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TWO THOUSAND NINE

Recent Legislative and Judicial Developments in Continental Europe

Affecting the Casualty Insurance Industry

September 2009

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1 Introduction

Recent Legislative and Judicial Developments in Continental Europe Affecting the Casualty Insurance Industry is the latest installment in Guy Carpenter & Company, Ltd's ("Guy Carpenter's") legislative update series, designed to provide our international clients and markets with a concise overview of key trends in the Continental European legal environment. These issues have had an impact on casualty insurers and reinsurers or are expected to have an effect in the near future.

In developing this report, Guy Carpenter has continued its valued cooperation with the insurance practice of law firm Heuking Kühn Lüer Wojtek and its network of legal experts, acknowledged as leading insurance law practitioners in their respective jurisdictions across Continental Europe. The objective has been, as in previous reports in this series, to focus on the legislative or judicial developments that we consider to be of greatest impact in each selected country. It has not been our goal to produce an exhaustive review of the entire scope of legislative changes and judicial rulings of the past year in Continental Europe, but rather to highlight the main developments that we and our legal colleagues perceive as being worthy of attention, and where necessary, further in-depth study.

In this latest series of short reports, we include for the first time Austria and Norway and provide a brief introductory overview of the Norwegian legal system. As our legal colleagues in Heuking Kühn Lüer Wojtek continue to expand their network, we hope to include other Continental European jurisdictions in future issues. The remaining reports highlight the principal legislative and judicial developments that have emerged since our last issue, during the period June 2009 to September 2009.

2 New Developments in Austrian Legislation Affecting the Insurance Act

The global economic situation has resulted in challenging conditions for the directors and officers (D&O) liability insurance market. Particularly in the United States, carriers worry that a torrent of claims for damages is coming, which could run into the billions of dollars. Statistical models forecast compensation payments of approximately EUR3 to EUR10 billion.

It is not yet known to what extent the credit crisis will affect Austria's insurance companies. At present, there are no statistics available that would correctly gauge the number of claims and the amount of potential compensation payments. Further, reliable data does not exist to illustrate the potential consequences for the Austrian D&O liability insurance market. But, if history is any guide, developments in the Austrian D&O liability insurance market will mirror those in the German market, where the need for environmental liability is expected to rise. The similarities between Austrian and German civil, criminal, and corporate law – at least as far as the liability risks within agencies and executives are concerned – provides some indication of where the market is headed.

The Federal Environmental Liability Act

The Austrian Federal Environmental Liability Act came into force on June 19, 2009. The Act is based on the EU Environmental Liability Directive 2004/35/CE, effective April 21, 2004, and addresses the prevention and remediation of environmental damages. The goal of the directive is to achieve a legal framework which will both prevent and remedy environmental damage caused by potentially or unequivocally dangerous activities. A specific goal is to regulate all business operations which could potentially cause damages through the use of chemicals, water, and waste in the natural environment. Particular reference is made to the species protected under the Birds Directive 1979 or to the Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora 1992 and the Water Framework Directive 2000.

According to the terms of the Federal Environmental Liability Act, it is considered a strict liability under the polluter pays principle: the operator of the plant is liable for any dangerous activity regardless of whether the environmental damage was caused culpably. Damages are deemed to be illicit (and the entity causing them liable) only if the operator of the plant breaches one of the compulsory duties mentioned under the Federal Environmental Liability Act. Hence, the operator must immediately take all necessary measures to prevent, as well as to remedy, any environmental damage, should it occur.

The Federal Environmental Liability Act applies to all environmental damages that result from unauthorized activities, incidents, or accidents. According to the Federal Environmental Liability Act the liability ceases to be in force if damages are caused by an official injunction or a third party, although the operator must have taken all necessary precautions.

According to the Federal Environmental Liability Act, only administrative authorities are allowed to take action against violations which cause claims for damages. Private individuals (natural persons or legal entities) are not permitted to assert private claims within the framework of the regulations in The Federal Environmental Liability Act. In particular, they are not allowed to charge the operator for damages which constitute a violation of the Act. However, all persons have the right to appeal violations of their rights caused by environmental damages. The responsible authority has to fulfill its duties ex-officio, if such complaints are filed.

Although one major Austrian insurer has now introduced an additional coverage component providing a maximum limit of EUR500,000 for property losses caused by environmental damage, most insurance companies in the Austrian market have yet to adapt their coverage to the new environmental damage liability risk. Gaps in coverage might occur for commercial insureds if there is no contract for complementary insurance.

The Corporate Law Amendment Act 2008

The Corporate Law Amendment Act is based on the EU directive on statutory audits of annual accounts and consolidated accounts (2006/43/EC), as well as on the EU amending directive on the annual accounts of certain types of companies (2006/46/EC). The application of the previously mentioned directives also increases the reporting requirements in Austria for companies under the Austrian Corporate Law Amendment Act 2008. This includes a status report featuring the most important measures of controls and risk management systems with regard to accounting policies, as well as an

extensive obligation to disclose business relationships with close persons or companies and significant businesses that do not appear in company financial statements. Publicly traded companies have to provide corporate governance reports disclosing general policy principles. At the same time, the audit committees and auditors are given new responsibilities. Time will tell if an infringement upon duties stipulated in the Corporate Law Amendment Act will bring about stronger demand for D&O liability insurance.

3 Compensation of Victims of Cross-Border Accidents in the EU

Legislation consisting of five directives on motor insurance that was adopted by the European Community (EC) is widely perceived as a major contribution to the free movement of vehicles (and thus individuals and goods) within the European Union. The first three directives, adopted between 1972 and 1990, established a single market in the field of motor insurance and required all motor vehicles to be covered by third-party liability insurance. Moreover, the directives abolished the inspections previously conducted at EU internal border points to verify civil liability insurance for motor vehicles. The fourth of the five Motor Insurance Directives adopted by the European Parliament (Parliament) and Council of the European Union (Council) in 2000 focused on "visiting victims," i.e., people who have had accidents outside their EU Member States of residence. The directive streamlined claim and compensation procedures and provided for the quicker settlement of claims. The latest Motor Insurance Directive in 2005 modernized the provisions contained in the previous directives on motor insurance and took steps to further protect victims.

Regulation 864/2007 of the Law Applicable to Non-Contractual Obligations, also referred to as "Rome II," entered into force in January 2009 and has significant implications for motor insurance. Article 4(1) of Rome II states that, in the case of a non-contractual obligation arising out of a tort, the laws of the country where the damage occurred shall be applicable. For motor insurance, this means that people who suffer road traffic accidents outside their Member States of residence are obligated to comply with the provisions of foreign law (if they do not fall within the exceptions contained in Article 4(2) and Article 4(3)).

The application of foreign law, especially in terms of compensation schemes and limitation periods, can pose problems for "visiting victims." Recognizing the difficult positions of cross-border victims, the European Commission ("Commission") attached a statement to Rome II on road accidents, expressing its intention to provide a study to the Parliament and the European Council by the end of 2008, which would examine the specific problems inherent to cross-border accidents, including available policy options to improve the situation of victims. As indicated in the initial statement attached to

Rome II, the study was intended to form an integral part of a subsequent "Green Paper" containing future policy options to be released by the Commission.

Rome II Study on Compensation of Cross-Border Victims in the EU

In accordance with its statement in Rome II, the Commission published the relevant study on compensation of cross-border victims in the EU ("the Study") on January 29, 2009. The Study focuses on the national practices of Member States regarding compensation awards and limitation periods. Furthermore, to facilitate the right to claim, the Study proposes several policy options to address potential disadvantages stemming from the significant differences in national compensation systems.

One of the differences between Member States is the use of compensation systems based on either strict liability or fault, or a combination of the two. The Study further highlights the significant differences in compensation levels between Member States. The type of loss or damage eligible for compensation, as well as the amount of compensation, vary among the Member States. In addition, differences in compensation levels do not only exist between the Member States but also between regions within Member States, further complicating matters. The Commission points out in its Study that differences in compensation awards can contribute to over- or under-compensation of victims depending on the location of the accident and on the victim's "state of habitual residence."

In the section of the Study that addresses limitation periods, the Commission made similar findings. Highlighting the wide variety of limitation periods, the Study identified several areas of difference between Member States, including: the event triggering the start of the limitation period, the events and circumstances that may suspend or interrupt the limitation period, and the length of the limitation period depending on the type of damage. Recognizing the limited knowledge and understanding that "visiting victims" have of respective national practices in regard to limitation periods, the Commission warns of the effective preclusion of a right to claim.

The Study suggests various policy options to address multiple national practices in compensation schemes and limitation periods, and to mitigate the negative impact of these divergent practices on persons having cross-border accidents. The proposed measures range from abstention from any action at the EU level to the introduction of EU-wide systems prescribing the treatment of "Visiting Victims" in relation to issues of compensation and limitation periods. For example, regarding compensation awards, the Commission proposes to introduce compulsory insurance for drivers – also known as first-party insurance. Under this specific type of coverage, the policyholder (i.e., the

driver of a vehicle), would be able to obtain insurance coverage for his own injuries and the injuries of his passengers.

Public Consultation on Compensation of Victims of Cross-Border Accidents in the EU

Through June 30, 2009, the Commission conducted a public consultation on compensation of victims of cross-border accidents in the EU ("the Consultation"), for which the Rome II Study served as the reference document. The objective of the Consultation was to obtain comments from stakeholders on the results of the Study and on the viability of the proposed policy options. The Commission is expected to publish the results of the Consultation in the coming weeks.

Solvency II Framework Directive

In May 2009, the Council of the European Union, meeting in the configuration of the Economic and Financial Affairs Council (ECOFIN), adopted the text for the Solvency II Directive, which had been endorsed by the European Parliament one month earlier. This Framework Directive involving the (re)insurance business needs to be transposed into national law by 2012 and further refines the reforms introduced by the preceding directives under Solvency I.

Solvency II establishes control and supervision mechanisms for insurance and reinsurance entities based on a three-pillar approach. The first consists of capital requirements, specifically the Solvency Capital Requirement (SCR) and the Minimum Capital Requirement (MCR). The second and third pillars institute reporting and disclosure requirements, as well as qualitative requirements related to risk management. With these requirements the European regulatory framework aims to guarantee the financial soundness of insurance companies and, thereby, to protect policyholders and beneficiaries. After the adoption of the Framework Directive by the European Parliament, the focus of the policy-making process is now on implementing the necessary measures.

The European Insurance and Reinsurance Federation (CEA) has endorsed the legislative reforms initiated under the Solvency II Framework Directive and has expressed its support for achieving modern and effective legislation. In particular, the CEA welcomes the benefits expected to result from the Framework Directive, such as improved policyholder protection, greater consumer confidence, more innovative and competitive products, and, in general, the creation of a financially sound EU insurance market.

However, given that the details of implementing the Framework Directive have yet to be worked out, the exact regulatory impact of this legislation on insurance companies remains to be seen.

4

French Supreme Court Holds That Findings Made by Arbitrators are Effective Against Third Parties

In a decision dated December 2, 2008, *(ITM Enterprises et al v. Prodim et al)*, the Commercial Division of France's Supreme Court, the *Cour de cassation*, ruled that, although an arbitral award is not binding on third parties and does not bar a subsequent lawsuit against them, the findings made in the award are effective against them. This ruling could impact both insurers and reinsurers.

The Case

Prodim, a hypermarket franchiser and distribution company, entered into a franchise contract and a supply contract with Sodi, a distributor. Under the franchise contract, Sodi was required to operate its business under the franchiser's trade name "Codec." Complaining of improper performance, Sodi terminated both contracts. As of the effective date of termination of the contracts, Sodi sold its business to a competitor of Prodim, ITM, which, a few months later, began operating the business under the trade name "Intermarché."

Availing itself of the arbitration clause in the terminated contracts, Prodim initiated an arbitration proceeding against Sodi for breach of contract through the early termination of the supply and franchise contracts, and for violation of both the non-compete clause and the right of preemption granted to Prodim in the franchise contract.

Finding in favor of Prodim, the panel declared the contracts rescinded at the fault of Sodi, held that Sodi had violated Prodim's right of preemption, and awarded damages against Sodi in an amount assessed in equity at a sum lower than the loss actually sustained. The arbitrators cited "the personality of the distributor," probably meaning its small size.

Prodim thereupon brought an action for damages against ITM for its alleged complicity in Sodi's breach of contract.

The court of appeals handed down a four-part opinion in favor of Prodim, finding that: (i) the arbitration award is *res judicata* on the issue of Sodi's wrongful conduct, (ii) the

findings made in the award are effective against third parties and hence against ITM, (iii) ITM was complicit in Sodi's breach of contract, and (iv) because the arbitrators' award of an amount less than actual loss was made in equity, the court could make an award against ITM for the difference.

The *Cour de cassation* quashed the court of appeals' decision with respect to the affirmation constituting the fourth part of the opinion, on the ground that an arbitral award is effective against third parties even if it was rendered in equity. Damages awarded by arbitrators are presumed to compensate all losses, including those for which others (not the parties to the arbitration proceeding) are jointly and severally liable.

Issues

The case dealt with three issues:

1. *Whether the franchiser's lawsuit against its competitor was barred by the previous arbitral proceeding between the franchiser and the franchisee*

For negative *res judicata* to apply, the lawsuit would have had to involve the same parties. But it was brought by the franchiser against its competitor, not its franchisee. Consequently, the previous arbitral award between the franchiser and the franchisee was not a bar to the franchiser's lawsuit against its competitor.

2. *Whether the findings made by the arbitrators regarding the franchisee's wrongful conduct could be relied upon by the franchiser in its lawsuit seeking to establish its competitor's complicity in such conduct*

Generally, the positive effect of *res judicata* is relative, i.e., the decisions of judges or arbitrators are binding only on the parties to the proceeding.

In the present case, however, the court of appeals held that the arbitral award was effective against third parties, notwithstanding its lack of binding effect on them. The court, therefore, refrained from inquiring into the wrongfulness of the franchisee's conduct, which had already been determined by the arbitral panel. The *Cour de cassation* approved the stance taken by the appellate court and upheld that the arbitrators' findings regarding the franchisee's conduct were authoritative in the subsequent lawsuit against the franchiser's competitor.

This position has been criticized as a misapplication of the concept of third-party effectiveness (see P. Mayer, *Rev. arb.*, 2009, No. 2, pp. 334 *et seq.*), which in substance prevents third parties from challenging a legal situation created by an arbitral or judicial decision, but does not prevent them from contesting findings made in a proceeding to which they were not parties. By basing its award against ITM on the third-party effectiveness of the arbitral tribunal's findings, the court made the findings binding on ITM,

which was not a party to the arbitration proceeding, and thereby disregarded the relative effect of *res judicata*.

In so doing, the court arguably violated ITM's due-process rights by preventing ITM from contesting findings made in a proceeding in which it did not have the opportunity to be heard.

As ITM was not in a position to defend itself in the arbitration proceeding, it should not be bound by the arbitrators' findings. Yet the appellate court and *Cour de cassation* decided otherwise. They seemed to take the view that it is more important to avoid inconsistency between their decisions and the arbitrators' decisions than to deprive a party of the opportunity to challenge findings of fact made in a proceeding to which it was not a party.

3. Whether the damages awarded by the arbitrators had compensated the franchiser for all the losses sustained by it as a result of the franchisee's breach of contract

The court of appeals held that the monetary award made by the arbitral tribunal had only partially compensated the franchiser for its losses. The *Cour de cassation* disagreed, holding that damages assessed by arbitrators acting as *amiable compositeurs* compensated all losses. Since, under joint and several liability, each co-debtor is liable for the entire loss, the aggrieved party who has recovered damages from one co-debtor cannot seek to recover damages from another co-debtor.

In the present case, the court's holding allowed the competitor to benefit from the *amiable compositeur* powers conferred on the arbitrators, which allowed the arbitrators to award the franchiser damages in an amount less than its actual loss on equity principles.

Implications for Insurers and Reinsurers

The *Cour de cassation* ruling could adversely affect insurers and reinsurers, since it would enable findings made in an arbitration proceeding to which they were not parties to be used against them.

To take an example in the construction industry, in the event of damage at the worksite, the client could bring an arbitration proceeding against a contractor pursuant to an arbitration clause in the construction contract. For example, a finding of bad workmanship made in the arbitration proceeding could later be set up against the contractor's insurers without their having the possibility to contest it.

In the reinsurance context, the ruling could enable an insurer to pursue against a reinsurer a finding regarding coverage between the insured and the insurer. The issue is even more acute in matters referred to arbitration, where applications to be joined to the proceeding are less readily allowed than they are in matters referred to a court.

5

Mandatory Deductible in German D&O Insurance

Formerly, D&O insurance seldom included deductibles borne personally by the members of a company's Management Board *(Vorstand)*. The Act on the Adequacy of Management Board Compensation *(Gesetz zur Angemessenheit der Vorstandsvergütung* – "VorstAG"), adopted on June 18, 2009 by the German Parliament, now makes this mandatory.[1]

The Legal Situation

VorstAG modifies the legal regime governing the compensation of members of the Management Board of German stock corporations and introduces a mandatory deductible for D&O insurance policies.

The new rules are intended to establish an "adequacy" standard and bring clarity to previously "customary" *(angemessen)* practices. Under the new law, the compensation of members of the Management Board will be structured in terms of long-term incentives designed to encourage the sustainable growth of the company. Simultaneously, new disclosure rules regarding executive remuneration specify that the Supervisory Board *(Aufsichtsrat)* must reduce the compensation of Management Board members in the event of any deterioration in the company's financial position and should undertake to prevent breaches of duty by Management Board members.

Of particular importance for the casualty insurance industry is the mandatory deductible which must be included in all D&O policies as of the day the Act enters into force *(Inkrafttreten)*. As a result, D&O protection will no longer be granted in full for members of the Management Board who commit breaches of duty or employment-related wrongful acts.

Impacts on D&O Insurance

Pursuant to Sec. 93 para. 2 cl. 3 of the new version of the German Stock Companies Act *(Aktiengesetz* – AktG), if a company provides insurance cover to the members of the Management Board for risks resulting from their occupational activities, a mandatory deductible personally borne by the Management Board member must be included. The amount of the deductible ranges from a minimum of 10 percent of the damage up to a minimum amount of 1.5 times the annual base salary *(feste jährliche Vergütung)*.

[1] Previously, even though the non-binding German Corporate Governance Code had recommended an appropriate deductible in D&O insurance contracts, most corporations and insurers did not comply.

This provision, however, is not applicable to Supervisory Board members or executives of other types of German corporations (e.g., limited liability companies [GmbH]) which are not stock-capitalized. As the new provision is incorporated into Sec. 93 AktG, one could argue that the mandatory deductible is solely applicable for claims which are raised within the framework of Sec. 93 AktG. Hence, the mandatory deductible would not apply to the costs incurred to defend or appeal a claim made against a member of the Management Board.

For current insurance contracts *(Altverträge)*, there will be a one-year transitional period (until June 30, 2010) to allow for the implementation of this regulation. Thus, insurance agreements that do not provide for a mandatory deductible will have to be amended. It would not be sufficient to implement the mandatory deductible in an employment agreement with the Management Board member.

Many questions remain, however, based on the wording of Sec. 93 para. 2 cl. 3 AktG. It remains unclear if (or to what extent) the provision applies to subsidiary stock companies which are not policyholders on their own behalf (e.g., co-insured subsidiary companies). This is even more complicated for subsidiaries that are part of a group structure *(Konzernstruktur)* in which the insurance cover is taken by the controlling company. Even though the legislature did not address this point specifically, the underlying rationale of the VorstAG leads to the assumption that there should be no exemptions from the mandatory deductible requirement even for Management Board members of subsidiary stock companies.

Another question emerges from the fact that a variety of German stock companies are subsidiaries of foreign parent companies. The controlling foreign company usually provides D&O insurance cover for the whole group under its particular foreign law regime. In this context, it can be concluded that the deductible requirement is not mandatory for Management Board members of German (subsidiary) stock companies. Further, it remains doubtful if the aim of the VorstAG – i.e., to provide incentives for the sustainable growth of companies – will be achieved by obligating a regime of mandatory deductibles. The deductible may lead to an overly cautious business approach, as Management Board members presumably will become more risk-averse if they could be held liable for a minimum amount of 10 percent of the damage up to a minimum amount of 1.5 times the annual fixed salary.

It can certainly be assumed that Management Board members will attempt to minimize their personal liability. Even before the enactment of the VorstAG, several insurance companies provided insurance cover for the remaining costs resulting from an agreed deductible. There is broad consensus that under the VorstAG the members of

the Management Board are not barred from taking insurance cover on their own behalf. But it should be pointed out that the legislature – in response to the current financial crisis – intended to create a new liability regime that emphasizes responsibility and requires members of the Management Board to participate in the losses resulting from breaches of their duties. Although this intention might be undermined by allowing for insurance cover for deductibles, it follows from the freedom of contract that such provisions are in accordance with the law. From a legal point of view, there are no convincing arguments that would prevent the purchase of such supplementary insurance contracts on a private basis.

Summary

Despite criticism expressed from different sides during the legislative process, the German Parliament ultimately adopted a provision that might cause more problems than it solves. This is due to the fact that the German Grand Coalition of Conservatives and Social Democrats, with an eye towards the forthcoming elections in September 2009, felt compelled to convince the public of their resolve in handling the financial crisis.

It remains to be seen whether a mandatory deductible for members of the Management Board will alter decision-making processes (as intended) and lead to the sustainable growth of stock companies, or whether future executive remuneration will contain an additional element that provides insurance cover for deductibles. Those who profit most from the VorstAG may be those insurance companies that develop a new line of business selling German deductible insurance.

6 Revised Limitation Period for Liability Insurance in Dutch Law

In January 2006, the new Dutch insurance law came into effect. Even though the stipulations contained in it are relatively recent, the Dutch government is already contemplating a new article on the period of limitation. In July 2008, a legislative proposal concerning the procedures for extrajudicial settlement of personal injury and untimely death claims was submitted to the House of Representatives. This proposal is now under debate in the Senate, and it is expected to pass in the near future.

Surprisingly, this proposal contains a revision of the stipulation concerning the period of limitation under liability insurance:

Article 7:942

1. A right of action to obtain payment from an insurer becomes time-barred by the passage of three years after commencement of the day following that on which the person entitled to the payment became aware that it had become payable. Nevertheless in the event of insurance against liability the right of action will not become time-barred until six months have elapsed after the claim against which the insurance provides cover has been instituted within the applicable time limit of the period of limitation.

2. The period of limitation will be interrupted by a written statement, asserting entitlement to payment. A new period of limitation will commence on the day following that on which the insurer either admits the claim or unambiguously states by registered letter, stating the above consequence, that it is rejecting the claim, and which also unequivocally states the consequence given in paragraph 3.

3. If the insurer rejects the claim the right of action becomes time-barred by the passage of six months.

The previous insurance law contained no stipulations on time limits for claims against insurers. As a result, the general five-year time limit applied, but non-compulsorily. It was typical for an insurance policy to restrict time limits, and claims against an insurer would become time-barred six or 12 months after the insurer definitively rejected the claim, depending on the policy. Under the current law, these policy clauses are no longer applicable: a claim against the insurer "becomes time-barred by the passage of three years after commencement of the day following that on which the person entitled to the payment became aware that it had become payable." The limitation period can be interrupted by a written statement asserting entitlement to payment. Subsequently, a new limitation period will commence on the day following that on which the insurer either admits the claim, in which case the new limitation period will be an additional three years, or the insurer rejects the claim by registered letter, in which case the new limitation period will be just six months.

According to the Dutch legislature, however, the short limitation period after an insurer rejects a claim is not appropriate for liability insurance. In many cases, an insurer will reject a claim without even looking into the merits of the case. When this happens, the aggrieved party or the insured contacts the insurer again, and often the parties will start negotiations after the rejection by the insurer. These negotiations tend to take longer than six months. An insurer will likely need more time to sort out what has happened, who is liable, and if there is coverage. But in the meantime, negotiations will often take place between the insurer and the aggrieved party. It is the insured's obligation, though, to act within the limitation period – despite the fact that the timeframe is easily forgotten or may not even be known to the insured. Consequently, the legislature has suggested changing the stipulations regarding liability insurances only.

In the revised article, the six-month period is removed from the first paragraph, and a new paragraph is added:

4. In the event of insurance against liability the period of liability will contrary to paragraph 2, first sentence, be interrupted by any negotiation between the insurer and the person entitled to payment or the aggrieved party. In such case contrary to paragraph 2, second sentence and paragraph 3 a new period of limitation will start after commencement of the day, following on which the insurer either admits the claim, or unambiguously states by registered letter to the person or party with whom or which the insurer is negotiating and, if this is another, the person entitled to payment that it breaks off the negotiations.

This new paragraph will give interrupting force to any form of negotiation between the insurer and the aggrieved party or policy beneficiary. As long as the parties are negotiating, the claim will not become time-barred. Negotiations result in a "life-interruption," whereas an interruption as stated in paragraph 2 only results in the commencement of a new period of limitation (i.e., three years). According to the legislature, this new article addresses the difficulties described above. It is also consistent with day-to-day practice. As long as the negotiations continue to take place, an insurer will have to take into account that the counterparty will reserve its right to performance.

The new article is also consistent with the Motor Vehicles Liability Insurance Act (WAM). The WAM already acknowledges the interrupting force of negotiations between the insurer and the aggrieved party. What qualifies as "negotiations" under WAM has been the subject of numerous disputes. Therefore, it is likely that case law pertaining to WAM will act as a guideline for addressing the question of whether a liability insurer is taking part in negotiations. According to the case law, only an unambiguous and absolute rejection from the insurer will give the aggrieved party cause to start proceedings, in which case there is no question of negotiations. In all other cases, little is needed to qualify as negotiations. Simply correspondence exchanged between the insurer and the insured or aggrieved party is sufficient.

If an insurer unambiguously states by registered letter that it is breaking off negotiations a new limitation period of three years will commence. This is different from all other types of insurance coverage in paragraph 3, which states that when an insurer rejects a claim the shorter limitation period of six months applies. Breaking off negotiations, of course, does not automatically mean that the insurer rejects the claim; however, this will most likely be the result.

Even though the legislature doubtless has put a great deal of thought into revision of art. 7:942 Dutch Civil Code, it is unclear what regime is applicable when the insurer refrains from any communication. The limitation period can only be interrupted by negotiations, but what if there are no negotiations? What limitation period applies, and how can this be interrupted? According to paragraph 1, the right of action to obtain payment from an insurer becomes time-barred by the passage of three years after commencement of the day following that on which the person entitled to the payment became aware that it had become payable. This period cannot be interrupted in the way described in paragraph 2. However, the limitation period can be interrupted by a written demand for payment according to art. 3:317 Dutch Civil Code. The question is whether an aggrieved party or an insured will be aware of the limitation period and the possibility of this kind of interruption. Some insurers prefer also to consider any interruption as a life-interruption in cases of liability insurance, as mentioned in art. 3:317 Dutch Civil

Code. As a result, only aggrieved parties or insureds who have not made the effort to send the notice of liability within three years can be confronted with the time bar.

Insurers will obviously have to be aware of the revision of art. 7:942 Dutch Civil Code. If a liability insurer rejects a claim, it will have to refrain from any action which may qualify as a deed of negotiation. Otherwise, an insurer may be surprised years later with a request for payment. Just to be on the safe side it is recommended that insurers always expressly state by registered letter that its action cannot qualify as a deed of negotiation and if it does qualify as a deed of negotiation, the negotiations are broken off by receipt of that letter.

7

An Introduction to Norwegian Liability Law

For a claimant to successfully file a claim under Norwegian law, three cumulative criteria must be fulfilled:

- Basis of liability
- Causation
- Economic loss

Overview

Basis of Liability

For liability to be established under Norwegian law, it must be shown that the injuring party acted negligently *(culpa)*. Either an act or the omission of performing an act may form the basis for liability, and whether either can be regarded as negligent must be evaluated based upon the prevailing facts. The injuring party will be liable if the actions or lack of actions by the injuring party are of a lower standard than objectively is to be expected by the bonus *pater familias* under similar conditions.

There are two other categories that could form a basis of liability, specifically: strict liability or strict liability for actions performed by a third party that has acted negligently, so that a basis of liability could be established in accordance with the main rule described above. Strict liability is either based upon legislation or non-statutory law.

Strict liability established by non-statutory law has been established by the courts. Whether a claim for damages can be based on such strict liability is determined by an individual assessment of the situation in which the damage occurred. Based on the prevailing facts and the injuring party's actions, the court will decide whether the injuring party shall be liable for damages – without establishing whether the injuring party has acted negligently. The decision will be based on several aspects of the facts.

Foremost is what actually caused the damage, as well as whether high risks were involved or accepted by any of the parties. If damage is inflicted in an expectable manner (based on the activities performed), strict liability is more likely to be determined

than if the damage is regarded as unforeseeable. This is due to the ability of the injuring party to take action to minimize risks. From the claimant's point of view, the assessment is the other way around: if a materialized risk is clearly visible to the injured party, the opportunity to successfully achieve indemnification is reduced. In such situations there is a substantial possibility of the risk actually being accepted by the claimant. Also, whether and to what extent the involved parties have or could have purchased insurance coverage is relevant as a part of the evaluation of each party's ability to sustain the loss caused. The assessment focuses on which party is closest to cover the losses inflicted by the damage under the particular setting.

Norwegian legislation has also established strict liability for injuring parties regardless of whether they have acted negligently. The most important, in which substantial losses are foreseeable, and which therefore are most relevant to the insurance industry, are related to traffic accidents and environmental damage caused by pollution.

In addition, with regard to strict liability for actions performed by a third party who has acted negligently in accordance with the main rule, the most important issue for insurers is the statutory strict liability employers have for negligent acts performed by their employees.

Causation

The main rule under Norwegian law, in regards to causation, is one of substantial-factor. When damage inflicted results from multiple necessary causes, the responsibility will be placed on the primary cause – i.e., the cause that played the dominant or most significant role. However, other causes required for the damage to materialize could also lead to liability. Those not required for the damage to materialize will not lead to liability. This applies both where the causes are simultaneous and when the causes occur subsequently.

Economic Loss

Under Norwegian law, only economic damages can be claimed. In some cases, the plaintiff will have a statutory right to damages for non-economic loss; however, the sizes of such losses are limited under Norwegian law to the point where they are of no importance for the insurance industry.

With regard to the economic loss, this shall be based on the loss each individual claimant has suffered. The loss will in short be a comparison between the situation with the damage and what the situation would have been if the tortious act had not occurred. However, the courts will perform an adequacy test if the losses are of extraordinary character or magnitude.

Compensation Levels

In 2005, the Norwegian mining company Store Norske experienced a fire in one of its coalmines in Svalbard/Spitsbergen. The fire led to a demanding rescue operation. Subsequently, Store Norske took legal action against its insurer. Both the district court and the court of appeal ruled in favor of Store Norske, and the final award remained at NOK612 million (EUR70.3 million).

Following a large fraud case, the so-called Finance Credit Case of 2005, an audit company became liable for NOK613 million (EUR70.4 million).

These are some of the largest claims in Norway to date. Although varying a great deal, the compensation level in general is lower than in other Continental European jurisdictions. The risk of large claims tends to be highest in the offshore and energy sectors. This is due to the risk of environmental damage and the general value of the installations. The major Norwegian companies in these sectors have set up captives, thereby gaining access to reinsurance coverage.

For personal injury cases, the compensation level in Norway is fairly low for individuals (compared to the rest of Europe) and is normally related to compensation for extra costs and the loss of future earnings. The largest insurance claims regarding personal injury on an individual basis are around NOK10 million (EUR1.2 million).

Group Proceedings/Class Action

The new Norwegian Civil Procedure Act (in effect from January 1, 2008) Chapter 35 enables group proceedings. The group may be located either on the plaintiff side or on the defendant side.

The requirements are that:

- The legal entities forming the group must have their claim or responsibility based on the same facts and legal basis – either exactly or in a "substantially similar" manner.
- There must be a representative for the group.
- Members of the class must be eligible to be parties in a common lawsuit in Norway. Group proceedings may be raised by "anyone" who is entitled, within the framework of the proceeding. This includes both physical and legal persons.

The general rule for group participation is the "registration option." This means that the individual who claims within the scope of the proceeding may join the legal proceedings at his or her own discretion. Group proceedings are open to individuals without registration. With this alternative, all entities within the group automatically become plaintiffs or defendants without having to sign up in advance. With this approach, a party would have to resign if it does not want to participate in the proceedings. This is intended for proceedings for smaller claims that may affect a large group of individuals. Examples include cases involving interest rates or electric rates.

Under both types of group proceeding, it is possible to divide a group into subgroups, where different categories of "special question" may be addressed. There are no criteria as to how many legal entities must be involved to use the group proceeding method. When legal proceedings involve the registration method, as mentioned, each group member will have to sign up, but may be passive after that, as the representative will act on behalf of the entire group. At registration, the members will be responsible for a certain maximum amount of costs – to be determined by the court and which will have to be paid in advance.

Members in group proceedings without registration may be totally passive. Any binding judgment will be enforceable for all group members. Such group members have no responsibility for costs.

8

When is the Late Payment of Insurance Claims Justified in Spain?

In the previous issue of *Recent Legislative and Judicial Developments in Continental Europe Affecting the Casualty Insurance Industry* (Fall 2008), we dealt with the punitive interest that insurers must pay if a delay in settling claims is unjustified. At the time, we said that the Supreme Court had fixed certain guidelines for ascertaining when an insurer's delay may be deemed justified. Since then, the Supreme Court has had the chance to address the issue on various occasions, the last in April 2009, and the guidelines may now be regarded as consistent doctrine.

By way of review, an insurer is liable for any delay in settling a claim that exceeds the time limits established by the Insurance Contract Act of 1980. Failure to pay will result in the levying of a special interest rate, which is punitive in nature as it is unrelated to the actual market cost of money. The amount of the special interest rate is calculated at 150 percent of the annual legal interest rate for each of the first two years payment is in arrears, and at no less than 20 percent each year thereafter. To be released from paying punitive interest, the insurer must prove that there were justified causes that prevented a more timely settlement of the insured's claim.

The criteria and guidelines set forth by the recent judgments of the Supreme Court[2] can be summarized as follows:

- The special interest rate is punitive in nature to encourage the quick settlement of claims. Consequently, the date of accrual is the date of loss, not of the judgment or any other date.
- Fault of the insurer is required; hence, this liability is not strict.
- Whether the delay in settling the claim is justified is a factual question to be resolved on a case-by-case basis.

[2] Decisions of July 1, 2008 (RJ 2008\3318); October 16, 2008 (RJ 2008\5694); February 12, 2009 (RJ 2009\1288); and April 6, 2009 (RJ 2009\1760).

- The delay is justified – and, therefore, the insurer will not be held liable to pay the punitive interest – if the discussion is centered not so much on the exact amount of the indemnity as on the coverage of the loss, provided there are sound reasons to question it.

- Discussion about the amount of the indemnity can also justify the delay, although in this case, the criteria for such a justification are much more limited, and rarely will the questioning of the amount release the insurer. This is because, firstly, the insurer must pay within a certain very tight timetable what he believes to be the minimum amount to be paid, and secondly, because the mere illiquidity of the indemnity is no longer a valid reason to delay payment.

- It follows that the sheer existence of a judicial controversy wherein the insurer acts as a claimant or defendant does not *per se* justify the delay in settling the claim.

In a recent case, the defense lawyer based his strategy on the incorrect notion that the illiquidity of the indemnity would release the insurer from paying the punitive interest, and thus, exhausted all alternatives in the expectation of tiring the claimant and reaching a convenient settlement. As a result the insurer had to pay a staggering amount of interest.

Auditors' Liability

The market is following attentively the ongoing discussions between the government, the auditors' supervisory authority, and the different auditors' associations. At the top of the agenda is the auditors' liability, which under the current law is unlimited.

Needless to say, a consensus to limit auditors' liability may have a substantial impact on errors and omissions (E&O) policies and broader attitudes regarding litigation against auditors.

Finally, recent judgments from the Supreme Court have also laid down causation criteria in liability cases involving auditors. Hopefully, this topic will be dealt with in a following issue.

9

Insurers Lost Important Personal Injury Case in Swedish Supreme Court

By a recent judgment, the Swedish Supreme Court overturned a longstanding insurance practice regarding the concurrent causes of loss of income.

Facts

A woman was severely injured in a traffic accident in 1992, and she lost her capacity to work completely. She was compensated i.a. for loss of income from the Motor Third-Party Liability Insurance *(Trafikförsäkringen)*. In 2000, the woman had a cardiac arrest, resulting in additional severe injuries, which were sufficient to cause the loss of her ability to work. Both parties agreed that there was no causal link between the traffic accident in 1992 and the cardiac arrest in 2000.

Because of the cardiac arrest and its consequences, the insurer stopped compensating the woman for loss of income. The insurer's decision was based on the view that, as long as the consequences of the cardiac arrest lasted, the insurer had no obligation to compensate for the loss of income caused by the traffic accident. The reasoning behind the decision was consistent with the then generally applied claims-handling practice in the Swedish insurance market and was also endorsed by the Traffic Injuries Board *(Trafikskadenämnden)*, which is a consultative committee that reviews the more severe personal injuries caused by traffic accidents.

The Dispute

The woman, who did not accept the insurance company's decision, initiated legal proceedings and claimed continued compensation for loss of income. The first court considered the matter to be of importance for guidance of application of the law. The court therefore used its power under the Swedish Procedural Code *(Rättegångsbalken)* to directly submit the matter to be decided by the Supreme Court.

The question to be answered by the Supreme Court was what impact does the cardiac arrest in 2000 and its consequences have on the insurer's liability to pay compensation to the injured person for loss of income and total loss of pension benefits, due to the traffic accident in 1992, where the two events are unconnected and each event is sufficient to cause total incapacity for work.

According to a statement obtained from The Swedish Association of Insurers *(Sveriges Försäkringsförbund)* claims situations like the present, where concurrent causes (negligence/strict liability – here the traffic accident) and an occurrence for which nobody is liable (here the cardiac arrest) are not uncommon. Further, based on a court precedent dating back to 1950, it is well established practice in the Swedish insurance market that the subject liable to pay indemnity under the Traffic Damage Act *(Trafikskadelagen)* is relieved from its liability as long as the consequences of a cause for which nobody is liable (here, for the cardiac arrest) lasts.

Compensation for Personal Injuries

Under Swedish law, indemnity for personal injuries – including injuries suffered through a traffic accident – is in most cases assessed pursuant to the Tort Liability Act *(Skadeståndslagen)*. It is a guiding principle that an injured person shall be fully compensated for his or her economic loss. The principle for calculating lost income, the so-called difference method *(differensmetoden)*, is laid down in the Tort Liability Act. The method means that the compensation shall be equivalent to the difference between the income the injured person could have earned had the injury not happened and the income he or she earns or ought to be able to earn as injured.

The Supreme Court's Decision

The Supreme Court found for the injured woman, for the following reasons: Legislation, inter alia the introduction of the Traffic Damage Act (*Trafikskadelagen*) in 1976, and other circumstances have changed considerably since the judgment of 1959, on which the insurance company relied. Furthermore, it can be perceived to be unreasonable if an injured individual should, due to illness, lose the right to indemnity from the traffic insurance in spite of the fact that his or her capacity for work has not changed, as in the present case due to the subsequent illness. The opposite view leads to evident disadvantages for an injured person and might even cause him or her to abstain from getting medical treatment out of fear of losing the insurance indemnity. And, it would not be particularly burdensome for the insurer to continue payments for loss of income and pension benefits.

Accordingly, the answer given by the Supreme Court is that the cardiac arrest and its consequences shall not affect the insurer's obligation to indemnify the injured person under the traffic insurance.

10

Damages to Swedish Personal Injury Victims: Do They Ever End?

General Principles

Damages to individuals who have suffered personal injury are regulated by the Tort Liability Act *(Skadeståndslagen)*. Compensation is payable for costs, loss of income, pain and suffering, disfigurement, and other permanent conditions. The overall guiding principle is that an injured person shall be compensated fully for his or her loss.

The Traffic Damage Act *(Trafikskadelagen)* refers to the provisions of the Tort Liability Act that regulate the assessment of damages and the right of reconsideration. Also, Patient Insurance *(Patientförsäkringen)*, Pharmaceutical Insurance *(Läkemedelsförsäkringen)*, and Job Security Insurance *(Trygghetsförsäkring för arbetsskada)* basically follow the same provisions of the Tort Liability Act.

Reconsideration of Damages

In many circumstances, damages for personal injuries are determined at a point in time when it is still difficult to foresee what the full effects of the injuries will be. Often, the assessment is of necessity based on a variety of assumptions that eventually may prove not to be reasonably correct.

The Tort Liability Act offers a "safety net" by providing a right of reconsideration in situations where there is a significant change in the conditions constituting the basis for assessment of damages.

Initially, only damages for loss of income and loss of pension benefits could be subject to reconsideration. By a change of the Tort Liability Act that took effect on January 1, 2002, all types of compensation under the Act can be subject to reconsideration.

What Circumstances Qualify for a Right of Reconsideration?

According to the legislative preparatory works, the legislature is focused on the considerable deterioration of the injured person's physical condition. The difference between assumed and actual injury should be of such significance to warrant that a reconsideration takes place, with the impetus linked to the change of circumstances rather than to the resulting difference in compensation that may follow.

As would be expected, this fairly general statement has proved insufficient as guidance in the many situations that could occur. Thus, the court system has become involved – and will probably continue to do so.

Two Recent Supreme Court Decisions

The Swedish Supreme Court recently decided two cases on requirements for right of consideration:

I. Adjustment of Wage Levels in Previous Occupation

The claimant was injured in a traffic accident in 1986, and the claim was settled in 1991. It was then established that the claimant was fully compensated for loss of income by her social insurance benefits and additional compensation from Occupational Insurance *(Arbetsskadeförsäkringen)*. At the time, Traffic Insurance compensation was not a consideration.

Eventually, the claimant noted that she was no longer fully compensated, as wages had increased in her former occupation, causing a deficit.

In a 1998 decision, the Supreme Court found that an adjustment to wage levels in the injured person's former occupation qualifies for reconsideration. But, an additional issue remained: whether an accumulation of yearly increases of wages should be the basis for the assessment if the change was sufficiently significant or if the assessment should be based on each of the relevant years separately.

The Supreme Court noted that the benefits the claimant received (annuities from the Social Insurance and Occupational Insurance) corresponded to 88.4 percent of the wages she should have received had she not been injured in the traffic accident.

After a lengthy reasoning the Court further stated that a reasonable starting point when assessing if there is an essential change, which qualifies for reconsideration, is if circumstances have changed since the compensation was determined (also where it was determined to be nil) so that the remaining income and benefits do not amount to 90% of the income the claimant should have earned but for the traffic injury. Thus, the basis for the assessment should be the accumulation of wages.

Accordingly, the change was considered essential and the claimant entitled to reconsideration of her right to compensation from the Traffic Insurance *(Trafikförsäkringen)*.

II. Fifty Percent Permanent Disability Pension Converted to 100 Percent

The claimant received a concussion from a traffic accident in 1993. She was granted a

50 percent permanent disability pension in 1998, and in 2001, her loss of income due to the traffic accident was settled.

The claimant's physical condition eventually deteriorated. She was granted a full permanent disability pension in 2004,which resulted in a reduction of her total compensation by 3.6 percent, for which she claimed compensation from Traffic Insurance.

The Supreme Court stated initially that the right of reconsideration should be reserved for situations where the circumstances have changed considerably in comparison with what the parties anticipated when the compensation was decided. When a change is not considered essential, the matter can be tried again later if additional changes take place.

In a decision rendered in 2001, the Supreme Court arrived at the conclusion that the right of reconsideration never becomes time-barred. This came as a surprise to the Swedish insurance market. The "reconsideration claim" that can occur due to essentially changed circumstances is, however, subject to time bar pursuant to relevant legislation, in this case the Traffic Damage Act.

In this matter, the Supreme Court had to specifically decide whether the relevant circumstance had changed sufficiently for a right of reconsideration – or if the change had had an essential effect on the level of compensation.

The Supreme Court held that in cases where the future capacity of work has changed essentially (as it had in this one) there is a right of reconsideration regardless of how the reduced working capacity affects the loss of income.

11

Revision of the Swiss Insurance Law

The Legal Situation

The Swiss Insurance Contract Act, dated April 2, 1908 (*Versicherungsvertragsgesetz* – VVG; SR 221.229.1), governs the contractual relationship between policyholders and insurers. The VVG proved its worth for many years, but over the last decade it has come under criticism. As a result, a partial revision of the VVG was made and entered into force on January 1, 2006, with the goal of strengthening the position of the policyholder. The Insurance Supervising Act *(Versicherungsaufsichtsgesetz* – VAG) and the attendant Supervising Regulation *(Aufsichtsverordnung* – AVO) have also been revised.

Even though the partial revision of the VVG in 2006 succeeded in strengthening the legal position of the policyholder, the ranks of those calling for further and more extensive revision swelled quickly. Consequently, the Department of Justice and Police, which was responsible for insurance legislation at that time, assigned a commission of experts to compose a draft bill as well as an explanatory report. The main aims were the alignment of Swiss insurance law with that of neighboring states – and a further improvement of the policyholder's legal position.

In August 2006, a commission of experts submitted a draft bill to the Department of Finance, which by that point had been given responsibility for insurance legislation. Based on that draft, the Federal Office of Private Insurance was tasked with finalizing a bill *(Entwurf zum Versicherungsvertragsgesetz* – E-VVG) for the consultation *(Vernehmlassung)* that closed on July 31, 2009. The consultation is part of the legislative process in Switzerland, providing the Cantons, the Council of States, and the political parties with an opportunity to comment on the bill. The final review of the statements made during the consultation is still pending, and it is not yet foreseeable when the review will be concluded. The next step in the legislative process will be the presentation of a definitive bill, including an explanatory report, by the Swiss Federal Council.

The Partial Revision of 2006

In the partial revision of 2006, particular attention was given to ensuring a significant and immediate improvement of the policyholder's position. For instance, formerly, insurance companies were allowed to rescind an insurance contract in total in case of a concealment of facts (all-or-none-principle – *"Alles-oder-Nichts-Prinzip"*). Now the insurer may only refuse compensation if the policyholder conceals facts that influenced the

insured event (Art. 6 and 8 VVG). Furthermore, the insurer has to refund a premium proportionately if the insurance contract is terminated before the agreed date (Art. 24 VVG). Another important regulation stipulates that the policyholder has to be informed about the product in a transparent and intelligible way (Art. 3 VVG).

In summary, the partial revision includes some new regulations which apply to all types of insurance contract – not just casualty insurance. The relevant version of the VVG still includes just two articles that specifically address casualty insurance: Art. 59 VVG stipulates the scope of casualty insurance, and Art. 60 VVG gives the damaged third party a lien to ensure its claim against the insurer.

Intentions of the Current Total Revision

The currently proposed version of the VVG includes many important modifications. According to the Principles of European Contract Law, the E-VVG is distinguished by a replacement of the above-mentioned all-or-none-principle, whereby in the event of concealment of facts the insurer may rescind the insurance contract in its entirety. In addition, the scope of the insurer's obligation to provide information will be widened. Furthermore, the E-VVG entitles the policyholder to revoke *(widerrufen)* the contract within an appropriate timeframe and makes it easier to close a reinsurance contract. Moreover, essential improvements for the policyholder in the E-VVG are made with regard to the limitation and the consequences of defaulting on a premium payment. Finally, it has been proposed to restrict the costs resulting from loss prevention or mitigation of damage to the sum insured.

The E-VVG is divided into four divisions and two attachments. The first division (general provisions), which applies to all insurance contracts, includes the following chapters: scope and peremptory norms, conclusion of contract, insurance premium, insured event, contract amendment, termination of contract, enforcement, limitation, insurance broking, and privacy. The second division (specific provisions) is subdivided into two chapters. The first deals with provisions for all classes of insurance and establishes a distinction between indemnity insurance and insurance on a fixed-sum basis, thereby modifying the previous differentiation between indemnity insurance and personal insurance. The second chapter includes provisions for specific classes of insurance, and one section deals specifically with casualty insurance (Art. 90 to 94 E-VVG). The third division covers regulations concerning international relationships, and the fourth division includes final and temporary provisions. The attachments give an overview of mandatory and half-mandatory norms, as well as federal law (other than insurance law) which needs to be changed in light of the proposed total revision of the VVG.

Effects on the Casualty Insurance Industry

The revisions pertinent to the casualty insurance industry can be found primarily in Art. 90 to 94 E-VVG, which apply exclusively to casualty insurance contracts. Within this

section, two stipulations deserve closer attention: according to Art. 91 E-VVG the damaged third party will be entitled to a direct claim against the insurer, and the previous lien will be abolished. This is intended to strengthen the legal position of the third party and facilitate the payment of the claim. Nevertheless, problems could arise; for example, if the policyholder keeps affirmative defenses towards the insurer. It thus remains to be seen if the claims settlement process will really become easier and less complicated.

Of further relevance to the policyholder and insurer is Art. 94 E-VVG, which seeks to streamline the claims settlement process by committing the insurer to offer the third party a claim for adjustment within three months. Should the insurer fail to make such an offer, there will be a shift of the burden of proof in favor of the policyholder. In this case, it is assumed that a liability in the amount of the claim exists.

12

Conclusion

This latest issue of our legal update continues to expand our coverage of key legislative and judicial developments in Continental Europe. A variety of developments in insurance legislation are charted in this latest issue, from the introduction of mandatory self-insured deductibles in D&O liability insurance in Germany to the introduction of rights of direct access against liability insurers in Switzerland.

Once again, we benefit from the proximity of lawyers based in Belgium and the Netherlands to the European Union Commission's legislating bodies. Of particular interest in this issue are the findings of the Rome II study on compensation of cross-border victims of accidents in the EU, which have highlighted the continuing wide variations of compensation levels and claims limitation periods applicable in different EU countries. These findings are likely to have a significant impact on the final content of the 6th EU Motor Liability Insurance Directive.

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