IN-DEPTH

Insurance Disputes

GREECE

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Insurance Disputes

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In-Depth: Insurance Disputes (formerly The Insurance Disputes Law Review) provides a practical overview of recent developments in insurance disputes across major jurisdictions worldwide. It examines the key features of the legal framework governing insurance-related disputes in each jurisdiction, covering substantive and procedural issues, recent litigation trends and much more.

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Greece

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Summary

Introduction

The volume of insurance disputes in Greece is rather limited compared to other countries with an equivalent population, since premium income remains poor in relation to the country's income per capita,[1] as social insurance takes up a major part of insurance normally covered by private insurers.[2] Owing to private insurance's underdevelopment, insurance contracts are mainly concluded on international insurance terms and clauses, although Greek law is usually stipulated as applicable.

The core legislation on contractual insurance law has remained mainly intact over the past 27 years, that is since the introduction of the Greek Insurance Contract Act (ICA),[3] in 1997. Despite its very succinct nature, the ICA is regarded as a pioneering law in Europe, its provisions resembling those of other contemporary European insurance contract laws. Rules applicable to insurance contracts are also found in the legislation on insurance supervision and distribution of insurance products, which, for the most part, comprise enacted EU legislation, as well as in special laws regulating other, individual issues. Rules on general contract law apply supplementarily. Recently, several compulsory liability insurances were introduced, including those of travel agents and travel service providers,-[4] payment institutions,[5] investment service providers[6] and insolvency practitioners within the meaning of Law No. 4738/2020,[7] while the provisions on liability insurance of shipowners and operators of yachts and tourist dayboats were amended.[8] Finally, although the introduction of a new Code of Private Maritime Law (CPML)[9] could be of interest to insurance law as the latter also encompasses a few provisions on marine insurance, insurance contracts covering maritime risks are mainly regulated by standardised insurance terms and English law is usually stipulated as applicable, so that the CPML' s provisions on marine insurance are of rather limited utility.[10]

Some positive developments in insurance dispute resolution are also apparent. The application of a system enabling the electronic submission of lawsuits and other legal instruments, as well as the expansion of the scope of mediation in retail cases, can shrink the volume of insurance litigation. Brokers and experts play a major role in the resolution of commercial insurance disputes. Although, as a rule, insurance disputes in Greece are not resolved through arbitration, marine insurance disputes concerning ocean-going vessels are usually resolved through international arbitration, whereas disputes related to short sea-shipping and yacht issues are typically referred to state courts. The aforementioned developments have contributed to the acceleration of dispute resolution and the curtailment of trials.

The trends in the fundamental developments in insurance law in Greece can be traced in the jurisprudence of the Supreme Civil and Criminal Court of Greece (the Court of Cassation),[11] certain decisions of which were of particular interest. Notably, following the issuance of the controversial Court of Cassation decision Nos. 18/2015 and 19/2015-[12] (in plenary session), there remains uncertainty as to whether and to what extent a derogation from the provisions of the ICA can be validly agreed whereby the policyholder has concluded the insurance for professional or commercial reasons – rather than a derogation being permitted exclusively for large-risk commercial insurance contracts. Finally, the supervisory authority on insurance, the Bank of Greece (BoG), has adopted

a quite formalistic approach on supervisory issues lately, thus giving rise to potential insurance disputes with the supervised insurance undertakings.

Year in review

Although case law is only a secondary source of law, so that judicial precedent is not binding for the courts, it constitutes a useful means of interpretation, given the brevity and non-exhaustiveness of the legislative provisions on insurance contract law.[13] In this regard, the following Court of Cassation decisions, which are irrevocable and represent a significant evolution in the jurisprudence, are noteworthy.[14]

In the field of road accidents, the Supreme Court recently delivered three important rulings, contributing to the clarification of ambiguities of the MTPL legislation.

Firstly, the Court of Cassation[15] has ruled that the provisions of Greek legislation on compulsory MTPL insurance, as in force until 2022,[16] were incompatible with the provisions of the respective (EU) Directives,[17] as they included in the concept of 'non-third parties' whose damages are excluded from coverage, persons other than the driver of the damaging vehicle, thus limiting the protection afforded to injured third parties. Of particular interest is whether, given the said incompatibility of national rules with EU law, injured third parties can invoke the direct application of EU law provisions against insurance undertakings covering the liability of the damaging party. The issue was referred to the Plenary Session of the Court, which will either affirm or overrule the position adopted by Chamber D and has adjudicated that private insurance undertakings shall be assimilated with the state as far as the direct application of (EU) Directives is concerned on the grounds that they are licensed and supervised by a public authority (BoG).

Secondly, the Court clarified that the Greek Motor Insurers' Bureau (MIB) bears only guarantor liability, for the benefit of injured third parties.[18] More specifically, in a car accident attributed to contributory fault of the drivers of a vehicle with Greek registration plates (70 per cent liable), and a car with Bulgarian registration plates equipped with an international insurance certificate (30 per cent liable), three Bulgarian nationals were fatally injured. After compensating the relatives of the deceased in full, the insurance undertaking covering the liability of the driver of the car with the Greek registration plates turned against the MIB, seeking reimbursement for part of the compensation that corresponded to the portion of co-liability of the driver of the car bearing Bulgarian registration plates. The action against the MIB was dismissed since it was held that the MIB is only an agent for service of the foreign insurance undertaking, not its representative. Thus, right of direct action against the MIB is only conferred to the injured third party and not to the insurance undertaking of the co-responsible driver, since the insurance undertaking is not an injured third party and the MIB is not a civil liability insurer.

Thirdly, the Court of Cassation verified that the provision of the Greek law on compulsory MTPL insurance that entitles the injured third party in a car accident to bring an action against the 'Auxiliary Fund (for the) Insurance of Liability Arising out of Motor Accidents' (Auxiliary Fund), only after having submitted a written claim for compensation to the latter and having awaited for three months for its response,[19] does not infringe the principles of equality and proportionality, and thus is compatible with the Constitution, EU law and the ECHR.[20] This is because the introduction of a mandatory pretrial procedure

that inescapably precedes the initiation of litigation proceedings against the Auxiliary Fund is aimed at the rapid out-of-court settlement of the injured third party's claim, without incurrence of substantial costs on its part, while, after the lapse of the aforesaid three-months period, third parties can initiate proceedings against the Auxiliary Fund. Notably, this decision is aligned with the provisions of (EU) Directive 2021/2118, which confers the injured third party the right to present a claim directly to the body that is entrusted with the provision of compensation to injured third parties for damage caused by a vehicle insured by an insolvent insurance undertaking, so that the pretrial proceeding, initially inserted as national law, is now mandated by EU law.[21]

Regarding contractual insurance law, a notable decision focused on the interpretation of a contract for the 'management of group pension funds'.[22] In this case, a company had concluded a contract for the benefit of its employees that entitled them to receive a defined pension benefit upon their retirement. The contract stipulated that the pension benefit was calculated according to each employee's final pensionable salary multiplied by his pensionable service, the final pensionable salary consisting in the 'average annual pensionable salary over the last three years of service before retirement' and the 'annual pensionable salary' taken as '14 times the monthly pensionable salary'. An employee claimed a pension benefit equating to his 'annual pensionable salary' (i.e., to 14 times his monthly salary, as provided for in the contract). Nevertheless, the Court held that the term 'annual pensionable salary' should not be taken formalistically but, instead, should be interpreted as denoting the 'annualized salary'; that is, the term did not refer to the sum of 14 monthly salaries paid within a year, but to the average monthly salary derived after consideration of the fact that each employee receives 14 salaries per year. In this regard, the 'annual pensionable salary' referred to 14/12 of the employee's monthly salary. This ruling is important since the Court abstained from the maxim '*in claris non fit interpretatio*' and resorted to the rules on contractual interpretation despite the existence of a contractual term with a seemingly unambiguous meaning.

Despite the lapse of 27 years since the introduction of the ICA, the interpretation of several of its provisions continues to bother the Supreme Court. For instance, in a case concerning a credit insurance covering the insured's occupational risks,[23] the Court adjudicated that the provision of the ICA on the limitation period for claims arising from an insurance contract[24] constitutes a bilaterally mandatory rule, so that the limitation period cannot be shortened by virtue of an insurance term thereto, regardless of whether the insurance covers a risk stemming from the insured's profession or is enumerated among the 'large commercial insurances' referred to in the ICA.[25] This is because the provision on the limitation period serves the public interest and thus is a public policy provision that cannot be validly modified by a contractual term, such term being invalid.[26]

Moreover, the ICA provides that, if policyholders fraudulently breach their obligation to disclose any objectively material information or circumstances of which they are aware, insurers are entitled to terminate the contract within one month from the date when they became aware of the breach; if the insured event occurs within such monthly period, insurers are released from their liability.[27] Although the ICA does not explicitly provide whether insurers are immediately released when their knowledge of the concealment and occurrence of the risk coincide in time, the Supreme Court held that the provision on the insurer's exemption applies *mutatis mutandis* in this case, the insurer not being required to terminate the contract to be exempted.[28] The relevant ICA provision is intended to deprive fraudulent policyholders from insurance money and preclude bad-faith insurers

from continuing to collect premiums despite awareness of the concealment and abusively invoking such concealment to be exempted, should the risk occur. Therefore, as rightly adjudicated, if the insurer is informed of the actual state of the risk, at the time when the risk occurs, the contract's termination is pointless, since it cannot have the effect that the provision is intended to prevent; there is no risk of the insurer continuing to collect premiums without actually covering the risk, since the risk has already materialised.

The legal framework

Sources of insurance law and regulation

Insurance law comprises two interrelated segments:

1. contractual insurance law; and
2. the rules on supervision of (re)insurance undertakings and on the distribution of (re)insurance products that are extensively harmonised at EU level.[29]

Contractual insurance law is mainly incorporated in the ICA, enacted in 1997, replacing the obsolete provisions of the Commercial Code, which had in turn been transposed from the repealed Italian Code of Commerce of 1882.[30] Since the ICA's provisions are rather few and concise, insurance law is extensively supplemented by customary law and business usage in the insurance sector, as well as by standardised terms and conditions.[31] In particular, in commercial risks insurance, international insurance terms and conditions are commonly applied, with only slight amendments (or none). However, Greek law is almost always stipulated as applicable in policies.

Insurance law is regarded as special contractual law, bearing its own methodology and concepts, which, although being literally identical to the civil law institutions, are sometimes interpreted differently than in civil and even in commercial law.[32] Notwithstanding such differences, the general provisions of the Civil Code also apply to insurance contracts in respect of, indicatively, contract formation, contracts voidable because of error, fraud or conclusion under duress, and interruptions of the limitation period.[33] Special legislation applies to marine insurance[34] and aviation insurance.[35] Furthermore, several dispersed provisions introduce compulsory insurance, among which Law No. 489/1976 on motor vehicle third-party liability (MTPL) insurance stands out.

Legislation on the supervision of insurance undertakings, namely on the taking-up and pursuit of insurance business, is structured in layers, as in all EU countries, according to the Solvency II[36] system. Law No. 4364/2016, enacting Solvency II, constitutes the first level, followed by the European Commission's delegated regulations and decisions.[37] Applicable law also includes several BoG's decisions, issued in compliance with relevant Guidelines of the European Insurance and Occupational Pensions Authority (EIOPA).[38] The provision of insurance services is subject to prior authorisation by the BoG upon fulfilment of certain conditions, with insurance undertakings licensed to carry out either life or non-life insurance business, according to the standing principle of business segregation.[39] Despite the national legislature's omission to introduce a special rule on

the minimum share capital of insurance companies, it has been suggested that this should be differentiated from that of common *sociétés anonymes* (i.e., €25,000[40]) and should not fall short of the minimum capital requirement for insurance undertakings, which varies among insurance branches, ranging from €2.5 million to €9.8 million.[41]

As regards distribution of insurance products, national legislation comprises mainly of Law No. 4583/2018, enacting the Insurance Distribution Directive[42], as extensively supplemented by European Commission delegated regulations on the distribution of insurance-based investment products, on product oversight and governance, and on packaged retail and insurance-based investment products, as well as on the key information documents and the insurance product information document. Such legislation establishes requirements for the provision of pre-contractual information to prospective insureds that are, in principle, equally applicable to insurance intermediaries and insurance undertakings engaging in direct sales. Insurance intermediaries can provide their services subject to prior enrolment in the relevant registry under one of three designated categories (insurance agent, insurance broker or coordinator of insurance agents), although they cannot act in the capacities of both an insurance agent and an insurance broker concurrently. Notably, according to a national arrangement, banks, investment firms or agricultural cooperatives engaging in insurance distribution are required to register as insurance agents.

In response to the withdrawal of the licences of two large life insurance undertakings that led to losses for hundreds of thousands of long-term insureds[43] and resulted in the launching of numerous lawsuits, the Life Insurance Guarantee Fund was established,[44] entrusted with the duty to ensure the portfolio transfer of life insurance undertakings in liquidation and, should a transfer prove impossible, to provide coverage in place of the insolvent insurance company. Moreover, the liability of the Auxiliary Fund, initially entrusted with the responsibility to provide compensation for losses arising out of unidentified vehicles and vehicles whose driver had not concluded MTPL insurance, had been extended by national law[45] to cover losses incurred by drivers insured by insolvent insurance companies,[46] before such extension was introduced at EU level.[47]

Insurable risk

Every risk capable of causing damage to a person or property, namely any risk that can harm tangible or intangible assets or generate liability, is deemed to be insurable.[48] There is a great deal of freedom in the formulation of insurance contracts, with the only condition to insurability being, in principle, the avoidance of fraud and collusion, without attachment to dogmatic positions .

In this regard, in view of public order considerations, non-insurable risks include liability for intentional damage caused to third parties and coverage for fines imposed for criminal offences, with the disputed exclusion of fines imposed in circumstances not constituting crimes punished under Greek Penal Law. Although legal costs incurred for the defence of a claim regarding a fine are borne by the insurer, these must be refunded if the final judgment of the criminal court convicts the insured. Moreover, intangible values and items without an objective value are non-insurable because they cannot be damaged, and therefore the specific risk does not actually exist. Furthermore, the risk of death of a person is non-insurable without the written approval of the person at risk. Finally, an insurable risk

must already be present at the time of effective commencement of the coverage but not necessarily at the time of conclusion of the insurance contract.

The ICA[49] contains certain risks that are, as a rule, excluded from coverage (acts of war, civil war, rebellion, civil commotion and natural deterioration of the insured items), in the sense that these risks are deemed not to be covered in the absence of an agreement to the contrary (the existence of which would be complemented by payment of an additional premium).[50] These statutory exclusions ensure that, if for any reason whatsoever the policyholder is not bound by the terms and conditions of the policy that exclude coverage, the aforesaid statutory exclusions will still apply. However, these risks are not uninsurable and the insurer is entitled to cover them if so agreed, as is the established practice in, for instance, marine insurance. Finally, the provision requiring an insurance undertaking to be licensed to legitimately conclude insurance of the class in question does not render 'uninsurable' a risk covered in default of the appropriate licence; covering a risk in default of the correct licence only exposes the insurance undertaking to the risk of an administrative fine.

All types of non-life insurance presuppose that the policyholder has, according to the ICA,[51] an 'insurable interest' that is 'a legal interest in the preservation of the property that is threatened by the risk against the materialisation of which coverage is sought'.[52] Greek insurance law doctrine distinguishes between insurable interest *lato sensu* and insurable interest *stricto sensu*; the existence of the former entitles the insurance applicant to conclude the insurance contract, while the latter is apparent if, due to occurrence of the risk, the policyholder suffers no less damage than the insurance money claimed. If neither the policyholder nor the insured have an insurable interest, the policy is null and void, irrespective of whether the insurer is seeking to benefit from avoiding the policy.[53]

Fora and dispute resolution mechanisms

The resolution of disputes arising between the insurer and the policyholder, insured or the loss payee (beneficiary) are resolved, as a rule, by referral to the competent courts, while other methods include arbitration, mediation and expert adjudication.

Courts' jurisdiction is defined in accordance with the standing separation between civil and administrative courts. In this regard, civil and commercial disputes arising between the insurer and either the insured or the collaborating insurance intermediary are resolved by civil courts and the handling of criminal prosecutions is entrusted to criminal courts. Disputes arising between insurance undertakings and the regulator (the BoG) concerning, indicatively, the latter's refusal to grant a licence or the licence's definitive or temporary withdrawal, as well as sanctions imposed by the BoG, are subject to an 'application for annulment' before the Council of the State (i.e., the country's supreme administrative court).[54]

In principle, civil courts' material competence is dependent on the monetary value of the object of the dispute: if the value does not surpass €20,000, the case is brought before the magistrate's court; if it exceeds €20,000 but is less than €250,000, the single-member court of first instance is competent; and if the object exceeds €250,000 in value, the dispute is resolved by the multi-member court of first instance. However, as an exception, lawsuits concerning compensation for damage resulting from car accidents and disputes regarding the amount and the payment of insurance premiums are brought before the

single-member court of first instance, even if the monetary value of the dispute's object exceeds €250,000,[55] as they are subject to the special procedural rules on the resolution of property disputes.[56] Nevertheless, if the value of the object of the dispute is less than €20,000, the magistrates' court is competent. Shipping law disputes, including marine insurance claims, are heard by the Piraeus Court of First Instance Maritime Disputes Department. Given that the trial process in the country is lengthy (with issuance of an irrevocable decision by the Court of Cassation taking several years from the initiation of proceedings), to avoid the risk of failing to obtain satisfaction from the defendant because of the latter's potential insolvency, a request for precautionary or interim measures until the trial's conclusion constitutes common practice; the decision on such measures is executable within days or even hours (e.g., in the context of marine insurance, the liability insurer who paid the insurance money and was therefore subrogated to the right to the insured's claim against the liable third party could ask for the precautionary seizure, or arrest, of the third party's ship).[57]

Notably, with a view to expediting court trials, as well as imposing a duty on lawyers to inform their clients of the possibility of resolving a dispute by way of mediation, Law No. 4640/2019 introduced a requirement for a mandatory initial mediation session in civil and commercial disputes falling within the competence of either the multi-member court or the single-member court of first instance (provided that the value of the dispute exceeds €30,000, in the latter case). Lawsuits launched in violation of this obligation will be deemed inadmissible. The new legal framework for mediation entered into force following advisory decision No. 34/2018 of the Court of Cassation (in plenary session), which declared as unconstitutional the pre-existing provisions envisaging the compulsory submission of car accident compensation-related disputes to mediation (with the exception of bodily injury or death), insofar as the costs incurred in this process jeopardised the right to free and unimpeded access to justice.[58]

Except for marine insurance, resort to arbitration is rather limited. Legislation for domestic arbitration is found primarily in the Civil Procedure Code[59] and in Law No. 5016/2023 (adopting the UNCITRAL Model Law) for international arbitration, both providing, inter alia, that in the event of the parties failing to agree on the appointment, the presiding arbitrator will be appointed by the competent single-member court of first instance. Furthermore, the arbitration award cannot be challenged in the courts on the accepted facts and their legal assessment; it can only be annulled in cases of procedural rule violation (e.g., breach of fair trial principles) or if the award contravenes public policy.[60]

Alternative dispute resolution mechanisms encompass expert adjudication and amicable settlement: expert adjudication is commonly agreed upon in commercial property insurance cases (e.g., fire insurance) with a view to determining the extent (quantum) of the damage, excluding the issue of liability.[61] In contrast, the amicable settlement system (knock-for-knock contracts) is applicable in MTPL cases, whereby the non-liable injured party's insurer pays the insurance money (for property damage) directly to the injured party and then settles with the liable injuring party's insurer.[62]

A special ombudsman for disputes arising between consumer insureds and insurance undertakings does not exist. Out-of-court settlements are arrived at with the valuable assistance of insurance intermediaries, experts and loss adjusters, and with the Hellenic Consumers Ombudsman, which is a general ombudsman service covering several kinds of consumers, but it is not 'insurance-focused'.[63] In addition, insurance undertakings are

required to adopt and implement a written policy on complaints handling and maintain a corresponding business function with a remit to address and investigate complaints thoroughly.[64] Finally, an insured that lodges a complaint with an insurance undertaking, but does not receive a timely response or receives an unsubstantiated answer, is entitled to file a complaint with the BoG, which will evaluate the matter solely in the context of its supervisory competence as it lacks competence to settle disputes.

The international arena

As far as insurance contracts with cross-border elements are concerned, the EU Regulation 'Rome I'[65] determines the applicable law,[66] and the 'Brussels IA' Regulation[67] applies to court jurisdiction and the recognition and enforcement of judgments.[68]

Nevertheless, the applicable law, either chosen by the parties or determined in accordance with the Regulation's special conflict rules,[69] cannot override the rules of Greek insurance law, which prevail mandatorily if a dispute is heard before the Greek courts (Greek law being the *lex fori*).[70] Greek insurance law prevails optionally if a dispute is heard before the courts of another EU Member State provided that the obligations arising out of the insurance contract are to be or have been performed in Greece; for example, the 'over-insurance rule' stipulates that, in property insurance, if the declared value of the insured object exceeds its current value, the insurer shall not be liable for the excess should the risk occur. This rule is regarded as being of Greek public policy and is therefore mandatory.[71]

By way of derogation from the provisions of Solvency II regarding the determination of the 'Member State where the risk is situated' (which also operate as a connecting factor in determining the laws potentially applicable to the insurance contract under the Rome I Regulation), Greek law (among only a few national laws of EU Member States) perceives the risk as being located in the country of 'registration where insurance concerns all means of transport', as opposed to the Solvency II provision that the risk is situated in the country of registration 'where insurance relates to vehicles of any type'.

The practical implication of this verbal imprecision is that Greece may be regarded as the country where the risk is located, including for vessel hull insurance, as long as the ship is entered in the Greek registry and even if it has never sailed in Greek waters – as is usually the case with large, ocean-going vessels.[72] Furthermore, the ICA provides that the insurer is obliged to pre-contractually inform the insurance applicant of the set law or the proposed applicable law and, if the contract is to be subject to a law other than Greek law, this should be marked on the first page of the policy containing the individual elements particular to that contract, rather than merely being included with the preformulated insurance terms.

As far as courts' jurisdiction regarding the settlement of insurance disputes is concerned, by way of derogation from the general rule that the courts of the defendant's place of residence have territorial jurisdiction, a lawsuit against the insurer may also be filed before the courts of the place where the policyholder, insured, beneficiary or injured third party (who has a right of direct action against the liability insurer of the injuring party) is domiciled.[73] Hence, the Court of Cassation[74] approved the jurisdiction of the Greek courts in respect of a car accident that occurred in Germany, for the launch of a lawsuit against the German liability insurer of the liable German driver by the injured

third party, who was domiciled in Greece.[75] Notably, the procedural advantage in favour of the weaker claimant does not extend to disputes between insurance undertakings.[76] Moreover, although the validity of an insurance term providing for the prorogation of courts' territorial jurisdiction presupposes the signing of the terms by the policyholder, jurisprudence has affirmed that such a clause can be validly contained in unsigned terms, provided that there is another signed document (i.e., the insurance contract) referring to the terms.[77] The Court of Cassation has accepted that the agreement on the prorogation of jurisdiction may also be oral,[78] on condition of a subsequent written confirmation; however, the Court also clarified that the letter of guarantee granted by the vessel's insurer cannot be regarded as the necessary verification.[79]

Apart from the location of the insurance company's head offices, the sites of its branches and agencies are also regarded as places in which it is domiciled. The mere existence of an office necessary for the exercise of insurance under the 'freedom to provide services' regime within the EU internal market does not suffice to establish jurisdiction for the courts of the place where the office is situated (neither does it indicate that the undertaking operates under the 'freedom of establishment' regime[80]). Moreover, the appointment of a claims representative by undertakings providing MTPL insurance is not regarded as sufficient basis to establish court jurisdiction, although claims settlement business other than MTPL claims representation could in principle establish jurisdiction.[81]

The Brussels IA Regulation[82] provides that any co-insurer may be sued before the courts of the Member State where the case against the lead co-insurer has already been brought, without defining the concept of the 'lead' co-insurer. This term should be interpreted autonomously, as it is also used in other EU legislation,[83] and any other interpretation would lead to uncertainty. In a case of this kind, the admissibility of proceedings against a co-insurer before the courts of the country where the lead co-insurer has already been sued would depend on the meaning ascribed to the term 'lead' by the law applicable in the court before which the dispute has been brought (the *lex fori*). Under Greek law,[84] co-insurance presupposes that the insurance contract was concluded by joint agreement, with each of the co-insurers being proportionally liable for the insured amount. Thus, if the lead co-insurer was sued in Greece, the Greek courts could dismiss a lawsuit initiated against another co-insurer if they found that there was no joint agreement – a conclusion that could not be reached by the courts of a country where the existence of a joint agreement was not considered a *conditio sine qua non* for the establishment of co-insurance. To counter the possibility of uncertainty in this matter, the inclusion of a jurisdiction clause in the policy should be accompanied by a governing law clause.[85]

Special considerations

The Greek insurance market has been largely concentrated over the past 20 years, through mergers of insurance companies and acquisitions of Greek enterprises by foreign insurance groups. The figure of insurance undertakings established in Greece decreased from 70 undertakings in 2003 to only 30 in 2023.[86] Although the assets and investments of insurance undertakings have more than doubled over this period,[87] contribution of premium income to the country's GDP remains poor (2.41 per cent in 2023 compared to 2.12 per cent in 2003) and well below the respective EEA average.[88]

This underdevelopment of private insurance is depicted in the distribution of premium income per class of insurance, compulsory MTPL insurances representing almost one-third of the total premium income and non-compulsory coverage of land vehicles representing an additional 10 per cent.[89]

This distortion is also reflected in insurance-related litigation, a considerable volume of which has been focused on MTPL disputes. Apart from insurances associated with land vehicles, only sickness insurances present a sizeable figure (14.46 per cent of total premium income in 2022),[90] covering the deficiencies of social insurance. Nevertheless, the current state of the insurance market may drastically change in light of the urgent need for coverage of the consequences of natural catastrophes, the frequency and magnitude of which has increased owing to climate change, since the devastating wildfires and floods of 2023[91] have raised concerns as to the state's capacity to assume the relevant restoration costs, the contribution of private insurance being essential.

Outlook and conclusions

Regarding the trends in insurance-related litigation, the recent introduction of Law No. 5113/2024, enacting the (EU) Directive 2021/2118, raises serious interpretative issues since its provisions on the Auxiliary Fund's liability to compensate the injured third party conflict with the standing legislation on the winding-up of insurance undertakings[92] and are anticipated to generate disputes thereof. Notably, the amendment of the standing legislation on MTPL insurance was confined to the harmonisation of national law with the Directive and several disputed issues, such as whether the owners or drivers of e-scooters should compulsorily take out MTPL insurance, remain unclear.[93]

Although emerging risks, such as cyber risks and natural catastrophes, could generate insurance-related disputes, only a few undertakings have taken out this type of insurance (either on a stand-alone basis or as part of a directors and officers policy[94]). Nevertheless, as coverage of the cost of natural catastrophes is at the forefront of public debate, recently a reduction of 10 per cent on property tax imposed on landlords[95] has incentivised them to take out building insurance polices against the risk of flood, fire and earthquake. Furthermore, the provision for compulsory insurance of enterprises with annual gross revenues exceeding €2 million against the risk of forest fire, flood and earthquake has been inserted, the obliged undertakings being jeopardised with an administrative fine of €10,000 and deprivation of any state aid, in case of breach of their obligation.[96]

Endnotes

1 Annual Statistical Report 2022 published by the Association of Insurance Companies of Greece (EAEE), accessible at http://www1.eaee.gr/etisia-statistiki-ekthesi (last visited on 8 July 2024). ^ Back to section

2 I Rokas, 'Greece' on Hellenic insurance law, in *International Encyclopedia of Laws Insurance Law* (ed H Cousy), 5th edn, 2022, Section 21. ^ Back to section

3 Law No. 2496/1997. ^ Back to section

4 Enacted by Presidential Decree 7/2018. ^ Back to section

5 Article 10 Paragraph 1, letter (b) of Law No. 4537/2018. ^ Back to section

6 Article 14 of Law No. 4514/2018. ^ Back to section

7 Introduced by Ministerial Decision No. 17192oik./2021; see I Rokas, 'Contractual Insurance Law', Part A of *Private Insurance Law*, 13th edn, 2021, Sections II 180, 181, 199, 202 and 211. ^ Back to section

8 Article 17 of Law No. 4926/2022. ^ Back to section

9 Law No. 5020/2023. ^ Back to section

10 I Rokas, 'Marine Insurance Law according to the new Code of Private Maritime Law', *Commercial Law Review* 223, at pp. 1 ff. ^ Back to section

11 Areios Pagos is the Supreme Civil and Criminal Court of Greece (http://www.areiospagos.gr/en/INDEX.htm). ^ Back to section

12 See note by I Rokas on this decision in the Athens Bar Association law review, *Nomiko Vima* 2016, at pp. 64, 297. ^ Back to section

13 I Rokas, on Hellenic insurance law, op. cit., Section 35. ^ Back to section

14 Decisions of lower instances are not included because they are not final and can be annulled. Citation of CJEU decisions is purposely avoided insofar as these findings are uniformly applicable throughout the EU. ^ Back to section

15 Case No. 654/2022; see this decision with a note by K Karanikolas in *Commercial Law Review* 2023, at pp. 771 ff. ^ Back to section

16 Article 7 of Codified Law No. 489/1976, as applicable prior to its amendment by Article 50 of Law No. 4949/2022. ^ Back to section

17 Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability; Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles; Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles. The provisions of the aforesaid Directives have been incorporated in the codified Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability. ^ Back to section

18 Case No. 1220/2023; see this decision with a note by K Karanikolas in *Commercial Law Review* 2023, at pp. 1129 ff. ^ Back to section

19 Article 19 Paragraph 8 of Codified Law No. 489/1976. ^ Back to section

20 Case No. 1050/2023; see this decision with a note by K Karanikolas in *Commercial Law Review* 2024, at pp. 170 ff. ^ Back to section

21 Article 1 Paragraph 8 of Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021, amending Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability. ^ Back to section

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