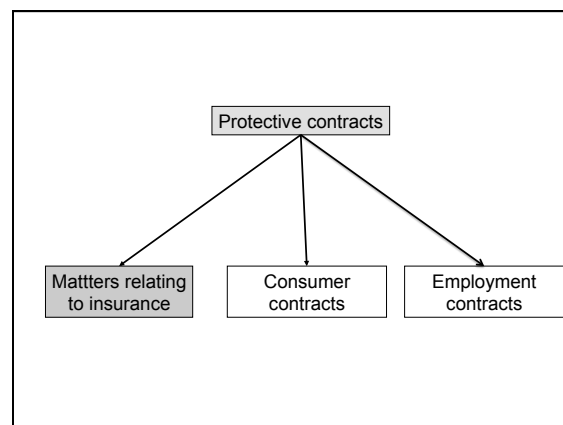


**Private International Law of Contractual and
Non-Contractual Obligations**

Prof. Martin Gebauer
Ferrara 2015



**Cross border actions directly brought
against the insurer**

Case 1:

In a car accident in Stockholm (Sweden) the car of a person living in Italy (C – the creditor) gets damaged and injured. The other party to the car accident (D – the debtor) lives in Sweden and is insured with a Swedish insurer (I). C wonders where to bring an action against the Swedish insurer.

Odenbreit (ECJ, case C-463/06 (2007))

31. [...] the reference in Article 11(2) of Regulation No 44/2001 to Article 9(1)(b) of that regulation is to be interpreted as meaning that the injured party may bring an action directly against the insurer before the courts for the place in a Member State where that injured party is domiciled, provided that a direct action is permitted and the insurer is domiciled in a Member State.

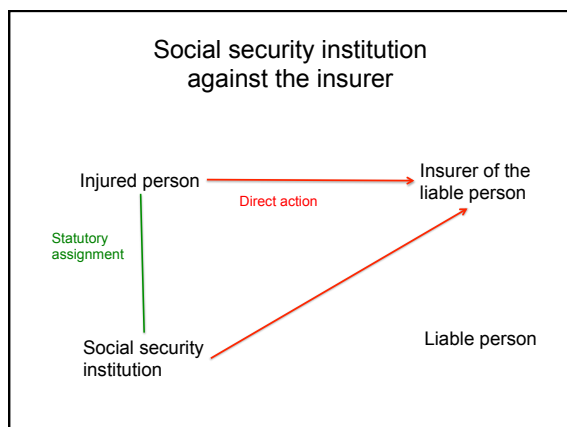
**Cross border actions directly brought
against the insurer**

Case 2:

In case 1, a Social security institution in Italy (S) paid for the treatment of C in a hospital and now wishes to recover the expenses. Can S bring an action against the Swedish insurer in Italy?

**Cross border actions directly brought
against the insurer**

May a social security institution, statutory assignee of the rights of the directly injured party in a motor accident, bring an action directly before the courts of its Member State of establishment against the insurer of the person allegedly liable for the accident, established in another Member State?



Vorarlberger Gebietskrankenkasse v. WGV
(ECJ, case C-347/08 (2009))

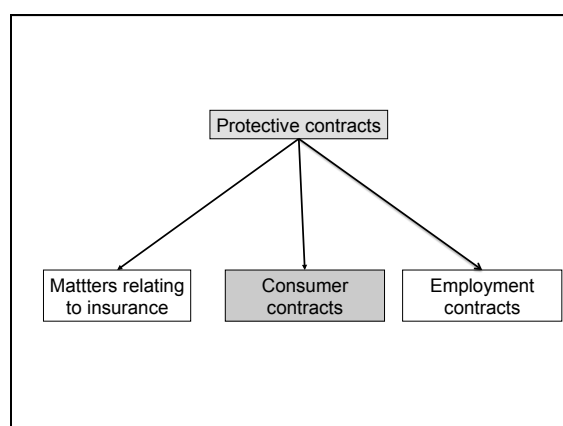
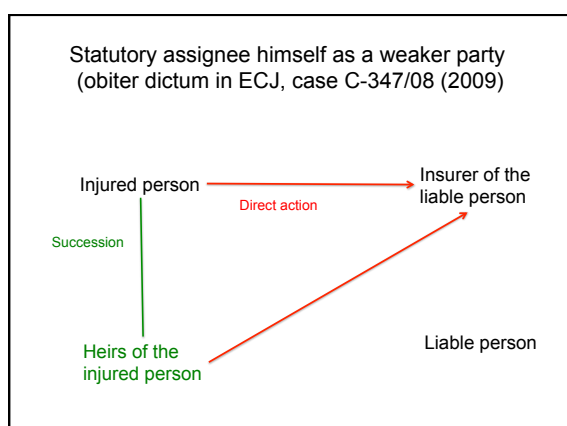
41. The protective role fulfilled by those provisions implies that the application of the rules of special jurisdiction laid down to that end by Regulation No 44/2001 should not be extended to persons for whom that protection is not justified.

Vorarlberger Gebietskrankenkasse v. WGV
(ECJ, case C-347/08 (2009))

43. Consequently, a social security institution, acting as statutory assignee of the rights of the directly injured party in a motor accident, cannot rely on the combined provisions of Articles 9(1)(b) and 11(2) of Regulation No 44/2001 in order to bring an action directly before the courts of its Member State of establishment against the insurer of the person allegedly responsible for the accident, where that insurer is established in another Member State.

Vorarlberger Gebietskrankenkasse v. WGV
(ECJ, case C-347/08 (2009))

44. In contrast, where the statutory assignee of the rights of the directly injured party may himself be considered to be a weaker party, such an assignee should be able to benefit from special rules on the jurisdiction of courts laid down in those provisions. This is particularly the situation, as the Spanish Government states, of the heirs of the person injured in an accident.



Consumer contracts

- Art. 17 (1) (c) : pursues commercial or professional activities in the Member State of the consumer's domicile“ or „by any means, directs such activities to the Member State, and the contract falls within the scope of such activities.

Consumer contracts

- Does there have to be some connection between the directing of the activities and the conclusion of the contract?
- Example: After the conclusion of the contract the consumer discovers the website of the professional party.

Consumer contracts

- Parallelism between Art. 17 Brussels I *bis* Regulation and Art. 6 Rome I Regulation

Art. 6 Rome I Regulation

Consumer contracts

(1)[...] a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:

Art. 6 Rome I Regulation

Consumer contracts

[...]

- a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or
 - b) by any means, directs such activities to that country or to several countries including that country,
- and the contract falls within the scope of such activities.

Consumer contracts

- Parallelism between Art. 17 Brussels I *bis* Regulation and Art. 6 Rome I Regulation
- Recital (25) of the Rome I Regulation

Recital (25) of the Rome I Regulation

[...] The same protection should be guaranteed if the professional, while not pursuing his commercial or professional activities in the country where the consumer has his habitual residence, directs his activities by any means to that country or to several countries, including that country, **and the contract is concluded as a result of such activities.**

Emrek v. Sabranovic
(ECJ, case C-218/12 (2013))

10 Mr Sabranovic operates a business selling second-hand motor vehicles under the name Vlado Automobiles Import-Export in Spicheren (France), a town close to the German border. At the material time, he had an Internet site which contained the contact details for his business, including French telephone numbers and a German mobile telephone number, together with the respective international codes.

Emrek v. Sabranovic
(ECJ, case C-218/12 (2013))

11 Having learned from acquaintances, and not from the Internet site, of Mr Sabranovic's business and the possibility to purchase a motor vehicle, Mr Emrek went to the business premises of that undertaking in Spicheren.

12 Thus, on 13 September 2010, Mr Emrek, as a consumer, concluded a written contract for the sale of a second-hand motor vehicle with Mr Sabranovic at his premises.

13 By an action brought subsequently before the Amtsgericht Saarbrücken (Local Court, Saarbrücken) (Germany), Mr Emrek made claims against Mr Sabranovic under the warranty.[...]

Emrek v. Sabranovic
(ECJ, case C-218/12 (2013))

32 Having regard to the foregoing considerations, the answer to the first question is that Article 15(1)(c) of Regulation No 44/2001 must be interpreted as meaning that it does not require the existence of a causal link between the means employed to direct the commercial or professional activity to the Member State of the consumer's domicile, namely an internet site, and the conclusion of the contract with that consumer. [...]

Emrek v. Sabranovic
(ECJ, case C-218/12 (2013))

- Reasoning of the ECJ
- Problems arising from the relationship with and the interpretation of Regulation Rome I

Recital (25) of the Rome I Regulation

[...] The same protection should be guaranteed if the professional, while not pursuing his commercial or professional activities in the country where the consumer has his habitual residence, directs his activities by any means to that country or to several countries, including that country, **and the contract is concluded as a result of such activities.**

§ 9 Choice of Court Agreements (Art. 25 Brussels I *bis*)

- General remarks and requirements of a valid Choice of court agreement
- Consent and substantive validity
- Formal requirements
- Legal consequences and effects of a valid agreement

Art. 25 Brussels I *bis* Regulation

(1) If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. [...]

General remarks and requirements of a valid Choice of court agreement

- Prorogation and Derogation
- Sphere of application
 - Not any more necessary: Domicile of one party to the agreement in a Member State
 - Cross border relationship
 - Court(s) in a Member State

General remarks and requirements of a valid Choice of court agreement

- Examples regarding the Sphere of application
 - Example 1: A company from Bologna and a company from Ferrara agree that for all disputes arising out of their contract the courts in Bologna shall be competent and have jurisdiction.
 - Example 2: In example 1, the place of performance is in Vienna.

General remarks and requirements of a valid Choice of court agreement

- Examples regarding the Sphere of application
 - Example 3: A company from Bologna and a company from Istanbul conclude a choice of court agreement in favor of Italian courts.
 - Example 4: A company from Bologna and a company from Istanbul conclude a choice of court agreement in favor of Turkish courts.

General remarks and requirements of a valid Choice of court agreement

- Examples regarding the Sphere of application
 - Example 5: A company from Bologna and a company from Istanbul conclude a choice of court agreement in favor of Turkish courts. The Turkish company brings an action in Bologna.