

MINUTES OF APIL INTERNATIONAL SPECIAL INTEREST GROUP MEETING ON 24 FEBRUARY 2009

In attendance: Coordinator: Alberto Perez Cedillo
Secretary: Xanthe Andrews
Speakers: Oliver Parker, Ministry of Justice
Katherine Deal – 3 Hare Court
Alan Saggerson – 1 Chancery Lane
Subject: Rome II

Oliver Parker

Oliver Parker gave a presentation giving a run through the Rome II Regulation and some information as to the negotiations, which took place in the background.

There is no handout for Oliver Parker's talk.

Katherine Deal

Katherine expanded on the background and an overview of Rome II and discussed other general issues relating to it, which are covered in the handout attached.

Alan Saggerson

Alan Saggerson gave a presentation on damages under Rome II, which is covered in the handout attached.

Questions

An attendee asked the Panel why it was that Article 33 of Rome II applies to road traffic accidents, but not other types of accident. Oliver Parker responded to the effect that this was part of a political compromise, from when Rome II was being negotiated between the member states. Mr Parker reminded us that Rome II has a review provision and that this issue could potentially be reviewed in due course.

Victoria Mortimer-Harvey – EC Update

1. Claims process: This is under review, for road traffic accidents worth up to £10,000 where there is a straightforward admission of liability. There is currently no change to the small claims limit. The fast track limit is to be increased to £25,000 from 6 April 2009.

A new process is under discussion, broadly, this consists of three stages:

1. Liability. Once the Claimant has made initial investigations, the claim is to be submitted to the third party insurers by email. The third party's insurers then have 15 working days, in which to respond. If they do not respond, this falls outside the process.
2. Medical evidence – The Claimant is to obtain a medical report and prepare a Schedule of Special Damages. The Claimant is to consider whether rehabilitation is required. The Claimant is then to prepare a settlement pack, to include the Claimant's offer to settle, to be sent to the other party's insurers.

The other party's insurers then have 15 working days to respond to the Claimant's offer.

There will then follow a short period of negotiation. The timescale for this is to be decided.

3. If agreement is not reached, then the parties move on to Stage 3, which is a Court hearing.

Whether the Court hearing is by paper or oral is for the parties to decide.

The exact documents, to be submitted for the hearing, are still under discussion.

At the hearing, each party is to bring along their final settlement offer in a sealed envelope. The Judge will not look at these offers until after he has made his decision. The Judge's decision as to how to award costs will then be determined by each party's offer.

APIL is concerned about changes being proposed to Part 36 by insurers. The Part 36 implications of this process are still under discussion. APIL is lobbying for the current Part 36 Rules to continue to apply.

APIL is lobbying for this simplified process to apply only to cases worth up to £2,500 in the initial stages, so that any problems can be ironed out at this stage.

APIL is also lobbying for there to be a facility for witnesses to attend the Court hearing.

The discussions are at a sensitive stage at the moment and APIL is therefore not able to give complete details, but APIL will continue to keep members informed.

2. Lord Jackson review on costs

This is a year long, wide ranging review. A formal public consultation is to be published in May 2009. APIL will then respond to that. APIL have already been involved in extensive discussions relating to this.

3. Employer's liability compulsory insurance campaign

Andrew Dismore has presented a Bill to parliament, drafted by APIL. APIL is lobbying for change as APIL's view is that the current voluntary code is failing injured people.

Xanthe Andrews 25/02/2009