OPINION OF ADVOCATE GENERAL JACOBS
delivered on 24 February 2005 [1]

1. This case involves proceedings brought by a policy-holder against his insurers with a view to obtaining indemnification under the policy in respect of his liability towards an injured party, to which the insurers seek to join as a third party another insurer alleged to have insured the injured party against the same risk.

2. The main issue is whether, for the purposes of applying the Brussels Convention, [2] that situation is governed by the rules concerning jurisdiction in matters relating to insurance or by a separate provision concerning third-party proceedings.

3. In the event that the latter provision is considered to apply, a further question is raised as to the conditions on which its application is contingent.

The Brussels Convention

4. The Brussels Convention governs jurisdiction and the enforcement of judgments in civil and commercial matters. Title II determines jurisdiction with regard to the Contracting States. Article 2 establishes the general rule that the courts of the Contracting State in which the defendant is domiciled have jurisdiction. Exceptions to that rule are then set out which confer jurisdiction on other courts in certain actions.

5. Of those exceptions, Article 6(2) relates to third-party proceedings. According to that provision, a person domiciled in a Contracting State may also be sued 'as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case'.

1 — Original language: English.

2 — Of 27 September 1968, on jurisdiction and the enforcement of judgments in civil and commercial matters. A consolidated version of the Convention as amended by the four subsequent Accession Conventions is published in OJ 1998 C 27, p. 1. Since 1 March 2002 (after the material time in the present case), the Convention has been replaced, except as regards Denmark and certain overseas territories of other Member States, by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

6. Section 3 of Title II concerns jurisdiction in matters relating to insurance. It provides as follows.

'Article 7

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 point 5.

Article 8

An insurer domiciled in a Contracting State may be sued:

1. in the courts of the State where he is domiciled, or

2. in another Contracting State, in the courts for the place where the policy-holder is domiciled, or

3. if he is a co-insurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer.

Article 9

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 10

In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party had brought against the insured.

The provisions of Articles 7, 8 and 9 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

If the law governing such direct actions provides that the policy-holder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 11

Without prejudice to the provisions of the third paragraph of Article 10, an insurer may bring proceedings only in the courts of the Contracting State in which the defendant is domiciled, irrespective of whether he is the policy-holder, the insured or a beneficiary.

The provisions of this Section shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Article 12

The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen, or

2. which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or

3. which is concluded between a policy-holder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or

4. which is concluded with a policy-holder who is not domiciled in a Contracting State, except in so far as the insurance is compulsory or relates to immovable property in a Contracting State, or

5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 12a.'

7. Article 12a lists risks connected essentially with the commercial transport of goods by sea-going ships and aircraft.

8. Section 8 sets out rules concerning related actions brought in the courts of different Contracting States. Article 22 provides, insofar as is relevant, as follows.

'Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.

...

For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.'

Factual background and proceedings

9. Soptrans is a company established in Boulou (France) and is the owner of a car park in which it stores new cars destined for sale and transportation in Europe. To that end, it is insured by GIE Réunion européenne, AXA, Winterthur, Le Continent and Assurances Mutuelles de France, all of whom are established in France, for damage caused to any such vehicles.

10. On 13 August 1990 a hail-storm damaged a number of vehicles stored in the car park and owned by General Motors España ('GME'), whose insurers, Zurich España, are established in Spain. Proceedings brought by GME in Spain led to a settlement between GME and Soptrans under which Soptrans was to pay ESP 120 million in damages to GME.

11. Soptrans then brought proceedings against its insurers before the Tribunal de grande instance de Perpignan seeking an order that they indemnify it in respect of the liability incurred. They in turn sought to join Zurich España to those proceedings on the basis of Article L 121-4 of the French insurance code, concerning simultaneous cover by separate policies. Zurich España claimed that the courts in Barcelona, where it was established, had jurisdiction.

12. By judgment of 5 February 2001 on appeal from a decision of the court in Perpignan, the Cour d'appel de Montpellier held that Zurich España could not be joined to the proceedings before the French courts.

13. Soptrans's insurers (hereinafter 'the appellants') now challenge that judgment before the Cour de Cassation, which has stayed the proceedings and requests a ruling on the following questions:

'(1) Are third-party proceedings between insurers, based on alleged multiple insurance or co-insurance rather than on a re-insurance agreement, covered as matters relating to insurance by the provisions of Section 3 of Title II of the Brussels Convention of 27 September 1968, as amended by the accession convention of 1978?

(2) Is Article 6(2) applicable when determining jurisdiction in the event of third-party proceedings between insurers and, if so, is such application contingent on there being a connection between the various claims within the meaning of Article 22 of the convention or, at the very least, on evidence that there is sufficient connection between such claims to demonstrate that the choice of forum does not amount to an abuse?'

14. Written observations have been lodged by the appellants, Zurich España, the Commission, and the Governments of France and Italy. All except the Italian Government were also represented at the hearing.

The first question

15. The parties are at variance as to whether Section 3 of Title II of the Convention applies to third-party proceedings between insurers based on multiple insurance or co-insurance. The appellants, the Commission and Italy argue that Section 3 does not apply, while Zurich España and France argue that it does.

16. It seems to me that, despite the broad wording of Article 7, the rules in that section are not designed to apply to proceedings between insurers.

17. There is support for that view in all the substantive provisions of the section, and in particular in Articles 8, 10 and 12, which clearly contemplate proceedings brought by a policy-holder, insured or injured party, and Article 11, which refers to proceedings brought against a policy-holder, insured or beneficiary.

18. It is further buttressed by the Court's case-law to the effect that this section, like many of the other special rules in the Convention, is intended to protect the weaker party; in this case 'the insured who is most frequently faced with a predetermined contract the clauses of which are no longer negotiable and who is in a weaker economic position' [3] or 'the party deemed to be economically weaker and less experienced in legal matters than the other party to a contract of insurance'. [4] I cannot conceive of circumstances in which a professional insurer could claim to be in a comparable position of weakness vis-à-vis another insurer, in order to invoke the protection of the section.

19. As regards the original proceedings in the present case, therefore, it was in full accordance with Section 3 that the forum was chosen by Soptrans.

20. From that point of view it may be noted that, in the context of proceedings falling within the scope of the section, Articles 8(3) and 10 allow an insurer who may be called upon to contribute to the indemnification of loss or damage to be brought into proceedings outside the jurisdiction of his domicile.

21. It is true that neither of those provisions refers to circumstances such as those of the present case. Article 8(3) refers to co-insurers and, despite the terms of the national court's question, it seems clear that the relationship between the appellants and Zurich España in the present case is not one of co-insurance in the sense contemplated. [5] Article 10 refers to actions brought by an injured party.

22. Clearly, however, it does not run counter to the scheme of the section for an insurer to be joined as third-party defendant in proceedings brought by a party other than an insurer.

23. Finally, even if one were to consider Section 3 to apply to the third-party proceedings between the appellants and Zurich España, taken in isolation — and I have explained above that I believe it does not apply to proceedings between insurers — only Article 11, which limits the right of an insurer to choose the forum in which he brings proceedings, could require those

3 — Case 201/82 *Gerling* [1983] ECR 2503, at paragraph 17.

4 — Case C-412/98 *Group Josi* [2000] ECR I-5925, paragraph 65.

5 — See the Schlosser Report on the Convention on the Accession of the Kingdom of Denmark, Ireland, and the United Kingdom of Great Britain and Northern Ireland to the convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice, (OJ 1979 C 59, p. 71), at paragraph 149.

proceedings to be brought in the courts of Zurich España's domicile.

24. However, first, Article 11 mentions only defendants who are policy-holders, insureds or beneficiaries; second, the forum was chosen by Soptrans and not by the appellants; and, third, Article 11 merely re-establishes the general rule of the defendant's domicile, expressed in Article 2, [6] which is subject, in so far as third party proceedings are concerned, to Article 6(2). That provision is the subject of the second question.

25. The answer to the first question is consequently that third party proceedings between insurers, based on alleged multiple insurance, are not covered by the provisions on matters relating to insurance of Section 3 of Title II of the Brussels Convention.

The second question

26. By its second question, the referring court asks whether Article 6(2) of the Convention is applicable when determining jurisdiction in the event of third-party proceedings between insurers and, if so, whether its application is contingent on there being a connection between the various claims within the meaning of Article 22 or on evidence that there is sufficient connection between such claims to demonstrate that the choice of forum does not amount to an abuse.

27. Zurich España's alternative submission, in the event that Section 3 is considered inapplicable, is that the requirements of Article 6(2) would not be fulfilled in the present case and so that provision would not apply. The appellants, the Commission and Italy, on the other hand, maintain that Article 6(2) applies.

28. The various arguments address three factors.

29. First, with regard to the condition that the original proceedings must not have been brought solely with the object of removing the third party from the jurisdiction of the court which would be competent in his case, Zurich España alleged at the hearing that the appellants had sought to remove it from the jurisdiction of the Spanish courts, by directing Soptrans to conduct proceedings in such a manner as to avoid bringing them before those courts.

6 — See the Opinion of Advocate General Fennelly in *Group Josi*, cited in footnote 4, at point 30.

30. However, that is a question of fact to be determined by the national courts. If removing Zurich España from the jurisdiction of its proper court were found to be the sole aim of the choice of forum, clearly Article 6(2), on its wording, would not apply.

31. Secondly, it is debated whether the application of Article 6(2) is contingent on a connection between the original and the third-party proceedings which is sufficient either to satisfy the criteria of Article 22, or to establish that the choice of forum does not amount to an abuse.

32. On the first aspect, I agree with the argument that when a defendant joins a third party to the proceedings, there is an inherent connection between that joinder and the original proceedings. As the Commission submits, the connection lies in the interest which the original defendant may have in seeking to secure from a third party either performance of a warranty or guarantee or some other indemnity against the consequences of the original claim.

33. In any event, it seems clear that there is an inherent relation between, on the one hand, an action against an insurer seeking indemnification for the consequences of an insured event and, on the other, proceedings whereby that insurer seeks contribution from another insurer alleged to have provided cover for the same event.

34. On that basis, I do not think it necessary to require in addition that there be any closer connection within the meaning of Article 22 or otherwise. For that reason, the submissions as to the precise nature of such a connection do not arise for consideration.

35. On the second aspect, the presence or absence of an intention to remove a party from the proper jurisdiction is independent of the connection between the original and the third-party proceedings, and there is in my view no purpose to be served in linking the two criteria.

36. Zurich España none the less cites the Montpellier Court of Appeal's finding that

there is no risk that the original and the third-party proceedings might give rise to conflicting judgments.

37. However, as I have already said, I am of the view that proceedings of the kind at issue are inherently related and that the criteria of Article 22 — which include the risk of irreconcilable judgments — are not relevant. In any event, it should be noted that Article 22 merely permits but does not require courts other than the court first seised to stay proceedings or decline jurisdiction.

38. Thirdly, several of the parties consider whether third-party proceedings may be excluded from the scope of Article 6(2) by national procedural rules on admissibility.

39. The appellants, the Commission and Italy refer in that regard to the Court's statement in *Hagen* that 'with regard to an action on a warranty or guarantee, Article 6 (2) merely determines which court has jurisdiction and is not concerned with conditions of admissibility properly so called', and that 'as regards procedural rules, reference must be made to the national rules applicable by the national court'. [7]

40. The appellants note that Article 325 of the French code of civil procedure provides that third-party proceedings are admissible only if they have a sufficiently close relation with the claims of the parties in the original proceedings.

41. It is clear that national procedural rules may limit the possibility of bringing third-party proceedings before the court competent to hear the original action.

42. However, it follows from *Hagen* [8] that a national court may not apply national rules on admissibility if they would have the effect of restricting the application of the rules of jurisdiction laid down in the Convention.

7 — Case C-365/88 [1990] ECR I-1845.
8 — At paragraph 20.

43. Article 6(2) is thus applicable in determining jurisdiction in the event of third-party proceedings between insurers, as such proceedings are defined by national procedural rules. Given the inherent connection between those proceedings and the original action, its application is contingent only on the absence of evidence demonstrating that the original proceedings were brought solely with the object of removing the defendant to the third-party claim from the jurisdiction of the court which would be competent in his case.

Conclusion

44. I am therefore of the opinion that the Court should give the following answers to the questions referred by the Cour de Cassation:

(1) Third-party proceedings between insurers, based on alleged multiple insurance, are not covered by the provisions on matters relating to insurance of Section 3 of Title II of the Brussels Convention of 27 September 1968, as amended.

(2) Article 6(2) of the same convention is applicable in determining jurisdiction in the event of third-party proceedings between insurers, as such proceedings are defined by national procedural rules. That application is contingent only on the absence of evidence demonstrating that the original proceedings were brought solely with the object of removing the defendant to the third-party claim from the jurisdiction of the court which would be competent in his case. National rules on admissibility may apply only in so far as they do not impair the effectiveness of the Convention.