Translation from Norwegian

NORGES HØYESTERETT

NORWEGIAN SUPREME COURT

RULING

Made on 11 November 2020 by the Supreme Court
sitting as a panel of five Supreme Court Justices

Justice Jens Edvin A. Skoghøy
Justice Aage Thor Falkanger
Justice Wenche Elizabeth Arntzen
Justice Ingvald Falch
Justice Erik Thyness

HR-2020-2175-A, (case no. 20-027402SIV-HRET)
Appeal against the Gulating Court of Appeal's ruling of 12 December 2019

The bankruptcy estate of Alpha Insurance AS (Advocate Henning Harborg)

v.

(Advocate Lornts Natrud Nagelhus – qualifying test case)

V O T I N G

(1) Justice **Falkanger:**

Issues of and background to the case

(2) The case concerns an action brought against the bankruptcy estate of a Danish insurance company to establish whether there are grounds for a claim under an occupational injury insurance. The question is whether the action can be brought at the claimant's ordinary legal venue in Norway.

(3) A was working for the Norwegian company X AS when he fell and injured himself on 12 October 2007 at M. A filed a claim for compensation for his financial loss resulting from the injury under the occupational injury insurance which his employer had taken out with the Danish insurance company, Y AS, subsequently Alpha Insurance AS.

(4) The claim was denied by the insurance company on 5 February 2018 on the grounds that there was no causal link between the fall and his financial loss.

(5) By a ruling of 8 May 2018 by the Danish Maritime and Commercial High Court in Copenhagen, bankruptcy proceedings were opened against Alpha Insurance AS.

(6) On 26 June 2018, A issued a writ of summons against Alpha Insurance AS before the Bergen District Court requesting that the company be found liable in damages for his injuries under the Occupational Injury Insurance Act. The bankruptcy estate filed a defence for a dismissal of the case. The estate contended that the claim must be registered against the in Denmark pursuant to the rules in force there.

(7) In a pleading of 21 August 2018, A's counsel stated that the rightful defendant is the bankruptcy estate of Alpha Insurance AS.

(8) On 5 November 2018, A registered the claim also against the Danish.

(9) The Bergen District Court heard the issue of a dismissal in a special court hearing and made a ruling on 20 March 2019 with the following conclusion:

> «1. Case no. 18-097626TVI-BERG/4 is dismissed.
> 2. Costs are not awarded.»

(10) A appealed to the Gulating Court of Appeal. On 12 December 2019, the court made a ruling with the following conclusion:

> «1. Case no. 18-097626TVI-BERG/4 shall be heard by the Bergen District Court.
> 2. A is awarded costs before the Court of Appeal in the amount of NOK 204.900 – Norwegian Kroner twohundredandfourthousandninehundred –. Time limit for performance is 2 – two – weeks from service of judgment.
> 3. A is awarded costs before the District Court in the amount of NOK 50,000 – Norwegian Kroner fiftythousand –. Time limit for performance is 2 – two – weeks from service of judgment.»

(11) In short, the Court of Appeal found that it follows from the Lugano Convention that the action could be brought before the courts of A's domicile. The Court of Appeal found that the exclusion set out in Article 1.2 b) of the Convention relating to bankruptcy actions did not apply.

(12) The bankruptcy estate has appealed to the Supreme Court. On 31 March 2020, the Appeals Selection Committee of the Supreme Court decided that the appeal was to be decided by a division of the Supreme Court sitting as a panel of five justices, see section 5 1st subsection 2nd sentence of the Norwegian Courts of Justice Act.

Parties' view of the matter

(13) The Appellant – *the bankruptcy estate of Alpha Insurance AS* – has briefly submitted the following:

(14) The action must be dismissed from the Bergen District Court. Since bankruptcy proceedings have been opened against the insurance company, A is no longer filing a claim for compensation under the occupational injury insurance, but a claim for dividend in the bankruptcy estate. Accordingly, A's claim falls under the bankruptcy exclusion set out in in Article 1.2 b of the Lugano Convention

(15) The bankruptcy exclusion is in itself a jurisdiction rule entailing a requirement that the action must be brought in the country where the bankruptcy was declared. Regardless, the action must be dismissed because it follows from section 4-3 of the Norwegian Dispute Act that it cannot be brought in Norway.

(16) Under any circumstances, Norwegian courts must apply Danish bankruptcy rules. These rules prohibit instituting legal proceedings relating to claims against estates in bankruptcy before any other court than the one dealing with the estate. This also follows from EU Directive 2009/138/EF Solvency II and the Nordic Bankruptcy Convention of 1933.

(17) The bankruptcy estate of Alpha Insurance AS' has submitted the following statement of claim:

> «1. Point 1 of the Bergen District Court's ruling of 20 March 2019 to be affirmed.
> 2. The bankruptcy estate of Alpha Insurance A/S's to be awarded costs before all courts.»

(18) The Respondent – *A* – has in outline submitted:

(19) A's claim is a general insurance claim under the occupational injury insurance. Pursuant to the Lugano Convention the Bergen District Court is accordingly the correct legal venue. The fact that bankruptcy proceedings have been instituted against the insurance company and the estate has been made a party to the dispute does not mean that the bankruptcy exclusion set out in the Convention shall apply. The bankruptcy exclusion must be interpreted strictly and only covers claims that are directly founded on bankruptcy-specific rules.

(20) In the event that the action is covered by the bankruptcy exclusion, the provisions of the Dispute Act provide grounds for bringing the action before the Bergen District

Court. The bankruptcy exclusion is not an independent legal-venue rule.

(21) The Solvency II Directive is not implemented in Norwegian law. The Directive is, regardless, only relevant within the framework of the bankruptcy exclusion in the Lugano Convention.

(22) The Nordic Bankruptcy Convention is only applicable to strictly bankruptcy-related issues, not to claims that are founded on a general basis under the law of obligations and property, as in our case.

(23) A has submitted the following statement of defence:

> «1. The appeal to be dismissed.
> 2. A to be awarded costs before all courts.»

My view of the matter

The Supreme Court's competence

(24) The appeal is a further appeal against a ruling, and the Supreme Court's competence is regulated in section 30-6 of the Dispute Act. The Court of Appeal has submitted the case, and the provision in section 30-6 a shall accordingly not apply. Consequently, the Supreme Court can only review the Court of Appeal's procedure and general legal understanding of written rules, see paragraphs b and c The notice of appeal addresses the Court of Appeal's application of the law, but during the proceedings before the Supreme Court arguments are limited to addressing the Court of Appeal's general legal understanding of written rules. The Supreme Court's review competence also comprises the understanding of conventions and non-statutory rules of procedure, see Skoghøy, *Tvisteløsning [Dispute Resolution]*, 3rd edition, page 1263.

Does the bankruptcy exclusion in the Lugano Convention apply?

Legal points of departure

(25) It follows from section 145 1st subsection paragraph 3 of the Bankruptcy Act that a dispute relating to bankruptcy claims must be brought before the court that deals with the bankruptcy estate. Hence, the dispute cannot be brought before any other courts.

(26) Our case gives rise to the question whether the situation is different in the event of cross-border elements. To be specific, the issue is whether an action contending to have a claim against a Danish bankruptcy estate can be brought at the claimant's ordinary legal venue, which is the Bergen District Court.

(27) I will first address the issue whether the Lugano Convention 2007 solves this question. Supreme Court judgment HR-2017-1297-A paragraph 37 states on this subject:

> «The Lugano Convention regulates jurisdiction and recognition and execution of judgments in civil and commercial matters between the Convention member states. It applies as Norwegian law and takes precedence in respect of claims that fall

> within the scope of the Convention, see section 4-8, see section 1-2, of the Dispute Act.»

(28) Both Denmark and Norway have ratified the Lugano Convention. Since the litigant parties are domiciled in two different Convention member states and A's action falls within the ambit of «civil and commercial matters», see Article 1.1, it is clear that in principle the Convention shall apply.

(29) However, the question is whether A's action is comprised by the exclusion in Article 1.2 b, which reads as follows:

> "The Convention shall not apply to:
> .....
> (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings."

(30) In our case the issue is whether A's action falls within the term «bankruptcy», and I therefore refer to the exclusion as the bankruptcy exclusion.

(31) In the EU the Lugano Convention has its parallel in the Brussels Regulation 1215/2012, which supersedes Brussels Regulation 44/2001. According to Protocol no. 2 to the Lugano Convention the interpretation of the Convention shall have «due regard» for the decisions of the EU Court of Justice relating to the Brussels Regulation and its predecessor. HR-2017-1297-A [*Translator's comment:* Supreme Court decision] paragraph 37 states that it is «established law that the decisions of the EU Court of Justice are a weighty source of law». In practice, the court's decisions have been regarded as binding, see Skoghøy, *Tvisteløsning* [*Dispute Solution]*, 3rd edition, page 66.

(32) The decision of the EU Court of Justice of 22 February 1979 C-133/*78 Gourdain v. Nadler* is fundamental in this field. Subject matter of the action was the personal liability of the managing director of a German company for the debt of a wholly owned French subsidiary in a case where both companies were bankrupt. In paragraph 4 the court stated on the issue of which claims fall within the bankruptcy exclusion:

> «… that court decisions relating to bankruptcy proceedings are only excluded from the scope of application of the Convention if they arise directly from the bankruptcy and are rendered in close connection with a matter concerning bankruptcy, compositions and other analogous proceedings in the sense cited.»

(33) The matter concerned a claim filed by the estate based on French bankruptcy legislation, and the court found that such a claim is comprised by the bankruptcy exclusion.

(34) Subsequently, the EU Court of Justice has repeated the points of departure from the Gourdain case a number of times, see e.g. decision of 10 September 2009 C-292/08 *German Graphics Graphische Maschinen GmbH v. Alice van der Schee, paragraph* 26. There the EU Court of Justice found that a claim concerning retention of ownership of machinery was not comprised by the bankruptcy exclusion.

(35) Up to the decision of 18 September 2019 C-47/18 *Riel*, which I will revert to shortly, the EU Court of Justice had never heard the issue as to whether a claim against a bankruptcy estate can be filed by bringing an action in another country than the country where the bankruptcy was declared. As far as our case is concerned, case law therefore does not provide any certain guidance.

(36) I interject here that also prior to the Riel case it was not possible to draw any certain conclusions from other international sources. A has, admittedly, argued that the preamble to the EU Insolvency Regulation 2015/848, paragraph 35, shows that claims against a bankruptcy estate fall outside the bankruptcy exclusion. The Regulation applies to those cases where the bankruptcy exclusion in the Brussels Regulation 1215/2012 applies. The paragraph reads as follows:

> "The courts of the Member State within the territory of which insolvency proceedings have been opened should also have jurisdiction for actions which derive directly from the insolvency proceedings and are closely linked with them. Such actions should include avoidance actions against defendants in other Member States and actions concerning obligations that arise in the course of the insolvency proceedings, such as advance payment for costs of the proceedings. In contrast, actions for the performance of the obligations under a contract concluded by the debtor prior to the opening of proceedings do not derive directly from the proceedings."

(37) I agree that what is quoted here, seen in isolation, may be read as if the Insolvency Regulation shall not apply to actions for the establishment of contractual obligations, regardless of whether the estate is claimant or defendant. In that event, such actions would also fall outside the bankruptcy exclusion. However, the quote must be read in context with what follows:

> «Where such an action is related to another action based on general civil and commercial law, the insolvency practitioner should be able to bring both actions in the courts of the defendant's domicile if he considers it more efficient to bring the action in that forum. This could, for example, be the case where the insolvency practitioner wishes to combine an action for director's liability on the basis of insolvency law with an action based on company law or general tort law."

(38) In my view, these formulations show that article 35 of the preamble merely addresses situations where the estate is the claimant. Cases where the estate is the defendant are not mentioned. This article therefore does not shed any light on the issue of our case.

(39) Nor has the Supreme Court decided whether actions contending to have a claim against a bankruptcy estate, fall within the ambit of the bankruptcy exclusion. The two existing decisions relating to exclusion are nevertheless not without interest in this context.

(40) The decision in *Rt-1996-25* [Translator's remark: Rt. is a publication containing Norwegian Supreme Court judgments.] concerned the issue whether a Norwegian company could bring an action before the Oslo City Court against a company that formed part of an Italian government- owned group which was under liquidation pursuant to special legislation. Subject matter of the action was a request for an enforcement judgment for the payment for deliveries. One of the main issues was whether the type of liquidation in question here could in any way be equated with the type of liquidations which are governed by the bankruptcy exclusion. The majority of three justices answered this question in the affirmative. Subsequently, the majority discussed whether the

connection between the action and the compulsory liquidation would entail the application of the bankruptcy exclusion. On this issue the first-voting justice stated:

> «A bankruptcy does thus not *per se* prevent adjudication in another country. It will for example be possible to use the place of performance of the obligation in question in Art. 5 (1) first alternative of the Lugano Convention in cases relating to contractual delivery and the consequences of a breach of contract. Bankruptcy exclusion is limited to disputes that are governed by and shall be adjudicated under rules pertaining to insolvency law, see *Rognlien* page 125. The purpose of the bankruptcy exclusion is that bankruptcy-related issues shall be decided in the country where the bankruptcy was declared. The courts in other countries shall not take a position on the consequences of a suspension of payments and bankruptcy.»

(41) At first glance, this may be read to mean that claims against the estate based on contractual obligations fall outside the ambit of the bankruptcy exclusion. However, it is not quite clear what the statement refers to. It may simply be a reference to preferential claims against the estate. And, even if the statement cannot be limited to such claims, it is uncertain whether it is only meant to include cases where the estate is the claimant. The assumption that the statement does not include actions contending to have a claim against the estate seems to find support in the next paragraph:

> «Examples of bankruptcy-related claims which in legal literature are assumed to be comprised by the bankruptcy exclusion in the Brussels Convention and the Lugano Convention are avoidance in bankruptcy proceedings, preferential claims, claims secured against a fixed charge relating to movable property, recognition of claims and cancellation of agreements according to provisions under bankruptcy law ….”

(42) An obvious interpretation is that the Supreme Court has here endorsed the assumption that «recognition of claims» falls within the ambit of the bankruptcy exclusion.

(43) However, the Supreme Court decided the case on a different basis. For the first-voting justice it was decisive that «in reality, the purpose of the action was exclusively to obtain a decision determining the significance of the insolvency proceedings in Italy” for the Italian company’s payment obligation.

(44) HR-2017-1297-A concerned a Norwegian bankruptcy estate’s claim against a Dutch bank. The gist of the claim was that the bank did not have a valid security interest with protection of the law in the accounts receivable of the debtor in bankruptcy. Based on the case law of the EU Court of Justice, the Supreme Court found that the claim fell within the ambit of the bankruptcy exclusion. The close connection between the validity and protection of law of the security interest and the rules under bankruptcy law relating to distribution of the assets of the estate was considered significant:

> «(59) The granting of a security interest may be of quite fundamental significance for the estate, while the insolvency proceedings and the rules appliable to these may at the same time strongly affect the content and effects of alleged security interests. This interwovenness lends a different character to the security interest issues in relation to e.g. the question of whether the estate may register a claim or is liable for a claim that does not derive directly from the bankruptcy.»

(45) A has in particular argued that the last part of the quote supports his view. I do in fact

agree with him that the wording "is liable for a claim that does not derive directly from the bankruptcy» at first glance indicates that a claim based on an insurance agreement falls outside the ambit of the bankruptcy exclusion. However, in the same way as in the case from 1996 it is also possible that the court is here referring to preferential claims against the estate. Regardless, the statement was not necessary to decide the matter.

(46) For me it is not necessary to go into detail as regards what may be deduced from the two Supreme Court judgments. The point is that in my view the EU Court of Justice's decision of 18 September 2019 C-47/18 *Riel* – which does not appear to have been submitted to the Court of Appeal – has clarified that recognition of claims against an is comprised by the bankruptcy exclusion.

(47) Subject matter of the action was a preliminary reference in connection with a dispute between a Polish government-owned legal entity with responsibility for national roads and the bankruptcy estate of an Austrian company which had undertaken to carry out several road projects in Poland. Bankruptcy proceedings were opened in Austria, while so-called secondary bankruptcy proceedings were opened in Poland. The Polish legal entity registered claims against the estates in bankruptcy in both countries. The Austrian receiver disputed the claims. Subsequently, the Polish legal entity brought actions in Poland as well as before the Commercial Court in Vienna relating to the same claims. The company requested the Commercial court to defer the decision of the matter until the Polish decision had been made. Without taking a position on the request for a deferment, the Commercial Court refused to uphold the request regarding the claims. The case was subsequently appealed to a higher court, which decided to refer several issues to the EU Court of Justice. The question which is relevant to our case is formulated in section 32 of the judgment as follows:

> «By its first question the referring court asks, in essence, whether Article 1.2 b) of Regulation no. 1215/2012 must be interpreted as meaning that an action for a declaration of the existence of claims for the purposes of their registration in the context of insolvency proceedings, such as that at issue in the main proceedings, is excluded from the scope of that regulation.»

(48) The question was thus whether an action with a view to establishing the existence of a claim against a falls within the ambit of the bankruptcy exclusion in the Brussels Regulation 1215/2012.

(49) In sections 35–36 the EU Court of Justice started the discussion by reviewing the general points of departure on which the court has relied since the Gourdain/Nadler case:

> In that context, the Court took into consideration the fact that the various types of action which it had had to hear were brought in connection with insolvency proceedings. Moreover, it focuses above all on determining each time whether the action in question derived from insolvency law or other rules ….
>
> In particular, the decisive factor used by the Court to identify the area within which an action falls is the legal basis of that action. In accordance with that approach, it must be determined whether the right or the obligation which forms the basis of the action has its source in the ordinary rules of civil and commercial law or in derogating rules specific to insolvency proceedings…."

(50) Subsequently, in sections 37-38 the EU Court of Justice proceeded to assess the concrete

matter:

> "In the present case, it should be noted that, apart from the fact that the action for a declaration of the existence of claims provided for in Article 110 of the IO, brought by the applicant in the main proceedings, constitutes an element of Austrian insolvency legislation, it is clear from the wording of that provision that that action is intended to be brought in the context of insolvency proceedings, by creditors participating in those insolvency proceedings, in the event of a dispute concerning the accuracy or ranking of claims declared by those creditors.
>
> Accordingly, it is apparent that, in view of those characteristics, the action for a declaration of the existence of claims under Article 110 of the IO derives directly from insolvency proceedings, is closely connected with them and has its origin in the law on insolvency proceedings."

(51) Subsequently, the Court concluded as follows in sections 39-40:

> Consequently, that action does not fall within the scope of Regulation No 1215/2012 but within that of Regulation No 1346/2000.
>
> In those circumstances, the answer to the first question is that Article 1(2)(b) of Regulation No 1215/2012 must be interpreted as meaning that an action for a declaration of the existence of claims for the purposes of their registration in the context of insolvency proceedings, such as that at issue in the main proceedings, is excluded from the scope of that regulation.

(52) The only conclusion I can draw from this is that the EU Court of Justice finds that an action for establishing the existence of a claim against a bankruptcy estate is comprised by the bankruptcy exclusion in Brussels Regulation 1215/2012.

(53) During the proceedings before the Supreme Court the question has been raised as to the implication of the wording "for the purpose of the registration of the claim". As far as I am concerned, I find it difficult to interpret this to mean anything other than that actions for establishing the existence of a claim against a debtor in bankruptcy is comprised by the bankruptcy exclusion. The purpose of such actions will precisely be a registration of the claim for inclusion in the administration of the estate, possibly with a specification of the amount.

(54) As far as I understand, there are no significant differences between Austrian, Danish and Norwegian rules relating to the proving of bankruptcy claims. In outline, this means that when bankruptcy proceedings have been opened the creditors must register their claims against the estate. If the claim is not recognised, an action may be brought against the estate or anyone who disputes the claim. This must be done before the court that administers the bankruptcy proceedings.

(55) As mentioned, case law from the EU Court of Justice relating to the interpretation of Brussels Regulation 1215/2012 is a weighty source of law in the interpretation of the Lugano Convention. On the basis of the Riel decision, it is therefore my conclusion that actions with a view to the recognition of claims against a bankruptcy estate fall within the ambit of the bankruptcy exclusion in the Lugano Convention's Article 2 b. The rules of the Convention relating to jurisdiction thus do not apply to such actions.

The concrete case

(56) The purpose of A's action is to establish the existence of a basis for a claim under

the occupational injury insurance. The fact that he merely requests judgment for the basis for the claim, and not for its size, cannot be relevant to the question of whether the action falls within the ambit of the bankruptcy exclusion. The object is, regardless, that a judgment establishing that he has such a claim shall have legal effect in case of a later review of the claim against the estate.

(57) Based on my conclusion of the interpretation of the bankruptcy exclusion, A's action falls outside the scope of the Lugano Convention.

Which ordinary-venue rules shall apply when the Lugano Convention is not applicable?

(58) I will now move on to looking at what the consequences will be of the fact that the Lugano Convention's ordinary-venue rules do not give A the right to bring the action before the Bergen District Court.

(59) In the cited decision in Rt-1996-25 the Supreme Court found that the effect of the non-application of the bankruptcy exclusion was that an action needed to be brought in the country where the bankruptcy was declared. The deliberations on the question whether the 1915 Dispute Act provided a right to bring the action in the country of performance of the obligation in question – Norway – included the following statement:

> «By its wording section 25 of the Dispute Act provides a general right to bring an action in the jurisdiction of performance of the obligation in question. However, the special provisions in the Lugano Convention must take precedence over the general provision in section 25 of the Dispute Act in international disputes between persons or companies in countries that have ratified the Lugano Convention. This means that section 25 of the Dispute Act must be interpreted to mean that the provision does not provide the right to bring an action in the jurisdiction of performance of the obligation in question if the bankruptcy exclusion in Art 1.2(2) shall apply. As mentioned before, bankruptcy-related issues shall be decided in the country where bankruptcy was declared. This purpose would be ignored if one or more Lugano member states had internal rules that opened the door to bringing actions in the jurisdiction of performance of the obligation in question in those cases where the bankruptcy exclusion was applicable.»

(60) The Supreme Court thus interpreted the bankruptcy exclusion in the Lugano Convention to mean a venue rule.

(61) As the Supreme Court states in its judgment HR-2017-1297-A section 62, the Convention itself does not provide any such solution. On the contrary, the wording suggests that in cases where the bankruptcy exclusion shall apply, it will be necessary to fall back on national jurisdiction rules. However, in sections 64 *et sec.* the Supreme Court emphasises the weighty grounds indicating that actions should be brought in the country where the bankruptcy was declared:

> «(64) However, the reason for the bankruptcy exclusion is that the application of the main rules of the Convention on insolvency-related disputes may result in the splitting of court jurisdiction between several nations. The purpose of the exclusion is to prevent such splitting. The consideration for preventing a splitting could suggest that the national jurisdiction rules, which would otherwise have become applicable, should not apply

> unconditionally. Moreover, the considerations for a harmonisation of rules and efficiency in the processing of bankruptcy-related cases suggest that disputes with sufficient connection with bankruptcy should be subject to the jurisdiction of the country where the bankruptcy was declared. This is emphasised in Rt-1996-25 on page 34:
>
> > 'The purpose of the bankruptcy exclusion is that bankruptcy-related issues shall be decided in the country where the bankruptcy was declared. The courts in other countries shall not take a stand on the consequences of a suspension of payments and bankruptcy.'
>
> (65) Here the Supreme Court seems to rely directly on the Lugano Convention. With a different interpretation it would have been natural for the Supreme Court to have considered whether Norwegian jurisdiction was relevant in the matter.
>
> (66) The preparatory works of the recently adopted cross-border regulation of insolvency proceedings support this interpretation. Here the Ministry discusses the issue 'whether the Lugano Convention imposes jurisdiction on Norwegian courts in cases comprised by the bankruptcy exclusion, see *Prop. 88 L (2015–2016) [proposition to Parliament]* page 34. Even if it is not explicitly clear from the discussion, it seems implicit that Norwegian courts have jurisdiction by virtue of the Convention – the question is whether the jurisdiction is exclusive. On page 35 the Ministry concludes that a regulation by law of the issue would be desirable, but that the scope of the bankruptcy exclusion should primarily be determined by the EU Court of Justice.
>
> (67) In my view, real considerations strongly suggest that disputes that are comprised by the bankruptcy exclusion are subject to the jurisdiction of the country where the bankruptcy was declared. This is where the issues are most relevant, and the concern for procedural economy, legal costs and uniformity of law suggest the same.
>
> (68) ING has strongly contended that one cannot derive a jurisdiction rule from the Lugano Convention when the Convention is assumed not to be applicable as a result of the bankruptcy exclusion. For the reasons I have mentioned, I do not automatically endorse this. But I do not find it necessary to take an individual stand as to whether, in this context, a jurisdiction rule can be derived directly from the bankruptcy exclusion. I find that the reasons pointed out are sufficient, under any circumstances, to establish a general rule under section 4-3 of the Dispute Act that the requirement for sufficient connection is met in disputes covered by the bankruptcy exclusion when the bankruptcy proceedings are initiated in Norway. In such cases, there is no need for any further assessment of whether the connection with Norway is sufficient."

(62) I agree with A that it does not follow directly from the bankruptcy exclusion that actions brought between parties domiciled in the Convention member states must be brought in the country where the bankruptcy was declared. According to the wording the effect of the fact that exclusion shall apply is limited to the consequence that the Convention rules relating to jurisdiction will not apply. However, the Supreme Court decisions from 1996 and 2017 must be interpreted to mean that actions that fall within the bankruptcy exclusion of the Lugano Convention do not «have a sufficiently strong connection with Norway» if the bankruptcy proceedings were opened in other Convention member states, see section 4-3 of the Dispute Act. The action must in such cases be brought where the bankruptcy proceedings were opened.

(63) As far as I can see, such an interpretation of the Dispute Act is not in contravention of instruments under EU law relating to choice of law in case of bankruptcy. On the contrary, I find a certain support in these. It follows from Insolvency Regulation 2015/848 that the rules of the country where the bankruptcy was declared relating to the registration of claims shall be complied with. The Regulation falls outside the

scope of the EEA Agreement and is not binding on Norway, but choice of law in the event of insolvency in insurance companies is dealt with in a special directive – known as the Solvency II Directive 2009/138 of 25 November 2009. The directive is binding on Norway through the EEA Agreement. It follows from Article 274.2 g of the directive – which has so far not been implemented in Norwegian law – that the rules of the country where bankruptcy was declared governing registration, verification and admission of claims shall apply. Even if the directive thus concerns choice of law, it appears to support the principle that the rules of the country where bankruptcy was declared should apply. Moreover, also the Nordic Bankruptcy Convention 1933, which Norway has ratified, points in the same direction. Article 1 provides that the member states undertake to respect the statutory provisions of the country where bankruptcy was declared relating to "the administration and treatment of the estate" – which in our case seems to include the Danish rules relating to the registration, verification and admission of claims, including the provisions that actions must be brought before the court that deal with the bankruptcy.

(64) In this light I find that no Norwegian courts have local jurisdiction in the matter. The action must accordingly be dismissed from the Bergen District Court, see section 4-7 3rd subsection of the Dispute Act.

Conclusions and legal costs

(65) The Supreme Court has limited competence in the matter. When an appeal is upheld, the main rule is that the Court of Appeal's ruling must be set aside. However, in cases where a correct understanding of rules and the facts of the case on which the Court of Appeal has relied entail only one possible solution to the question at issue in the appeal the Supreme Court has the basis for rendering a new decision, see *Skoghøy, Tvisteløsning* [*Dispute Resolution],* 3rd edition page 1290. Since this is the case here, I find it most expedient to affirm Point 1 of the Bergen District Court's ruling.

(66) The appeal is upheld, and Alpha Insurance AS's bankruptcy estate has claimed compensation for costs before all courts. However, weighty reasons suggest that A be exempted from liability for legal costs, see section 20-2 third subsection of the Dispute Act. I refer specifically to the fact that the case has given rise to doubt and that it is of great significance for A in terms of his welfare.

(67) I vote in favour of the following

R U L I N G :

1. Point 1 of the conclusion of the Bergen District Court's ruling is affirmed.

2. Costs are not awarded before any courts.

(68) Justice **Arntzen:** [I concur in all essentials and as regards the conclusion with the first-voting justice.

(69) Justice **Thyness:** Likewise.

(70) Justice **Falch:** Likewise.

(71) Justice **Skoghøy:** Likewise.

(72) After the voting the Supreme Court made the following

R U L I N G :

3. Point 1 of the conclusion of the Bergen District Court's ruling is affirmed.

4. Costs are not awarded before any courts.

This document is in accordance with the original:
Anders Berg Dønås

True translation certified: