La Kanzlei

Arbitration clause in the liability insurance contract and direct claims against the insurer

Vertragsrecht / AGB



Gordian Deger

According to a judgment of the Court of Cassation (Cass. crim. 26/6/2019, nos. 17-87.485), a national court cannot rule on its jurisdiction for a direct action from an injured party against the insurer if the insurance contract contains an arbitration clause. The court states that the arbitrator has the odirektverriding decision on his jurisdiction, unless the arbitration clause is manifestly invalid or inapplicable (see Article 1448 of the French Civil Procedure code).

The Court of Cassation therefore upheld the judgment of the lower court, which held that the state court did not have jurisdiction to decide on its own competence (so-called "competence-competence") because the arbitration clause wasn't manifestly inapplicable. With the direct claim, the injured party solely asserts the claim for compensation of the insured against the insurer, to which, however, arbitration agreements apply. It now remains to be seen whether the arbitral tribunal affirms its juridiction for the direct claim or whether it transfers the matter to a state court.

Practical advices:

- If the arbitral tribunal confirms its jurisdiction for the direct claim of the injured party, this would mean that by using arbitration clauses, insurers would be able to concentrate all litigation relating to liability insurance before an arbitral tribunal of their choice.
- By including an arbitration clause in their liability insurance contracts, insurers would in particular be able to determine the place, language and rules of procedure of the arbitral tribunal, which will decide exclusively on claims of the insured and direct claims of injured parties.

Qivive Rechtsanwalts GmbH

2019-09-30

qivive.com

Köln[D]
Konrad-Adenauer-Ufer 71
D – 50668 Köln
T + 49 (0) 221 139 96 96 - 0
F + 49 (0) 221 139 96 96 - 69
koeln@qivive.com

Paris[F]
50 avenue Marceau
F – 75008 Paris
T + 33 (0) 1 81 51 65 58
F + 33 (0) 1 81 51 65 59
paris@qivive.com

Lyon[F]
4 Pl. Amédée Bonnet
F – 69002 Lyon
T + 33 (0) 4 27 46 51 50
F + 33 (0) 4 27 46 51 51
lyon@qivive.com

Strasbourg[F]
10 Pl. Gutenberg
F – 67000 Straßburg
T + 33 (0) 3 92 12 02 20
F + 33 (0) 3 92 12 02 21
strasbourg@qivive.com