

Foreign Road Traffic Accident Claims

The webinar will start shortly

Next week: Zac Bredemear and Richard Cherry
Will be speaking on disrepair and dilapidations

The Thursday Morning Webinar

- 1. Jurisdiction
- 2. Service
- 3. Applicable Law
- 4. MIB Claims

Jurisdiction: Europe

The tortfeasor: Article 4 of recast Brussels I
(Regulation (EU) 1215/2012):

“Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.”

Jurisdiction: Europe

The insurer: Section 3 of recast Brussels I, *FBTO v Odenbreit* and the Sixth Motor Insurance Directive (Directive 2009/103/EC):

- The Claimant may sue the insurer in his or her home court if there is a direct cause of action against the insurer. In motor insurance cases there ought to be such a right due to operation of the Sixth Motor Insurance Directive.
- Territorial limitation clauses after *Hutchinson v Mapfre [2020] 2 WLUK 9*.

Service: Europe

Service may be effected via the English claims handling agent: *Spedition Welter GmbH v Avanssur SA, CJEU Case 306/12*:

- Proceedings may be served on the handling agent.
- If the insurer has nominated solicitors within the jurisdiction, service must be effected on those solicitors.

Jurisdiction: Outside Europe

The jurisdictional gateways: CPR Part 6, PD 6B:

- Damage has been, or will be, sustained within the jurisdiction.
- Anchor Defendants: a 'necessary or proper party to the claim'.

Jurisdiction: Outside Europe

CPR Part 6.37: applying for permission to serve the claim form:

- The claim must be able to pass through one of the gateways.
- The Claimant must believe that the claim has a reasonable prospect of success.
- The court must be satisfied that this is the proper place in which to bring the claim.
- *Four Seasons Holdings Inc v Brownlie* [2018] 1WLR 192, [2020] 7 WLUK 417.

Service: Outside Europe

CPR Part 6.37: the court may give directions for service. Generally the safest course is either:

- Service via the Foreign Process Section.
- Service via a method permitted by the law of the country in which proceedings are to be served.

But **BEWARE THE BACKLOG**: be ready to make an application for an extension of the lifetime of the claim form.

Jurisdiction and Service: Brexit

When will the uncertainty ever end?



Applicable law

Article 4(1) of Rome II (Regulation (EU) 864/2007) standardised EU rules regarding non-contractual obligations (*inter alia*):

“Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.”

Applicable law

Article 4(2) of Rome II (Regulation (EU) 864/2007):

“However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.”

Applicable law

Article 4(3) of Rome II (Regulation (EU) 864/2007):

“Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a preexisting relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.”

Applicable law

The applicable law governs substance but not procedure: Articles 15 and 1(3) of Rome II:

Substance:

- Liability, including contributory negligence, and quantum, including indemnity limits and caps.
- Limitation.

Procedure:

- Evidence: *Wall v Mutuelle de Poitiers Assurances* [2014] 1 WLR 4263.
- Costs.

Applicable law

A note on interest:

Scales v MIB [2020] EWHC 1747 (QB) (featuring Matthew Chapman QC of 1 Chancery Lane fame)

- Where a foreign law provides a substantive right to interest (e.g. Spanish penalty interest rate at 20%), that right will be a matter of substantive law rather than procedural law (para 255)
- But where the court has a discretionary power to award interest, as with S.35A SCA 1981, that provision will be matter of procedure.

Applicable law

But note Recital 33 to Rome II:

“According to the current national rules on compensation awarded to victims of road traffic accidents, when quantifying damages for personal injury in cases in which the accident takes place in a State other than that of the habitual residence of the victim, the court seised should take into account all the relevant actual circumstances of the specific victim, including in particular the actual losses and costs of after-care and medical attention.”

I.e. claimants facing significant medical bills which aren't covered in their home country may be able to recover those losses.

Applicable law

Other general points:

- Foreign law is a matter of fact, to be proved by expert evidence.
- Note differing limitation periods for RTAs in other countries: E.g. Italy, 2 years in RTAs; Denmark, 5 years against tortfeasors, but 2 years against insurers; Turkey, 1 year; Spain, 1 year from conclusion of criminal proceedings or investigation. Essential to have a good foreign law expert/contact to keep you abreast of changes in foreign law!

To summarise....

English courts have jurisdiction over European road traffic accidents.

English courts are unlikely to have jurisdiction over non-European road traffic accidents, unless there is some special feature.

The applicable law is likely to be that of the place where the accident occurred; but there are exceptions.

The applicable law governs all substantive issues, but not procedural ones, including costs.

Claims Against the Motor Insurers' Bureau

- Various EU Motor Insurance Directives require insurers to cooperate to handle claims between states.
- Victims can claim where insurer's representative fails to respond to a claim promptly, where vehicle not insured, or where vehicle cannot be traced.
- In the UK, MIB is the compensation body for such claims. When acting as such, MIB operates pursuant to Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regs 2003.

Claims Against the Motor Insurers' Bureau

2003 Regs allow the injured party to receive compensation from compensation body (MIB in the UK) in their own state. MIB then recovers compensation from relevant compensation body in Member State where tortfeasor's vehicle is insured. That compensation body can then claim an indemnity from tortfeasor's insurer (where there is one).

Claims Against the Motor Insurers' Bureau

Reg 11 - Entitlement to compensation where the insurer is identified:

Victim entitled to compensation from MIB where:

- (a) resident in the United Kingdom,*
 - (b) claims to be entitled to compensation re accident occurring in an EEA; and*
 - (c) loss caused by vehicle which is—*
 - (i) based in an EEA, and*
 - (ii) insured in EEA State other than the UK*
- AND they meet the following conditions ...*

Claims Against the Motor Insurers' Bureau

Reg 11 - Entitlement to compensation where the insurer is identified:

(3) –

(a) Victim has claimed compensation from insurer/insurer's claims representative and neither the insurer/claims representative has replied within three months;

(b) insurer has failed to appoint a claims representative in the UK.

Claims Against the Motor Insurers' Bureau

Reg 12 - Response from the compensation body:

(2) The compensation body shall respond to a claim for compensation within two months of receiving the claim.

(3) If victim satisfies the compensation body as to the matters specified in paragraph (4), the compensation body shall indemnify the injured party in respect of the loss and damage described in paragraph (4)(b).

Claims Against the Motor Insurers' Bureau

Reg 12 - Response from the compensation body:

(4) (MIB to be satisfied...)

(a) that insured tortfeasor is liable, and

(b) the amount of loss properly recoverable.

Claims Against the Motor Insurers' Bureau

Reg 13 - Entitlement to compensation where vehicle or insurer is not identified:

(1) applies where—

(a) Accident arising from use of vehicle based in EEA State, occurs on territory of—

(i) EEA State other than UK, or

*(ii) a subscribing State,
and victim resides in UK,*

(b) Victim has made a request for information under regulation 9(2), and

Claims Against the Motor Insurers' Bureau

Reg 13 - Entitlement to compensation where vehicle or insurer is not identified:

(c) impossible to identify vehicle alleged to be responsible, or

(ii) within two months after the date of the request, to identify an insurer for vehicle.

Then

(2) (a) victim may claim compensation from the compensation body, and

(b) compensation body shall compensate the in accordance with the Article 1 of the 2nd motor insurance directive as if it were MIB.

Claims Against the Motor Insurers' Bureau

What law applies to MIB claims?

Moreno v MIB [2016] UKSC 52

C injured in Greece, driver not insured.

Supreme Court held that the Motor Insurance Directive scheme's object was to improve enforcement prospects for compensation, not to change the merits of compensation. Accordingly, 2003 Regs were a mechanical device which had the effect of enabling UK residents to claim damages as if they were claiming against compensation body in the relevant Member State of the accident location.

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