



Minutes of Meeting, November 4th, 2010

A19 Employers' Liability & Workers' Compensation

Present: *Ken Oliphant (KO), Helmut Koziol (HK), Nicholas Ronneberg (NR), Ina Ebert (IE), Christian Lahnstein (CL), Florence G'sell-Macrez (FG,) Isabelle Velliard (IV), Dan Murdoch (DM,) Colm McGrath (minutes), Thomas Thiede (TT), Ernst Karner (EK,) Felix Kernbichler (FK), Massimo Foglia (MF), Lucian Borjin (LB), Siewert Lindenbergh (SL), Gerhard Wagner (GW), Cristian Alunaru (CA)*

Apologies: *Mike Green, Alessandro Scarso, Dominika Doerre-Nowak (DD)*

Key Terms: *Workers Compensation (WC), Employer's Liability (EL)*

09:30 *KO* welcomes everyone and thanks *HK* for attending the morning session of the meeting. Invites all present to introduce themselves. Apologies are given for *GW* who will be joining the session via video link later in the day. *KO* notes his gratitude to *DD* for stepping in at short notice to produce a report.

KO notes that the point of the meeting is 4 fold:

1. For reporters to raise issues.
2. For the project leaders to get feedback.
3. For Munich Re to be able to give input to the project.
4. To draw out policy consideration for the comparative report.

KO highlights 3 points from the skeleton paper compiled by the project leaders:

1. Reporters are asked to concentrate on policy (point 7) and to ensure that there is an analytical and evaluative element to their reports.
2. Point 4. Where available, reporters are reminded to incorporate evidence based scholarship.
3. A new heading has been added in section 4: Evaluation and conclusion in section F and points A and B are both new headings.

KO invites comments on his introduction. None are given.

09:55 *CL* invited to give his introduction to the issues.

CL notes that there are 2 main interests in the project: Firstly, *EL* is a classical case and is a large part of many liability markets. Secondly markets are greatly structured by social security and there are a wide range of diverse approaches to arranging *WC*, *EL* and social security.

IE adds a brief statement on matters of non bodily harm such as harassment and discrimination. *KO* notes that any focus on discrimination has to be kept only to cases where it plays a part in *EL* systems and how this relates to general compensation.

10:19 *EK* and *FK* deliver their report on Austria.

KO asks if empirical evidence is available for *EL* and *WC*.

FK, notes that it is available for *WC* (numbers of occupational accidents and diseases) but not *EL*.

10:40 SL delivers his report on the Netherlands.

In discussion HK raises the question of how the actions of an employer can be assessed in cases of non-performance noting that Austria developed a codified rule. SL agrees that this is a hard case. KO recommends the expansion of the historical development section as well as including a short overview of the social security system.

KO reminds reporters to clearly mark situations where there is no relevant case law or statute within a system. This is particularly key for the construction of the comparative report.

11:09 Short coffee break (HK leaves)

11:32 FG and IV present their paper on France.

In discussion the relevance of asbestos related injury is raised. NR notes that this has been covered extensively by Munich Re. KO believes that the issue might still be of some interest from an academic perspective. KO notes that it would be good to expand the criminal law section of the paper along with outlining the procedural interaction that the criminal law has with other elements (social security, WC).

12:11 MF delivers the report on Italy.

In discussion CL asks about the quantum damages for *danno biologico* under the INAIL scheme. KO asks if more statistics can be used to uncover a larger trend in EL claims.

Break for Lunch

14:25 LB delivers the report on Romania.

Discussion centres on the role of tort law in Soviet legal systems and the influence on the Romanian system.

14:41 DM delivers the report on the United States.

In discussion CL notes that it would be helpful to know how much is paid out under the 'Section 2/Section B' of standard WC agreements. Those sections regulate a form of residual EL within the WC system. Equally, it would be useful to know the extent of special categories where there is an EL scheme such as in the case of longshoremen or train operators. DM notes the existence of a number of special categories such as asbestos where the federal government steps in.

15:06 GW joins the meeting via video link from Chicago.

KO invites GW to recap on the reasons for beginning this project.

GW outlines 2 central reasons: Firstly, the manner in which systems draw boundaries between their chosen instruments (WC, EL, tort law, social security) is inherently interesting. Particularly as it is interesting to note that very basic questions such as the reasons why workers deserve different treatment from other victims often go unaddressed. Secondly, the choice of using WC raises interesting questions of efficiency and the fulfilment of underlying aims in relation to tort law. Preliminary conclusions are that although it looks like a patchwork there are basic issues which are not solved uniformly and pose fundamental questions about how you should organise this area of compensation law. He doubts that analysing this subject yields a *best* approach.

Discussion follows.

15:45 NR expresses his gratitude for the good work that has been done in the project. NR, IE leave.

KO goes through the main points of the skeleton comparative document. Again emphasises that 'no law' is a valid and important answer where appropriate.

KO and GW then outline the **next steps in the project**:

Return of the reports taking into account the feedback from today – one month's time, at the start of December.

Comments from KO/GW on these papers – **START OF JAN 2011**

Final versions of reports submitted – **END OF JAN 2011**

Internal procedures in ECTIL begin at this point with publication estimated for **July 2011**

Project conference estimated for February/March 2011 in Munich. Not all papers likely to be delivered. CL suggests panels of papers and notes that there will need to be some framing papers on the relevance of this project for the market.

GW notes the importance of drawing attention to criticism of the status quo in each system. What are the counter-arguments given? Also notes two striking issues, obvious in the reports. First, the divergence of the systems and secondly that there is so much similarity in both the nature of the tests used (course of employment) and the interpretation of them. So much is inherently about reasonableness. Path dependency is clearly a greater impetus than systems thinking through the problems afresh. GW thanks all present for their efforts and leaves the meeting.

16:07 *Short coffee break*

16:23 TT delivers his report on the conflicts of laws aspects of the project.

16:50 KO thanks all for coming and looks forward to the final reports.

Meeting closed