

ECJ: New Reference on Art. 11 (2) Brussels I

Another new reference on the interpretation of the Brussels I Regulation has been referred to the ECJ for a preliminary ruling: The *Landesgericht Feldkirch* (Austria) has asked the following questions:

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 interpreted as meaning that a social security institution, to which the claims of the directly injured party have passed by operation of law (Paragraph 332 of the Allgemeines Sozialversicherungsgesetz (General Social Insurance Law, ASVG)), may bring an action directly against the insurer in the courts for the place in a Member State where the social security institution is established, provided that such a direct action is permitted and the insurer is domiciled in a Member State?

If the answer to Question 1 is in the affirmative: Does that jurisdiction exist even if at the time of bringing the action the directly injured party is not permanently or ordinarily resident in the Member State in which the social security institution is established?

Recently, the ECJ had already to deal with the interpretation of Art. 11(2) Brussels I in a different case: In C-463/06 (*FBTO Schadeverzekeringen N.V. v. Jack Odenbreit*) the ECJ held that

[t]he 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.

The difference with regard to the present case is that here the action is not brought by the directly injured party but rather by a social security institution, to

which the claims of the directly injured party have passed by operation of law. Consequently the question arises whether the ECJ's reasoning in case C-463/06 can be transferred to this situation.

This has been argued by the claimant in the main proceedings on the grounds that a social security institution to which the claims of the injured party have passed has to be qualified as "injured party" in terms of Art. 11 (2) Brussels I since "injured party" is everybody sustaining any disadvantages of rights, assets or physical integrity. This is - according to the claimant - the case since the claimant paid medical expenses and sickness benefits to the directly injured person. According to this point of view, the fact that two economically comparable insurance institutions are opposing each other does not preclude the application of Art. 11 (2) Brussels I.

This line of argument is disputed by the respondent party arguing that Artt. 11 (2), 9 Brussels I reflect the need to protect the economically weaker party. This, however, is - according to the defendant - in view of its economic situation not the case with regard to a social security institution, to which the claims of the directly injured party have passed by operation of law. Consequently, with regard to the question of international jurisdiction it is decisive where the directly injured party is domiciled.

According to the *Landesgericht Feldkirch*, the more persuasive arguments suggest that a social security institution, to which the claims of the directly injured party have passed by operation of law **cannot** bring an action directly against the insurer in the courts for the place in a Member State where the social security institution is established. However, since this particular question has not been answered by the ECJ so far, it referred the above cited questions for a preliminary ruling.

The case is pending as C-347/08 (Vorarlberger Gebietskrankenkasse v. WGV-Schwäbische Allgemeine Versicherungs AG).

See with regard to the ECJ's decision in case C-463/06 also our previous posts on the judgment itself, the referring decision and annotations to this case which can be found [here](#), [here](#) and [here](#).