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Paris Court of Appeal
Division 5 - Chamber 16
International Commercial Chamber

RULING OF DECEMBER 8, 2020

FIXED DAY

(n° /2020, 15 pages)

Registration no. on the general roll : **RG no. 19/18298 - Portalis no. 35L7-V-B7D-CAW6M**

Decision deferred before the Court: Judgment of September 17, 2019 – Paris Commercial Court - RG n° 2016014052

APPELLANTS:

SA AXA CORPORATE SOLUTIONS ASSURANCE
Registered with the PARIS Registry of Trade and Companies under the number 399 227 354
With its registered office at: 61, rue Mstilsav Rostropovitch – 75832 PARIS CEDEX 17
Represented by its legal representatives,

AIG EUROPE LIMITED, insurance company governed under foreign law
Registered with the Registrar of Companies for England and Wales under the number 01486260
With its registered office at: Tha Aig building 58 Fenchurch Street LONDON EC3M 4AB (UNITED KINGDOM).
Represented by its legal representatives,

SA CNA INSURANCE COMPANY LIMITED – insurance company
Registered with the PARIS Registry of Trade and Companies under the number 399 042 332
With its registered office at: 37 rue de Liège – 75008 Paris
Represented by its legal representatives,

KA KOLN ASSEKURANZ AGENTUR GMBH – insurance company incorporated under German Law
With its registered office at: Ka Koln im Zollhafen 15-17 – Koln (GERMANY)
Represented by its legal representatives,

SA ROYAL&SUN ALLIANCE INSURANCE PLC – insurance company
With its registered office at: 153 rue Saint Honoré – 75001 Paris
Represented by its legal representatives,

TORUS INSURANCE MARKETING LIMITED – insurance company under Dutch law
With its registered office at: Beurs-World trade center – Beursplein 37 – Rotterdam (THE

NETHERLANDS)
Represented by its legal representatives,

SA XL INSURANCE COMPANY LIMITED – insurance company
With its registered office at: 50 rue Taitbout – 75320 PARIS CEDEX 09
Represented by its legal representatives,

All of them domiciliated at their agent office société SIACI SAINT-HONORE, with its registered office at: 39 rue Mstislav Rostropovitch - Paris 75017

All of them represented by Mr. (…), attorney at the PARIS bar, court registration: - with litigating attorney Mr. (…), attorney at the PARIS bar, court registration:

RESPONDENT:

Société EUKOR CAR CARRIERS INC
With its registered office at : 24th Floor Gangnam Finance Centre, 152 Teheran-Ro, Gangnam-Gu, Seoul (SOUTH KOREA)
Represented by its legal representatives,

Taking up residence at their agent office WALLENIUS WILHELMSEN LOGISTICS FRANCE, Registered with the PARIS Registry of Trade and Companies under the number 423 509 082 and with its registered office at: 4 avenue Bertie Albrecht – 75008 Paris

Represented by Me (…), attorney at the PARIS bar, court registration: - with litigating attorney Me (…), attorney to the PARIS bar, court registration:

WILLFULL INTERVENTION

XL INSURANCE COMPANY SE representing the rights of AXA CORPORATE SOLUTIONS ASSURANCE
Registered with the Central Bank of Ireland Registry under the number 641 686
With its registered office at: 8 St Stephen's Green, DO2 VK30, Dublin (IRELAND)
Represented by its legal representatives,

Taking up residence at their branch in France, XL INSURANCE COMPANY SE, with its registered office at: 61, rue Mstilsav Rostropovitch 75017 Paris, registered with the PARIS Registry of Trade and Companies under the number 419 408 927

Represented by Me (…), attorney at the PARIS bar, court registration: - with litigating attorney Me (…), attorney to the PARIS bar, court registration:

COMPOSITION OF THE COURT:

The matter was heard on October 20, 2020, in open court, before the Court composed of:

Mr. François ANCEL, President
Mrs. Fabienne SCHALLER, Judge
Mrs. Laure ALDEBERT, Judge
who ruled on the case, a report was presented at the hearing by Mrs. Laure Aldebert under the conditions provided for by Article 804 of the French Code of Civil Procedure.

Court clerk during the proceedings: Mrs. Clémentine GLEMET

RULING:

- ADVERSARIAL
- made available at the Clerk's office, the parties having been informed therefore beforehand under the terms stipulated in second paragraph of Article 450 of the Civil Procedure Code.
- Signed by François ANCEL, President and by Clémentine GLEMET Court Clerk to whom the original was handed by the signatory judge .

I - FACTS AND PROCEEDINGS:

1. Eukor Car Carriers Inc (hereinafter Eukor) is a shipping company incorporated under Korean law, specialising in the transport of vehicles, with its head office in Seoul, South Korea.

2. Between December 2014 and July 2015 it was charged under several bills of lading by Automobiles Peugeot and Citroën with the maritime transport of vehicles from Antwerp in Belgium to South Korea, which were delivered to Hanbull Motors, which took delivery of them.

3. The bills of lading under which the shipments were made contained a clause conferring jurisdiction on the court in Seoul, Korea, and stipulating the application of Korean law.

4. On arrival, the vehicles received were damaged and Hanbull Motors requested a joint expert appraisal in Korea and was compensated for the damage suffered by Axa CS Solutions Assurance and a pool of insurers.

5. Taking the view that the damage occurred during maritime transport, the insurance companies Axa CS Solutions Assurance, CNA Insurance Company Limited, Aig Europe Ltd, XL Insurance Company Lt, Royal & Sun Alliance Insurance Plc, Ka Koln Asserkuranz Agentur Gmbh, and Torus Insurance Marketing acting as subrogates of Hanbull Motors, unsuccessfully claimed reimbursement from Eukor of the sums they had paid.

6. It is in this context that by bailiff's deeds dated February 8, 2016, the insurance companies, whose names appear at the head of the judgment, summoned Eukor before the Paris Commercial Court for payment of the following sums:
    - EUR 15,908.83 in principal and USD 4,600 in expert fees with interest for the benefit of all the claiming companies;
    - EUR 89,149.01 in principal and USD 22,400 in expert's fees for the (sole) benefit of Axa CS Solutions Assurance;
    - EUR 5,000 in damages for abusive resistance;
    - EUR 7,500 under Article 700 of the Code of Civil Procedure.

7. By judgment of September 17, 2019, the Paris Commercial Court:
    - dismissed the insurance companies' claims
    - found that it did not have jurisdiction and referred the parties to the Seoul District Court,

- ordered the insurance companies to pay Eukor the sum of EUR 7,000 under Article 700 of the Code of Civil Procedure and to pay the costs.

8. By notice dated September 27, 2019, the insurance companies appealed against the judgment of the Paris Commercial Court and requested, by application dated November 15, 2019, the authorisation to serve a summon for a fixed date.

9. After being authorised to do so by order of January 14, 2020, the insurance companies summoned Eukor to appear at a hearing on March 10, 2020, before the International Commercial Chamber.

10. The case was remanded at the request of the parties and was argued on October 19, 2020.

II - CLAIMS OF THE PARTIES:

11. **Under the terms of their submissions no. 4, filed electronically on 5 October 2020, the appellant companies ask the Court to**

Reverse the judgment of the Paris Commercial Court dated September 17, 2019, insofar as it ruled for the plea of lack of jurisdiction and ruling again, in recap

On the voluntary intervention:

Having regard to the merger involving the transfer of the portfolio enforceable under Article L 236-3 of the Commercial Code.

To acknowledge and record the voluntary intervention of XL Insurance Company SE, in the rights of Axa CS Solutions.

On the procedural objections,

1- On the alleged lateness of the summons:

As a principal claim,
Having regard to Article 4 of the Code of Civil Procedure

Declare that the Court is not seised of a possible nullity of the writ of summons, and therefore find that there is no need to give a ruling.
In the alternative,
Having regard to Articles 114 and 117 of the Code of Civil Procedure, Article 1214 of the Civil Code,
- Declare that Eukor Car Carriers Inc. does not justify any grievance with regard to the allegedly late summons, whereas it was duly served, as of February 14, 2020, at its actual headquarters, now 28th Floor, Lotte World tower, 300 Olympicro, Songpa gu, Seoul (South Korea).
- Dismiss it and declare it first of all inadmissible, alternatively ill-founded in its objection of "inadmissibility".

2- On the alleged lapse of time in relation to Article 84 of the Code of Civil Procedure:

Having regard to Article 643, together with Article 84 of the Code of Civil Procedure,
- Declare that Eukor Car Carriers Inc. is ill-founded in its request for the lapsing of the appeal.

3- On the alleged inadmissibility based on Article 85 of the Code of Civil Procedure:

- Declare that the notice of appeal dated September 27, 2019 is properly and sufficiently motivated and that the filing of the submissions on October 1, 2019, moreover within the time limit of Article 84, does not give rise to any grievance, as noted by the order of January 14, 2020 ;

In any event, having regard to Article 126 of the Code of Civil Procedure
Dismiss Eukor's claim and declare it inadmissible, alternatively ill-founded in its objection of "inadmissibility".

4- On the alleged inadmissibility based on Article 920 of the Code of Civil Procedure:

Having regard to this text, in addition to all the above-mentioned texts, articles 15 and 16 of the Code of Civil Procedure

Dismiss all the objections of inadmissibility.

On the reversal of the judgment:

- Find that EUKOR has failed to submit the freight reservations and freight invoices by GEFCO, the transport agent, whose intervention is not seriously disputable.

In any event
Having regard to Article 14 of the Civil Code, declare and judge that it is without fraud and in a legitimate manner that the Commercial Court of Paris was seized.
In view of Article 48 of the Code of Civil Procedure, judge the clause invoked by EUKOR CAR CARRIERS Inc. as unenforceable.

Having regard to the authority of *res judicata* attached to the judgment of June 30, 2020;
Having regard to Article 1355 of the Civil Code,
- Declare EUKOR inadmissible for claiming to be legible a clause identical to one that has already been judged perfectly illegible and in any case unenforceable;
- For these reasons alone, reverse the judgment.
- In any case, declare and judge that the clear evidence of the acceptance of the jurisdiction clause by HANBUL MOTORS, simple notify in 98% of the claims, is not established.

Consequently
- rule that the Commercial Court of Paris has jurisdiction.
- furthermore overturn the Judgment.

Having regard to Article 76 of the Code of Civil Procedure
- note that Eukor Car Carriers Inc. has already made a submission on the merits in the first instance, invite it to do so on appeal and set a timetable accordingly.

On Article 700 of the Code of Civil Procedure :

- Dismiss Eukor Car Carriers Inc's claims.
- Order Eukor Car Carriers Inc to pay the total sum of EUR 15,000 under Article 700 of the CCP.
- Order the Respondent Eukor Car Carriers Inc to pay the costs of the proceedings.

12. **In its final pleadings filed electronically on September 10, 2020, Eukor requests :**

Primarily, on the inadmissibility of the appeal

Having regard to the references in the Court's order of January 14, 2020, authorising the appellants to serve a writ of summons on a fixed date,
-note that the writ of summons was served by the bailiff on February 10, 2020,
- Find that the appellants did not serve the summons before January 31, 2020, as required by the order,
As a consequence,
- Declare inadmissible the appeal of XL Insurance Company SE in the rights of AXA CORPORATE SOLUTIONS ASSURANCE, CNA INSURANCE COMPANY LIMITED, AIG EUROPE LTD, XL INSURANCE COMPANY LTD, ROYAL & SUN ALLIANCE INSURANCE PLC, KA KOLN ASSEKURANZ AGENTUR GMBH and TORUS INSURANCE MARKETING LTD.

Having regard to Article 84 of the Code of Civil Procedure,

- find that the appellant insurance companies have not brought the case to the First President within the 15-day time limit for appealing provided for in Article 84 of the Code of Civil Procedure

Consequently,
- Rule for the lapsing of the notice of appeal of XL Insurance Company SE, in the rights of AXA CORPORATE SOLUTIONS ASSURANCE, CAN INSURANCE COMPANY LIMITED, AIG EUROPE LTD, XL INSURANCE COMPANY LTD, ROYAL & SUN ALLIANCE INSURANCE PLC, KA KOLN SSEKURANZ AGENTUR GMBH and TORUS INSURANCE MARKETING LTD.
Also,
Having regard to Article 85 of the Code of Civil Procedure,
- note the lack of motivation of the notice of appeal filed on September 27, 2019
- note that the appeal submissions were filed on October 1, 2019, after the notice of appeal of September 27, 2019,
As a result,
- Find inadmissible the appeal of XL Insurance Company SE, in the rights of AXA CORPORATION, .
Company SE in the rights of AXA CORPORATE SOLUTIONS ASSURANCE, CAN INSURANCE COMPANY LIMITED, AIG EUROPE LTD, XL INSURANCE COMPANY LTD, ROYAL & SUN ALLIANCE INSURANCE PLC, KA KOLN ASSEKURANZ AGENTUR GMBH and TORUS INSURANCE MARKETING LTD.
Finally,
Having regard to Article 920 of the Code of Civil Procedure
- note that the request for authorisation to serve a fixed date summons was not attached to the writ of summons before the Paris Court of Appeal.
Consequently,
-Declare even more inadmissible the appeal of the companies, XL INSURANCE in the rights of AXA CORPORATE SOLUTIONS ASSURANCE, CNA INSURANCE COMPANY LIMITED, AIG EUROPE LTD, XL INSURANCE COMPANY LTD, ROYAL & SUN ALLIANCE INSURANCE PLC, KA KOLN ASSEKURANZ AGENTUR GMBH and TORUS INSURANCE MARKETING LTD.

In the alternative, on the confirmation of the judgment

Having regard to the jurisdictional clauses contained in the bills of lading,
Having regard to case law,
- Uphold the judgment of the Commercial Court of Paris dated September 17, 2019, insofar as it

allowed the objection of lack of jurisdiction raised by EUKOR,

Consequently,
- Declare that it does not have jurisdiction and refer the parties to the Seoul Civil District Court for further proceedings.
In any event,
-Order t XL INSURANCE in the rights of AXA CORPORATE SOLUTIONS ASSURANCE, CNA INSURANCE COMPANY LIMITED, AIG EUROPE LTD, XL INSURANCE COMPANY LTD, ROYAL & SUN ALLIANCE INSURANCE PLC, KA KOLN ASSEKURANZ AGENTUR GMBH and TORUS INSURANCE MARKETING LTD to pay Eukor Car Carriers INC the sum of EUR 15,000 under Article 700 of the Code of Civil Procedure, under provisional enforcement, and to pay all the costs of the proceedings at first instance and on appeal, which shall be recovered in accordance with the provisions of Article 699 of the Code of Civil Procedure

III - ARGUMENTS OF THE PARTIES:

On the voluntary intervention of XL Insurance Company SE

13. The voluntary intervention of XL Insurance Company SE, as successor to the rights of Axa CS Solutions, which is not contested, shall be acknowledged.

On the procedural pleas raised in defence before any debate on the merits

14. Eukor puts forward three grounds of inadmissibility and a plea of lapsing.

15. In support of its claims, Eukor argues that the judgment delivered on September 17, 2019, was notified to the parties on the same day, the time limit to appeal expired on October 2, 2019. It contests the benefit of the distance period for foreign companies that had elected domicile in France with their Parisian agent Siaci Saint Honoré.

16. In these circumstances, it claims, firstly, that the appellants having failed to attach their set of submissions to the notice of appeal on September 27, 2019, the notice of appeal is inadmissible on the basis of Article 85 of the Code of Civil Procedure; secondly that the writ was sent to the bailiff on February 10, 2020, so that it did not comply with the time limit set by the first president to file a writ by January 31, 2020 at the latest in the order; finally, it claims that the appellants did not attach to the writ of summons served the application (to be authorised to summon at a fixed date) in disregard of paragraph 2 of Article 920 of the Code of Civil Procedure, which is sanctioned by the inadmissibility of the appeal in fixed-day proceedings .

17. Finally, Eukor maintains that the appeal has lapsed on the grounds that the appellants do not establish having filed their application for leave to appeal at a fixed date within the 15-day time limit for appealing provided for in Article 84 of the Code of Civil Procedure.

18. In reply, the appellants state that they have complied with all the formalities required by the appeal procedure of judgments ruling on jurisdiction, in accordance with Articles 84 and 85 of the Code of Civil Procedure.

19. They explain that since the judgment was not notified to their headquarters , even if for some of them the notifications by the Clerk were made at their agent in Paris, the time limit did not run; that in any event the time limit for appealing was extended by two months for companies

with headquarters abroad, which applies to all the appellants that have appealed to gether within a single notice of appeal, so that the time limit would expire on December 2, 2019 if it ran from the day after the date of the judgment; that the notice of appeal dated September 27, 2019 is sufficiently substantiated by the filing of their pleadings on October 1, 2019 within the time limit set out in Article 84 of the Code of Civil Procedure.

20. They state that they submitted to the court three days after the notice of appeal on that date their application in paper form, together with the pleadings, draft summons and and the exhibits, which were too voluminous to be filed by electronic means, and to have filed again their application via electronic mail on November 15, 2019, which was accepted by order of January 14, 2020 by the First President's delegate who, in view of the circumstances, relieved them of any lapse of time, noting that there was no grievance.

21. More specifically, with regard to the lateness of the summons served in Korea, they argue that the court is not seized of any possible nullity of the writ of summons, and request that there be no need to rule on the matter.

22. In the alternative, they explain that they took the necessary steps in right time and that the delay to serve in Korea is justified by internal difficulties encountered by their judicial officer and by the change of address of Eukor which delayed the service.

23. On the plea of inadmissibility for failing to comply with the provisions of Article 920 of the Code of Civil Procedure, the appellants argue that the copy of the application is included in the writ of summons served that is perfect. They argue that otherwise it shall be deemed to be a nullity of form requiring the demonstration of a grievance which is not justified.

Thereupon,

On the reminder of the texts and the procedure

24. It is not disputed that the appeal on jurisdiction is governed by the following texts resulting from the decree n°2017-891 of May 6, 2017, the provisions of which it is worth recalling :

25. Article 83: *"When the judge has ruled on jurisdiction without ruling on the merits of the dispute, its decision may be appealed under the conditions provided for in this paragraph."*
26. Article 84: *"The time limit to appeal shall be fifteen days from the notification of the judgment. The clerk shall notify the parties by registered letter with acknowledgement of receipt. It shall also notify the judgment to their lawyer, in the case of a procedure with mandatory representation. In the event of an appeal, the appellant must, on pain of the notice of appeal lapsing, within the appeal period, refer the matter to the first president with a view, as the case may be, to being authorised to serve a writ of summons for a fixed hearing date or to be given priority in the setting of the hearing date of the case"*.

27. Article 85: "*In addition to the provisions provided for under Articles 901 or 933, as the case may be, the notice of appeal shall specify that it is directed against a judgment on jurisdiction and, on pain of inadmissibility, state the reasons for it, either in the notice of appeal itself or in the submissions attached to that notice.*
Notwithstanding any provision to the contrary, the appeal shall be managed and determined as in the fixed-day procedure if the rules applicable to appeals against judgments given by the court from which the judgment under appeal emanates require the representation by a lawyer, or,

otherwise, as provided for in Article 94."

28. It follows from the combination of Articles 85 and 126 of the Code of Civil Procedure that the failure to state reasons for the appeal, which may give rise to the inadmissibility of the appeal against the judgment ruling on jurisdiction, may be rectified, in matters of procedure with mandatory representation, by the deposit at the clerk's office, before the expiry of the time limit for appealing, by lodging a new reasoned notice of appeal or a statement of claim with reasons for the appeal, addressed to the Court of Appeal.

29. In the present case, the insurance companies, some of which are foreign, have appealed against the judgment of the Commercial Court of Paris ruling on jurisdiction on September 17, 2019 by a dematerialised notice of appeal, dated September 27, 2019, registered under number RG19/18298, supplemented by their pleadings with the attachment of an application seeking the authorisation to serve a fixed date summons and the summons provided for this purpose, filed in electronic form via the RPVA network on November 15, 2019.

30. In this respect, the Court cannot take into account the precedence of the alleged manual filing at the Clerk's office on October 1, 2019, of the application and the summons, on which there is no visa from the Clerk, so that only the application filed on November 15 by RPVA and registered at the Clerk's office on November 20, 2019, under No. RG 19/00504 shall be taken into consideration.

31. By order of January 14, 2020, the appellants were authorised to summon Eukor for a hearing before the international commercial chamber on March 10, 2020.

32. Prior any debate, it shall be observed that the presidential Order which merely gives a hearing date to the appellant , constitutes a measure of judicial administration without effect on the admissibility of the notice of appeal.

On the time limit for appealing

33. Pursuant to Article 84(1) of the Code of Civil Procedure, the time limit for appealing starts from the service of the judgment, that is increased by two months for parties domiciled abroad and must comply with the special provisions for the service abroad.

34. In the present case, there is no evidence that the service was validly made on the foreign and French companies, it being observed that if they had elected domicile for the purposes of the proceedings before the Commercial Court, at the Parisian agent Siaci Saint Honoré, the election of domicile does not imply that the agent is empowered to receive service of the judgment intended for the party itself.

35. The appellants stated in their pleadings, which no document contradicts, that AIG Europe Ltd established in the United Kingdom, Ka Koln GmbH in Germany, Torus Insurance Ltd in the Netherlands and CNA Insurance Ltd had not been served.

36. It follows from the above that without knowing the date of service of the decision to the parties in France and abroad, the time limit for appealing shall be deemed not to have run.

On the inadmissibility for failure to state reasons on the basis of Article 85 of the Code of Civil Procedure

37. The grounds for the appeal by the insurance companies are not contained in the statement of appeal itself.

38. However, it is established that the appellants submitted their pleadings to the Court of Appeal by the RPVA message of November 15, 2019, the subject of which is entitled - Mise en état – RG 19/18298- 15 /11/2019- coda@complément DA - so that the joinder occurred before the expiry of the time limit for appealing, the expiry date of which, for the reasons given above, is not established.

39. This plea of inadmissibility shall therefore be dismissed.

On the inadmissibility of the appeal on the ground of the late sfiling of the summons

40. The appellants have not argued in their written submissions, on the basis of Article 4 of the Civil Code, why there should be no need to rule on the late filing of the summons.

41. The Court is in fact regularly seized of an objection for the inadmissibility of the appeal and not for the nullity of the summons as developed in the respondent's writings, to which it is appropriate to reply.

42. In the present case and on this count, no text provides for inadmissibility for failing to comply with the time-limit set by the order of the First President for service of the summons, which, as indicated above is a measure of judicial administration, which has no effect on the admissibility of the appeal.

43. Consequently, this plea of inadmissibility shall be rejected.

On the inadmissibility of the appeal for failing to comply with the provisions of Article 920 of the Code of Civil Procedure

44. According to Article 85 of the Code of Civil Procedure, notwithstanding any provision to the contrary, the appeal shall be managed and judged as in the case of a fixed date procedure.

45. In the section entitled "Fixed day procedure", Article 920 states that:
“The appellant shall summon the opposing party for the day fixed.
Copies of the application, the order of the first president, and a copy of the notice of appeal endorsed by the clerk or a copy of the notice of appeal in the case mentioned in the third paragraph of Article 919, shall be attached to the summons.
The summons shall inform the respondent that if it fails to appoint a lawyer before the date of the hearing, it shall be deemed to have stuck to its pleas in law at first instance.
The summons shall indicate to the respondent that it may examine at the Clerk's office the copy of the documents referred to in the application and shall summon it to disclose before the date of the hearing any new documen s it intends to submit.”

46. In the present case, the production of the document served on the respondent by the bailiff appointed by the appellants does not show that a copy of the application, which is a separate

document from the order, is among the documents served on Eukor.

47. However, it does not follow from the provisions of Article 920 of the Code of Civil Procedure that the recommendations referred to, and in particular that provided for in paragraph 2, are provided for on pain of inadmissibility of the notice of appeal in the event of failure to comply, it being noted moreover that the provisions do not formally establish a link between this formality and the regularity of the appeal.

48. Moreover, if the procedure of appeal on jurisdiction refers to the fixed-day procedure and to this end to the provisions of Article 920 of the Code of Civil Procedure for the management and the judgment of the appeal, the notice of appeal in this matter is subject to its own specific system set forth in the above-mentioned Articles 84 et seq. and the application is only a procedural modality allowing the appellant to have the first president or his delegate set the day on which the case is to be heard.

49. Finally, the objective of Article 920 of the Code of Civil Procedure, which is centred on complying withcontradiction, to ensure that the respondent is as fully informed as possible in the matter of fixed-day proceedings, is fulfilled in the present case by the document issued which contains the writ of summons, the notice of appeal, the order , thesubmissions of appealing jurisdiction, and the exhibits which clearly and effectively informed Eukor of the hearing date and the issue involved in the debate.

50. For all these reasons, the objection of inadmissibility of the notice of appeal shall be dismissed .

On the lapsing of the notice of appeal

51. For the reasons given above concerning the running of the time limit for appealing, the evidence of a late referral to the First President is not established so that the lapsing of the notice of appeal is not incurred.

On the international jurisdiction of the Paris Commercial Court

52. In support of the international jurisdiction of the Paris court, the appellants rely on Article 14 of the Code of Civil Procedure because of the French nationality of one of the insurance companies, AXA CS, pointing out, moreover, that the bills of lading were signed in Paris with Eukor's Parisian agent, and that, secondly, the case has a serious and certain connection with the Paris Commercial Court.

53. The parties dispute that they have waived their jurisdictional privilege by virtue of the effect of the jurisdiction clause in the bills of lading in favour of the Korean court, arguing that this clause, written in small print on the back of the bill of lading, buried among others, is illegible, does not comply with the provisions of Article 48 of the Code of the Code of Civil Procedure, which requires the clause to be written in very conspicuous characters, so that the clause could not be accepted. They argue in this respect that the Court of Appeal has already ruled in this sense that the clause is illegible in a judgment of June 30, 2020 (Axa cs insurance v Eukor Pôle 2-5 RG 18/17747) which has the force of *res judicata*.

54. In the absence of such a ruling, the parties contest the fact that Eukor can invoke the jurisdiction clause inserted in the bills of lading in the absence of proof of Hanbull Motors' consent in whose rights the insurers are subrogated.

55. They invoke the principle that a jurisdiction clause can only be invoked against the party who was aware of it and who accepted it at the time of the formation of the contract and that it is necessary to investigate the existence of the acceptance of Hanbull Motors, which has not been established in this case.

56. They argue that Hanbull Motors could not have agreed to the clause in the bill of lading, which was formed before the delivery of the vehicles, and that as it was not the shipper, the prior business relationship between Eukor and the Peugeot Citroên automobile companies for the maritime transport of vehicles in Korea is irrelevant in this respect and one cannot assume that it knew of the clause, and even less suggest that it agreed to it.

57. They explain that Hanbull Motors is mentioned as the "notify" on most bills of lading, i.e. the person whom the carrier undertakes to notify of the arrival of the ship and the unloading of the goods is not a party to the contract of carriage even if it collects the originals from the banks, so that by privity of contract, the clause cannot be invoked against it failing to prove its agreement ; as a consignee, the solution is the same except for the infinitely subsidiary consideration that in this case, which only concerns a small number of bills of lading, the consignee succeeds the shipper.

58. On the ground of the illegibility of the clause, they also challenge the application of the Korean law contained in the clause, pointing out that it does not constitute proof of the clause and add in any event that the contract of carriage refers exclusively to the 1924 Brussels Convention in the Paramount 2 clause.

59. In response, Eukor argues that the privilege of jurisdiction set out in Article 14 of the Code of Civil Procedure is a subsidiary rule of jurisdiction which is superseded by the existence of a choice of jurisdiction clause in the bills of lading, invoking its validity and enforceability against the insurers subrogated to the rights of Handbull Motors.

60. As to form, it maintains that according to settled case-law the requirement laid down in Article 48 of the Code of Civil Procedure is not applicable to clauses conferring jurisdiction in international trade matters and that in any case the clause, drafted in accordance with the usual standards in international maritime transport, is entirely understandable and that there is no doubt that Hanbull Motors was aware of it in view of the volume of business over the last 15 years for cargoes loaded in Europe to Handbul Motors in Korea.

61. Finally, it argues that under Korean law, as set out in the jurisdiction clause applicable to the dispute, it is irrelevant whether Hanbul Motors is designated as "notify" or "consignee" on the bills of lading, as it is always the actual consignee of the goods carried and the actual consignee of the goods transported and the bearer of the bills of lading which, according to affidavits under Korean law succeeded to the rights of the shipper so that the jurisdiction clause is enforceable against it.

Thereupon,

62. It is appropriate to recall first the factual framework in which the question of the international jurisdiction of the Paris Commercial Court is raised.

63. The action brought by the insurance companies acting on behalf of Hanbull Motors seek to

establish the contractual liability of the Korean carrier Eukor in connection with various shipments of new vehicles between Belgium and Korea loaded by the French car companies Automobiles Peugeot and Citroën and received by Hanbull Motors in South Korea.

64. Hanbull Motors , whiche name is mentioned on the bills of lading as the notify or final consignee, found that the vehicles were damaged, causing it damages which it was compensated for by the insurers after a joint expert report in Korea.

65. The insurers' action is based on the bills of lading (B/L) written in English, drawn up in Paris via the Parisian agent of the company Eukor, which were produced in support of their claims, in which, in addition to the "Paramount" clause which provides in particular for the application of the Brussels Convention of August 25, 1924, for the unification of certain rules relating to bills of lading – the Hague rules), a jurisdiction and applicable law clause reads as follows:

Article 25. Governing Law Jurisdiction

"The claims arising from or in connection with or relating to this Bill of Lading shall be exclusively governed by the law of Korea except otherwise provided in this Bill of Lading. Any and all action concerning custody or carriage under this Bill of Lading whether based on breach of contract, tort or otherwise shall be brought before the Seoul
Civil District Court in Korea." Translated as follows:

66. It is not disputed that the dispute involving the contractual liability of the carrier under its obligations under the bills of lading with shippers, falls within the contractual scope of the clause.

67. In support of the jurisdiction of the French court, the appellants, recalling the absence of a Franco-Korean convention on jurisdiction, invoke the privilege of nationality provided for in Article 14 of the Civil Code, which states that "A foreigner, even one not residing in France, may be summoned before the French courts, for the performance of obligations contracted by him in France with a French citizen; he may be brought before the French courts for obligations contracted in a foreign country with French nationals".

68. However, Article 14 of the Civil Code, which is not a matter of public policy, does not prevent the application of a jurisdiction clause which waives any privilege of jurisdiction.

69. It is on this ground that Eukor, in order to object to Article 14 of the Civil Code, argues that there is the existence of a jurisdiction clause conferring jurisdiction on the Korean courts, according to the provisions of Article 25 of the bills of lading at issue, the validity and enforceability of which the appellants contest.

Review of the formal validity of the clause

70. In order to exclude the application of this clause, it is ineffective for the appellants to first invoke the authority of *res judicata* of the judgment of the Paris Court of Appeal of June 30, 2020, which ruled that the identical clause was unreadable and, in any event, unenforceable.

71. Indeed, according to Article 1355 of the Code of Civil Procedure, *res judicata* is only applicable to what was the subject of the judgment. It is necessary that the requestbe based on the same cause of action; the claim must be between the same parties and made by them and against them in the same capacity.

72. In the present case, if the facts judged in the judgment of June 30, 2020 (Pôle 2-5 RG 18/17747) are similar in terms of the liability of Eukor in connection with the transport of new Peugeot Citroën vehicles to Korea delivered to Hanbull Motors under the same contractual conditions, the claims are not the same, nor are the parties, only Axa CS being involved in the case, so that the decision is not binding on the court.

73. Secondly, the appellants contest the material conditions of the clause, arguing unsuccessfully that the formal requirements of Article 48 of the Code of Civil Procedure are not met, the clause being illegible and unenforceable in accordance with the consistent case law on the subject.

74. It should be recalled in this regard that clauses extending international jurisdiction are in principle lawful when they do not defeat the mandatory territorial jurisdiction of a French court and are invoked in a dispute of an international nature.

75. As to the form of the jurisdiction clause, the usual criteria of French law shall not be applied but its conformity with the uses widely known and regularly complied with in international trade shall be verified.

76. It is therefore in the light of these principles established by the case law that it is up to the Court to verify that the clause is valid in the relationship between the carrier and the shipper, the parties to the bill of lading before verifying its enforceability against the insurers subrogated to the rights of Hanbull Motors.

77. In this case, a jurisdiction clause is usually inserted in bills of lading by international maritime carriers, in the English language, giving jurisdiction to the courts of the jurisdiction in which the carrier has its registered office, what the transport professionals are fully aware of . This is even more established by the production of bills of lading of other international maritime carriers filed in the debate.

78. In the present case, it has been established that Eukor, which has transported over the last fifteen years cargoes loaded in Europe by Automobiles Peugeot and Citroën to Hanbull Motors under the same contractual conditions as the disputed shipments has regularly made use of it, it being observed that the disputed clause inserted in the text on the back of the duplicate bills of lading is legible in a typography similar to that of other clauses inserted in other bills of lading, so that there is no reason to disregard the clause on this ground.

79. The Court shall therefore find that the form of the jurisdiction clause inserted in the bills of lading on which the claim is based is valid.

Review of the enforceability of the jurisdiction clause:

80. The appellants maintain that the Court must determine whether Hanbull Motors, as "notify" or final consignee, has succeeded to the shipper's rights and obligations arising from the bill of lading in accordance with the French domestic rules of privity of contract and that, failing that, it must assess whether it has agreed to the jurisdiction and applicable law clause.

81. It is common ground that the determination of the effects of the bill of lading on the consignee of the goods must be made in accordance with the law applicable to the contract of carriage.

82. It is therefore necessary to first determine the applicable law and then to assess whether, in application of that law, Hanbull Motors takes over the rights of the shipper and only if it does not, to assess its consent.

83. According to Article 3 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of June 17, 2008, on the law applicable to contractual obligations, known as Rome I, which asks for universal application, the contract is governed by the law chosen by the parties, which in this case is Korean law, according to the terms of the bill of lading contract.

84. Consequently, the determination of the effects of the bill of lading shall be assessed under Korean law with respect to Hanbull Motors.

85. Contrary to what the appellants claim, the application of Korean law is not precluded by clause 2 Paramount insofar as the Brussels Convention of August 25, 1924, is limited to regulating only certain aspects relating to the carrier's liability, the other aspects being still governed by the applicable law, in this case Korean law.

86. According to Korean law, established by legal advice or opinions, the content of which has not been challenged by the appellants, and in particular Article 140-1 of the Korean Commercial Code (KCC), "*when the goods have arrived at their destination, the consignee acquires the same rights as those of the shipper"* and Article 140-2 of the KCC*, "when the consignee demands delivery of the goods carried after their arrival at destination, its rights prevail over those of the shipper".*

87. According to the opinion issued *"the B/L is binding on the holder of the B/L even though the contract of carriage has not been concluded between the holder of the B/L and the carrier, and the consignee or holder of the bill of lading undertakes the obligations arising from the term of the B/L as soon as he requests delivery of the goods"* and *"[...] concerning the nature of the insurer's subrogation, the rights and obligations of the consignee or lawful holder of the B/L are transferred to the insurer who is subrogated in his rights, the insurer putting himself in the place of the insured in the exercise of his right of subrogation".*

88. In the present case, Hanbull Motors, which took delivery of the vehicles and suffered the loss, irrespective of its capacity as "notify" or consignee mentioned on the bills of lading, is the actual consignee of the goods entrusted by the shippers to the carrier by virtue of the bills of lading which it carried.

89. It is clear from the above that Hanbull Motors, whether it is alternatively a "notify" or a consignee of the vehicles entrusted to it, is considered under Korean law as the successor to the shipper's rights, so that the jurisdiction clause designating the Korean jurisdiction is enforceable against it and Eukor has merits in opposing it to the insurers who have received their rights and obligations from Hanbull Motors.

90. In the light of these findings and assessments, the jurisdiction clause prevailing on Article 14 of the Civil Code, the decision to refer the appellants for further consideration has merits and shall therefore be upheld.

Costs and expenses;

91. The insurance companies, which are unsuccessful in their appeal, shall be ordered to pay the costs of the proceedings.

92. In addition, they must be ordered to pay to Eukor, which incurred costs to assert its rights, compensation under Article 700 of the Code of Civil Procedure, which it is fair to set at the total sum of EUR 7 000.

ON THESE GROUNDS, THE COURT HEREBY

1. Notes the voluntary intervention of XL Insurance Company SE, which has taken over the rights of Axa CS Solutions;

2. Finds the appeal admissible;

3. Finds that the notice of appeal has not lapsed ;

4. Upholds the judgment rendered on September 17, 2019 by the Commercial Court in all its provisions;

5. Orders XL Insurance Company SE, as successor in law to Axa CS Solutions Assurance, CNA Insurance Company Limited, Aig Europe Ltd, XL Insurance Company Lt, Insurance Company Lt, Royal & Sun Alliance Insurance Plc, Ka Koln Asserkuranz Agentur Gmbh, and Torus Insurance Marketing, to pay to Eukor Car Carriers Inc the total sum of EUR 7,000 under Article 700 of the Code of Civil Procedure;

6. Orders XL Insurance Company SE, as successor in law to Axa CS Solutions Assurance, CNA Insurance Company Limited, Aig Europe Ltd, XL Insurance Company Lt, Royal & Sun Alliance Insurance Plc, Ka Koln Asserkuranz Agentur Gmbh, and Torus Insurance Marketing to pay the costs of the proceedings.

Clerk
C. GLEMET

President
F. ANCEL