

Personal Injury Compensation in Europe

by Marco Bona and Philip Mead (editors), Kluwer, 2003

By Peter Carter

The benefits being delivered to consumers as a result of the economic success of the EU single market and the removal of national barriers include cheap travel, property ownership opportunities abroad and international employment. Consumer disputation therefore is now more likely to contain an international element.

The type of claims the pan-European lawyer will be confronted with will typically involve an injury to local consumers elsewhere (motor accidents or holiday injuries) or a local injury caused by an international firm (defective products or employment injuries).

Personal Injury Compensation in Europe is a remarkable work. Funded by the European Commission and driven by the Pan European Organisation of Personal Injury Lawyers (PEOPIL), whose members comprise the editorial board, it is a comprehensive guide to the personal injury compensation laws of EU member nations and some relevant European laws.

A 'report' on the injury compensation regimes of each of the 18 member nations (as at the 2002 manuscript date) is provided by contributor lawyers or academics from that state. These are easy to read but assume some understanding of EU laws.

Each report is in the same format and deals with eight major headings: sources of law; compensation rights; the role of lawyers and of medical experts; deductions from awards; social security; lawyers' fees; the status of foreign claims in that country; and limitation law. There is no discussion of damages quantum and civil procedure receives only cursory comment. The 'reports' do, however, provide sufficient detail to enable lawyers to advise clients on their compensation options.

Greece, for example is a civil law jurisdiction. Its tort law is contained in article 914 of its 1946 Civil Code: *anyone who causes harm to someone else due to the fault of the former is liable to pay compensation*. Damages principles are remarkably similar to those in common law jurisdictions although expressed in an entirely different way. There are many specific rules relating, for example, to the strict liability of Greek hotels for injuries on their premises and these all are commented upon.

The second section of the book – the companion to the 18 separate national 'reports' – gives a comparative overview of European compensation law. This should be the starting point for non-European lawyers wanting an understanding of the subject.

This section also deals with some of the relevant European 'directives'. I will mention some of these here because it will give Australian Lawyers Alliance members an idea of how pro-consumer the European jurisdiction is compared to those in Australia.

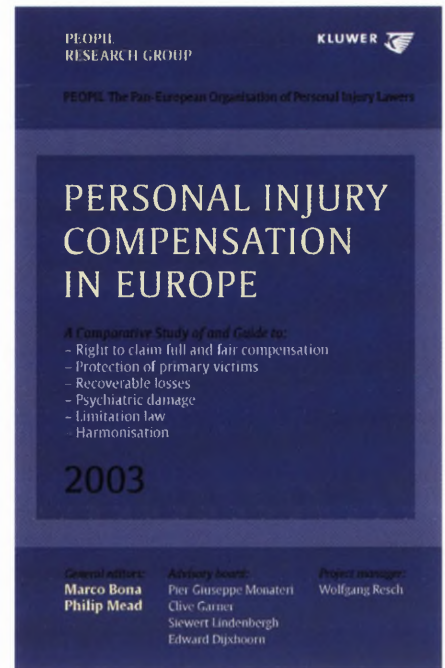
In relation to defective products, the injured person is entitled, by Directive 85/374, to sue the actual or deemed European domiciled producer in the place where the injury occurs, regardless of whether or not the producer carries on business there.

Directive 90/314 refers to injuries sustained in the course of a packaged holiday and allows an injured holiday-maker to sue the holiday retailer for any injury suffered on the trip in their home jurisdiction.

The 4th Motor Insurance Directive allows a motor accident victim to claim in their home country, in their home language, with the option of having damages calculated according to either the law of the home jurisdiction or that where the accident occurred.

There are several forewords to the work that give the reader an appreciation of the enormity of the undertaking and the achievement represented by its publication. One of these, titled *The Wisdom of Damages*, is a well-reasoned economic defence of the soundness of tort law. 'The cornerstone of tort law is not primarily to compensate victims but to induce others to take into account the costs arising from their actions ... to react to a specific deficiency of human conduct', argues professor Pier Giuseppe Monateri, who is a member of the editorial advisory board.

Injury compensation recovery appears to be an emerging field in continental Europe. Lawyers from common law jurisdictions are well placed to have a dominant role in the international aspects of such practice. I commend this work as a reference for all lawyers who are committed to individual rights and have a hunger for diverse cultures. ■



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