

EUROPEAN PARLIAMENT
COMMITTEE ON LEGAL AFFAIRS

Public Hearing on Road Traffic Accidents

Monday 19 March 2007

Meeting room: ASP 3E2, Rue Wiertz

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SPEAKING NOTES

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1. THE PROBLEM

- **The Fourth MID has exported the settlement process, but not the proper law to the state of the Victim's domicile**
- **Liability in road traffic accidents ("RTAs") not normally difficult to determine**
- **Most controversy concerns causation and loss, in particular future loss**
- **Claimants encounter difficulties where:**
 - (i) **the procedures and approach taken to quantification of loss diverge between state of the Victim and the state of the accident;**
 - (ii) **the evidence on issues of quantum and the victim is in a different jurisdiction from where proceedings take place**
- **Potential solution is either to move the assessment of loss to the Victim's state of domicile or to ensure that the Victim's losses are determined according to the law of the Victim**

2. FULL COMPENSATION – RESTITUTIO IN INTEGRUM

- **Past pecuniary loss:** this is uncontroversial in that past losses are verifiable and capable of proof
- **Future pecuniary loss:** these are inherently uncertain in that such losses cannot be known ahead of time nor events predicted with certainty
- **Non-pecuniary loss:** concerns compensation of loss which is not readily translated into monetary terms
- In most large claims therefore, the Claimant is dependent on the approach of the Court as to how it values losses which are by their nature uncertain
- The maxim of restitutio in integrum does not give an answer to assist Claimants (or Defendants) in valuing and quantifying any particular claim. The answer in each national system is determined differently to a greater or lesser degree
- **Availability of Interim payments:** in those jurisdictions where interim payments are not available, Claimants are subject to greater uncertainty in

that care regimes cannot be instituted and other requirements paid for before final hearing

3. DIFFERENCES OF APPROACH

- **Role of the expert:** some jurisdictions defer to medical opinion or have court appointed experts who determine the degree of injury, level of disability and the band of compensation applicable
- **Role of the Judge:** this can be contrasted with those jurisdictions where the Judge has the principal role in assessing just and equitable compensation
- **Recovery of psychiatric injury, Recovery for secondary victims and Recovery in fatal accident claims:** varies from jurisdiction to jurisdiction. No hard and fast rules as to which jurisdictions are high value and low value jurisdictions; nor between families of jurisdiction: eg common law jurisdictions, Scandinavian jurisdictions; civil law jurisdictions
- **Personalisation of loss:** ie the degree to which the award of compensation reflects the individual losses of the injured Claimant, will differ from jurisdiction to jurisdiction
- **Capping of recoverable losses and use of tariffs and Use of medical tables:** those jurisdictions which use these methods of quantification rely upon a high degree of standardisation of awards of loss and the removal of discretion from the individual Judge

4. DIFFERENCES IN QUANTIFICATION OF SPECIFIC LOSSES

- **Multipliers and discount rates:** applicable to future earnings losses, pension losses and care claims: likely to give rise to the sharpest divergences in awards
- **Lump sums or periodical payments:** differences in approach between jurisdictions makes comparison very difficult to determine; choice of parties and policy of courts may lead to very different outcomes
- **Recognition of specific heads of loss: cost of future care:** this head of loss likely to be very dependent upon the local culture of the court in awarding compensation and what is seen as the “acceptable rate” for particular heads of

loss; may lead to discrepancies where foreign victim's environment diverges significantly

- **Recoverability of specific third party costs, for example recoupment of hospital costs, recovery of private medical costs; wages paid during disability:** some jurisdictions are not used to such heads of loss being claimed (perhaps because of the interplay between insurance cover/social security and recovery of tortious damages)
- **Recoupment of benefits and set-off of insurance monies and taxation:** applicable rules vary from place to place
- **Recovery of costs and lawyers' fees:** will vary in terms of whether the injured victim is expected to bear his own costs even where successful, and what is considered reasonable remuneration to be awarded to the Claimant's lawyers (and expert witnesses)

5. HARMONISATION PRINCIPLES

The following principles apply in other relevant personal injury contexts

- **Levelling up of standards** (health and safety at work; consumer protection)
- **No competition on standards or subordination of standards to economic considerations** (health and safety at work)
- **Increase access to justice** (free movement; consumer protection)
- **Internal Market vs Private International Law** (the tension in Rome II)

This speaker considers specific sectoral regulation for personal injury Claimant's should either legislate for the determination of issues of loss to be heard in the Claimant's own courts, or by applying the law of the victim's domicile in the courts of the place of the accident/domicile of the Defendant.