**1 April 2020**

**PRESS SUMMARY**

**Aspen Underwriting Ltd and others (Appellants) v Credit Europe Bank NV (Respondent)**
**Aspen Underwriting Ltd and others (Respondents) v Credit Europe Bank NV (Appellant)**
**[2020] UKSC 11**
*On appeals from: [2017] EWHC 1904 (Comm) and [2018] EWCA Civ 2590*

**JUSTICES**: Lady Hale, Lord Reed, Lord Kerr, Lord Hodge, Lord Lloyd-Jones, Lord Kitchin, Lord Sales

## BACKGROUND TO THE APPEALS

These appeals concern whether the High Court of England and Wales has jurisdiction to hear claims to recover sums paid under a settlement agreement relating to the loss of an insured vessel. The parties dispute the interpretation of the Brussels Regulation Recast (Regulation (EU) 1215/2012) ("the Regulation"). Article 4 of the Regulation provides that defendants must be sued in the member state where they are domiciled. This is subject to article 7(2), which provides that, in "matters relating to tort, delict or quasi-delict", a defendant may be sued in the place where the relevant "harmful event" occurred. Article 7(2) is, in turn, subject to section 3 of the Regulation, which provides (in article 14) that, in "matters relating to insurance", an insurer may only bring proceedings in the courts of the member state where the defendant is domiciled.

Aspen Underwriting Ltd and others ("the Insurers") insured the "Atlantik Confidence" ("the Vessel") under an insurance policy ("the Policy"), which valued the Vessel at $22m. The Policy had an exclusive jurisdiction clause in favour of the courts of England and Wales. Credit Europe NV, a bank which is domiciled in the Netherlands ("the Bank"), funded the re-financing of the Vessel. In exchange, the Bank took a mortgage of the Vessel and an assignment of the Policy. The assignment identified the Bank as the sole loss payee under the Policy. After the Vessel sank, the Bank (at the request of the Owners) issued a letter to the Insurers, authorising them to pay any claims relating to the loss of the Vessel to a nominated company, Willis Ltd ("the Letter of Authority"). For the next several months, the Insurers engaged in settlement discussions with the owners and managers of the Vessel (the "Owners"). The Bank was not involved in those discussions. Eventually, the Insurers concluded a settlement agreement with the Owners and made a payment of $22m to Willis Ltd.

Three years later, in an action not involving the Insurers, the Admiralty Court held that the Owners had deliberately sunk the Vessel. Following this judgment, the Insurers began legal proceedings in the High Court against the Owners and the Bank, seeking to set aside the settlement agreement and recover the sums paid under it, either in restitution or as damages for alleged misrepresentations by the Owners and the Bank. The Bank challenged the jurisdiction of the High Court to hear the Insurers' claims against it. In two first instance judgments, Mr Justice Teare held that the Bank was not bound by the exclusive jurisdiction clause in the Policy but nor could it rely on section 3 of the Regulation, since it was not "the weaker party" in its relations with the Insurers. He found that the High Court had jurisdiction to hear the damages claims under article 7(2) of the Regulation but not the restitution claims, since these were not "matters relating to tort, delict or quasi-delict". The Court of Appeal affirmed Teare J's decisions. The Insurers and the Bank each appealed to the Supreme Court.

## JUDGMENT

The Supreme Court unanimously dismisses the Insurers' appeal and allows the Bank's appeal, declaring that the High Court does not have jurisdiction over any of the Insurers' claims against the Bank. Lord Hodge gives the sole judgment with which the other Justices agree.

## REASONS FOR THE JUDGMENT

The Supreme Court affirms the findings of Teare J and the Court of Appeal that the Bank is not bound by the exclusive jurisdiction clause in the Policy **[23]**. Under EU law, a jurisdiction agreement will only bind a party if there is actual consensus between the parties which is clearly and precisely demonstrated **[24]**. Although not a party to the Policy, EU law recognises that the Bank may be taken to have consented to the jurisdiction clause if, as a matter of national law, it became a "successor" to the Owners under the Policy **[25]**. As an equitable assignee, the Bank did not take on the Owners' obligations under the Policy. However, nor was it entitled to assert its assigned rights in a way that was inconsistent with the terms of the Policy, including the jurisdiction clause **[26-28]**. In fact, the Bank had not asserted its rights under the Policy at all: it left the settlement negotiations to the Owners and its Letter of Authority merely facilitated that settlement **[29]**. Not being a party to the Policy, it is not required to submit to the jurisdiction of the English courts in an action brought by the Insurers **[30]**.

The Supreme Court finds that the Insurers' claims against the Bank are "matters relating to insurance" within the meaning of section 3 of the Regulation **[41]**. The Supreme Court notes that the title of section 3 is drafted in broader language than other sections of the Regulation, which refer to individual contracts **[35]**. It is also significant that the scheme of section 3 is concerned with the rights not only of parties to an insurance contract but also of beneficiaries and injured parties, who will typically be non-parties **[36]**. The recitals to the Regulation do not operate to narrow the scope of section 3 **[37]**. Whereas EU case law indicates that articles derogating from the general rule in article 4 should be interpreted strictly, article 14 operates to reinforce article 4 and so need not be read narrowly **[38]**. Even if section 3 were to apply only to claims based on a breach of an individual insurance contract, the insurance fraud alleged by the Insurers would inevitably entail a breach of the Policy **[40]**.

The Supreme Court holds that there is no "weaker party" exception to the protection of article 14 **[43]**. Article 14 protects certain categories of person because they are generally the "weaker party" in a commercial negotiation with an insurance company, not because of their individual characteristics **[44]**. Whilst recital (18) explains the policy behind section 3, it is the words of article 14 which have legal effect **[45]**. Article 14 refers to the policyholder, the insured and the beneficiary without further qualification and derogations from the jurisdictional rules in matters of insurance must be interpreted strictly **[46, 57]**. In any case, it would undermine legal certainty if the applicability of section 3 were to depend on a case by case analysis of the relative strength or weakness of contracting parties. This is why the Court of Justice of the European Union ("CJEU") has treated everyone within the categories identified in article 14 as protected unless the Regulation explicitly provides otherwise **[47-49]**. The CJEU only has regard to recital (18) in deciding whether to extend the protections of article 14 to persons who do not fall within the identified categories, not to decide whether a particular policyholder, insured or beneficiary is to be protected **[50-56]**. Further, in deciding whether to extend the protections of article 14 in this way, the CJEU seeks to uphold the general rule in article 4 **[43]**.

As a result of these conclusions, it is not necessary for the Supreme Court to address whether the Insurers' restitution claims are matters relating to "tort, delict or quasi-delict" under article 7(2) **[61]**.

*References in square brackets are to paragraphs in the judgment*