



3 HARE COURT

Travel & Aviation Bulletin

Special Focus - Nicholls & Anr v Mapfre
Espana [2024] EWCA Civ 718

Table of Contents

<u>Introduction</u>	3
<u>Spanish interest: Is an English court obliged to award 'penalty' interest?</u>	4
<u>Penalty interest under provisions of Spanish law</u>	5
<u>Tort in Spain, claim in England - should interest be awarded at the higher rate as stipulated by Spanish law?</u>	6
<u>Spanish insurers may be reeling from the aftershocks of the recent judgment of the Court of Appeal</u>	7
<u>Packages and penalties</u>	8
<u>Latest 3HC news</u>	9 - 10
<u>About us</u>	11

Introduction

Welcome to our Special Focus edition of the Travel & Aviation Bulletin.

In this issue we address various questions arising from the Court of Appeal decision on foreign interest in [*Nicholls & Anr v Mapfre Espana \[2024\] EWCA Civ 718*](#). The conjoined appeal addressed the application of Spanish penalty interest rates in personal injury claims pursued against Spanish insurers directly in the English courts. The articles in this edition cover the Nicholls decision, its importance in a post-Brexit world, as well as what the Court of Appeal did not decide.

In this Special Focus edition:

- [**Pierre Janusz**](#) and [**Anna Gatrell**](#) have written an article for Personal Injury Brief Update Law Journal.
- [**James Hawkins**](#) and [**Tabitha Hutchison**](#) have written an article for The Law Society Gazette
- [**Andrew Young**](#) has written an article for New Law Journal.
- [**Katherine Deal KC**](#) has written an article for Solicitors Journal and also an article for our website.

[**Katherine Deal KC**](#)

Editor

Spanish interest: Is an English court obliged to award 'penalty' interest?

Pierre Janusz and **Anna Gatrell** have written an article for Personal Injury Brief Update Law Journal.

The decision provided the Court of Appeal with an opportunity to give a definite ruling on whether, in a case where the law applicable to the claim is Spanish law, an English court is obliged to award "penalty" interest pursuant to Article 20 of the Spanish Insurance Contract Act 50/1980 (Article 20). This article seeks to consider an issue which can arise in such cases, namely what approach a court should take in a case where it is required by CPR r.36.17(4)(a), unless it considers it unjust to do so, to award interest on all or part of the damages awarded at a rate of up to 10% above base rate when it is required also to award interest pursuant to Article 20.

[Read this article here](#)

Pierre Janusz & Anna Gatrell



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Pierre is recognised as a leading junior in personal injury claims, where he regularly deals with catastrophic injury and high value fatal accident cases as well as clinical negligence matters. He has substantial experience of handling cases with an international element, with expertise in matters involving jurisdiction and applicable law issues, both generally and in relation to accidents abroad. Following on from his in-depth knowledge of the Brussels Ia Regulation dealing with jurisdiction and enforcement of judgments, the Rome II Regulation dealing with non-contractual liability and the Rome I Regulation dealing with contractual matters, he continues to be the author of the jurisdiction and applicable law chapters in the APIL Guide to Accidents Abroad published by LexisNexis.

Anna is one of our 2023 pupils. Prior to pupillage, Anna studied the Graduate Diploma in Law, achieving a distinction. Alongside this, she volunteered for IPSEA, where she provided representation at Tribunal hearings to help ensure that children and young people were able to access the right education.

Penalty interest under provisions of Spanish law

James Hawkins and **Tabitha Hutchison** have written an article for The Law Society Gazette looking at whether an award of penalty interest under foreign law is an issue of substance or procedure pursuant to Rome II.

[Read this article here](#)

[James Hawkins & Tabitha Hutchison](#)



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James specialises in personal injury, travel law and professional negligence claims. In his personal injury practice, James represents both claimants and defendants, often in claims of substantial value and with complex medical causation issues. Recently, James has been involved in claims involving traumatic brain injuries and other serious physical injuries which have resulted in a need for significant treatment and care.

Tabitha is one of our 2023 pupils. Before commencing pupillage, Tabitha Hutchison spent a year as Judicial Assistant to Lord Justice Dingemans in the Court of Appeal, where she worked on a broad range of civil and criminal appeals, including significant public law cases such as *R (Cabinet Office) v Chair of the UK Covid-19 Inquiry and Ors* [2023] EWHC 1702 (Admin) and *R (Good Law Project) v Prime Minister and ors* [2022] EWCA Civ 1580

Tort in Spain, claim in England – should interest be awarded at the higher rate as stipulated by Spanish law?

Andrew Young has written an article for New Law Journal.

The article addresses the question of whether the English court should award interest at the higher rate stipulated by Spanish law (art 20(4) of Spanish Insurance Contract Act 50/1980).

[Read this article here](#)

Andrew Young



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Andrew has many years' experience of handling foreign accident and illness cases, including multi-party claims, and frequently acts in cases involving complex issues of jurisdiction and conflicts of law. In recent years, he has developed a special expertise in acting for claimants who have suffered injuries or illnesses while working overseas, particularly for international security companies and in the oil industry. He has immense experience of the Package Travel Regulations and he recently acted for the claimant in the leading case on food poisoning claims against tour operators, both at first instance and in the Court of Appeal. He also acts for claimants in high-value domestic employers' liability personal injury claims.

Spanish insurers may be reeling from the aftershocks of the recent judgment of the Court of Appeal

Katherine Deal KC has written an article for Solicitors Journal.

The judgment confirms that Spanish penalty interest rates are matters of substance falling within the scope of article 15 of the Rome II Regulation. The potential for grievance amongst Spanish insurers (and those from other jurisdictions where high rates of interest may apply) suffering the potential triple whammy of high interest, substantial legal costs and the penalties imposed under the Part 36 regime is enormous.

[Read this article here](#)

Katherine Deal KC



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Katherine specialises in all aspects of high value personal injury claims often involving fatal accidents and catastrophic brain injuries of maximum severity. She has a particular expertise dealing with claims arising from overseas accidents or medical treatment, in particular concerning issues of jurisdiction and choice of law. She is widely considered a leading expert on the interpretation and application of Rome II, and acted for the claimant in the first ever decision from the Court of Justice of the European Union to consider the scope of Rome II, *Homawoo v GMF Assurances* (CJEU Case C412/10).

Packages and penalties

Katherine Deal KC has written an article for 3 Hare Court's website

The *Nicholls* decision has been addressed from a variety of perspectives in this bulletin, focusing particularly on the increasingly endangered species of the injured person's direct claim against the insurer of the alleged tortfeasor or contract breaker. On its face, it has no bearing on a package claim brought by the British holidaymaker against the British tour operator for the consequences of the slippery pool surround, leaking air conditioning unit or indeed dodgy bit of chicken.

But there is one scenario where it might come into play but which, invariably, does not feature in the claim, to protect not the holidaymaker but the tour operator.

[Read this article here](#)

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Latest 3HC news

3HC attending PEOPIL Annual Conference 2024

[Asela Wijeyaratne](#) and [Toby Eales](#) (Senior Practice Manager) are joining the personal injury community to attend sessions discussing rebuilding trust in personal injury law, technology in law, and privacy protection.

If you will be in Prague from 19-21 September we would be glad to meet. Please contact [Toby](#) to arrange a meeting.



Join our Personal Injury and Travel Litigation team

We are expanding our [Personal Injury](#) and [Travel Litigation](#) team. Ranked in Personal Injury by the Legal 500 and in Travel: International Personal Injury (Band 1) by Chambers and Partners, we invite applications from personal injury and travel law practitioners.

We are especially keen to recruit juniors with expertise or an interest in developing a practice in cross-border and travel related litigation but welcome and encourage applications from practitioners at all levels of call.

We are a modern and friendly set, committed to the promotion of equality, diversity and inclusion, with a dedicated and supportive team of practice managers, marketing and business development and business support staff.

Applications or expressions of interest should be sent to [James Donovan](#), our Senior Clerk, at jamesdonovan@3harecourt.com. Applications should include a covering letter and CV in the first instance.

3HC sponsors ABTA Travel Regulations Conference

We are delighted to support the [ABTA Travel Regulations Conference](#) on 18 November in London.

[Katharine Bailey](#) will be providing a 'Travel and litigation claims update' at 3.15pm.



The one day conference will discuss the changing landscape of travel regulation, the progress made on ATOL and PTRs reform, along with all current legal issues facing travel.

3HC seminar programme

We are running a series of online and in-person seminars aimed at practitioners at all levels of PQE. Our experts will provide you invaluable insight and training on:

Travel litigation

- Expert evidence post-Griffiths: tips & tactics
- Local standards evidence (selection, permission, Part 35, trial)
- Issues involving foreign-domiciled claimants and how to meet them
- Jurisdiction post-Brexit
- Foreign interest claims

General and domestic personal injury

- Vicarious liability
- Fundamental dishonesty
- Effective approval hearings
- Sensible negotiations - types of ADR, negotiation tactics
- Fixed costs and the new Tracks

Overseas clinical negligence

Can't see what you are looking for? We are happy to tailor a talk for you. Contact marketing@3harecourt.com to book a session.

Meet our practitioners

Our personal injury and travel team take great pride in being recognised by the legal directories, Chambers & Partners and the Legal 500 in PI and Travel: International PI.

We act for both claimants and defendants, including local authorities and insurers, providing specialist advice and representation at all stages of the litigation process and at all levels - from fast track cases to the most substantial and complex disputes, involving serious head and spinal injuries, catastrophic and fatal accidents, and we frequently also provide representation at inquests.

[Meet our practitioners here.](#)

3 Hare Court

We have a strong reputation in personal injury and travel litigation, as well as in civil fraud, commercial litigation, employment, insolvency, international work including arbitration, financial services, professional negligence, property and construction litigation and all manner of public, administrative, and constitutional law practice, incorporating civil liberties and human rights.

Members are ranked as leading specialists in the Legal 500, Chambers & Partners and Who's Who Legal in personal injury, travel, insolvency, civil fraud, administrative and commercial law, amongst others, and we are a top tier set for travel.

We provide specialist advice and representation at all stages of the litigation process, including pre-action, drafting pleadings, skeleton arguments and schedules, undertaking ADR, and providing advocacy at interlocutory hearings, trials and inquests - from fast-track cases to the most substantial and complex claims, from major commercial disputes to catastrophic and fatal accidents.

Claims in which we are involved frequently have a cross-border element; whether arising from an overseas accident or contractual dispute or involving foreign parties. We are uniquely placed to assist with such matters, where there are implications for the duty and standard of care, where jurisdiction and the choice of law are in issue and where direct actions are brought against overseas defendants or insurers. Chambers has established links to the travel industry and we are an ABTA partner. Members of Chambers are admitted as barristers in overseas jurisdictions and are fluent in many languages including Dutch, French, German, Hindi, Italian, Punjabi, Spanish, Swahili and Urdu.

For further information please view our website or contact us at marketing@3harecourt.com or 020 7415 7800 for further information.



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