

PRESS RELEASE

10 September 2009

Legal expenses insurers are concerned about the effects of the ECJ's judgment on the coverage of mass claims

Brussels, 10 September 2009: The European Court of Justice (ECJ) today ruled that the Austrian legal expenses insurers practice of selecting the lawyers to represent their clients in collective redress proceedings is an inadmissible limitation of the rights of the insured.

"We are disappointed about this outcome. While the ECJ wants to protect consumers, we actually think that the ruling is against the interests and needs of the users of legal services," said Antje Fedderke, Secretary-General of the International Association of Legal Expenses Insurance (RIAD).

The case (*C-199/08 Eschig*) concerns the so-called, 'mass claims clause' used by Austrian legal protection insurers. In Austria, as in other EU countries, legal protection insurers seek to combine the legal representation of their clients' interests. The mass claims clause allows insurers to select the legal team when several insured parties in similar situations wish to pursue claims against the same opposing party.

"Our clients only gain advantages from the mass claims clause," explains Ingo Kaufmann, Director of D.A.S. Austria, which is a member of RIAD. "We are talking about gigantic procedures where the expectations and interests of hundreds of consumers have to be managed and bundled. By selecting specialised lawyers, we are able to optimise the professional competence to best defend our clients' interest. Our concern is that today's dogmatic interpretation of the Legal Expenses Insurance Directive¹ will have an adverse effect on our clients."

Looking at the case from a European perspective, Antje Fedderke notes that, "from a strictly legal point of view the ruling is consistent with the Directive which makes no exemption from the free choice of lawyer in respect of collective actions." However, she adds that the prime concern of the Directive is to protect the insured parties and prevent conflicts of interests between them and the insurance company. "Therefore, in my view it makes no sense to prohibit measures that are clearly in the interest of individuals who all have a common cause of action and for who the use of a single legal team has the effect of improving the management of their legal action, to the benefit of both, claimant, defendant and society in general."

Austrian insurers must now face the consequences. "In many cases such insurance coverage has only become possible as it has allowed us to avoid unnecessary duplication of legal expenses," says Ingo Kaufmann. As legal expenses insurers in Austria prepare to meet the Court's requirements, Kaufmann concludes that, "the question is to what extent does the judgment force us to limit our coverage and how we will strike the right balance between efficient claims management and consumer interests."

- Ends -

¹ Directive 87/344/EEC of 22/06/1987, OJ 1987 L 185/79 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance

Notes for editors:

- **RIAD, the association of legal protection insurers and service providers**, is committed to promote via its global members easy, affordable and high quality access to justice and the law. RIAD counts almost 60 members in 18 countries. The RIAD members are specialised in providing insurance and/or services in support of enforcing and defending individual legal rights: they provide their customers with the necessary resources to access high quality and readily available legal advice and services. They also effectively shield customers from financial risks associated with the cost of enlisting legal professionals and accessing the justice system. <http://www.riad-online.eu>

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