

Fulli-Lemaire on the private international law aspects of the PIP breast implants scandal

In a recent article, Samuel Fulli-Lemaire, a Senior Research Fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg and a PhD candidate in Private International Family Law at the Paris II - Panthéon-Assas University, examined the private international law aspects of the PIP breast implants scandal.

The article, in French, appeared under the title *Affaire PIP: quelques réflexions sur les aspects de droit international privé* in the first issue for 2015 of the *Revue internationale de droit économique*, together with other papers concerning the PIP case.

Here's an abstract of the article, provided by the author.

It is now common knowledge that the PIP company, domiciled in France, fraudulently mixed industrial-grade and medical-grade silicone gels to make its breast implants. The victims, women who have received the defective implants and have subsequently developed medical conditions, or who wish to have the implants removed or replaced as a precaution, can claim damages from a variety of actors. Because the victims, the clinics where the operations were performed, and the companies that were part of the supply chain, as well as their insurers, are domiciled in states spread all over the world, this case raises innumerable private international law issues.

This paper focuses on some of these issues, specifically those related to the tort actions which the victims can bring against the manufacturer, its executives, its insurer, and the notified body, which is the entity that was tasked with ensuring that PIP complied with its obligations under the European Union legal framework for medical products. In each case, both international jurisdiction and applicable law will be addressed.

To that end, some technical questions have to be answered first, for instance determining the place where the damage is sustained following the insertion of a

potentially defective implant, or to what extent criminal courts can be expected to apply private international rules.

But on a more fundamental level, the PIP case highlights some of the shortcomings of the product liability regime in the single market. To take just one striking example, a French judge ruling on a claim against the manufacturer would apply the rules of the 1973 Hague Convention on the law applicable to products liability, while a German judge would apply the specific provision for product liability of the Rome II Regulation, a discrepancy which might ultimately result in the two claims being subject to different laws. Even though this particular field of the law has been harmonized by the 1985 Product Liability Directive, significant differences remain between the legislations of Member States, and these could have a decisive influence on the outcome of the cases.

This is just one factor that parties should take into account when deciding before which court to start proceedings, and it is likely that the significant forum shopping opportunities afforded to the victims by the Brussels I Regulation will be put to good use by the best-informed among them.

This state of affairs might legitimately be regarded as a lesser evil, since what is ultimately at stake is the compensation of victims of actual or possible bodily harm brought about by the fraudulent behaviour of a manufacturer. But the unequal treatment of victims, particularly depending on their domicile, cannot be regarded as satisfactory, any more than the considerable risk that contradictory or incoherent decisions will be rendered by the courts of different Member States, as some lower courts in Germany and France have already done.

The development of class actions, as introduced recently in French law, albeit in a very limited way, could help suppress or mitigate these difficulties, but accommodating these mechanisms within the framework of European private international law will create additional challenges.

U.S. Federal Judicial Center Publication on “Discovery in International Civil Litigation”

The Federal Judicial Center (FJC) has just published the most recent item in their series on international litigation. The text, entitled “Discovery in International Civil Litigation: A Guide for Judges,” was written by Timothy Harkness, Rahim Moloo, Patrick Oh and Charline Yim. The guide joins a variety of other titles, including those on mutual legal assistance treaties (T. Markus Funk), the Foreign Sovereign Immunities Act (David Stewart), international commercial arbitration (S.I. Strong), recognition and enforcement of foreign judgments (Ron Brand), and international extradition (Ronald Hedges).

The new text can be downloaded from the FJC website [here](#). The other texts are also available for download at [fjc.gov](#). If you would like a free copy of the new discovery guide or any of the judicial guides on international law, just contact the FJC.

Conference From common rules to best practices in European Civil Procedure

As was announced earlier on this blog, on 25 and 26 February 2016 a conference will be held at Erasmus University Rotterdam (Netherlands) on the theme **From common rules to best practices in European Civil Procedure**, jointly organized by Erasmus School of Law and the Max Planck Institute in Luxembourg.

The conference brings together distinguished academics, practitioners,

legislators, and policy makers, discussing in panels the need for common rules to facilitate judicial cooperation and mutual trust, procedural innovation and e-justice in the EU, alternative dispute resolution, and best practices on the operationalization of judicial cooperation.

The program and more information is available [here](#) and you are cordially invited to register.

The Council of the EU to adopt a political agreement on the regulations on matrimonial property regimes and the property consequences of registered partnerships

The Council of the European Union is expected to adopt at its next meeting on Justice and Home Affairs, scheduled to take place on 3 and 4 December 2015, a political agreement on the compromise text of the future regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (see [here](#), however, for a corrigendum), and the compromise text of the future regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships.

The initiative comes one year after the Council had observed that “some member states needed more time to complete their internal reflection process” on the two Commission proposals of 2011 and decided to “re-examine this matter as soon as

possible, and by no later than the end of 2015”.

Peter Hay: Selected Essays on Comparative Law and Conflict of Laws



Although it is hard to believe given his prolific writing and his remarkable fitness, American-German conflicts giant Professor Dr. Dr. h.c. mult. *Peter Hay* has actually celebrated his eightieth birthday on 17 September this year in Berlin. On this occasion, he has been honoured by a publication of *Selected Essays on Comparative Law and Conflict of Laws*, edited by *Hans-Eric Rasmussen-Bonne* and *Manana Khachidze*. For further information, [click here](#). This volume is a collection of articles, case notes and book reviews authored by Professor *Hay*, both in English and in German. The contributions cover the whole range of his academic interests, mainly private international law, comparative law and international civil procedure. Taken together, they provide a fascinating view of the development of private international law and comparative law in recent decades, from the U.S. conflicts revolution in the 1960's to the Europeanization of conflict of laws since the Treaty of Amsterdam. This book is a testimony to a truly impressive lifetime achievement, and it is to be hoped that many more contributions will be added in the future. *Ad multos annos!*

Notice from Member States - Update of Information on the Brussels I Recast

First update of the information referring to Article 76 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, to be found here (OJ C 390/10, 24.11.2015).

International Seminar on Private International Law, Madrid 2016. Call for Papers

The 10th edition of the International Seminar on Private International Law, organized by Prof. Fernández Rozas and Prof. de Miguel Asensio will be held next 14 and 15 April 2016, at the Faculty of Law of the Universidad Complutense of Madrid .

At the sitting of Thursday 14 special attention will be paid to the recent reforms of Spanish private international law; the latest developments towards codification of private international law in Latin America will also be addressed . The following sessions, on Friday, will focus on the development of private international law in Europe and within international commercial arbitration.

As in previous editions the main lectures of the seminar will be in charge of well-known scholars, including Jürgen Basedow (Max Planck Institute Hamburg), Roberto Baratta (University of Macerata), Bertrand Ancel (Paris II), Christian Heinze (University of Hannover) and Sebastien Manceaux (University of Dijon). Nonetheless, the seminar is open to all scholars, either Spanish or foreigners,

willing to participate with brief presentations. In this regard proposals including both the title and a brief summary are to be sent no later than December 15 to Prof. Angel Espiniella Menéndez (espiniell@gmail.com). The final written version of the presentations, not exceeding 25 pages, is to be submitted before April 1, 2016. Subject to prior peer-review they will be published in the *Anuario Español de Derecho Internacional Privado*, vol. XVI.

The registration deadline to attend the seminar, as well as the programme and further information will be announced in due time.

The recast EU Regulation on insolvency proceedings: an invitation to join the on-line debate at the Italian Society of International Law

SIDIBlog - the blog of the *Italian Society of International Law and European Union Law* - has issued a call for contributions to an on-line debate on EU Regulation No 848/2015 on insolvency proceedings (recast).

[From the blog] - *The EU Regulation No 848/2015 of the European Parliament and of the Council of 20 May 2015 brings about the revision of the EC Regulation No 1346/2000 in matters of insolvency proceedings: while not departing from the structure of the pre-existing Regulation, the new instrument aims at improving the application of uniform rules under several aspects. With the following post of Professor Stefania Bariatti, and other ones that will be published in the coming weeks, the SIDIBlog intends to start a debate on the novelties contained in the new Insolvency Regulation, trusting*

to host further contributions of Italian and foreign scholars and practitioners, willing to discuss the issues raised by the new instrument. Prospective contributors can submit their posts at sidiblog2013@gmail.com.

Contributions may be submitted in English, French, Spanish or Italian. The papers received will appear in the next issue of the on-line journal *Quaderni di SIDIBlog*.

International Symposium on Private International Law in Asia at Doshisha University, Kyoto

The following announcement has been kindly provided by Béligh Elbalti, Assistant Professor, Graduate School of Law, Kyoto University.

On December 19, 2015, a one-day international symposium on the theme of private international law in Asian countries will be held at Doshisha University, Kyoto (Japan). The symposium is organized by The Research Center of International Transaction and Law (RECITAL), Doshisha University (Professor *Naoshi Takasugi*, Director of RECITAL) with the support of the Ministries of Justice and Foreign Affairs of Japan and coordinated by Professor *Yuko Nishitani* (Kyoto University). The symposium presents an opportunity to gather distinguished experts in the field of Private International Law from many countries (especially Asian countries) as well as representatives from the Hague Conference on Private International Law. The ultimate purpose of the symposium is to discuss private international law issues from an Asian perspective and to share knowledge as well as experience with the aim of building a set of “Asian Principles of Private International Law”. The program of the symposium is as follows:

Morning Session

Title: “Private International Law from a Comparative Perspective”

Time: 9:30 – 12:00

Venue: Doshisha University, Imadegawa Campus, “Ryoshin-Kan” Building, 1st floor room 107

9:30 – 9:40

Naoshi Takasugi (Professor, Doshisha University, Japan)

“Opening Speech: Towards the Asian Principles of Private International Law (APPIL)”

9:40 – 10:10

Kanaphon Chanhom (Professor, Chulalongkorn University, Thailand)

“Private International Law in Thailand: Focusing on Jurisdiction”

10:10 – 10:40

Yu Un Oppusunggu (Professor, University of Indonesia)

“Introduction to Private International Law in Indonesia”

10:40 – 11:10

Gérald Goldstein (Professor, Montreal University)

“Highlights of Quebec Private International Law Rules and Case Law”

11:10 – 11:40

Discussion

Afternoon Session:

Title: “Cross-Border Business Transactions and the Hague Conference in Asia”

Time: 13:30 – 17:30

Venue: Doshisha University, Imadegawa Campus, “Ryoshin-Kan” Building, 1st floor room 107

Chair: Naoshi Takasugi (Director of RECITAL; Professor, Doshisha University)

13:30-13:35

Koji Murata (President, Doshisha University)

“Welcome Speech”

13:35-13:45

Muneki Uchino (Councilor, Ministry of Justice, Civil Affairs Bureau)

“Opening Speech”

Part 1 - Hague Principles: Soft Law of PIL

13:45-14:15

Yuko Nishitani (Professor, Kyoto University)

“Hague Principles and Party Autonomy in International Contracts”

14:15-14:45

Anselmo Reyes (Representative of HAPRO; Professor, Hong Kong University)

“Hague Principles from a Practical Viewpoint in Asia”

14:45-15:20

Discussion

(Coffee Break)

Part 2 - Foreign Judgment Project: Past, Present and Future

15:30-16:00

Marta Pertegás (First Secretary, Hague Conference on Private International Law)

“Development of the Hague Judgments Project”

16:00-16:30

Keisuke Takeshita (Professor, Hitotsubashi University)

“The Hague Choice of Court Convention and Dispute Resolution in Asia”

16:30-16:50

Masato Dogauchi (Professor, Waseda University)

“Comments”

16:50-17:30

Discussion

Participation to this event is free of charge. However, all those who are interested in taking part of this event are cordially required to contact beforehand via email Professor Naoshi Takasugi (ntakasug@mail.doshisha.ac.jp) and indicate their name, affiliation and email address. All presentations are in English.

Access:

(<http://www.doshisha.ac.jp/en/information/campus/imadegawa/imadegawa.html#>)

By Subway: from “Kyoto Station”, take Karasuma line to Kokusai-Kaikan and get off at “Imadegawa Station” (10 mn). (Exit #1 of Subway Imadegawa Station is

directly connected to the symposium venue, Ryoshinkan, Doshisha University).

The fifth meeting of the Working Group charged with preparing the Hague Judgments Convention

The report of the fifth meeting of the Working Group established by the Council on General Affairs and Policy of the Hague Conference on Private International Law to prepare proposals in connection with “a future instrument relating to recognition and enforcement of judgments, including jurisdictional filters” is now available through the Conference’s website (see here for an account of the previous meeting).

The Working Group proceeded on the basis that the Convention should: (a) be a complementary convention to the Hague Choice of Court Convention of 30 June 2005, currently in force for the EU and Mexico; (b) provide for recognition and enforcement of judgments from other contracting States that meet the requirements set out in a list of bases for recognition and enforcement; (c) set out the only grounds on which recognition and enforcement of such judgments may be refused; and (d) not prevent recognition and enforcement of judgments in a contracting State under national law or under other treaties, subject to one provision relating to exclusive bases for recognition and enforcement (covering matters in the fields of intellectual property rights and immovable property).

The proposed draft text of the Convention prepared by the Working Group is annexed to the report.

The Working Group recommended to the Council on General Affairs and Policy (which is expected to meet in March 2016) that the proposed draft text be submitted for consideration to a Special Commission “to be held, if possible, in June 2016”.

It also recommended that matters relating to direct jurisdiction (including exorbitant grounds and *lis pendens*) be considered by the Experts' Group in charge of the Judgments Project "with a view to preparing an additional instrument". In the Working Group's view, the Experts' Group "should meet soon after the Special Commission has drawn up a draft Convention".