RAIDLA LEJINS & NORCOUS

# LITIGATION LAW NEWS APRIL, 2012

Dear Reader,

In this Litigation and Dispute Resolution newsletter prepared by RAIDLA LEJINS & NORCOUS you will find an update on recent developments in the case law of Latvia, news related to relevant legislation, and news on our proceedings before the Constitutional Court.

We will be glad to answer your questions or to assist you with a particular legal issue.

With kind regards,

**Girts Lejins,**
Partner

**In this issue:**



## Recent case law of the Supreme Court of Latvia

### Management board members are liable for losses caused to the company even if their actions were merely negligent (case No SKC-25/2012 *MSIA Rajss vs J.K.*)

**at.gov.lv [LAT only]**

The Civil Department of the Senate of Supreme Court has ruled that a management board member is liable to the company for damages for negligence, whereas director liability to third parties is subject to the general standards of liability set out in the Civil Act.

Under Section 169(3) of the Commercial Act, a management board member is liable for damages caused by his actions unless he has acted as diligent and prudent manager. Thus, a board member is liable even for ordinary negligence, but damages caused by the management board member to any third party must be assessed under general provisions on non-contractual liability as provided in the Civil Act.

The facts of the case are as follows: On 14 August 2003 SIA Rajss management board member J.K. issued Riontex Group LLC, an American company, a loan of LVL 18 000 at

2% annual interest, and with a maturity date of 1 March 2004. Prior to the loan maturity date, SIA Rajss was declared insolvent.

Although Riontex Group LLC had repaid nearly half the loan, the liquidator of SIA Rajss decided not to start debt collection proceedings against Riontex. Instead, he brought a claim against J.K. for damages equivalent to the outstanding debt (LVL 9260).

Both the trial court and the appeals court dismissed the claim on the grounds that neither unlawful action nor fault of J.K. had been established, and therefore, there is no basis to hold J.K. liable for damages.

In the cassation court, the Civil Department of the Senate of Supreme Court reversed. The court found the lower courts incorrectly applied general standards of liability provided under the Civil Act. The Senate explained that provisions of the Civil Act on non-contractual liability can be applied only against the management board members for damages that he has caused by unlawful actions to third parties; however, in relations with the company itself, the Commercial Act contains *lex specialis* that provide for higher standards.

According to the reasoning of the Senate, if the management board member, acting in his official capacity, acts contrary to reasonable commercial practice, and it can be established that the company has incurred damages as a result of these actions, then the fact that actions of the management board member are not unlawful *per se*, has no legal consequence. Instead, the board member is liable for any type of negligence, including ordinary negligence. The only possible defense is to establish that he has acted as prudent and diligent manager, i.e. has not committed even ordinary negligence.

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**The Senate finds that only fees of licensed attorneys may be awarded (case No SKC-377/2011)**

**at.gov.lv [LAT only]**

In this judgment, the Senate of Supreme Court has changed its previous practice on compensation of legal fees in civil proceedings, ruling that the winning party no longer is entitled to claim from the losing party compensation of legal fees invoiced by lawyers that are not members of the Latvian Bar Association. Previously the Senate ruled that the term “advocate” must be interpreted broadly, and that encompassing non-licensed lawyers who provide legal assistance and represent parties in litigation.

The previous practice has been changed because the Latvian Parliament has rejected amendments to the Civil Procedure Act that would expressly provide that legal fees of qualified non-licensed lawyers can also be awarded. The Senate concluded that the legislature made a clear and conscious choice not to broaden “advocate” to include lawyers that are not sworn advocates. The reasons for refusing to adopt the legislative amendments were clearly revealed during the debates prior to the voting.

According to Section 33(3)(1) and 44(1)(1) of the Civil Procedure Act the winning party is entitled to claim from the losing party legal fees of advocate in their actual amount, with the total not exceeding 5 per cent of the total amount awarded in a claim for damages, but where the claim is of a non-monetary nature – not more than the advocate’s remuneration

fees.

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### Civil partnerships still have no legal status in Latvia (case No SKC-4/2012)

**at.gov.lv [LAT only]**

In a case arising out of a residential tenancy dispute, the Supreme Court Senate gave its opinion on the legal status of civil partnerships in Latvia. The Senate focused on two issues - whether civil partnership can be equated with marriage, and whether civil partnership has the same legal consequences as marriage. To both questions, the answer, for now, is no.

The Senate concluded that, due to lack of any legal regulation on civil partnership, the courts are not competent to equalize civil partnership with marriage and to grant the civil partner the same rights as the spouse. The principle of separation of powers authorizes the judiciary to participate in legislative work only when it would not be considered interference into the powers of the legislature.

The Senate pointed out that the questions of whether to introduce legal regulation of civil partnership into the legal system is a political question and must be decided exclusively by the legislator; the courts are competent to decide only legal, not political questions.

Consequently, the Senate established that a civil partner is not a family member of the tenant within the meaning of the Law on Residential Tenancy.

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## Legislative News

### Simplified procedure for small claims grows more popular

**Latvijas Vestnesis, 20.09.2011., No. 148 (4546) [LAT only]**

Although amendments to the Civil Procedure Act introducing a procedure for handling small claims became effective on 30 September 2011, only now have litigants started to discover the advantage of this procedure.

The small claims procedure is analogous to the ordinary court procedure, however, certain exceptions apply. First, the value of the main claim cannot exceed LVL 1 500 (EUR 2 135). This amount does not include interest, contractual penalty, fees for legal assistance, etc.

Second, the proceedings are written (using standard forms), unless either party requests or the court considers that it is necessary to hold an oral hearing. The statement of claim form with all documents enclosed is served together with a response form to the respondent, who has 30 days to respond. Within a given term, the respondent is also entitled to file a counterclaim.

Finally, the judgment of the trial court in small claims procedure is not subject to ordinary appeal. It only can be contested by filing a cassation claim to the Senate of the Supreme Court. Thus, the judgment of the court of first instance enters into force when the term for its appeal under a cassation procedure has expired and a cassation claim has not been filed.

Time will show how popular this procedure will become, but a growing number of small claims filed under the new procedure shows that creditors has started to appreciate the advantages of the new procedure for handling small claims.

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# Practice News

### Raidla, Lejins & Norcous Represents Swedbank in the Constitutional Court

Raidla Lejins & Norcous, acting for AS Swedbank, has initiated proceedings in the Constitutional Court of Latvia against the Civil Procedure Law provision that regulates the submission of ancillary complaints on court decisions related to defendant bonds.

As the law currently stands, the court may require either the plaintiff, or the defendant, or both parties to post bonds guaranteeing payment at the outcome of civil litigation. The contested legal norm forbids the plaintiff to submit an ancillary complaint if the court revokes the defendant's bond upon the motion of the defendant. However, if the defendant's motion to revoke his own bond is denied, the defendant may appeal against that decision.

In our application to the Constitutional Court, we argue that the rights of the parties are not properly balanced. The plaintiff's option of submitting of a new request for a defendant's bond is not a solution equivalent to appealing against the revocation of that bond. The plaintiff is denied access to a court of a higher instance, which could reassess the holding of the lower court with respect to both the facts and legal justification. At the same time, the defendant has the right to appeal against the refusal to revoke his own bond and does thereby gain access to a higher court. This restriction on plaintiffs is not proportional with the legitimate aim of ensuring faster and more effective court proceedings.

Currently the Constitutional Court is awaiting the reply of the Latvian Parliament, which is effectively the respondent in this matter. A hearing date will be set sometime after July 2012. We will keep you informed on further developments in the case.

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