



## **Personal Injury and Travel Update**

**September 2017**

### The Challenges and Changes Ahead for Personal Injury - The PEOPIL Annual Conference

Several hundred of Europe's leading personal injury practitioners met in London earlier this month for the 20<sup>th</sup> Anniversary Pan-European Organisation of Personal Injury Lawyers (PEOPIL) Annual Conference. 3 Hare Court was delighted to sponsor the event, as well as to have [Katherine Deal](#) as a co-Chair of the conference. This year's conference focussed on the imminent challenges and changes which lie ahead for the field of personal injury. Delegates enjoyed talks and panel debates on subjects including the uncertainty over Brexit, the sadly relevant challenge of claims arising from terrorist attacks, and comparative views on mediation in personal injury cases. This issue of the Personal Injury and Travel Update will look at some of the issues explored by the speakers and attendees at the conference.

#### Terrorism

Perhaps one of the most pertinent subjects discussed was claims arising out of terrorist attacks. The conference received a thorough introduction to the Spanish



system of state liability for victims of terrorist attacks, by Carlos Villacorta. The Spanish Law on Recognition and Overall Protection for Victims of Terrorism has created a two-tier system of liability for the Spanish government in the event of terrorism attacks, providing compensation to Spanish nationals and non-nationals without differentiation. This legislation therefore provides redress from the state for all of the victims of the recent terrorist attacks in Barcelona and Cambrils, which affected individuals with over 35 different nationalities. Importantly for those claiming compensation under the law to be aware of, it is a condition that the Spanish state be subrogated to any claim for damages against the person responsible – where such claims are even possible and are pursued.

### Mediation

Katherine Deal chaired an afternoon focussed on effective mediation in personal injury cases. The afternoon's panel comprised UK, Northern Irish, Dutch, American and Spanish lawyers, sharing their experiences of mediation in their home jurisdictions. Whilst mediation is widely regarded as a positive and useful tool across all the participating jurisdictions, delegates gained an understanding of the approaches of different jurisdictions to mediation between the parties, from the Netherlands where the *Mediators federatie Nederland* promotes a code of conduct



for its members which is proving highly successful in resolving disputes submitted to mediation, to Italy which has been experimenting with compulsory mediation in certain civil and commercial matters. Those claimants who have a choice of jurisdiction in which to bring their claim will need to consider whether taking legal action abroad will entail compulsory, or strongly encouraged, mediation in that jurisdiction as well.

#### Views from the USA

The usually European-focussed conference also benefitted from several contributions by US-based practitioners. The American Association for Justice President Kathleen Nastri and CEO Linda Lipsen addressed the Conference on the experiences of personal injury practitioners "from across the pond". As well as sitting on the panel debate on comparative mediation, US attorney Marc Weingarten gave a presentation on the opportunities provided by litigating claims with foreign elements in the USA, citing the attraction of jury trials, extensive discovery procedures, and strict product liability laws as just a few of the reasons US courts are being chosen to determine international disputes.



### Post-Traumatic Stress Disorder

Shifting the focus from law and procedure to expert evidence, Consultant Psychiatrist Dr Michael Isaac spoke to the conference on the issue of Post-Traumatic Stress Disorder, and the question of whether PTSD can ever be a bodily injury. Explaining the neurochemical and physiological responses of the body to stress, Dr Isaac brought delegates up to date on fascinating medical research which may show that PTSD is not only a psychological condition but has physical consequences for the human brain. Such developments, whilst not conclusive, are hoped to enable greater certainty in assessing vulnerability to PTSD, prognoses, and effective treatment of the condition. The research offers hope for better understanding of the condition, as well as more accurately assessed damages for those living with PTSD.

### French Clinical Negligence Claims

French avocat Sebastian van Teslaar addressed delegates on some interesting idiosyncrasies of French medical negligence claims, including the reverse burden of proof in certain types of claim. The French Public Health code has recognised the difficulties faced by claimants in relation to hospital-acquired infections, and hepatitis B contracted through blood transfusions. In such cases, the burden of proof is effectively reversed for those patients who demonstrate that the hospital-acquired



infection occurred more than 48 hours after admission, or can provide circumstantial evidence that hepatitis B was contracted from the blood transfusion. Thereafter it is for the defendant to prove an alternative cause of infection. Similarly in medical negligence claims, where a defendant clinician cannot produce a complete medical record of treatment provided, the burden shifts to the practitioner to prove that no fault was committed. The introduction of such laws in other areas and other jurisdictions could permit claimants who currently face overwhelming evidential burdens in certain personal injury and clinical negligence claims to seek redress at lower cost and in shorter timeframes.

### Conclusions

The 2017 PEOPIL Conference was an interesting and highly informative event, giving members the opportunity to consider solutions to current challenges, discuss innovations ahead, and most importantly share a wealth of experience and knowledge.