

Case law

Case Details

National ID: C.05.0520.F/4

Member State: Belgium

Common Name: link

Decision type: Supreme court decision

Decision date: 12/10/2007

Court: Supreme Court

Subject:

Plaintiff: AXA Belgium

Defendant: Allart Motor

Keywords: burden of proof, illness, insurance contract, unit price

Directive Articles

Unfair Contract Terms Directive, [Article 4, 1](#). Unfair Contract Terms Directive, [Article 4, 2](#).

Headnote

A clause in an insurance policy, placing the burden of proof of non-causality to benefit from the insurance on the insured party, constitutes an unfair contractual term.

Facts

The plaintiff in this case is AXA Belgium, the insurer of Mr. G. (further unknown), who bought a car from defendant, Allart Motor. Despite several reminders, the defendant did not receive payment of Mr. G. for the car. At a certain moment in time Mr. G. caused a car accident while driving the car bought from defendant. In a police report it was noted that Mr. G. was intoxicated at the moment of the accident.

The judge of first instance decided that Mr. G. should receive money from the plaintiff. The defendant claims the money by virtue of a lateral action under Belgian law.

The plaintiff argues that coverage of the insurance is excluded by a clause in the insurance policy when the insured person is intoxicated with alcohol at the moment of the accident. The clause however indicates that the exclusion ground does not apply when the insured person proves that no causality is at hand between the intoxication and the accident.

Legal issue

The court decided that a clause in an insurance policy placing the burden of proof of non-causality of alcohol intoxication and the accident on the insured party to benefit from the insurance, constitutes an unfair contractual term in the sense of article 4 of the Directive 93/13.

According to the judge, this type of clause creates an unfair balance between the parties because it is much easier for the insurer to prove that there is a connection between the accident and the alcohol intoxication, than it is for the insured person to prove that there is no such causality.

Decision

Does a clause in an insurance policy, placing the burden of proof of non-causality on the insured party to benefit from the insurance, constitute an unfair contractual term in the sense of article 4 of Directive 93/13?

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Result

The court upheld the first instance court's judgment that ruled the contractual term as unfair under article 4 Directive 93/13.