

JUDGMENT OF THE COURT (THIRD CHAMBER)  
14 JULY 1983<sup>1</sup>

**Gerling Konzern Speziale Kreditversicherungs-AG and Others  
v Amministrazione del Tesoro dello Stato  
(reference for a preliminary ruling  
from the Corte Suprema di Cassazione)**

(Interpretation of Articles 17 and 18 of the Brussels Convention of  
27 September 1968 — Insurance contract containing a stipulation in favour  
of a third party)

Case 201/82

1. *Convention on Jurisdiction and the Enforcement of Judgments — Jurisdiction by consent — Agreement conferring jurisdiction — Contract of insurance — Jurisdiction clause for the benefit of third parties who have not signed the clause — Right of third parties to avail themselves of the said clause — Conditions*  
(Convention of 27 September 1968, Art. 17)

2. *Convention on Jurisdiction and the Enforcement of Judgments — Jurisdiction by consent — Appearance of the defendant before the court seised of the matter — Appearance not only to contest jurisdiction but also to plead as to the substance — Appearance not conferring jurisdiction*  
(Convention of 27 September 1968, Art. 18)

1. The first paragraph of Article 17 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that where a contract of

insurance, entered into between an insurer and a policy-holder and stipulated by the latter to be for his benefit and to enure for the benefit of third parties to such a contract, contains a clause conferring

<sup>1</sup> — Language of the Case: Italian.

jurisdiction relating to proceedings which might be brought by such third parties, the latter, even if they have not expressly signed the said clause, may rely upon it provided that, as between the insurer and the policyholder, the condition as to writing laid down by Article 17 of the Convention has been satisfied and provided that the consent of the insurer in that respect has been clearly manifested.

2. Article 18 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that it allows a defendant not merely to contest jurisdiction but at the same time to submit, in the alternative, a defence on the substance of the case without thereby losing the right to raise an objection of want of jurisdiction.

In Case 201/92

REFERENCE to the Court in pursuance of the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, by the Corte Suprema di Cassazione, Sezioni Unite Civili [Supreme Court of Cassation, Combined Civil Sections], giving its preliminary decision on a question of jurisdiction under Article 41 of the Italian Code of Civil Procedure, in the proceedings pending between

GERLING KONZERN SPEZIALE KREDITVERSICHERUNGS-AG, having its registered office in Cologne, AND OTHERS,

and

AMMINISTRAZIONE DEL TESORO DELLO STATO [Treasury Administration] (Central State Accounting Department, Office for Winding-Up Companies, Ente Autotrasporti Merci), in the person of the Minister for the Treasury for the time being,

on the interpretation of Articles 17 and 18 of the aforementioned Convention of 27 September 1968,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Y. Galmot and C. Kakouris, Judges,

Advocate General: G. F. Mancini  
Registrar: H. A. Rühl, Principal Administrator

gives the following