Case No: HT-2015-000194
Neutral Citation Number: [2015] EWHC 2887 (TCC)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice
Rolls Building, 7 Rolls Buildings
London EC4A 1NL

Date: 13 November 2015

Before :

MR. JUSTICE EDWARDS-STUART

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Between :

1)	**Iveco SpA**	**Claimants**
2)	**Iveco Limited**	
	- and -	
	Magna Electronics Srl (formerly Italamec Srl	**Defendant**

- -
- -

Noel Dilworth Esq (instructed by **Clyde & Co LLP**) for the **Claimants**

Miss Marie Louise Kinsler (instructed by **DWF LLP**) for the **Defendant**

Hearing dates: 28th July, 13 November 2015

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Judgment

Mr. Justice Edwards-Stuart:

Introduction

1.
This is an application by the Defendant to strike out the Claimants' claims on the grounds that the courts of England and Wales have no jurisdiction over the claims and that the Defendant should be sued in Italy, where it is registered.

2.
The claims under consideration are for contribution under the Civil Liability (Contribution) Act 1978 in respect of the Claimants' liability to the owners of property that was damaged in a number of fires that occurred in England and Wales during 2005 and 2006. The claims by the First Claimant in contract and tort, and by the Second Claimant in tort, were abandoned during the course of the hearing and so in this judgment I need say no more about them. For the avoidance of doubt, there is no allegation of any contract between the Second Claimant and the Defendant.

3.
The outcome of the application depends on the application of Articles 7 and 8 of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. It is generally known as Brussels I Recast.

4.
The claimants are, respectively, the manufacturer of commercial vehicles in Italy and the distributor of those vehicles in the United Kingdom.

5.
The Claimants were represented by Mr. Noel Dilworth, instructed by Clyde & Co, and the Defendant was represented by Miss Marie Louise Kinsler, instructed by DWF LLP.

Background

6.
The following summary of the relevant facts is taken largely from the Claimants' skeleton argument. Some of the vehicles manufactured by the First Claimant ("Iveco Italy") incorporated a grid heater relay system designed and manufactured by the Defendant and of these vehicles some were imported to the United Kingdom by the Second Claimant ("Iveco UK").

7.
In March/April 2005 a fault was identified in the relay systems supplied by the Defendant following reports of a number of incidents in which the relay system had malfunctioned and overheated. The cause of the fault was unknown but it was decided by the Claimants' that the relay systems should be replaced altogether rather than repaired or modified (if that was possible).

8.
However, in spite of the discovery of the defect a number of vehicles overheated and caught fire, in turn setting fire to the commercial premises in which they happened to be parked. The subject matter of these claims are fires which occurred at the premises of three English companies: CB Transport Refrigeration Ltd; Alloy Bodies Ltd; and STS Flooring Distributors Ltd ("STS"). Each of these companies sued, amongst others, the Claimants, who settled the claims by the payment of sums of money to the relevant claimants.

9.
Each of the Claimants contends that the Defendant was also liable in tort to the original claimants and therefore claims contribution in respect of the settlement of the claims made against them. The issue, therefore, is whether the courts of England and Wales have jurisdiction under the Regulation to hear and determine these claims.

The Civil Liability (Contribution) Act 1978 ("the Act")

10.
Section 1 of the Act includes the following provisions:

"(1) Subject to the following provisions of this section, any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise).

...

(4) A person who has made or agreed to make any payment in bona fide settlement or compromise of any claim made against him in respect of any damage (including payment into court which has been accepted) shall be entitled to recover contribution in accordance with this section without regard to whether or not he himself is or ever was liable in respect of the damage, provided, however, that he would be liable assuming that the factual basis of the claim against him could be established.

...

(6) References in this section to a person's liability in respect of any damage are references to any such liability which has been or could be established in an action brought against him in England and Wales by or on behalf of the person who suffered the damage; but it is immaterial whether any issue arising in any such action was or would be determined (in accordance with the rules of private international law) by reference to the law of a country outside England and Wales."

11.
Section 2 provides that

"(1) Subject to subsection (3) below, in any proceedings for contribution under section 1 above the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage in question.

(2) Subject to subsection (3) below, the court shall have power in any such proceedings to exempt any person from liability to make contribution, or to direct that contribution to be recovered from any person shall amount to a complete indemnity.

(3) Where the amount of the damages which has or might have been awarded in respect of the damage in question in any action brought in England and Wales by or on behalf of the person who suffered it against the person from whom the contribution is sought was or would have been subject to -

(a) any limit imposed by or under any enactment or by any agreement made before the damage occurred;

(b) any reduction by virtue of section 1 of the Law Reform (Contributory Negligence) Act 1945 or section 5 of the Fatal Accidents Act 1976; or

(c) any corresponding limit or reduction under the law of a country outside England and Wales;

the person from whom the contribution is sought shall not by virtue of any contribution awarded under section 1 above be required to pay in respect of the damage a greater amount than the amount of those damages as so limited or reduced."

12.
In his speech in Royal Brompton Hospital v Hammond [2002] UKHL 14, Lord Bingham explained the history of the law of contribution and the background to the Act and then summarised the position at [6] in the following terms:

"When any claim for contribution falls to be decided the following questions in my opinion arise: (1) what damage has A suffered? (2) Is B liable to A in respect of that damage? (3) Is C also liable to A in respect of that damage or some of it? At the striking out stage the questions must be recast to reflect the rule that it is arguability and not liability which then falls for decision, but their essential thrust is

the same. I do not think it matters greatly whether, in phrasing these questions, one speaks (as the 1978 Act does) of 'damage' or of 'loss' or 'harm', provided it is borne in mind that 'damage' does not mean 'damages' (as pointed out by Roch LJ in Birse Construction Ltd v Haiste Ltd (Watson and others, third parties) [1996] 1 WLR 675 at 682) and that B's right to contribution by C depends on the damage, loss or harm for which B is liable to A corresponding (even if in part only) with the damage, loss or harm for which C is liable to A. This seems to me to accord with the underlying equity of the situation: it is obviously fair that C contributes to B a fair share of what both B and C owe in law to A, but obviously unfair that C should contribute to B any share of what B may owe in law to A but C does not."

13.
In this judgment I shall from time to time adopt Lord Bingham's lettering when describing the roles of the parties. In this case A represents each of the original claimants whose premises were damaged by a fire caused, it was alleged, by the defective engine grid heater relay manufactured by the Defendant. Thus in these contribution proceedings that is the damage in suit. Where appropriate, I shall refer to Iveco UK as B1 and Iveco Italy as B2. C is, of course, the Defendant.

14.
Taking the claim by Iveco UK first, it was alleged to be liable to A on the ground, amongst others, of its negligence in failing properly to implement the recall procedure, its failure to warn A of the defect in the lorry and for failing to take reasonable care to ensure that the lorry was free of known or foreseeable defects when it was sold by Iveco UK. [1] There was no allegation of any contract between A and B or between A and C. In each case the claims by A against B1 or B2, in other words Iveco UK and Iveco Italy, were based on a breach of a duty of care in tort. So far as Iveco UK was concerned, those breaches were alleged to have occurred in the United Kingdom: Iveco UK was sued in its capacity as an importer, supplier and distributor of commercial vehicles. It was irrelevant to the claim by A against Iveco UK whether the vehicle was manufactured in Italy or, say, Belgium.

15.
Thus the breaches of duty alleged by A against Iveco UK all occurred within the United Kingdom.

16.
Turning to Iveco Italy, the claims by A were based on negligent design or manufacture of the lorries in Italy and for failing to communicate relevant service information about the vehicles sold to Iveco UK and/or Iveco dealers in the UK and/or the UK Vehicle and Operator Services Agency ("VOSA"). Thus the breaches of duty alleged were committed primarily in Italy but also, possibly, in the United Kingdom (for example, allegedly giving inaccurate information to VOSA).

17.
A further point, which only really emerged in the course of the hearing, is that the payments in settlement of the claims by A were made by Iveco UK. It seems that no money was paid by Iveco Italy. This was not subject of any evidence: the court was informed of this by counsel on instructions. [2] If this is correct, then Iveco Italy has no claim for contribution against the Defendant, C, because it has paid no money in respect of any potential liability to A. However, this was not, understandably, a ground relied on by the Defendant in this application but, if it is correct, it will mean that Iveco Italy may have to discontinue its claim against the Defendant. Accordingly any conclusions that I reach in respect of Iveco Italy may turn out to be entirely academic.

Regulation 1215/2012 ("Brussels I Recast")

18.
It is common ground that the issue of jurisdiction is to be determined by reference to this regulation. By Article 4 a defendant is entitled to be sued in the country of its domicile unless one or other of the provisions of Articles 7 and 8 apply so as to confer jurisdiction on the courts of another state.

19.
Before turning to those two articles I should mention two paragraphs of the preamble to the regulation to which I was referred: paragraphs (15) and (16). These are as follows:

“(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant’s domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(16) In addition to the defendant’s domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in the court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.”

20.
Under the heading “Special jurisdiction”, in Section 2 of the regulation, Articles 7 and 8 provide, so far as is relevant, as follows:

“ Article 7

A person domiciled in a Member State may be sued in another Member State:

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

…

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

…

Article 8

A person domiciled in a Member State may also be sued:

(1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

(2) as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seized of the original proceedings …"

The claim for contribution by Iveco UK (B1) against the Defendant (C)

Article 7(1)

21.
Miss Kinsler submitted that Article 7(1) applied to the claims in tort since "… the legal basis for the claim is for breach of rights and obligations which are based in a contract". That submission was founded on the decision of the Court of Justice in Case C - 548/12, Brogsitter v Fabrication de Montres Normandes.

22.
In that case Mr. Brogsitter, a German national, sued the defendant in the German courts to prevent the defendant from developing and marketing products in its own name in breach of the terms of a contract by which the defendant was said to have agreed to work exclusively for Mr. Brogsitter. However, Mr. Brogsitter sued in tort for breach of business confidentiality, fraud and breach of trust. The defendant was domiciled in France.

23.
Miss Kinsler relied in particular on the following paragraphs of the judgment:

"18. It should also be pointed out that it is settled case-law that the concept 'matters relating to a contract' and 'matters relating to tort, delict or quasi-delict' within the meaning, respectively, of Article 5(1)(a) and (3) of Regulation No 44/2001, must be interpreted independently, by reference to the regulation's scheme and purpose, in order to ensure that it is applied uniformly in all the Member States (see, inter-alia, Case C - 147/12 OFAB [2013] ECR, paragraph 27). Those concepts cannot therefore be taken to refer to how the legal relationship in question before the national court is classified by the relevant national law.

...

20. In that regard, it is apparent from settled case-law that the concept of 'matters relating to tort, delict or quasi-delict' within the meaning of Article 5(3) of Regulation No 44/2001 covers all actions which seek to establish the liability of the defendant and which do not concern 'matters relating to a contract' within the meaning of Article 5(1)(a) of the regulation (see, inter alia, Case 189/87 Kalfelis [1988] ECR 5565, paragraph 17).

21. In order to determine the nature of the civil liability claims brought before the referring court, it is important first to check whether they are, regardless of their classification under national law, contractual in nature (see, to that effect, Case C-167/00 Henkel [2002] ECR I-8111, paragraph 37).

22. It is apparent from the order for reference that the parties to the main proceedings are bound by a contract.

23. However, the mere fact that one contracting party brings a civil liability claim against the other is not sufficient to consider that the claim concerns ‘matters relating to a contract’ within the meaning of Article 5(1)(a) of Regulation No 44/2001.

24. That is the case only where the conduct complained may be considered a breach of contract, which may be established by taking into account the purpose of the contract.

25. That will a priori be the case where the interpretation of the contract which links the defendant to the applicant is indispensable to establish the lawful or, on the contrary, unlawful nature of the conduct complained of against the former by the latter.

26. It is therefore for the referring court to determine whether the purpose of the claims brought by the applicant in the case in the main proceedings is to seek damages, the legal basis for which can reasonably be regarded as a breach of the rights and obligations set out in the contract which binds the parties in the main proceedings, which would make its taking into account indispensable in deciding the action .

27. If that is the case, those claims concern ‘matters relating to a contract’ within the meaning of Article 5(1)(a) of Regulation No 44/2001. Otherwise, they must be considered as falling under ‘matters relating to tort, delict or quasi-delict’ within the meaning of Article 5(3) of Regulation No 44/2001.

...

29. Therefore, the answer to the question referred is that civil liability claims such as those at issue in the main proceedings, which are made in tort under national law, must nonetheless be considered as concerning ‘matters relating to a contract’ within the meaning of Article 5(1)(a) of Regulation No 44/2001, where the conduct complained of may be considered a breach of the terms of the contract, which may be established by taking into account the purpose of the contract.”

(My emphasis)

Articles 5(1)(a) and 5(3) were the predecessors of Articles 7(1)(a) and 7(2), respectively.

24.
On the facts of that case I would have thought that no other conclusion was available. It seems to me that Mr. Brogsitter was effectively dressing up as a claim in tort what was effectively a claim based on breaches of contract. So far as Iveco UK is concerned, there is no relevant contract. I did not understand Miss Kinsler to submit that Iveco Italy was in some way acting as an agent for Iveco UK when entering into the contract with the Defendant. In my view any such submission would not be tenable: there is nothing unusual or artificial about large corporations carrying on business through separate legal entities registered in the different states in which they operate. There is no material in the papers to suggest that when it entered into the contract to purchase the relay systems from the Defendant Iveco Italy was in some way acting as agent for Iveco UK. On the contrary, the evidence served in the application shows that the Iveco companies operated at arms’ length and that vehicles manufactured by Iveco Italy and fitted with components supplied by the Defendant were also sold to other Iveco subsidiaries or directly to the market by Iveco Italy.[3] The evidence served on behalf of the Claimants was to the effect that title to the vehicles was transferred from Iveco Italy to Iveco UK on completion of production but prior to shipping to the United Kingdom (paragraph 11 of the second witness statement of Mr. Plumley).

25.
Accordingly, this application must be approached on the basis that there was no contractual relationship between Iveco UK and the Defendant in connection with the provision of the relay systems. Thus Iveco UK has no cause of action in contract against the Defendant.

26.
Miss Kinsler relied also on the decision of the Court of Justice in Case - 189/87, Kalfelis v Bankhaus Schroder. The claimant entered into a number of spot and futures transactions with the defendant bank for which he paid DM 344,868. His claim was based on a contractual liability to provide information and, in tort, was based on breach of good faith. There was also an allegation of unjust enrichment. The paragraphs of the judgment upon which the argument was concentrated were paragraphs 17-20, in which the Court said:

“17. In order to ensure uniformity in all the Member States, it must be recognised that the concept of ‘matters relating to tort, delict and quasi-delict’ covers all actions which seek to establish the liability of a defendant and which are not related to a ‘contract’ within the meaning of Article 5 (1).

18. It must therefore be stated in reply to the first part of the second question that the term ‘matters relating to tort, delict or quasi-delict’ within the meaning of Article 5 (3) of the Convention must be regarded as an independent concept covering all actions which seek to establish the liability of the defendant and which are not related to a ‘contract’ within the meaning of Article 5 (1).

19. With respect to the second part of the question, it must be observed, as already indicated above, that the ‘special jurisdictions’ enumerated in Articles 5 and 6 of the Convention constitute derogations from the principle that jurisdiction is vested in the courts of the State where the defendant is domiciled and as such must be interpreted restrictively. It must therefore be recognised that a court which has jurisdiction under Article 5 (3) over an action in so far as it is based on tort or delict does not have jurisdiction over that action in so far as it is not so based.

20. Whilst it is true that disadvantages arise from different aspects of the same dispute being adjudicated upon by different courts, it must be pointed out, on the one hand, that a plaintiff is always entitled to bring his action in its entirety before the courts for the domicile of the defendant and, on the other, that Article 22 of the Convention allows the first court seised, in certain circumstances, to hear the case in its entirety provided that there is a connection between the actions brought before the different courts.”

27.
Mr. Dilworth referred me to the translations of paragraph 19 in the French, Italian, Spanish and German texts in order to emphasise the point that the fact that a claim was in part based on contractual obligations did not prevent the court from dealing with those aspects of the claim that were based on tort or delict. The French, Italian and Spanish texts appeared to reinforce the submission. I was not able to derive any assistance from the German text.

28.
I did not find this case to be of much assistance in the context of the present claims. Since, so far as the claim by Iveco UK is concerned, there is no contract upon which it could have brought a claim against the Defendant, the problem raised by the facts of Kalfelis does not arise.

29.

Miss Kinsler appeared to found her submissions on the fact that since the defective relays were the subject of a contract between Iveco Italy and the Defendant everything that followed was “related to a contract”. If this argument is sound, then the application of Article 7(2) would be severely restricted: in the vast majority of product liability cases, the defective product will have been the subject of a contract of sale or hire somewhere along the line. It seems to me, as a matter of construction, that the reference to “a contract” in Article 7(1)(a) must be to a contract between the claimant and the defendant, or a situation very close to it - for example, where one of the contracting parties is, or is effectively, acting as agent for one of the parties to the litigation. In my view, for the reasons that I have already given, no such situation exists in the case of Iveco UK.

Article 7(2)

30.
If the claim for contribution by Iveco UK is characterised as a matter “relating to tort, delict or quasi-delict”, then jurisdiction is determined by the place where the harmful event occurred. On the facts of this case I would have had no hesitation in concluding, in the absence of any authority to the contrary, that the “harmful event” in question was each of the fires that caused damage to A’s premises in England, so that England is the relevant place.

31.
However, Miss Kinsler submitted that, in the context of a potential claim in tort by A against either B or C, England was not the place where the harmful event occurred. It is common ground that the “place where the harmful event occurred” encompasses both the place where the event giving rise to the damage occurred and the place where the damage occurred. Miss Kinsler submitted, correctly in my view, that the event giving rise to the damage was in this case the negligent manufacture of the relay system at the Defendant’s factory in Italy. I did not understand that proposition to be disputed.

32.
The issue between the parties is as to the place where the damage occurred. Miss Kinsler submitted that the damage occurred when the allegedly defective components were delivered to Iveco Italy or, alternatively, when the relay systems were incorporated into the vehicles at Iveco Italy’s factory in Italy. Mr. Dilworth submitted that the relevant damage was that sustained in the fires which occurred in England and which were caused by the defective relay systems.

33.
If Miss Kinsler’s submission is correct, then it is fatal to the claims for contribution because by section 1(6) of the Act references to a person’s liability are references to any such liability which could be established in an action brought against him in England and Wales by the person who suffered the damage. If either B1 or C could not be sued by A England and Wales in respect of damage suffered by A because in respect of its claim the harmful event occurred in Italy, then B1 cannot maintain a claim in contribution against C.

34.
The first case upon which Miss Kinsler relied was the decision of the Court of Justice of the European Union in Case - 21/76, Bier v Mines de Potasse. That case concerned the discharge by the defendant of chlorides into the Rhine at Mulhouse, France. The claimant, a nursery garden in the Netherlands, used water that came predominantly from the Rhine to water its seed beds. The high salinity of the water caused by the defendant’s discharge of chlorides into the river in France damaged those seed beds. The court held that “the place where the harmful event occurred” was not only the place where the damage occurred (in this case the Netherlands) but also the place where the event giving rise to

that damage occurred (in this case, Mulhouse). The result was that the defendant could be sued, at the option of the claimant, in the courts of either country.

35.
I do not see how the Mines de Potasse decision assists Miss Kinsler because if the event giving rise to the damage occurred in Italy and the place where the damage occurred was England, then A had the option of suing C in either England, where the damage occurred, or Italy where the event giving rise to that damage occurred. Since in that case there was no intermediate party who suffered any damage, actual or potential, the decision does not throw any light on the question in this case as to the place where the damage occurred.

36.
As I have already noted, Miss Kinsler's argument was that the damage occurred when the allegedly defective components were delivered to Iveco Italy and/or incorporated into the Iveco vehicles in Italy. All subsequent "damage" was she submitted, at best, indirect or consequential and, as such, insufficient to found jurisdiction.

37.
In support of this submission Miss Kinsler relied on the decision of the Court of Justice in Case - 364/93, Marinari v Lloyds Bank. The issue was whether the claimant, an Italian national, could sue the bank in Italy following the sequestration of a substantial amount of promissory notes in England. The claimant claimed not only the face value of the promissory notes but also consequential losses that he had sustained in Italy. The court held that the place where the harmful event occurred could not be construed so extensively as to encompass any place where the adverse consequences could be felt of an event which had already caused damage in another place. Again, I consider that this decision throws no light on the question of where the damage occurred in this case. This is not a case where A suffered some damage in member state X and then suffered further damage in member state Y.

38.
Miss Kinsler then relied on Case C - 220/88, Dumez France v Hessische Landesbank. This was a case in which parent companies sought to recover losses which were the consequences of harm suffered by other persons, namely their subsidiaries, who were direct victims of the harmful act. The claimants sought compensation in the French courts for damage which they claimed to have suffered as a result of the insolvency of their subsidiaries established in Germany, which was brought about by the suspension of a property development project in Germany because of the cancellation by the defendant German banks of the loans granted to the main contractor.

39.
The claimants submitted that the place where the harmful event occurred in the case of a victim who has sustained damage as a consequence of the loss suffered by the initial victim was the place where his interests were adversely affected. In that case the claimants were French companies and so the place of the financial loss which they suffered following the insolvency of their subsidiaries was the state in which they had their registered offices, namely France.

40.
At paragraphs 20-22 of its judgment the Court said this:

"20. It follows from the foregoing considerations that although, by virtue of a previous judgment of the Court (in Mines de Potasse d'Alsace , cited above), the expression 'place where the harmful event occurred' contained in Article 5(3) of the Convention may refer to the place where the damage

occurred, the latter concept can be understood only as indicating the place where the event giving rise to the damage, and entailing tortious, delictual or quasi-delictual liability, directly produced its harmful effects upon the person who is the immediate victim of that event.

21. Moreover, whilst the place where the initial damage manifested itself is usually closely related to the other components of the liability, in most cases the domicile of the indirect victim is not so related.

22. It must therefore be stated in reply to the question submitted by the national court that the rule on jurisdiction laid down in Article 5(3) of the Convention cannot be interpreted as permitting a plaintiff pleading damage which he claims to be the consequence of the harm suffered by other persons who were direct victims of the harmful act to bring proceedings against the perpetrator of the act in the courts of the place in which he himself ascertained the damage to his assets."

41.
A short answer to Miss Kinsler's submission based on this authority is that neither Iveco UK in these proceedings nor A in each of the original claims has asserted that the harm suffered by A as a result of each of the fires was the consequence of harm suffered by a separate person who was a direct victim of the harmful act. But a longer answer is that no one did suffer any damage prior to the occurrence of each of the fires. It is true that, if Iveco Italy had discovered the defects in the relay systems before it sold the vehicles, it would have suffered a loss in that it would have had to replace the defective relay systems. But this never happened. Similarly, Iveco UK suffered a potential loss in that it purchased vehicles which contained a serious defect, but since the vehicles were sold on at the agreed price in ignorance of the defect, it suffered no loss. It seems to me to be highly artificial to say that the fires were the consequence of harm suffered by either Iveco Italy or Iveco UK: apart from anything else, as a matter of causation the fires were a consequence of the negligent manufacture of the relay system by the Defendant and not the result of any intermediate loss suffered by Iveco Italy or Iveco UK. Indeed, if either of those companies had discovered the defect before selling the lorry in question and thereby sustained the financial loss represented by the cost of replacing the defective relay system, the subsequent fire would never have occurred and so A would never have suffered a loss.

42.
Finally, both sides relied on the more recent decision of the Court of Justice in Case C - 189/08, Zuid-Chemie v Philippo's Mineralenfabrik NV/SA. This case concerned the manufacture by the defendant in Belgium of an ingredient for fertiliser called "micromix". The claimant, who purchased the micromix from a Dutch seller, took delivery of the product directly from the factory of the manufacturer in Belgium (not the seller) and then brought it to its factory in the Netherlands where it was processed in order to manufacture fertiliser. Because the cadmium content of the micromix was too high the fertiliser was rendered unusable. The court rejected the argument that the claimant suffered the damage when it took delivery in Belgium of the defective micromix, and held that it suffered the damage at its factory in the Netherlands where it processed the micromix. That processing was held to be a normal use of that product.

43.
I am unable to see how this decision assists the Defendant. The court held that the place where the event giving rise to the damage occurred was Belgium where the defective micromix was manufactured, but this was immaterial if the damage occurred in the claimant's factory in the Netherlands. The court described the first question as being whether "the place where the harmful event occurred" was the place where the defective product was delivered to the purchaser (Belgium)

or the place where the initial damage occurred following normal use of the product for the purpose for which it was intended.

44.
Applying that approach the court held that the place where the damage occurred was the place where the event which may give rise to the liability in tort, delict or quasi-delict resulted in damage (at paragraph 26). The court then said this, at paragraph 29:

“Regard being had to the foregoing, the place where the damage occurred cannot be any other than Zuid-Chemie’s factory in the Netherlands where the micro mix, which is the defective product, was processed into fertiliser, causing substantial damage to that fertiliser which was suffered by Zuid-Chemie and which went beyond the damage to the micro mix itself.”

45.
This passage seems to echo the rule in English law the damage in the form of pure economic loss does not give rise to a liability in tort. In the case of the incorporation of a defective component supplied by a third party into a larger product, no liability of the third party can arise in tort unless and until that defective component causes physical damage to some other product. In the Zuid-Chemie case, that damage occurred when the micromix was incorporated as an ingredient into the fertiliser causing substantial damage to the fertiliser. In the present case, no damage was caused to the lorry by the incorporation of the relay system: the damage occurred when the defective relay caused a fire.

46.
For these reasons I reject the submission that Italy was the place where the relevant damage occurred. Accordingly, irrespective of whether or not the event giving rise to the damage occurred in Italy, a claimant in A’s position had the option of suing both Iveco UK and the Defendant in tort in the English courts because England was the place where the damage occurred.

Article 8(2)

47.
Miss Kinsler had a further argument to the effect that claims for contribution are contemplated by Article 8(2) which, she submitted, made specific provision for such claims.

48.
In my view, as a matter of construction, Article 8(2) is not directed to claims for contribution as such, although such claims may fall within it. Article 8(2) is in my judgment a provision directed to the avoidance of parallel proceedings in different jurisdictions in respect of the same subject matter. It is a measure designed to achieve the pragmatic result of having all the issues raised by a dispute or related disputes heard and determined together. I consider that there is nothing in Article 8(2) which prevents jurisdiction in a claim for contribution being determined by reference to Article 7(2) if it applies. In my view Article 7(2) does apply because in this case the liability of both B1 and C to A arises in tort alone.

49.
Miss Kinsler properly drew my attention to a decision of Jackson J (as he then was) in Hewden Tower Cranes Ltd v Wolkrann GmbH [2007] 2 Lloyd’s Rep 138, in which it was held that a claim for contribution under the Act fell within Article 5(3), the predecessor to Article 7(2). The case concerned the collapse of a tower crane operated by the claimant, Hewden, which had been (effectively) hired from the defendant. Jackson J summarised the position as follows:

“30. From this review of authority I derive two general propositions: first, the term ‘matters relating to tort, delict or quasi-delict’ in article 5(3) is an autonomous concept of European law which is wider than the English law of tort; secondly, in determining whether and how article 5(3) applies it is necessary to look at the substance of the claim being brought and the factual basis of the defendant’s alleged liability.

31. With the aid of the authorities cited by counsel, I must now address the claimant’s contribution claim in the present case. Section 1 of the 1978 Act enables a tortfeasor who has been sued to recover a contribution from any other tortfeasor liable in respect of the same damage. The substance of the claimant’s contribution claim is as follows: the defendant negligently designed and manufactured a climbing frame in Germany, which resulted in an accident in England causing fatalities, personal injuries, property damage and consequential losses. The defendant would if sued be liable in tort to (a) the families of the men who died, (b) the men who suffered personal injuries, and (c) the various companies which have suffered property damage or financial loss as a result of the accident. Accordingly, the defendant is liable under the 1978 Act to make a contribution to the claimant who has been sued by these parties.

32. In my judgment, a claim of this character falls within the European concept of ‘matters relating to tort, delict or quasi-delict’...”

50.
Miss Kinsler submitted that this approach is wrong because in this case the nature of the claim is different and, in any event, Article 7(2), properly construed, does not cover this claim for contribution. I have already given my reasons for rejecting the latter submission. As to the former submission, I consider that the facts of this case, so far as Iveco UK is concerned, are stronger in terms of the position relating to jurisdiction because there is no contractual relationship between Iveco UK and the Defendant. I should note in passing that none of the authorities cited to me on this point appear to have been relied on before Jackson J.

51.
In this context I was also referred to a decision of Eder J in Katsouris Bros v Haitoglou Bros [2011] EWHC 111, which concerned a contract to supply tahini paste in Greece. The purchaser then arranged for it to be shipped to England where it was sold to a manufacturer of houmous. It was alleged that the paste was contaminated with salmonella. Eder J expressly declined to decide where the “harmful event occurred” (because it did not affect the outcome of the decision that he had to make) but he expressed the tentative view that it was in Greece. He did not give any reasons for this view and so it is not easy to see why he did not conclude that the damage occurred when the contaminated tahini paste was processed in England during the manufacture of the houmous - as was determined in the Zuid-Chemie case.

The claim for contribution by Iveco Italy (B2) against the Defendant (C)

52.
Here, in my view, the position is quite different since the relay systems were supplied to Iveco Italy under the terms of a contract that it had made with the Defendant. Section 6(3) of the Act is directed to, amongst other things, this type of situation. In order to assess the extent to which the Defendant should contribute towards Iveco Italy’s liability to A, regard must be had to the terms of the contract between them: see paragraph 26 of Brogsitter. That contract may well contain provisions limiting or excluding the Defendant’s liability to contribute to Iveco Italy’s liability to A.

53.
The passages from the authorities that I have already cited make it clear that Article 7(2) is to be read restrictively. In addition, it seems to me that provisions relating to jurisdiction should be capable of application without requiring a detailed investigation of the facts, because jurisdiction is a threshold issue that has to be resolved at an early stage in the proceedings. It is sufficient, in my view, for there to be a contract in existence which is likely to be relevant to the assessment of contribution, rather than for it to be demonstrated that the terms of the contract actually do have this consequence. Accordingly, I consider that Iveco Italy's claim for contribution is a matter "relating to a contract" within the meaning of Article 7(1)(a). However, I am not to be taken as deciding that this should be an invariable rule: there may be cases, for example where fraud or breach of trust is alleged, where the terms of any contract between the parties is most unlikely to have any effect on the claim for contribution. Such cases must be decided on their own facts as and when they arise.

The amendments to the Particulars of Claim

54.
Mr. Dilworth sought to avoid the consequences that I have just outlined by submitting a proposed amended Particulars of Claim which omitted any reference to the claim in contract by Iveco Italy against the Defendant.

55.
In my view, this exercise is irrelevant. The mere fact that the claim against the Defendant was originally pleaded in contract as well as tort shows that the acts for which the Defendant was said to be liable amounted to breaches of contract. The decision in Brogsitter shows that the court will treat the claim as a matter relating to a contract if the matters complained of either amount to a breach of contract or make the taking into account of the terms of a contract indispensable in order to determine the claim.

Discretion

56.
To the extent that there is any discretion as to whether or not the claim by Iveco Italy should be struck out, I can see no grounds for concluding that any discretion ought to be exercised in its favour. First, as I have said, it now appears that Iveco Italy may not have paid any money itself in settlement of the original claims. Second, I consider that there is relatively little overlap between the factual issues in each claim. Iveco UK was not involved in the manufacture of the vehicles and Iveco Italy had only a limited role in the recall exercise, whose implementation in the United Kingdom was largely the responsibility of Iveco UK.

57.
One of the reasons advanced in support of the submission that any discretion should be exercised in favour of Iveco Italy is that it is said that legal proceedings in Italy take a very long time. However, if this is the case then it is likely that the claim by Iveco UK will probably be heard and determined before the claim by Iveco Italy is tried. Thus the Italian court will have the benefit of the judgment of this court, in particular its findings of fact, which it will be entitled to take into account. That is likely to reduce the possibility of conflicting findings of fact.

Conclusion

58.

For the reasons that I have now given the application to strike out Iveco UK's claim for contribution fails and must be dismissed.

59.
So far as the claim by Iveco Italy is concerned, in my judgment it clearly involves "matters relating to a contract" and so the Defendant must be sued in Italy, being the member state in which it is domiciled.

60. This is the result that I announced in open court on Friday, 13 November 2015 following further submissions from the parties. The draft judgment that was previously circulated has been very slightly modified to reflect those submissions.

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[1] This summary of the allegations is based on the claim by STS, but the allegations in the other actions were similar.

[2] When this judgment was handed down in draft, Mr. Dilworth took exception to this paragraph. He submitted that there was evidence before the court that the payments in settlement of the claims were "effected" by Iveco UK: see paragraph 57 of the witness statement of Mr. Plumley. However, this is not an answer to the point. By the relief sought in the Particulars of Claim each claimant is seeking indemnity and/or contribution "towards its liability pursuant to the settlement agreements the Claimants entered to compromise the disputes with CBT and/or ABL and/or STS and in respect of the costs and expenses incurred in defending and conducting the proceedings in respect of the said claims". Since defence costs cannot form part of a claim for contribution (not being a liability to the ultimate claimant), but only a claim in tort, this is an implicit assertion that Iveco Italy has in fact contributed to the payment made by Iveco UK, otherwise this claim for relief would not be sustainable. The Defendant had, in my view reasonably, proceeded until the hearing on the assumption that Iveco Italy had reimbursed or was liable to reimburse Iveco UK in respect of some portion of the amounts paid in settlement.

[3] See the second witness statement of Mr. Plumley, served on behalf of the Claimants, and paragraphs 8 and 9 of the first witness statement of Carys Oatham dated 20 May 2015, served on behalf of the Defendant.