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Higher Regional Court Hamm

Order

In the legal dispute

Luciano Lliuya v. RWE AG

the 5. Zivilsenat des Oberlandesgerichts Hamm [Fifth Division for Civil Matters of the Higher Regional Court of Hamm]

consisting of the presiding judge of the Higher Regional Court Dr. Meyer, the judge at the Regional Court Dr. Servais and the judge at the Higher Regional Court Uelwer

on 27 September 2021

held as follows:

I.

The Senate supplements and specifies its evidentiary questions as follows (supplements are highlighted in italics):

1.

a)

As a result of the significant increase in the spread and volume of water of Laguna Palcacocha, is there a serious threat of harm from flooding and/or mudslides to the Plaintiff's house property located below the glacial lagoon on [REDACTED] in the city of Huaraz in the Ancash region of Peru?

This initial question is supplemented and clarified as follows:

In addition, is there a serious imminent threat of an ice avalanche, glacial avalanche, or rock slide detachment into Laguna Palcacocha? What would be the consequences for Laguna Palcacocha and the plaintiff property?

At what magnitude (mass and volume) would a flood wave occur that would cause overtopping of the terminal moraine and the two man-made dams and/or breach of the terminal moraine and the

two man-made dams? Under what conditions would the plaintiff's property be inundated by a flood wave (if applicable, with what height and what speed)?

With regard to the definition of the existence of a seriously threatening impairment of the plaintiff's house property located below the glacier lagoon by a flooding or a mudslide, the question of proof must be concretized to the effect whether and to what extent already today scientifically provable facts exist which justify the conclusion of a serious danger for the plaintiff's property by the aforementioned events. It is therefore a matter of whether it can already be assumed today that the situation at the Palcacocha Lagoon actually entails a sufficient probability of the occurrence of damage to the plaintiff's property in the foreseeable future or in the near future (see Staudinger/Gursky, BGB (German Civil Code [Bürgerliches Gesetzbuch (BGB)]), revised edition 2012, § 1004, marginal no. 214).

Finally, the experts are ordered to deal with the questions of the defendant from the pleading of 31 07 2018 No. 1a (p. 2 - 4 para. 1, Bl. 998-1000 d.A.), if this appears necessary to answer the evidentiary questions.

If a serious threat of impairment within the meaning of the evidentiary question 1. a. is affirmed:

b)

Are the security measures already carried out by the plaintiff on his house property (creation of a second floor, reinforcement of the outer walls with cement and bricks, cf. Bl. 335 of the appendix) suitable to avert the danger of an impairment of life, limb and property in the event of a flooding of Laguna Palcacocha or at least to reduce it to a lesser degree?

It is to be assumed that the plaintiff's house had been built in wooden construction with adobe bricks before these measures were carried out.

c)

Are - in addition to the construction measures already carried out - safety measures on the plaintiff's house property such as permanent deflection walls, flood protection doors or a house wall reinforcement made of steel conceivable, which are in principle suitable to avert the danger of an impairment of life, limb and property in the event of a flooding of Laguna Palcacocha or at least to reduce it to a lesser degree?

(The Senate refers in this respect to item // 1. of its decision of 01.07.2021, Bl. 2328 et seq.).

2.

Are the following allegations made by the plaintiff true?

a)

The CO₂ emissions released by the defendant's power plants rise into the atmosphere and, due to physical laws, lead to a higher density of greenhouse gases throughout the earth's atmosphere.

b)

The compression of greenhouse gas molecules results in a decrease in global heat radiation and an increase in global temperature.

c)

As a result of the resulting increase in average temperatures, also locally, the melting of the Palcaraju glacier accelerates; the glacier loses extent and retreats, the water volume of Palcacocha Lagoon increases to a level that can no longer be maintained by the natural moraine.

Both overflowing and breaching of the natural moraine and/or the two artificial dams must be considered.

d)

The contributory cause of the defendant in the chain of causation shown under a) to c) is measurable and calculable. It amounts to 0.47% to date. A possibly deviating determined causation share is to be quantified accordingly by the expert.

The water level of Laguna Palcacocha would not be so high or the water volume would be smaller if the causation contribution of the defendant was ignored.

For purposes of answering these evidentiary questions, only the CO₂ emissions of the Defendant or its corporate subsidiaries from 1958 onward are to be considered.

In determining any causal share of the defendant, it must be taken into account that some of the CO₂ emitted by the defendant or its subsidiaries may not have a harmful effect on the climate because it is absorbed by CO₂ sinks or chemically converted. The influence of other greenhouse gases such as CH₄ and N₂O on the climate, any interaction between the various substances, other natural climate drivers such as the sun and volcanic eruptions, other anthropogenic factors (with positive or negative effects) such as aerosol emissions, and internal variability must also be taken into account.

II.

The expert [REDACTED] is currently preparing the on-site meeting for the first question of evidence. He has already contacted possible specialized companies for the core drillings and the laboratory for the evaluation of the samples. The contracts have not yet been awarded. Already now, however, a significant overrun of the cost advance paid so far is certainly foreseeable, which is related, among other things, to the duration of the drilling work at an altitude of approx. 4,500 meters. A concrete cost framework will be presented by the expert with a report on the measures to be carried out in detail on site before the end of this year. However, the plaintiff is already advised that a further substantial advance on costs will be requested.

III.

In order to partially make up for the previous time delays, the Senate is resuming the talks to sound out the experts who are to answer the second question of evidence. This - it is expressly emphasized - is not accompanied by an anticipated assessment with regard to the first evidentiary question.

Dr. Meyer

Dr. Servais

Uelwe