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Judgment in Case E-17/24 *Söderberg & Partners AS v Gable Insurance AG in Konkurs*

PRIORITY OF ASSIGNED INSURANCE CLAIMS IN WINDING-UP PROCEEDINGS

In a judgment delivered today, the Court provided guidance to the Princely Court of Appeal (*Fürstliches Obergericht*) on the interpretation of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (“the Directive”). The case concerns whether insurance intermediaries can acquire their clients’ insurance claims with priority in national insolvency proceedings, enabling them to provide immediate compensation in the event of an insurance company’s bankruptcy. This is the third case brought before the Court concerning the same insolvency (judgments of 10 March 2020 in *Gable Insurance AG in Konkurs* (“*Gable I*”), E-3/19, and of 25 February 2021 in *SMA SA and Société Mutuelle d’Assurance du Bâtiment et des Travaux Publics v Finanzmarktaufsicht* (“*Gable II*”), E-5/20).

The dispute arose after numerous policy holders assigned their insurance claims to their Norwegian insurance intermediary, Söderberg & Partners AS following the bankruptcy of the Liechtenstein-based insurer Gable Insurance AG. Söderberg & Partners AS subsequently lodged these assigned claims as privileged insurance claims in the insolvency proceedings of Gable Insurance AG in Konkurs. When the insolvency estate administrator contested the claims, the Princely Court of Appeal requested an advisory opinion on whether an insurance claim retains its priority status when assigned to a third party by way of legal transaction.

The Court noted that Article 275(1) of the Directive requires EEA States to ensure that insurance claims take precedence over other claims. It further recalled that Article 268(1)(g) defines an ‘insurance claim’ by four cumulative requirements: (1) an amount that is owed; (2) by an insurance undertaking; (3) to insured persons, policy holders, beneficiaries or an injured party having a direct right of action against the insurance undertaking and (4) on the basis of an insurance contract. The Court considered the broader context and purpose of the priority rule and observed that the possibility to assign insurance claims enables policy holders and beneficiaries to receive immediate compensation, thereby reinforcing the Directive’s objective. The Court concluded that insurance claims retain their precedence even when assigned to a third party by way of a legal transaction.

The advisory opinion is a step in the proceedings pending before the national court. The Princely Court of Appeal will now resume its proceedings and decide the case pending before it in light of the Court’s interpretation of the Directive.

The full text of the judgment is available on the Court’s website: eftacourt.int/cases/e-17-24/.

This press release is an unofficial document and is not binding upon the Court.