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Corr v. IBC Ltd: An Analysis of the House of Lord Case according to Swiss Law

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1. Facts

Mr Corr was working as a maintenance engineer for IBC (hereinafter, 'defendant'). At the age of 31, in 1996, he was severely injured while working on a prototype line of presses. Mr Corr was nearly decapitated, and most of his right ear was severed. As a result of the accident, Mr Corr underwent long and painful reconstructive surgery. Nonetheless, Mr Corr remained disfigured. He complained of unsteadiness, headaches, and had difficulty sleeping. He suffered from post-traumatic stress disorder, developed a drinking problem, and became bad-tempered. In short, Mr Corr suffered from depression, and his condition continued to worsen. In 2002, he was treated for depression and was admitted to a hospital when he overdosed on drugs. In May of 2002, during an episode of severe depression, Mr Corr committed suicide by jumping off the top of a multi-story car park. He left a note explaining that he was terribly depressed as a result of the accident. At the time of Mr Corr's suicide, Mr Corr was suffering from a disabling mental condition. A severe depressive episode impaired his capacity to make reasoned and informed judgments about his future. The probability of suicide for persons in this kind of situations is between one sixth and one tenth.

Mr Corr's wife (claimant) decided to sue the defendant for the financial loss attributable to Mr Corr's suicide.

2. Overview of the Swiss Social Security System

In Swiss social law, according to the federal statute on the general part of social insurances (Loi fédérale sur la partie générale du droit des assurances sociales (LPGA)), the Federal law on accident insurances (Loi fédérale sur l'assurance-accidents (LAA)) and the regulation on accident insurance (Ordonnance sur l'assurance-accidents (OLAA)), an employee has to be insured by his employer for work-related accidents. Even if the employee is not insured, he is protected, provided that the conditions for an affiliation to the insurance are fulfilled. According to Article 4 LPGA, an accident is described as, 'a harmful damage suffered suddenly and involuntarily by the body'. This harm has to be caused by extraordinary external circumstances, which compromise the mental or physical health of an individual, or result in death.

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As a result of the application of the LPGA and the OLAA, the present case will be solved first and foremost by relying on social security statutes.

According to Article 29 LPGA, the victim must first file his claim with the national insurance for accidents (CNA). The CNA issues a decision (Articles 35 and 49 LPGA) that the claimant can challenge in Court (Articles 52 and 56 et seq. LPGA). The following procedure is administrative in nature and the defendant is the CNA, not the employer.

The insurance against accidents offers notable recovery for medical costs (Article 10 LAA, 9 ss OLAA), loss of earnings (Article 15 ss LAA, 22 ss LPGA), and special damages for the bereaved widow and minor children (Article 28 ss LAA, 39 ss LPGA).

In case of gross negligence of the employer or in case of wilful conduct, the CNA will be able to exercise its right of recourse against the employer (Article 75 al. 2 LPGA). In the present case, the employer would probably not be considered as having committed an act of gross negligence.

One must be aware that, according to Article 24 al. 1 LPGA, the prescription (statute of limitations) is fixed at five years after the damaging event occurs. Mr Corr's accident happened in 1996 and he committed suicide in 2002. Arguably, if Mr Corr's suicide is the triggering act of a new damage, his wife's claim has not yet prescribed.

After the LPGA entered into force in January 2003, the fact that an employee is insured by national social insurances no longer exempts the employer from liability for damages, which are not covered by the state insurance. Under certain circumstances, another action could be brought against the employer, according to Article 328 SCO or to the general clause for tort encompassed in Articles 41 et seq. SCO.

3. Proposed Solution

According to Article 37 Federal statute on accidents (LAA), the insured who intentionally causes the harm to himself has no right to damages except for funeral costs. According to Article 48 OLAA, a suicide, which is the consequence of an accident insured by the insurer, is covered by the insurance if the insured was (without his own fault) totally incapable of discerning his own actions, or if the suicide was obviously causally linked to the accident covered by the insurance. The criteria used by Courts to assess the deceased's capacity is set out in Article 16 of the Swiss civil code.

Accordingly, the deceased in this case was not in full possession of his intellectual capacities. The victim acted in a clinically depressed state and had an acute high risk of suicide; additionally, there was evidently a causal link between accident and suicide. Therefore, the damage should be covered by the insurance.

As to the jurisprudence, a 1987 precedent case from the Cantonal Court of the Canton of Vaud¹ held that a suicide, committed by a depressed patient nine

¹ Arrêt du Tribunal Cantonal du Canton de Vaud No. 467, 26 Mar. 1987.

months after a motorbike accident, would not be covered by the accident insurance. This strict precedent has since been overruled by a 1994 case from the Swiss Federal Court (SFC).²

In this 1994 precedent case, a paraglider experienced a traumatic accident and, soon afterwards, committed suicide. The SFC decided that the accident was causally related to the suicide. To reach this conclusion, the SFC held that two criterions must be fulfilled: (1) a requirement on natural causation and (2) a requirement on adequate causation. These requirements of causation are to be uniformly judged for all Swiss social insurances.³

In the case of the paraglider, the natural causation requirement was certain; without a doubt, the accident suffered by the deceased was the primary trigger for the fatal turn in his life.⁴ But for the paragliding accident, he would not have committed suicide.

The adequate causation requirement is a question of values and not a question of fact. The SFC distinguishes between light, medium, and severe accidents. In the case of severe accidents, the adequate causation requirement is fulfilled.⁵ In the paraglider case, it was proven that the deceased suffered from a traumatic accident and it appeared highly probable that his deep psychological disorder, which was a result of the traumatic accident, was the cause for his subsequent suicide.

One can reasonably assume that under Swiss law, Mr Corr's suicide will also be deemed as a consequence of his 1996 accident and subsequent depression. If so, the estate of the deceased (wife and minor children) will be allowed to claim damages from the insurance. The damages shall cover the loss of earnings suffered due to the death of the deceased (according to Article 28 ss LAA).

According to Article 328 al. 2 of the Swiss Code of Obligations (hereinafter, SCO), the employer is liable to protect the psychical (mental) and personal integrity of his employees. In the present case, Mr Corr's employer did not take these necessary measures of protection. The resulting issue is whether Mr Corr's bereaved wife and children can ask for additional damages from Mr Corr's employer.

² ATF 120 V 352 (28 Oct. 1994). In this precedent, the SFC departed from a former precedent of 1974 (ATF 100 V 76).

³ ATF 120 V 352 Consid. 5, which explains that the two criterions for causation are to be applied according to ATF 115 V 133 of 1989.

⁴ ATF 120 V 352 Consid. 5, '*Der Gleitschirmunfall war zweifellos die entscheidende Wende im Leben des verstorbenen B.*'

⁵ ATF 120 V 352 Consid. 5 aa) '*Bei banalen bzw. leichten Unfällen kann der adäquate Kausalzusammenhang zwischen Unfall und psychischen Gesundheitsstörungen in der Regel ohne weiteres verneint werden. Bei schweren Unfällen dagegen ist der adäquate Kausalzusammenhang in der Regel zu bejahen, weil sie nach dem gewöhnlichen Lauf der Dinge und nach der allgemeinen Lebenserfahrung geeignet sind, invalidisierende psychische Gesundheitsschäden zu bewirken.*' More recently, the decision U 2/2007, 19 Nov. 2007, in SZS, 2008, 183.

According to the doctrine⁶ and the jurisprudence,⁷ a negligent employer can be ordered to pay the victim supplementary damages, if the damages paid by the social insurances do not cover the whole damage. In any case, the SFC limits this right to the direct victim, that is *in casu* Mr Corr.⁸ The Court further states that persons having lost their provider (i.e., one who provides income to support the family) are entitled to additional damages, under Article 45 SCO.

⁶ Gabriel Aubert, Commentaire romand, Code des Obligations I, ed. Luc Thévenoz et Franz Werro (Genève, etc.: 2003); Art. 328 no. 4 1728.

⁷ ATF 132 III 257 c. 5.4.

⁸ ATF 4C.194.1999.