



Cross border litigation between a business to which a road traffic accident victim's claim against an insurance undertaking was transferred and that undertaking: The Court of Justice clarifies the rules regarding jurisdiction

On 28 February 2018 a road traffic accident occurred in Poland involving the collision of two vehicles. The person responsible for the accident had taken out a contract for motor liability insurance with Gefion Insurance A/S ('Gefion'), an insurance company with its registered office in Denmark. On 1 March 2018 the injured party leased a replacement vehicle from the repair workshop to which his damaged vehicle had been entrusted. By way of payment for that lease service arrangement, that person transferred the claim against Gefion to the repair workshop. On 25 June 2018 the repair workshop then assigned that claim to CNP spółka z ograniczoną odpowiedzialnością ('CNP').

By letter of 25 June 2018, CNP requested Gefion to pay it the amount invoiced for the lease of the replacement vehicle.

By letter of 16 August 2018, Crawford Polska sp. z o.o., a company established in Poland and entrusted by Gefion with loss adjustment, validated the invoice relating to the leasing of the replacement vehicle in part, and granted CNP part of the amount invoiced for such lease. In the final part of that letter, Crawford Polska referred to the possibility of making a claim against it as the entity authorised by Gefion, or directly against Gefion, 'either under the general provisions on jurisdiction or before the court with jurisdiction for the place where the policyholder, the insured person, the beneficiary or any other person entitled under the insurance contract is resident or established'.

On 20 August 2018, CNP brought an action against Gefion before the Sąd Rejonowy w Białymstoku (District Court, Białystok, Poland).

On 11 December 2018 an order for payment was issued by that court.

Gefion lodged a statement of opposition to the order for payment, disputing the jurisdiction of the Polish courts to hear the case. In that situation, the Polish court decided to seek a ruling from the Court of Justice on the interpretation of Regulation 1215/2012 on jurisdiction in civil and commercial matters ¹.

By today's judgment, the Court considers first the question of whether EU law precludes, in the case of litigation between, on the one hand, a business which has acquired a claim initially held by an injured party against an insurance undertaking and, on the other hand, that insurance undertaking, jurisdiction being founded independently under Article 7 of Regulation 1215/2012, in accordance with which a person may be sued in the courts for the place where the harmful event occurred (Article 7(2)) and in the courts for the place where the branch, agency or other

¹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

establishment is situated, for actions brought against the latter in respect of activities involving such branch, agency or other establishment (Article 7(5)).²

In that regard, the Court notes that Section 3 of Chapter II of Regulation 1215/2012, entitled 'Jurisdiction in matters relating to insurance', establishes an autonomous system for the conferral of jurisdiction in matters of insurance. The aim of that section is to protect the weaker party to a contract by means of rules of jurisdiction which are more favourable to his or her interests than the general rules of law, and that such an aim means that the special rules of jurisdiction laid down in that section³ are not to be extended to persons for whom that protection is not justified. Furthermore, although an assignee of the rights of the injured party, who may himself be regarded as a weak party, must be able to benefit from the special rules on the jurisdiction of courts,⁴ 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. In the present case, CNP recovers claims from insurance undertakings. That fact, which it is for the referring court to verify, precludes that undertaking from being regarded as a party in a weaker position than the other party, so that it cannot benefit from the special rules on jurisdiction.

Section 3 of Chapter II of Regulation No 1215/2012 therefore does not apply in the case of a dispute between, on the one hand, a business which has acquired a claim originally held by an injured party against a civil liability insurance undertaking and, on the other hand, the same civil liability insurance undertaking, so that it does not preclude jurisdiction to hear and determine such a dispute from being founded on Article 7(2) or Article 7(5) of that regulation, as appropriate.

Second, the Court considers whether 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 Article 7(5) of Regulation 1215/2012. The Court states in that regard that the rule of special jurisdiction laid down by Article 7(5) of Regulation No 1215/2012 is based on the existence of a particularly close linking factor between the dispute and the courts that may be called upon to hear and determine the case, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings.

The Court recalls that two criteria make it possible to determine whether a dispute concerns the operations of a branch, agency or other establishment. In the first place, those concepts imply a centre of operations which has the appearance of permanency, such as the extension of a parent body. It must have a management and be materially equipped to negotiate business with third parties, so that they do not have to deal directly with the parent body. In the second place, the dispute must concern either acts relating to the management of a branch, or commitments entered into by such a branch on behalf of the parent body.

The Court points out, concerning the first criterion, that Crawford Polska is, as a legal person, an independent legal entity and has a management. Furthermore, it appears that it has every power to carry out activities involving the loss adjustment and settlement of claims, which are binding on the insurer, meaning that Crawford Polska must be regarded as a centre of operations which has the appearance of permanency, such as the extension of a parent body. By contrast, it is for the national court to determine whether that centre is materially equipped to negotiate business with third parties, so that they do not have to deal with the parent body.

As regards the second criterion, the Court observes that Gefion authorised Crawford Polska to adjust the loss and settle the claim in the main proceedings. In addition, it was Crawford Polska itself which took, in the name and on behalf of Gefion, the decision to award CNP only part of the amount claimed. If that fact were confirmed by the national court, it would follow that Crawford Polska was not a mere intermediary responsible for passing on information without further

² Article 7(2) and (5).

³ Laid down in Articles 10 to 16 of Regulation 1215/2012.

⁴ Defined in the combined provisions of Article 11(1)(b) and Article 13(2) of Regulation 1215/2012.

consideration, but rather an active contributor to the legal situation that led to the dispute before the Polish courts. That dispute ought then to be regarded, in view of Crawford Polska's involvement in the legal relationship between the parties in the main proceedings, as concerning undertakings made by Crawford Polska on behalf of Gefion.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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