

towards a transaction can be more or less protracted, depending on the extent to which the victim accepts the offer.

It should be noted that, as a general rule, French insurers will make an offer which is within the compensation band for each head when compared to case law decisions made by the French Courts.

It is also pointed out that given, *inter alia*, the differences between the French social security systems and those in other countries, levels of compensation in France are not usually as high as might be expected in certain other systems and are somewhat lower than those which I am told obtain in Australia.

Since the change in the system which came about in 1985, it has now become unusual for proceedings to be brought before the Courts.

Criminal proceedings

The only area where this step is frequent and necessary is where criminal proceedings have been instigated against one or other of the drivers implicated in the accident. In such circumstances, French criminal procedure enables victims to be joined to the proceedings brought by the State, in order to have access to the papers, notably the original police report.

An action on behalf of the victim may take the form of a civil action joined to those criminal proceedings, which is heard at the same time and by the same Court as the criminal matter.

The criminal court will first deliver judgement on the issue of criminal liability and then hand down a Judgment on civil liability, (as a general rule reserving its decision in order to assess the quantum of the damages to be awarded to the victim).

Two remarks should be made about criminal prosecutions. First, it is important to note that a victim is not obliged to join a civil action to the criminal prosecution; however any civil claim would be stayed until the criminal action had been tried and final judgement given. Second, although an accident victim may consider that he or she has a claim, the victim may in fact be the defendant in the criminal prosecution which of course would preclude the joining of a civil action.

Stand-alone civil actions

Such actions before the French civil courts are today somewhat rare. The need for such action would only arise if the third party insurers of the vehicle which is presumed to be implicated in the accident were to refuse to make an offer for compensation. Of course, in this particular circumstance the cost-benefit analysis would be of even greater importance in assessing whether or not such a claim should be pursued.

A standard procedure in this area would be to petition the presiding judge of the court in the locality in which the accident occurred in order to appoint a medical expert to examine the victim. The victim would be examined and the medical expert would report on his findings and which would be binding on all parties. The victim would then serve a writ to have the substantive claim heard by the full court on the basis of the medical report.

The full court, again in the locality where the accident took place, would deliver judgement on the issue of liability, and if the court found the defendant liable it would proceed to determine the amount of the award of compensation.

Costs, fees and disbursements

The profession in France is unified, thus an Avocat is the equivalent of a Barrister and a Solicitor, and under French Bar rules Contingency fees *per se* are not permitted. Charging methods vary and the majority of practices in France currently do not use a notional hourly charging rate. Thus a clear agreement as to fees, and the modalities of their calculation, should be entered into prior to giving substantive instructions to the French lawyer. In the event that a notional hourly rate be applicable, then it is likely to be of the order of between \$A225 and \$A350 at current exchange rates.

Finally, it should be noted that French Bar rules require that an initial amount, on account, to be paid by the instructing Solicitor, or lay client, to the French Avocat at the same time as the initial instruction. ■

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WEDNESDAY, APRIL 1, 1998

Victims of CJD shock win \$3m payout

By JENNIFER COOKE

Human hormone recipients who can prove they have been damaged psychiatrically from news that they may contract the human equivalent of mad cow disease will be compensated with up to \$3 million in Federal Government funds.

The decision - part of a ground-breaking response to the majority of the 18 recommendations of the Senate Community Affairs References Committee which were tabled in the Senate yesterday - was a change of stance by the Government.

The Minister for Health, Dr Wooldridge, said support must be given to those affected - some of the more than 2,500 official and unofficial recipients of human hormone drugs under the 19-year Australian Human Pituitary Hormone Program (AHPHP).

But the Government refused to accept other key recommendations surrounding the eligibility of legal aid to test cases on issues of public interest.

This was an issue which had led to the Senate inquiry. It followed what had been described as an "unfair" legal settlement forced on a woman who was denied legal aid to sue the Federal Government (which sponsored drugs under the AHPHP) for nervous shock.

Between 1967 and 1985 about 700 children were treated with human growth hormone (hGH) to correct short stature and more than 1,500 adults were given human pituitary gonadotrophin (hPG) to reverse infertility. Those injections, some of them contaminated, have resulted in five deaths from the fatal brain condition Creutzfeldt-Jakob disease (CJD).

National co-ordinator of the CJD Network Inc, Mrs Sue Byrne, welcomed the move.

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