

The case of pilot Alexandre Lacoude and recognition of Aerotoxic Syndrome (linked to exposure to organophosphates) as an Occupational Disease:

'The Tribunal Judiciaire de BORDEAUX, ruling by contradictory decision, delivered by disposition at the registry and at first instance,

DECLARES that illness no. **185112448** presented by **Alexandre LACOUE** must be recognised as being an occupational disease under the third paragraph of Article L.461-1 of the Social Security Code.'

Notes-

Caisse Primaire d'Assurance Maladie

(CPAM) - sometimes referred to in the documents as 'Caisse'.

- A caisse primaire d'assurance maladie (primary health insurance fund) is a health-related body with a public service remit in France. It is responsible for local relations with the beneficiaries of the Caisse nationale d'assurance maladie.

Comité Régional de Reconnaissance des Maladies Professionnelles

(CRRMP)

- Regional Committees for the Recognition of Occupational Diseases

<https://www.anses.fr/en/content/how-are-scientific-expert-appraisals-occupational-diseases-conducted>

Pôle Social - Social Division.

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EXPOSÉ DU LITIGUE

DESCRIPTION OF THE DISPUTE

Alexandre LACOUE, a pilot with the airline HOP!, completed on 2 October 2018, a declaration of occupational illness accompanied by an initial medical certificate dated 12 November 2018 reporting "worsening digestive, respiratory, nervous and vascular disorders linked to exposure to organophosphates (fume event and aerotoxic syndrome) in the workplace."

Following an administrative enquiry, on 28 June 2019, the Caisse Primaire d'Assurance Maladie de la GIRONDE refused to cover the illness under occupational legislation, on the grounds that the condition in question was not included in any of the tables of occupational diseases and that, according to the opinion of its Medical Examiner, the insured did not have a foreseeable partial permanent disability equal to or greater than 25%.

On 20 August 2019, the Caisse's Commission de Recours Amiable upheld this analysis.

Following the legal expert opinion of Dr Dominique TRIPODI and the consultation of Dr Charles BONNAN, by judgment of 22 June 2021, the Social Division of the Court ruled that the foreseeable rate of disability of 12 November 2018 was greater than 25% and referred **Alexandre LACOUE** to the Caisse Primaire d'Assurance Maladie de la GIRONDE for the continuation of the investigation of his claim.

The latter took over the investigation of the case, which was forwarded to the Comité Régional de Reconnaissance des Maladies Professionnelles de BORDEAUX, pursuant to Article L.461-1 of the French Social Security Code. The said Committee having issued an unfavourable opinion on 20 October 2021, the Caisse notified the insured person of a refusal to cover the pathology on 12 November 2018, under occupational legislation.

By registered letter sent on 21 April 2022, **Alexandre LACOUE's** legal counsel referred the matter to the Social Division of the Tribunal of the Judicial Court of BORDEAUX to challenge the implicit rejection decision of the amicable appeals commission, upholding the rejection decision of the Caisse.

This appeal was registered under number RG no. 22/0521. The Commission de Recours Amiable (Amicable Appeals Commission) issued an explicit rejection decision on 5 April 2022.

By registered letter sent on 29 April 2022, **Alexandre LACOUE's** legal counsel referred the matter to the Social Division of the Tribunal of the Judicial Court of Bordeaux in order to contest this decision.

This appeal was registered under RG no. 22/0550.

By order dated 27 May 2022, the Pre-Trial Judge of the Social Division of the Judicial Court of Bordeaux ordered the two cases to be joined and referred to The Regional Committee for the Recognition of Maladies Professionnelles d'Occitanie for the purpose of giving its opinion on the existence of a link between the pathology declared by **Alexandre LACOUE** and his occupational exposure.

The opinion of the Occitanie CRRMP, issued on 3 October 2022, did not find a direct and essential link between the pathology present and the professional activity carried out.

The parties having been duly summoned, the case was argued at the referral hearing on 5 June 2023.

By submissions of 2 June 2023 made orally at the hearing, to which reference should be made for a fuller statement of grounds of appeal, **Alexandre LACOUDE** asks the court

- to declare his appeal admissible and well founded,
- principally, :

*annul the opinion issued by the Comité Régional de Reconnaissance des Maladies Professionnelles d'Occitanie on 3 October 2022,

* order the Caisse de la Gironde to refer the matter to a new committee in order to obtain a second opinion,

* order that the designated CRRMP consider the observations made in the course of its mission and the scientific data provided in support of those observations,

- in the alternative, order the Caisse de la Gironde to recognise the occupational nature of his pathology and to resume the investigation into the consolidation of his condition and the liquidation of his rights,

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- in any event, to :

* order Caisse de la Gironde to pay him the sum of 2,000 Euros pursuant to Article 700 of the Code of Civil Procedure,

- order the provisional execution of the forthcoming decision.

Alexandre LACOUDE invokes the nullity of the opinion of the second CRRMP, which was issued without taking knowledge of the opinion of the occupational physician.

* * *

In defence, by written submission sent to the Registry on 22 May 2023, to which it is appropriate to refer for further statement of the pleas in law, which were supported orally, the Caisse Primaire d'Assurance Maladie de la GIRONDE is asking the court to dismiss Alexandre LACOUDE's claims in their entirety, on the basis of of the opinion issued on 3 October 2022 by the CRRMP of Occitanie.

At the hearing, she argued that the opinion of the occupational physician did not have to be included in the documents sent to the CRRMP and that it was not necessary to include it in the documents sent to the CRRMP and opposes the claim under Article 700 of the Code of Civil Procedure.

The parties present were notified that the judgment would be delivered by being made available at the clerk's office on 18 September 2023 and extended to date.

REASONS FOR THE DECISION

It should be noted, as a preliminary matter, that the admissibility of **Alexandre LACOUDE's** claims is not contested, so that there is no need to rule specifically on this point.

On the failure to notify the CRRMP of the opinion of the occupational physician:

Alexandre LACOUDE alleges a breach of Article D.461-29 of the Social Security Code, in its version prior to the amendment by Decree no. [2019-356](#) of 23 April 2019, which came into force on 1 December 2019.

However, this amendment is applicable to the opinion of the Occitanie CRRMP, which was referred to pursuant to the ordinance of 27 May 2022.

The aforementioned Article D. 461-29 stipulates that, since 1 December 2019, "the file examined by the regional committee includes the elements mentioned in article R.441-14 plus: (...) 3 ° a reasoned opinion of the occupational physician of the company or companies where the victim was employed, in particular on the disease and the reality of the exposure to the occupational risk present in this or these company(ies), as the case may be requested by the fund pursuant to II of Article R. 461-9 and provided to it within one month".

In this case, it is clear from a simple reading of the opinion of the Occitanie CRRMP that the reasoned opinion of the occupational physician was not one of the elements of which the members of the committee took cognisance before reaching their decision.

The Fund does not make any observations and in no way invokes the impossibility of obtaining the contact details of the work of the occupational physician.

It follows that, for this reason, the opinion of the Occitanie CRRMP is not in order and cannot be taken into account.

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Moreover, this opinion does not include any real motivation. The Committee states that it has taken note of all the information provided in the contradictory file - without summarising it - and then concluded that "in this context and in the absence of any new information provided since the

conclusion of the Bordeaux CRRMP

de Bordeaux", there is no direct and essential link between the pathology and the professional activity.

Consequently, the opinion issued by the Comité Régional de Recognition of Occupational Illnesses in Occitanie on 3 October 2022 /

On the recognition of a link between the illness and the work:

Pursuant to the provisions of Article L.461-1 of the Social Security Code, in force since 1st July 2018, "The provisions of this book are applicable to diseases of occupational origin subject to the provisions of this title. With regard to occupational illnesses, the date of the the accident:

1° The date on which the illness is first diagnosed medically,

2° Where it is later, the date which is two years before the declaration of occupational disease mentioned in the first paragraph of Article L.461-5,

3° For the application of the prescription rules in article L.431-2, the date on which the victim is informed by a medical certificate of the possible link between the illness and a professional activity.

Any disease listed in an occupational disease table and contracted under the conditions mentioned in that table is presumed to be work-related.

If one or more conditions relating to the period of coverage, the cost of the work, the duration of exposure or the restrictive list of work are not met, the disease as designated in an occupational disease table may be presumed to be of occupational origin.

A characterised disease not designated in an occupational disease table may also be recognised as being of occupational origin if it is established that the disease was contracted under the conditions mentioned in the table.

If one or more conditions relating to the period of coverage, the duration of exposure or the restrictive list of treatments are not met, the disease as designated in a table of occupational diseases may be recognised as being of occupational origin when it is established that it is directly caused by the victim's usual work.

A disease not specified in a table of occupational diseases may also be recognised as being of occupational origin when it is established that it is essentially and directly caused by work under the conditions mentioned and results in the death of the victim or permanent disability of an assessed rate under the conditions mentioned in article L.434-2 and at least equal to a given percentage.

In the cases referred to in the two preceding paragraphs, the caisse primaire shall recognise the occupational origin of the disease following a reasoned opinion from a regional committee for the recognition of occupational diseases. The composition, functioning and territorial jurisdiction of that committee and the elements of the file on the basis of which it gives its opinion shall be determined by decree. The opinion of the committee shall be binding on the caisse under the same conditions as those set out in article L.315-1.

Psychological pathologies may be recognised as diseases of occupational origin, under the conditions set out in the seventh and penultimate paragraphs of this article. The specific procedures of processing these files are laid down by regulation.

In accordance with the provisions of article R.142-17-2 of the same Code, in force since 1st January 2019 "Where the dispute concerns the recognition of the occupational origin of a disease under the conditions set out in the sixth and seventh paragraphs of Article L.461-1, the court shall first obtain the opinion of a regional committee other than the one which has already been referred to by the fund in application of the eighth paragraph of article L.461-1. The court then designates the committee of one of the nearest regions".

Under Article R.461-8 of the same code, in force since 1 December 2019, "The rate of disability of incapacity referred to in the seventh paragraph of Article L.461-1 is set at 25%".

In this case, the unfavourable opinion of the CRRMP of BORDEAUX was not submitted to the debates, but it is mentioned in the decision of the Commission de Recours Amiable which states that "this insured person has been an airline pilot since 2006 in an airline company. He is assigned to medium-haul flights of 1 to 2 hours each. Several flights a day. He flies on aircraft with jet engines. He describes the onset of subjective disorders following the emission of fumes into the cockpit from the engines on several occasions.

The last of these, in March 2015, led to a progressive worsening of the symptoms, with continuous work stoppage from 18 July 2016. The Committee considers that, given the evidence in the file, it is not possible to conclude that there is a direct and essential causal link between the occupational risks in question and the pathology declared".

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By order dated 27 May 2022, the Pre-Trial Judge of the Social Division of the BORDEAUX Judicial Court ordered the referral of the case to the Occitanie CRRMP, whose opinion issued on 3 October 2022 was dismissed from the proceedings due to its irregularity.

However, the court is not bound by the opinion of the CRRMPs, and it is up to the claimant to prove that there is a direct and essential link that he invokes between his pathology and his work.

The claimant has submitted to the court various and numerous publications on aerotoxic syndrome, a term introduced in 1999 to designate an illness caused by contaminated air in aircraft cabins:

- In an article published in the LOS ANGELES TIMES on 17 December 2020, the journalist sums up the issues as follows: "The air you breathe in aircraft comes directly from the jet engines. Known as bleed air, it is safe; except in the event of a mechanical problem - a faulty seal, for example. In this case, heated jet engine oil can seep into the air, potentially releasing toxic gases into the aircraft.

For decades the airline industry and its regulators have become aware of these incidents - called 'fume events' and they claim that they are rare and that the levels of toxic chemicals are too low to present serious health risks".

- In a thesis on the subject defended on 17 December 2017, Marie-Lorraine BOSSARD of the Université Claude BERNARD LYON 1, explains that the symptoms developed can be acute or chronic: irritation, sensitisation, neurotoxicity such as headaches, confusion, loss of balance, muscle weakness and neurobehavioural problems. She adds that the cockpit continuously receives bleed air,

whereas in the cabin, 40 to 60% of the air comes from recirculation via a HEPA (high efficiency particulate air) filter,*

so pilots are more exposed during "fume events".

- the Direction Générale de l'Aviation Civile's safety information note, no. 2020/05, recommends that aircraft operators make flight crews aware of the need to use personal protective equipment, after pointing out that "the toxic nature of certain substances leads us to take into account [...] the risk of

the partial or total incapacity of part of the crew to manage the flight".

Alexandre LACOUDE, who used to be a pilot for an Air France subsidiary, has produced an expert report on the quality of cabin and cabin air dating from

June 2016 according to which the elected members of this company's CHSCT (Health, Safety and Working Conditions Committee) reported incidents affecting air quality as early as 2009.

In addition, it is not disputed that HOP! decided to change the engine oil used on its aircraft for the following reason

The reason given for this was that "TN600 is the only oil available on the market today **that does not contain organophosphate additives**, which reduces the risk of aerotoxic syndrome" (see the HOP! technical report dated 3 October 2018, produced by **Alexandre LACOUDE**).

Consequently, if the aircraft are not equipped with air sensors that can reliably measure the quality of the air in the cabins, then it is impossible for HOP! to guarantee the quality of the air in cabins and cockpits, the fact remains that the risk of contamination during smoking events is real, particularly onboard HOP! aircraft.

Concerning his personal exposure to the risk of airborne contamination and its medical consequences, **Alexandre LACOUDE** produced the following elements in particular:

- an incident report concerning an odour of oil in the cockpit, followed by nausea during a flight which took place on 11 March 2015, it should be noted that this event was also reported by the employer to the accredited investigator.

- a letter from the regional consulting engineer of CARSAT Aquitaine dated 14 March 2019, stating that **Alexandre LACOUDE** suffers from an aerotoxic syndrome or fume event after a potential exposure to tricresyl phosphate during his professional activity.

- a copy of the judgment dated 22 June 2021, which includes the opinion of Dr Charles BONNAN, who sought the expert opinion from Dr Dominique TRIPODI stating that "the disorders described by **Mr Alexandre LACOUDE** civil aviation pilot are part of an aerotoxic syndrome associating physical symptoms and

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neurological effects caused by the short- and long-term effects of exposure to air in aircraft cabins caused by atomised oils and other technical agents."

- the preparatory document for the medical assessment under common law drawn up on 8 December 2020 by Dr Yannick-Louis MARTIN, who found that the patient suffered from "a toxic encephalopathy in the context of a polyvisceral intolerance of chemical exposure associating massive acute intoxications during "fume events" to reduced but prolonged and chronic exposure to air pollutants that ventilate the aircraft and in particular the cockpit".

These numerous scientific and medical elements make it possible to retain, without any doubt, the existence of a direct and essential link between Alexandre LACOUDE's pathology and his work, without it being necessary to re-designate a CRRMP.

Consequently, the appeal lodged by **Alexandre LACOUDE T**, who should be admitted to the benefits of the legislation on occupational diseases and to refer him to the services of the Caisse Primaire d'Assurance Maladie de la Gironde for settlement of his rights.

On the ancillary claims :

As the Caisse Primaire d'Assurance Maladie de la GIRONDE is unsuccessful in the proceedings, it must be ordered to pay the costs on the basis of the provisions of Article 696 of the applicable Code of Civil Procedure pursuant to paragraph II of Article R.142-1-A of the Social Security Code.

On the other hand, as the defendant is bound by the opinion of the CRRMPs and has no decision-making power in this matter, equity does not dictate that it be ordered to pay the costs.

The Caisse Primaire de l'Assurance Maladie de la GIRONDE should not, in equity, be ordered to pay on the basis of Article 700 of the Code of Civil Procedure.

In the case of social security decisions, provisional enforcement is optional, pursuant to Article R.142-10-6 of the Social Security Code. The need to order provisional enforcement has not been demonstrated.

FOR THESE REASONS

The Tribunal Judiciaire de BORDEAUX, ruling by contradictory decision, delivered by disposition at the registry and at first instance,

NOTES the irregularity of the opinion issued by the Comité Régional de Reconnaissance des Maladies

The Tribunal Judiciaire d'Occitanie,

DECLARES that there is no need to order the referral of the case to a new Comité Régional de Reconnaissance des Maladies

the Court of First Instance,

DECLARES that there is a direct and essential link between **Alexandre LACOUE**'s pathology noted by initial medical certificate dated 12 November 2018, and his working conditions,

DECLARES that illness no. **185112448** presented by **Alexandre LACOUE** must be recognised as being an occupational disease under the third paragraph of Article L.461-1 of the Social Security Code.

REFERS **Alexandre LACOUE** to the services of the Caisse Primaire d'Assurance Maladie de la GIRONDE for the settlement of his rights,

ORDERS the Caisse Primaire d'Assurance Maladie de la GIRONDE to pay the costs,

DISMISSES **Alexandre LACOUE**'s claim for irrecoverable costs,

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DECLARES that there is no need to order provisional execution of this decision.

Thus judged and made available at the court clerk's office on 6 October 2023, and signed by the President and the Clerk.

the Registrar.

(Signatures of)

THE REGISTRAR

THE PRESIDENT

Certified true copy of the original.

The Registrar,

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End of document translation.

*** HEPA filters are inadequate protection**

The recirculated air is often filtered using a high efficiency particulate air filter (HEPA) which removes microorganisms and other particulate contaminants but does not remove other contaminants such as volatile organic compounds (Judith Anderson & Dr. Michaelis testimony; Exs. 13 9-155 & 141-4). Apart from noticeable fume events, pilots are chronically exposed to engine vapors that continuously leak through the oil seals in tiny amounts because the use of pressurized air to both seal the jet engine's bearing chamber and to provide ventilation for the cabin guarantees that fugitive low-level oil emissions will enter the breathing air supply during normal engine operations (Judith Anderson & Dr. Michaelis testimony; Ex. 142, pages 3 & 5).'

<https://safetymatters.co.in/2023/01/27/toxic-cabin-air-the-cause-of-neurological-problems/?amp>

<https://www.unfiltered.vip/hepa-technology-tested.html>

<https://www.unfiltered.vip/guest-articles.html>