

CASE TRANSLATION: FRANCE

CASE CITATION:

Appeal No. 07-17622

NAME AND LEVEL OF COURT:

Court of Cassation - second civil chamber

DATE OF DECISION: **Public Hearing of 4 December 2008**

MEMBERS OF THE COURT: **M. Gillet, presiding judge and M. Feydeau, Counsellor and Rapporteur**

DEPUTY PROSECUTOR: **M. Lautru, avocat général**

LAWYERS: **SCP Célice, Blancpain et Soltner, SCP Peignot et Garreau, solicitors**

Original document; copy of original; digital copy; evidence of logo on scanned letter regarding proof of receipt

French Republic

In the Name of the French People

The Court of Cassation, second civil chamber, has rendered the following judgment:

On the sole ground of appeal:

In view of articles 1334, 1348, and 1316-1 of the French Civil code;

- Given that the first two articles state that when a party has not retained the original document, the proof of its existence can be established by the presentation of a copy of it, which must be both a trustworthy and durable copy; that article 1316-1 states that electronic-based writing is admissible as evidence only if its author can be duly identified and if it has been established and saved in conditions that safeguard its integrity;

- Given that, according to the judgment under appeal, the *State Health Insurance Office* (la Caisse Primaire d'Assurance Maladie of the French département of Marne) decided upon inquiry and pursuant to French labour laws, to bear the medical costs of Mme X, an employee of the company Continent France, concerning a work-related illness which she declared on 15 November 2002, the employer referred the matter to the jurisdiction of the *Sécurité Sociale* claiming that this decision should be declared void, arguing that *Caisse Primaire d'Assurance Maladie* had not officially informed him that the investigation procedure was over, that it had not informed him of the possibility of consulting the case file, and that it did not mention the date on which its decision was to be made.

- Given that to render a judgment against the company, the Court of Appeal, having noted that proof

that the letter had actually been sent, could be made by any means, ruled that *Caisse Primaire d'Assurance Maladie* could not be held responsible for only having kept a digital copy of the letter sent on 20 January 2003, and the fact that the copy was printed out on a headed notepaper bearing a logo issued in 2004, does not in itself prove that the original copy had not been received.

In so ruling without enquiring whether the document produced by *Caisse Primaire d'Assurance Maladie* to prove that it followed standard procedures laid down in article R441-11 of the code of *Sécurité Sociale*, and complied with the above-mentioned articles, the Court of Appeal deprived its ruling of a legal basis with regard to these articles.

For these reasons:

SETS ASIDE AND ANNULS all provisions of the judgment handed down on 30 May 2007 between the parties by the Reims Court of Appeal; consequently remands the case and returns the parties to the state in which they were before the judgment and sends them back before the Douai Court of Appeal;

Orders *Caisse Primaire d'Assurance Maladie de la Marne* to pay costs;

In view of article 700 of the code of Civil Procedure, dismisses the appeal of *Caisse Primaire d'Assurance Maladie de la Marne*; orders Caisse Primaire d'Assurance Maladie de la Marne to pay the sum of 2,500 euros to the Continent France company;

Rules that at the diligence of the deputy Prosecutor to the Court of Cassation, this judgment will be sent to be transcribed in the margin or at the end of the judgment that has been set aside;

So done and judged by the Court of Cassation, second Civil Chamber, and pronounced by the Presiding Judge at its public hearing on December fourth, two thousand and eight.

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