/2013 (not yet reported): In this case, the Supreme Court denied the cassation (appeal), because the German foreign company proved that the appellant was not a resident of Greece. In light of the unambiguous wording of the European Court in the *FBTO* case, namely that the injured party may bring an action directly against the insurer before the courts for the place in a Member State where (s)he is domiciled, the CoA judgment was reaffirmed.

Two final comments on the situation in Greece: First, it is no coincidence that all cases were tried before the courts of the capital. As it is well known, articles 9 & 11 Regulation 44/2001 deal with the issue of international jurisdiction, leaving the venue of the court to be decided pursuant to domestic law provisions. Apparently the claimants (i.e. their lawyer) made use of Article 6.1 Brussels I Regulation, in conjunction with Article 37.1 Greek Code of Civil Procedure, in order to establish the venue of the Athens court. In particular, by filing a claim against both the foreign insurance company and its agent in Greece (it is common ground that all agents of foreign enterprises are situated in the capital), the Athens court become territorially competent by virtue of a joinder of parties. Second, no decision has been yet rendered on the merits, thus leaving ample space for speculation about the problems that Greek courts will eventually face in terms of applicable law [see in this respect *Jayme*, Der Klägergerichtsstand für Direktklagen am Wohnsitz des Geschädigten (Art. 11 Abs. 2 i.V.m. Art. 9 EuGVO): Ein Danaergeschenk des EuGH für die Opfer von Verkehrsunfällen, in: Grenzen überwinden – Prinzipien bewahren, Festschrift für Bernd von Hoffmann zum 70. Geburtstag (2011), p. 656-663, and *Fuchs*, Internationale Zuständigkeit für Direktklagen, IPRax 2008, p.104-107].