

SWITZERLAND

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Asbestos Litigation Liability based on Reliance

Asbestos Litigation



Asbestos Litigation

- Pro Memoria:
ECHR Decision *Howald Moor and Others v. Switzerland*
of 11 March 2014: Period of Limitation too short in cases
of injuries with long latency period
- Legislation:
Revision Period of Limitation for Personal Injuries
30 – 20 – 10 years?
- Settlement Fund
Asbestos Victims since 2006
Waive right to file Civil Action

Liability based on Reliance

Liability of an ISO Certification Agency

Swiss Federal Court 142 III 84 of 2 February 2016



Facts

- D Company - an ISO certificated international Broker in foreign exchange trading - forwarded funds of its clients to the Spanish Broker Agency E
- E's transactions investments however were fictitious based on a Ponzi Scheme
- After both Brokers went bankrupt the damaged investor sued the ISO Certification Company
- The investor claimed that the meaning of such ISO Certification was to promote client trust in the certificated D Company

Judgment (1/2)

- Federal Court rejects the claim
- Liability based on Reliance
 - has been developed as an additional basis for liability between contract and tort
 - may not be expanded to a liability towards anyone
 - can not be used to undermine the concept of contract
 - needs sufficiently concrete and specific expectations

Judgment (2/2)

- Certification Company has to assume that D would use the certification to acquire clients
- Relevance of what was effectively the material object of certification
- Conclusion: Certification of an established quality management system by itself does not inspire legally relevant trust in repayment of investments

Commentary 1

- Concept of Liability based on Reliance recognized in Switzerland for about 20 years
- Refining the principles of *culpa in contrahendo* and applying them to comparable constellations

Commentary 2

- + Includes liability of individuals who...
 - ...in the context of contractual negotiations between third parties
 - ...provide information about one of the parties or their services
 - ...and thus influence the conclusion of the contract

Commentary 3

- Excludes liability...
 - ...based on reliance of a voluntary performance of services
 - ...if the relying party has not secured this performance by contract
 - ...except for situations where the prerequisites of freedom of contract are not present

Commentary 4

- How to handle the general problem of liability for information in an appropriate way?
- Draft Common Frame of Reference
VI. – 2:207: Loss upon reliance on incorrect advice or information
Loss caused to a person as a result of making a decision in reasonable reliance on incorrect advice or information is legally relevant damage if:
 - (a) the advice or information is provided by a person in pursuit of a profession or in the course of trade; and*
 - (b) the provider knew or could reasonably be expected to have known that the recipient would rely on the advice or information in making a decision of the kind made.*