## Insolvency & Restructuring - Austria

### Court rules on future damage due to event before insolvency proceedings open

Contributed by **Graf & Pitkowitz Rechtsanwälte GmbH**

December 14 2012

**Author**

**Alexander Isola**

A recent judgment of the Supreme Court (OGH August 2 2012, 4Ob125/12d) made clear that future damage of an unknown amount arising from an event that occurred before the opening of insolvency proceedings may be asserted only as a bankruptcy claim in the insolvency proceedings. The estimated amount of damage must be disclosed when the claim is asserted against the bankrupt company. No legal action may be brought before another court to determine the estate's liability for such future damage.

However, if the plaintiff claims to be secured by virtue of a preferential treatment in respect of insurance cover (eg, by virtue of liability insurance), a complaint seeking determination of liability for future damage is possible, provided that it is confined to the liability insurance cover.

Any damage which an insolvent debtor has caused before the opening of insolvency proceedings constitutes a claim against the bankrupt company and must therefore be satisfied at the respective recovery rate. This also applies generally to any future damage. If the amount of damage is still unknown, the estimated amount of damage must be asserted. The injured party can hope only that the debtor has purchased liability insurance, in which case claims against that liability insurance can be secured by virtue of the preferential treatment pursuant to Section 157 of the Insurance Contracts Act. In the insolvency proceedings the injured debtor may assert that preferential treatment against the trustee, not exceeding the amount of the liability claim towards the insurance company, even without filing a claim (eg, by seeking a declaratory judgment from a civil court).

*For further information on this topic please contact Alexander Isola at Graf & Pitkowitz Rechtsanwälte GmbH by telephone (+43 316 833 777), fax (+43 316 833 777 33) or email (isola@gpp.at). The Graf & Pitkowitz Rechtsanwälte GmbH website can be accessed at www.gpp.at.*