

**TECH LAW CLINICS 2022  
PROCEDURAL ORDER No. 1**

**CLAIMANT**

**Mr. Horatio Munk  
Grodzka 1  
Kraków  
Poland**

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**AGAINST**

**The Star Maker Insurance  
Rynek Główny 33  
Kraków  
Poland**

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## FACTUAL BACKGROUND

The present proceedings were initiated by Mr. Horatio Munk, a Polish citizen residing in the Polish city of Kraków (hereinafter the ‘CLAIMANT’) against The Star Maker Insurance, an UK-based insurance company seated in London (hereinafter the ‘RESPONDENT’), active in Poland as a foreign insurer registered with the Polish Financial Supervision Office. According to the parties’ initial submissions to the Court, the following facts must be considered as undisputed between the parties.

In December 2019, Horatio Munk, then a 2<sup>nd</sup> year economics student at the Jagiellonian University, urgently needed insurance cover for an upcoming New Year skiing holiday in the French Alps. Using his smartphone, Horatio consulted the first insurance comparison website prompted by Google, called ‘yourbestinsurance’. Through a hyperlink on this comparison website Horatio was directed to an app of ‘the Star Maker Insurance’, which he instantly downloaded on his smartphone. Having downloaded the app, Horatio chose the option ‘login with Facebook’. He also consented to sharing all his data with the insurer’s app. Having provided data about the insurance cover (type of activity, time etc) he needed; Horatio made use of the app’s option ‘Talk to us live!’. A friendly chatbot Paulo recommended buying a ‘Student Ski Comprehensive Package’ policy, an exclusive product for students such as Horatio which included three components: civil liability cover, medical costs insurance, personal accident insurance. Delighted at the speed with which the transaction proceeded, Horatio clicked ‘Yes. I agree’ to the first offer made by the ever-charming Paulo.

Unbeknownst to Horatio, the Star Maker Insurance used his postal code to price the risk Horatio potentially posed: As he officially resided in a poor district, with a high credit default rate among its residents, the algorithm deployed by the Star Maker Insurance classified him as a ‘high-default risk’ client, which automatically doubled the insurance premium. Given his young age and a proven track record of athletic achievements (suggested by the data obtained from Facebook), the algorithm prompted a ‘basic’ policy category as a default offer, with all exclusions applicable, the justification being that future claims by, and consequently also pay-outs to, this class of customers were deemed very unlikely (‘young sportive males, rarely injured, not sophisticated enough to sue insurers’).

An hour later he was e-mailed two PDF documents: ‘the insurance policy’, and ‘standard terms and conditions’. He looked only at the front page of ‘the insurance policy’ and concluded that his name and address were correct.

On 2 January 2020, the first day of his long-awaited skiing holiday, Horatio crashed against a snowboarder through his own fault. In the accident, both Horatio and the snowboarder sustained personal injuries, the snowboarder’s equipment was destroyed. A rescue service called on to the scene reported the accident to the police, indicating Horatio as the responsible party. When asked in the hospital about his insurance cover, Horatio called the Star Maker Insurance Hotline. There, an insurance employee, who was far less charming than Paulo, informed Horatio that his medical cost insurance covered in-patient treatment in a private clinic (the one he had been transported to) only up to 24 hrs, whereas a stay of four days was necessary. The cost of transport back home was excluded. Further, civil liability cover was limited to 20 000 euro (whereas the estimated damages suffered by the snowboarder amounted to 40 000 euro). All these limitations and exclusions, said the Star Maker Insurance employee, were contained in the ‘standard terms and conditions’ e-mailed to Horatio. Further expenses were to be covered by Horatio himself. Utterly despaired, Horatio called for his family to arrange help and bring him back home.

## THE DISPUTE

Having recovered from the accident and consulted his bank records, Horatio discovered the payment of 300 euro debited to his account to the benefit of the Star Maker Insurance. Outraged at being overcharged for what had proven to be a largely useless insurance product, Horatio demanded:

- a) a restitution of 200 euro for an overpriced insurance police;
- b) the compensation by reimbursement of 20 000 euro, which he was obliged to pay for the snowboarder’s losses;
- c) the compensation by reimbursement of 20 000 euro, which was the cost of treatment at the private clinic in France and the trip back home, for which he had paid himself.

The insurance contract between the RESPONDENT and CLAIMANT contains the following dispute resolution clause:

*‘All disputes arising out of or in connection with the present Insurance Contract shall be finally settled by a procedure under the Jur Court Layer.<sup>1</sup> The Jur Court Layer is an online dispute resolution (“ODR”) mechanism. The parties accept the functioning and the rules of procedure of the Jur Court Layer, as laid down on the Jur website’.*

Moreover, the insurance contract contains the following applicable law clause:

*‘The parties’ entire relationship is governed by English law.’*

The CLAIMANT commences the dispute resolution procedure via the *Jur Court Layer*, as provided for in the insurance contract, and asks for the payment of the sums stated above.

The rules of procedure for the *Jur Court Layer* provide that the dispute will be resolved by a panel of three adjudicators, selected randomly by an algorithm. The procedure is conducted entirely online through written submissions, and no oral hearing is held.

At the end of the *Jur Court Layer* procedure, the panel finds that the CLAIMANT is not entitled to receive any pay-out from the RESPONDENT. The panel’s final decision is contained in a PDF document, delivered to the parties through electronic means. In it, the panel rules that the RESPONDENT is not responsible for making any payments to the CLAIMANT, as both ‘the insurance policy’ and ‘standard terms and conditions’ have been duly sent to the CLAIMANT after he chose the RESPONDENT’s offer. The CLAIMANT’s risk pricing policy (underwriting guidelines) is fully legitimate and not discriminatory in any regard.

After losing the *Jur Court Layer* procedure, the CLAIMANT commences the present proceedings. The CLAIMANT asks that the RESPONDENT be ordered to pay the sum of 42 200 euro, or the corresponding amount in Polish zloty (PLN).

The RESPONDENT appears in the present proceedings and argues that:

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<sup>1</sup> <https://bit.ly/jur-wp-v203>. See also: <https://jur.io/products/court-layer/>.

1. the case is *res judicata*, as it has already been finally decided on in the context of the *Jur Court Layer* procedure, which qualifies as a form of binding arbitration;
2. In the alternative, should the Court hold that the case is not *res judicata*, the CLAIMANT's request for relief should be declined, because:
  - a. The CLAIMANT agreed to share all data with the RESPONDENT. It is a standard practice of insurers to use all accessible data to price risk and avoid unnecessary pay-outs.
  - b. The CLAIMANT should have known that insurers use automated applications, such as Paulo, with a view to making selling insurance more exciting for customers and cheaper for themselves. If the CLAIMANT had wanted a more personal approach, he should have visited a branch office at one of the many shopping malls or high streets.
  - c. The CLAIMANT had an opportunity to withdraw from the insurance contract if he had not liked it, which he did not do.

## THE COURT'S ORDER

In the light of the above, the Court orders that the parties submit their statements of claim and defence before **DATE**. The Court invites the parties to address the following issues in their statements:

1. Is the case *res judicata*? With specific reference to the questions of whether:
  - a. the *Jur Court Layer* procedure, where the adjudicators are selected by an algorithm, can be qualified as arbitration;
  - b. the *Jur Court Layer* procedure, where no oral hearings are conducted, can be qualified as arbitration;
  - c. the outcome of the *Jur Court Layer* procedure can be recognized in these court proceedings as a binding arbitral award.
  - d. the *Jur Court Layer* procedure can be used for resolving consumer disputes on a mass scale (including typical consumer financial products).
2. What data, and to what effect, can be used by insurers for pricing risk or other commercial purposes? What are the legal requirements for using such data?
3. What are the legal requirements for deploying automated applications for the purpose of concluding contracts with consumers?
4. Were insurance standard terms binding in this case on Horatio?

5. What legal claims may Horatio invoke in the case at issue?