

CJEU on jurisdiction for an assigned insurance claim and branch jurisdiction in the case CNP, C-913/19

Back in January, we reported about the Opinion presented by AG Campos Sánchez-Bordona in the case CNP, C-913/19. At the request of the Court, the Opinion addressed only the second preliminary question on the branch jurisdiction under the Brussels I bis Regulation. This Thursday the Court delivered its judgment, which answers the second as well as two other (first and third) questions of the referring court, pertaining to the jurisdiction in matters of insurance.

The outline of the factual and legal contexts of the case can be consulted in the previous post. Remarks on the EU legal framework of relevance for the issues raised by the present case were made by Geert Van Calster and they should still be a point of consideration for those wishing to delve thoroughly into these issues.

Factual context in the main proceedings

In brief summary, an owner of a vehicle damaged in a road accident occurred in Poland assigns the claim against a Danish insurer covering, under a motor liability insurance, the liability of the person responsible for the accident to an automobile repair workshop, which provides a replacement vehicle to the assignor. Subsequently, the automobile repair workshop assigns that claim to CNP, a liability limited company established in Poland.

In its attempts to obtain the payment corresponding to the rental amount for the replacement vehicle, CNP is interacting with two companies established in Poland that represent the interests of the insurer in this Member State, namely Polins and Crawford Polska.

Failing to obtain full payment of the rental amount, CNP brings an action against the Danish insurer before a Polish court. The insurer argues that the claim should

be rejected due to the lack of jurisdiction of the Polish court. The national court decides to refer three questions for a preliminary ruling.

Jurisdiction in matters relating to insurance and assignment of claims

At the outset the Court clarifies that it deems it appropriate to examine together the first and third questions by which, as the Court puts it, the referring courts asked, in essence, whether Article 13(2) of the Brussels I bis Regulation, read in conjunction with Article 10 thereof, must be interpreted as precluding jurisdiction being founded independently under Article 7(2) or Article 7(5) of that Regulation in the case of a dispute between, on the one hand, a professional which has acquired a claim originally held by an injured party against a civil liability insurer and, on the other hand, this insurer.

It seems that the referring court invited the Court to examine whether an action can, as to its substance, fall within the scope of the Section 3 (“matters relating to insurance”), yet the applicant bringing that action and being a professional is barred from relying on the rules on jurisdiction of the Section 2 (as an action in matters relating to insurance is covered exclusively by the Section 3), namely on Article 7(2) and (5) of the Brussels I bis Regulation.

After reminding that an entity that recovers claims from insurance undertakings has to be considered as a professional in insurance sector (paragraph 43), the Court examines whether such professional is barred from relying on Articles 7(2) and (5) of the Brussels I bis Regulation and answers this question in the negative (paragraph 46).

On a side note, as previously hinted, in the present case, the claim was first assigned to the repair workshop and then by this repair workshop to CNP. The latter sought to build up upon this particularity an argument in its favour in the proceedings pending before the Polish court.

While the particularity in question, which distinguishes the present case from the case *Hofose* (where the owner of the damaged vehicle assigned the claim against the insurer directly to the applicant in the main proceedings), is not reflected in the wording of the preliminary questions, the Court does seem to hint at the presentation of these questions (“claim originally held by an injured party”,

paragraph 29). However, it seems to be of no relevance as “no special protection is justified where the parties concerned are professionals in the insurance sector, neither of whom may be presumed to be in a weaker position than the other” (paragraph 40). Besides, the request for a preliminary ruling arose out of the proceedings to which the repair workshop is not a party.

Notion of “branch, agency or other establishment”

By its second question, the referring court asked, in essence, whether Crawford Polska must be regarded as being a “branch, agency or other establishment” within the meaning of Article 7(5) of the Brussels I bis Regulation.

Against this background, just as AG in his Opinion, the Court had to establish which of the two companies representing the insurer’s interests in Poland (Polins or Crawford Polska) is the relevant entity for the purposes of Article 7(5) of the Brussels I bis Regulation (see points 53 – 58 of the Opinion). The Court held that referring court is seeking guidance about the scope of this provision in the light of the activity of Crawford Polska, this company had been “instructed by [the insurer] to adjust the claim at issue in the main proceedings” (paragraph 53).

In line with the Opinion, the Court considered that an undertaking which adjusts losses in the context of motor liability insurance in one Member State pursuant to a contract concluded with an insurance undertaking established in another Member State, in the name and on behalf of that undertaking, must be regarded as being a branch, agency or other establishment, within the meaning of that provision, where that undertaking:

- has the appearance of permanency, such as an extension of the insurance undertaking; and
- has a management and is materially equipped to negotiate business with third parties, so that they do not have to deal directly with the insurance undertaking (paragraph 61).

On a side note, in its request for a preliminary ruling, the referring court sought to establish whether the Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) may impact the interpretation of the notion of “branch, agency or other establishment” within the

meaning of Article 7(5) of the Regulation.

In this regard, the Court notes that the interpretation of the latter must be performed in an independent manner (paragraph 60). The judgment echoes therefore the case law built up upon the judgment in Kainz, C-45/13, paragraph 20 (Brussels I Regulation/Rome II Regulation), and brings to mind in particular the judgment in Pillar Securitisation, C-694/17, paragraph 35 (Lugano II Convention / Directive 2008/48/EC on credit agreements for consumers).

The judgment, which is also the subject of a press release, can be consulted [here](#).