The French market and Motor Third Party Liability: 2009 analysis of serious bodily injury compensation

Compared to the other European markets we studied in the European Newsletter, France is set apart by extreme volatility in terms of its compensation costs.

In the absence of standardised claims handling tools, any kind of foreseeability remains difficult. In this respect, for several years now we have been requesting the implementation of an official list of heads of damage, a compensation database, a schedule of average compensation, an up to date capitalisation table, and so on.

Will the draft law submitted by the members of parliament Guy Lefrand, Geneviève Levy, Jean-François Chossy, Marie-Anne Montchamp and several of their colleagues (1) facilitate such implementation? This draft law was unanimously approved after its first reading before the French National Assembly on 16 February 2010 and aims to bring the various players involved in compensation to a consensus.

In the absence of a framework for compensation law, it will be impossible in the medium term for insurers to maintain the profitability of serious bodily injury risk so far as the number of extremely expensive claims is increasing whilst premiums remain the same.

With no major change in pace, the average cost of serious bodily injuries increased in 2007-2008. Our Newsletter will analyse the reasons behind this increase.

Evolution of serious bodily injury costs

Traditionally, we compare the annual evolution in the cost of the most serious bodily injuries to economic indicators. According to the information collected in SCOR Global P&C’s claims database, the gap continued to widen in 2008.

From 2001 to 2008, GDP and inflation rose by 12%, whilst the average cost of bodily injuries increased by 92% over the same period.

Following a steady period between 2006 and 2007, which we mentioned in our previous Newsletter on the French market, a clear increase in costs of around 10% emerges between 2007 and 2008.

Once again, the scope of the principle of full compensation has been extended through the supreme authority of assessment exercised by judges. This situation is unique in Europe!

The creation of a schedule of average compensation in the Lefrand draft law would mean that this volatility could be kept under control. However, following the advice of the French Council of State on 28 January 2010, the creation of such a tool has now been abandoned.

This situation gives us cause for concern because an increasing number of claims affect reinsurance. Clearly, in this context there is an additional need for cedant protection.

We thought it would be interesting at this point to look at the origins of the increased cost of settlements for 2006, 2007 and 2008, and to this end we set out an analysis below.

(1) Proposed law that aims to improve compensation for road accident bodily injury victims.
Under the effects of the reforms that have taken place over the past few years and the case law of the French Cour de cassation (the highest court of appeal), the structure of settlements has changed. On the one hand, the classification of heads of damage has enabled compensation to be assigned to one of the 29 heads currently listed for direct and indirect victims. On the other hand, the series of judgements delivered in 2009 by the Civil and Criminal Courts of the Cour de cassation has re-established the rights of social security bodies, to the detriment of the rights of victims.

Certain parties want to maintain the benefits for victims brought about by the law of 21 December 2006, which could lead to an increase in care costs. This would further increase the claims burden. We are already seeing a significant new increase in two compensated heads of damage:

- **Care costs**
  - The increase in the proportion of care costs of the total settlement is a recurring phenomenon; for settlements in 2006-2007 care costs accounted for 51.02%, for 2007-2008 this had increased to 54.38%.
  - Based on the detailed information available in our database, this increase is partly due to a rise in hourly fees, but is mainly caused by an increase in the number of hours allocated. In this respect, it is important to note that there is no medico-legal scale for this head of damage. This trend is even more remarkable given that the cost of equipment is also on the rise.
  - Once again, the supreme authority exercised by judges in terms of assessment challenges the concept of full compensation!

- **Equipment**
  - The analysis of the settlements made in respect of these heads of damage for the financial years 2006-2007 and 2007-2008 shows an increase of more than 50%.
  - In terms of overall compensation, whilst the proportion of settlements dedicated to the cost of adapting a vehicle is on the decline, the proportion taken up by modifications to the home is increasing sharply.

  Evidently, case law continues to ignore the fact that victims may regain partial independence through all of the technical assistance provided.

  We could rebalance this situation if the principle of home environment expertise were recognised by the reform currently underway and if we had a medico-legal evaluation table with regard to care needs.

  We should remember that all this is not about more compensation, but better compensation! This is how the objective of full compensation will be achieved.

Conclusion

The current situation as we have just described once again illustrates the deterioration of our compensation system. We are still awaiting the implementation of tools that could lead to equal treatment for all victims and to a reduction in compensation volatility, which in turn would lead to improved foreseeability.

This is the roadmap that the National Commission could follow after the adoption of the draft Lefrand law.

There is a huge amount of legislative and regulatory work involved, combining technical skill with political will.

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