

CJEU Rules on jurisdiction in actions brought by the injured party against the insurer and the insured (BT v Seguros Catalana Occidente, EB, Case C-708/20)

In its Judgment *BT v Seguros Catalana Occidente*, EB, Case C-708/20, rendered on 9 December 2021, the Court of Justice of the European Union interpreted Article 13 Brussels Ibis Regulation. Amongst other things, the provision at hand takes into consideration direct actions of the injured party against the insurer domiciled in a Member State. Two main scenarios are taken into account. Either the injured party starts proceedings against the insured, and the insurer joins proceedings at a second moment, or the damaged party brings a direct action against the insurer. In this last case, the court having jurisdiction over the insurer shall have jurisdiction over the insured as well (that is, the contractually weaker party).

In *Seguros Catalana Occidente*, the damaged party, domiciled in the UK, spent some time at a holiday accommodation in Spain, and was there injured due to a fall on the patio. The insurance company of the immovable property was Spanish, and the insured/owner of the premises where the accident occurred, and who previously entered into an accommodation contract allowing the stay of the injured party, was domiciled in Ireland. By making use of its own *forum actoris* under Article 13(2) Brussels Ibis Regulation, the injured party started proceedings against the insurance company before British courts. British courts were also seised by the injured party for an action in damages against the insured party/owner of the property, who contested jurisdiction arguing that Article 13(3) Brussels Ibis was not applicable as a claim for damages arising from alleged negligence in the provision of a holiday accommodation would not constitute an 'insurance claim' (para. 18).

Whereas the nature of the injured person's direct action against the insurer under national law is irrelevant for the purposes of qualifying an action as falling within the notion of 'insurance matters' (as already noted in C-463/06), the CJEU accedes to the interpretation that a claim against an insured for damages arising from alleged negligence in the provision of holiday accommodation does not fall within the scope of Article 13(3) Brussels Ibis Regulation, rather it being a matter of tort. For the section on insurance matters to be applicable, *'the action before the court must necessarily raise a question relating to rights and obligations arising out of an insurance relationship between the parties to that action'* (para. 30). In other words, *'a claim brought by the injured person against the policyholder ... cannot be considered to be an insurance claim merely because that claim and the claim made directly against the insurer have their origin in the same facts or there is a dispute between the insurer and the injured person relating to the validity or effect of the insurance policy'* (para. 31).

In the CJEU's eye, allowing the injured party to bring an action unrelated to insurance matters against the insured on the basis of Article 13(3) Brussels Ibis would circumvent the rules of that regulation concerning jurisdiction in matters of tort and lead to the effect that damaged parties could start proceedings against insurers before their own *forum actoris* under Article 13(2) *'in order, subsequently, to bring an action against the insured, as a third party to those proceedings, on the basis of Article 13(3)'* (para. 36).