

MARKET NEWS FRANCE

Development of « Faute Inexcusable de l'employeur » in France

Since 1946 Works Accidents/Industrial Diseases in France are obligatorily indemnified by a State organism called « Sécurité Sociale » (SS). No private insurance is admitted in this basic rule.

The SS has a flat approach to indemnification, based on fixed scales and fixed limits, resulting in losses or damages suffered by employees not being compensated in full. According to French law the injured employee can obtain a complementary indemnity.

When there is GROSS NEGLIGENCE or of the employer, or the person he/she is substituted in the management, the employee can get a complementary indemnity. In this case the employee has not to prove that the employer is liable for the accident or professional illness, because "faute inexcusable" is based on strict liability. Insurance for this specific risk "faute inexcusable" might be provided by an extension of the General Liability Policy. Only AXA and Allianz in France have specific policies so called "financial losses" policies for this risk and exclude it from their General Liability policies.

In cases of gross negligence the SS may increase the sum payable up to a maximum of twice the basic indemnity and add specific compensation for losses or damages such as Pretium Doloris, aesthetic damage, amenity prejudice, loss in business opportunity, all these losses or damages are restrictively listed in article L 452-3 of the Social Security Code.

On June 18th 2010, the French Conseil Constitutionnel (Constitutional Court) issued an order which extends the compensation payable in case of gross negligence to ANY LOSS OR DAMAGE suffered by the employee and not indemnified according to the Social Security Code. As a consequence there are new items to be indemnified by Insurers under "faute inexcusable", such as for instance expenses to adapt the flat/house and/or the car. It is up to the judge to determine the kind of expenses concerned.

This verdict has been confirmed by the Court of cassation on February 13, 2014 but only for cases which have not been finally judged before the publication of the above verdict of June 18, 2010 published on June 19, 2010.

As a result, this court order might lead in certain cases to a significant increase of the total compensation to be settled by the insurers.

Therefore it is very important to have a sufficient local insurance limit for this risk. A limit of 150 000 Euro without any DIL cover in a foreign Master policy for work accidents and professional illness would not be enough, knowing that the average indemnification of such a loss is about 600 000 Euro.

An other interesting case around “faute inexcusable”

Indemnity for a wife exposed to dust of Asbestos

In the context of Asbestos the Court of Appeal of Aix-en-Provence has decided on November 6, 2013:

That the employer has to pay and indemnity a wife of one of his workers who was in contact with Asbestos, because she was the guardian of his clothes. He brought his clothes he used at work home to clean them, but they were plenty of Asbestos dust. His wife was exposed to this Asbestos dust. Although the company of the employer was closed since 30 years when the wife fall ill, he was condemned to pay an indemnity because the exposure of the risk took place before the closure.

This decision is not founded on Social Security law but on tort law, because there was no work contract between the employer and the wife of his employee.

Employment Practices Liability in respect of “faute inexcusable”

Our General Liability Policies exclude normally Employment Practices Liability.

This means that if a case of harassment would be the cause of a work accident qualified as “faute inexcusable” then the General Liability Policy would not apply due to the EPL exclusion.

If mother companies have an EPL policy covering subsidiaries in France they should check if it includes a specific extension for the French “faute inexcusable” in case of harassment.

However, local EPL policies are available and could extend to this kind of “faute inexcusable” coverage.

New premium rates for French Terrorism Pool “ GAREAT”

As you know terrorism and attempt coverage is compulsory in France since January 1, 2002 for insured property situated in France.

With effect from January 1, 2014 AMRAE, the association of French Risk Managers, could obtain a premium reduction in the following case.

Insured sums for large risks which are higher than 20 Million Euro for the fire risk could be limited in the past to a maximum of 20 % according to L 126-2 of the French Insurance Code. In this case the premium reduction was 20 %, knowing that the premium rate of the pool for limits exceeding 50 Mio Euro is 18 % of the insurance premiums.

With effect from 1. 1. 2014 the premium reduction for this limitation of the insurance limit is increased from 20 % to 30 %.

However, if you want to maintain the former reduction of 20 % you get 50 % of the insured limit instead of 20 %.

Two examples:

-A client has an insured site with a fire limit of 200 Mio Euro. According to the law he can limit the insured sum for terrorism/attempt to 20 % i.e. 40 Mio Euro. The premium reduction is today 30 % instead of 20 %.

-Same case with an insured fire value of 200 Mio Euro and a limitation to 40 Mio Euro in 2013, you can maintain the same premium reduction and the same budget than before, but you can get an insured limit for terrorism/attempt of 100 Mio i.e. 50 % of the insured fire limit.