

## **Admissibility of the direct action against the insurer whereas the action against the insured is not admissible**

**Comment of a decision rendered on 11 May 2022 by *Cour de cassation* (French Supreme Court: Cass. 3<sup>rd</sup> civ., 11 May 2022, n° 21-12478: RGDA, Sept. 2022, n° 200x1, p. 10)**

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### Summary of the commented decision:

*According to article L. 124-3 of French Insurance Code, the insurer cannot pay to anybody else than the third party all or part of the sum owed under coverage, as long as the third party has not been disinterested, to the extent of the said sum, of the pecuniary consequences of the damaging event which involved the insured's liability.*

*It is ruled, under these provisions, that it is not a condition of admissibility of the direct action that the insured is called into the proceedings by the third party.*

*From this it results that inadmissibility of the claims presented by the third party against the insured has no incidence upon admissibility of the direct action of the third party against the insurer.*

### Comment

With the decision under study, *Cour de cassation* states a solution appearing so obvious, and it does it with a reasoning so clear, that one could wonder if it is useful to comment it. We note however that the Supreme Court had to quash the decision of a Court of Appeal, thus calling it to order.

The Court of Appeal believed it could declare the direct action against the insurer inadmissible, with the motivation that the action against the insured or against its liquidator was inadmissible (commented decision, § 13).

It was however overlooking that admissibility of direct action is not subject to a condition that the insured is called into proceedings by the third party, a principle reminded by *Cour de cassation* with reference to relevant case law (decision, § 15 : Cass. 1<sup>st</sup> civ., 7 Nov. 2000, n° 97-22.582, Bull. I, n° 274 ; Cass. 3<sup>rd</sup> civ., 15 May 2002, n° 00-18.541, Bull. III, n° 98). From this principle it results that inadmissibility of claims presented by the third party against the insured is without incidence upon admissibility of the direct action against the insurer (decision, § 16).

We can only approve. Insofar as it is not a condition of direct action against the insurer that the insured is called into proceedings, it does not matter that the action against the insured is inadmissible: the direct action can be used independently.

Maybe the quashed decision of the Court of Appeal can be seen as a reminiscence of the time when calling the insured to the proceedings was a condition of admissibility of direct action (see J. Kullmann, *Lamy Assurances*, 2022, n° 1588 and f. ; J. Beauchard and R. Schulz, *Traité*

*de droit des assurances* (dir. J. Bigot), t. 3, *Le Contrat d'assurance*, 2<sup>nd</sup> ed. LGDJ, 2014, n° 2169 and f.).

But Cour de cassation reminds that it is a bygone era since 7<sup>th</sup> November 2000. One should move with the times...