German Federal Supreme Court requests ECJ to give a Preliminary Ruling on Art. 11 (2), 9 (1) b) Brussels I

The German Federal Supreme Court has decided, on 26 September 2006 (VI ZR 200/05), to ask the ECJ to give a preliminary ruling according to Art. 234 EC-Treaty on the question of whether the Regulation 44/01/EC enables the party, who has been injured in an accident that has taken place within the European Union, to sue the other party´s foreign liability insurance directly at his/her own domicile for compensation on the basis of the reference made in Art. 11 (2) to Art. 9 (1) b) Reg. 44/01/EC (Brussels I).

This question has been answered negatively so far by most legal writers in Germany since a direct action brought against the liability insurance did not constitute a dispute based on a relationship relating to insurance law. However, such a dispute was required by Art. 9 Reg. 44/01/EC.

In contrast to the legal literature, the VI. Civil Division leans towards the legal opinion which has been expressed by the European Council and the European Parliament in Directive 2005/14/EC, namely to regard the injured party as a beneficiary in terms of Art. 9 (1) b) Reg. 44/01/EC by way of an analogous interpretation of this rule so that the injured party has a right of action at his/her domicile.

Since the Court has doubts as to whether a uniform interpretation can be reached without a decision of the ECJ, the Court referred the following question to the ECJ:

> ***Is 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 to be understood as meaning that the injured party may bring an action directly against the insurer in the courts for the place in a Member State where the injured party is domiciled,***

provided that such a direct action is permitted and the insurer is domiciled in a Member State?

The case is registered under nummer C-463/06 (*FBTO Schadeverzekeringen N.V. v Jack Odenbreit*).