

Netherlands: Liability for diethylstilboestrol damage

The Supreme Court stated last month that it would be unfair for the daughters of women who had taken diethylstilboestrol (DES) during pregnancy to be left with the risk of incomplete compensation because a drug company had become insolvent or ceased to exist. The Supreme Court was overruling the decisions of a cantonal court and a court of appeal that had judged against a mass-action case on the grounds that the DES daughters could not name the company that had produced the DES pills that their mothers had taken. The case had been brought against eight firms that produced the drug. The Supreme Court decision has brought tremendous jubilation to DES mothers and daughters and caused much astonishment in the legal and pharmaceutical circles that have been following the case since 1986. The case has now been referred back to the court of appeal in The Hague, where it is to be judged on grounds of negligence, foreseeability, and causation. Lawyers in the case are hoping that every DES daughter with DES-related clear-cell adenocarcinoma will receive about 100 000 guilders (£37 000).

DES Action was formed 11 years ago and has on its list some 45 000 people alleged to be damaged by DES. Its information centre in Utrecht has, since the Supreme Court decision, been inundated by more than 10 000 inquiries, including some from men. Modification at the start of this year of civil claims regulations means that, to be eligible for compensation, cases diagnosed before 1987 as being DES related must be registered by Dec 1.

Legal experts and pharmaceutical officials fear that innovation in drug research will end because they expect drug companies to be unable to meet the burden of claims that might result from this decision. One attorney has offered the following analogy. Hunting is forbidden. Nevertheless somebody has heard a shot and there has been damage. It's not easy to prove the most likely cause of the damage. All possible hunters will now be held liable for the damage unless they can prove their innocence.

The pharmaceutical industry has claimed that "this decision puts the Netherlands in an exceptional position compared with the rest of Europe. Even in the US such far-reaching liability has not been accepted by any court". However, Sybil Shainwald, a woman's health product liability lawyer in the US (known for Dalkon shield cases), who happened to be in the Netherlands at the time of the decision, pointed out that courts in some North American states have accepted similar liability and have awarded full compensation to DES daughters.

The Supreme Court decision has not only removed the obstacle to the mass-action case in question but also makes individual suits possible.

Marjanke Spanjer

Australia: Research funding stand-off

A stand-off has developed in the dispute over medical research funding (see *Lancet*, October 3, 1992). Usually by the end of October the formal agreement between the Government, which supplies the money for the next year, and the National Health and Medical Research Council (NHMRC), which distributes it, would have been signed. But this year, the two parties have been unable to reach

agreement. The Government, under considerable financial pressure, has told the NHMRC that it will have about \$1 million less (before inflation) to distribute to researchers than last year. The NHMRC is concerned that it will lose a generation of researchers if medical research, within which a career structure has been developed and which has expanded considerably over the past nine years of Labour Government, is cut back. It points out that Australia spends less than other Western nations on medical research. It also says that medical research is a good performer, receiving less than 15% of government funds for research, yet contributing almost 50% of the research papers published.

The stand-off has developed because of a peculiarity in the legislation that covers the distribution of funds. Under the relevant act, each year the NHMRC applies to the Government for a certain amount of money. The Government cannot alter the amount requested, and can grant neither more nor less. It can only accept the application or reject it.

The difference between what the Government says it will grant and what the NHMRC says it will accept is \$3.5 million. Even at the figure the NHMRC would accept, the decline in funding would see the number of projects funded drop from 1035 to 968 and the average amount granted drop from \$67 668 to \$65 248 per project. New scholarships would fall from 73 to 68, new postdoctoral fellowships from 25 to 20, new RD Wright Fellowships (for those making the transition from post-doc to independent research) from 19 to 13, and new career fellowships from 13 to 11. After its latest meeting in early November, the NHMRC released a statement saying: "If this shortfall is not made good, its impact will be felt not only in the immediate year, its impact will be felt for many years to come through the discouragement of medical researchers for the future; significant reduction of medical research staff and diminution of NHMRC prior investment". The Minister for Health, Brian Howe, was unimpressed. "Medical researchers have to understand that the Government doesn't have some unlimited pool of money to add to medical research", he said.

At the time of writing, the NHMRC was still refusing to submit an application for the lesser amount, hoping that public pressure will see that the Government agrees to provide more funds. The Government has not yet responded to the pressure, but has no way of forcing the NHMRC to submit the application.

One unintended consequence of the stand-off will occur soon. Untenured university staff will lose their positions for next year unless NHMRC funding is guaranteed. Universities are starting to make their decisions, so the deadline for the resolution of this issue nears.

Mark Ragg

Bangladesh: Changes to drug policy

Earlier this year the Government set up a committee to review the national drug policy (NDP) that was introduced in 1982. The committee's composition reflects many of the key actors in the drugs debate but the voice of patients or consumers is strangely missing. Nonetheless, discussion is underway and indications are growing that the Government may soon announce some changes.

The main aim of the NDP was "to ensure that the common people get the essential and necessary drugs easily