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Subject: Note on the main steps and features of French expert proceedings when there is a fire claim filed with an electric product suspected

1. NATURE OF THE EXPERT PROCEEDINGS

Since there are no proceedings for discovery/disclosure of documents, nor *ex parte* expert or witness reports to be submitted under French civil proceedings, French expert proceedings are used to gather elements of fact and provide the court with an independent authorized technical opinion. Such proceedings are frequent in France and almost systematic in product liability litigation.

As such, in France, when the solution of a dispute is dependent on a technical issue, the plaintiff usually asks for the appointment of an expert in summary proceedings ("*référé*") or emergency summary proceedings ("*référé d'heure à heure*") before he/she launches any proceedings on the merits ("*procédure au fond*"). This is allowed by article 145 of the French Code of Civil Procedure. An order may be obtained within weeks, days or hours, depending on the urgency of the matter.

2. THE VARIOUS STAGES OF THE EXPERT PROCEEDINGS

2.1 The court order

A hearing for the appointment of an expert(s) tends to be quite short since, generally, only the scope of the expert's assignment is debated. Hearings are public but are generally attended only by lawyers and, where relevant, by representatives of the parties.

The judge often tries to reach an agreement with the lawyers on the expert to be appointed. The parties may suggest experts specialized in the technical field in question, but the court has the discretionary power to decide which expert it will ultimately appoint. Usually, the expert is selected among an official list of experts registered with the Court of Appeal that has jurisdiction over the case or with the French Supreme Court ("*Cour de Cassation*").

The parties may also propose wordings for the scope of the expert's assignment.

It is generally very difficult to oppose a claim for expert operations, unless for instance the defendant sued is the wrong defendant (has not manufactured/sold the product at issue for instance). In practice, the defendants tend to file very short submissions, not opposing the appointment of the expert but simply expressing "protests and reservations" to the Court.

The court's decision is rendered in a court order which appoints one or more (as needed) experts, defines the scope and length of the experts' assignment and sets out the amount of the expert's advance fees to be deposited with the clerk of the court (Article 265 of the French Code of Civil Procedure).

An appeal may be lodged before the relevant Court of Appeal.

2.2 The beginning of the expert operations

The party which is to pay the expert's advance fees (i.e. the plaintiff, unless exceptionally provided otherwise in the court order), must deposit the amount set forth in the order with the clerk of the court.

Once these funds have been deposited, the clerk of the court notifies the expert who can then begin his/her operations.

The expert convenes a first expert meeting where the court order is formally read to the attendees. The parties' lawyers then briefly present the issues at stake, and the operations to be carried out are defined and scheduled.

At this first meeting, the expert also usually checks that all the relevant parties are parties to the expert proceedings. Often, at their own initiative or upon the suggestion of the expert, parties will third-party additional parties, which were not initially sued but have a connection with the dispute, in the pending expert proceedings. This will result in Court orders extending the scope of the pending expert proceedings to new parties.

2.3 The expert operations *per se*

Various expert meetings will generally be convened by the expert. These are traditionally planned at least 15 days in advance, although a shorter notice can occur should an emergency so justify.

These meetings are attended by (i) the expert, (ii) the parties' lawyers, (iii) the parties' representatives (managers, business and/or technical people, as required) but also by (iv) *ex parte* technical experts retained by the parties, if needed.

During these meetings, the expert questions the attendees on the matter at stake and requests the production of documents necessary to his/her investigations, such as sketches, diagrams, charts, incident data, etc.. Third parties can also be heard by the expert if so required.

The merits of the case are not discussed in the course of such operations. The expert may only address technical issues (article 238 of the French Code of Civil Procedure).

The parties' positions and analyses are developed in statements ("*dires*") filed by the lawyers with the expert. In addition, the latter may request the parties to file *dires* providing explanations on specific points. The parties' lawyers can further request in their *dires* that specific investigations be carried out by the expert or documents produced by the other parties.

French expert proceedings are adversarial. Accordingly, every document filed with the court or the expert should be copied to the opposing parties. No private conversations or communications may consequently be held with or sent to the expert.

Expert proceedings also have to be conducted in French. A copy of every document submitted must consequently be translated into French.

The expert generally elects to visit the sites at stake. He/she may also decide that tests need to be carried out on the products under investigation and appoint an independent laboratory for such purpose, should he/she not be able to carry them out personally for technical or logistical reasons.

Generally, the Court-appointed expert is also requested to assess the loss sustained by the injured party(ies).

The expert settles any disputes which may arise between the parties in the course of the expert proceedings, for instance if the parties disagree on whether or not a document should be produced. The expert and the parties can also request that a judge from the court which appointed the expert

(and is in charge of the control of the expert operations) settle any such dispute by court order (article 241 of the French Code of Civil Procedure).

2.4 The end of the expert proceedings

The expert proceedings are closed when the expert files his/her final report with the clerk of the court, a copy of which is sent to the parties' lawyers. Frequently, a preliminary report is submitted by the expert to the parties so that they can make comments in order to influence the final views of the expert.

The expert report must contain all pieces of information necessary to understand the issues at stake and the expert's conclusions. However, the expert is not allowed to include in his report other pieces of information, which he/she could have come across during the expert operations (article 244 of the French Code of Civil Procedure).

Furthermore, where the expert report contains pieces of information the public disclosure of which would be detrimental to one of the parties' legitimate interest, the report may not be used in a framework other than that of the proceedings at stake, unless the court or the party concerned authorizes such use of the report (Article 247 of the French Code of Civil Procedure).

Please note that the expert's final report is almost never filed within the period set forth in the court order since time extensions are almost always requested by the expert and, in turn, granted by the court.

Expert proceedings in the field of product liability usually last no less than one to two years.

2.5 The consequences of the expert operations

Should the expert's conclusions support his/her claim, the plaintiff then needs to initiate proceedings on the merits requesting the court to rule that the claim is well founded against the party(ies) which are deemed to be liable, order compensation of the loss sustained, and rule that the defendants are to bear the expert's costs as well as part of the legal fees incurred.

The expert's report is non-binding on the court (Article 246 of the French Code of Civil Procedure). Indeed, in law, the said report is merely an opinion given to the court which may or may not be disregarded. However, in most cases, the complexity and technicality of the issues at stake mean that the court generally tends to adopt the conclusions of the expert(s) it has appointed as far as technical points are concerned.

If the parties are not satisfied with the conclusions of the expert report, they may ask for the appointment of one or several new experts with the same assignment or an amended assignment. It will be up to the discretion of the court whether to appoint such experts (very serious grounds should be invoked, such as obvious mistakes in the expert report, and courts are usually very reluctant to grant such requests).

Finally, it must be noted that the parties remain free to settle the case while the expert proceedings are ongoing. In such an event, the expert proceedings will be suspended and the settlement acknowledged by the expert (Article 281 of the French Code of Civil Procedure).