

# CLAIMSMANAGEMENT

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## NO CASH FOR CRASH SPOTTING CRIMINALS



# Cross-border claims

Angus Logan and Antoinette Collignon look at jurisdiction-crossing claims

Nothing is subject to more myth than trying to make a claim for a client who has suffered injury in a foreign jurisdiction. Most lawyers would probably try to deal with the matter entirely in their own country if they possibly could and only realise when it is too late that they should really be taking advice from a foreign lawyer.

This tendency for people to try to deal with a case in their own country has continued since a European Court of Justice ruling in December 2007. The court decided that a German motorist injured in a road accident in the Netherlands was able to bring his case in Germany, after a German court originally rejected the case because it didn't have jurisdiction over the Dutch insurance company.

However, there is really no excuse. In this age of instant communication it is easy to meet and exchange information with lawyers from the different European and international jurisdictions, especially

through organisations such as the Pan European Organisation of Personal Injury Lawyers (PEOPIL) and APIL.

It is very important not to be afraid of the foreign jurisdiction and to get early, informal, advice from a competent foreign lawyer. There will be legal peculiarities about the foreign system and equally the foreign lawyer may well consider that your system is rather odd in some respects.

## TARDY CASE REFERENCE

We have both seen cases, referred to us rather tardily, in which early attention to seeking foreign law advice from a lawyer in the appropriate country would have avoided (a) time bar problems (where time limits are missed) and (b) fairly poor or last-minute decisions on the raising of court proceedings.

Each country has its own policies, to list but a few:

- If an accident happens in Spain there may only be a year in which to raise

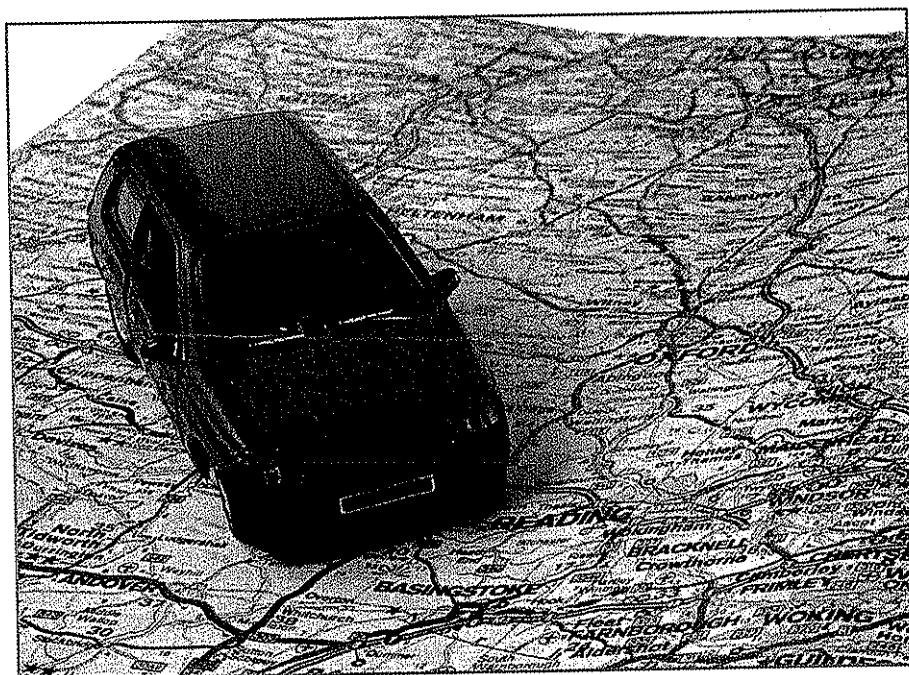
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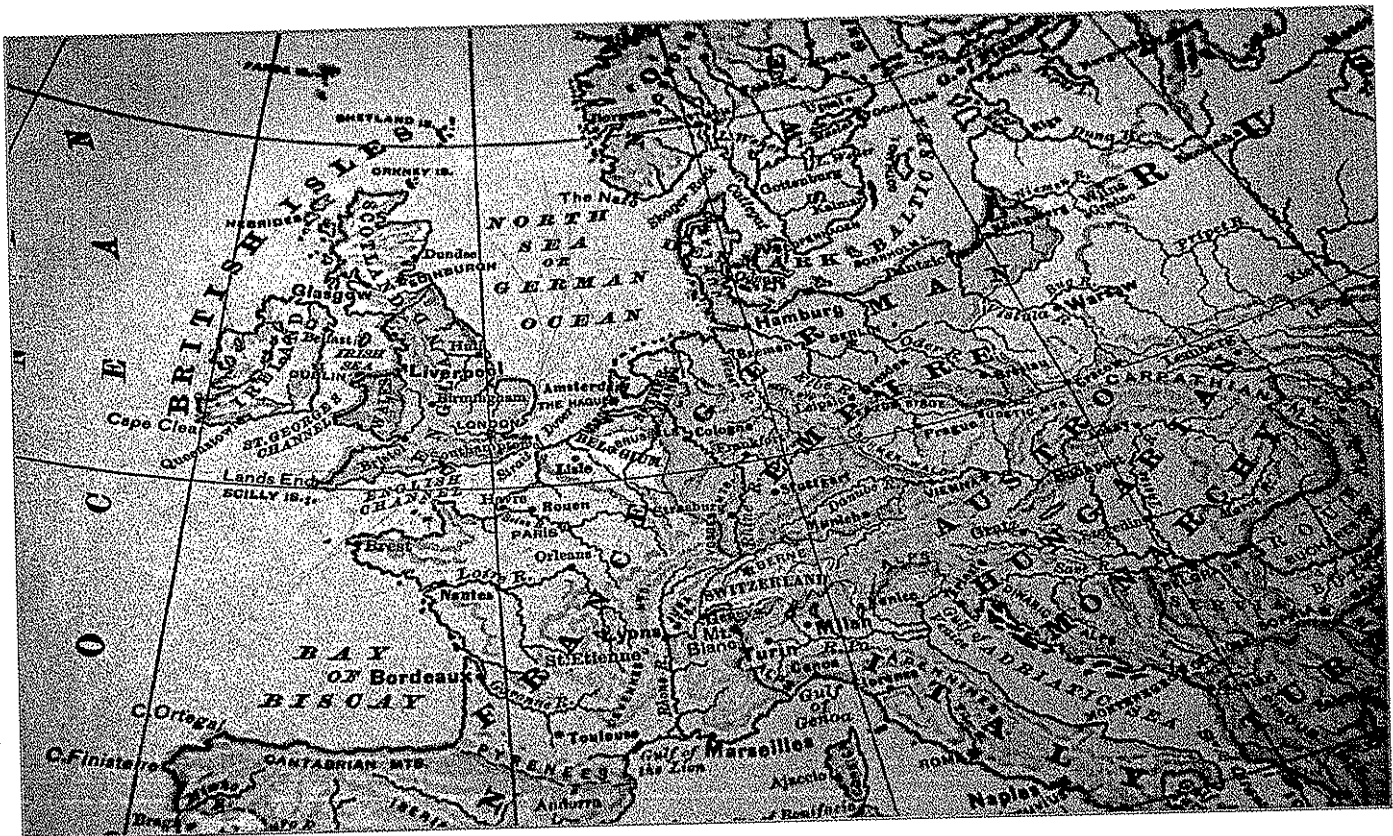
- If a road traffic accident happens in France, the system will be run on the no-fault and tariff scale first introduced in the 1980s.
- If you are working on a case related to the Netherlands you may need to understand the integrated nature of employment and care expert reports.
- Claims of secondary victims are calculated in a different way in each country.
- In several European countries secondary victims of fatal accidents will not be entitled to claim non-pecuniary damages for the loss of their loved ones.

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## THE RIGHT CHOICE

Thereafter you should be thinking about progressing the case through the chosen system, be it the foreign system, or be it your own system, if you can establish enough links with your own jurisdiction. You need to decide which would be in the best interest of your client (i.e. where they will receive the best damages for pain and suffering and loss of earnings potential etc). Plainly, the stakes increase in relation to particularly serious injuries – then choice of law and choice of jurisdiction systems is of extreme importance. In the last decade particularly the various road traffic Directives from Europe mean that a careful evaluation of the best system in which to run the claim and in which to raise any proceedings is vital.





## INTERNATIONAL PICK 'N' MIX

There may be ways to pick and choose parts of two different systems to suit your client, but in general it would be best to run the claim and raise any proceedings in one jurisdiction (so long as this is in your client's best interest).

If you do not already know the foreign lawyer you are working with then it is plainly a good idea to meet fairly early on in the case, particularly if the value of the claim is high. If you are going to be travelling to the foreign jurisdiction then you should of course aim also to meet your "foreign" client through your foreign lawyer contact.

Early advice and liaison with a knowledgeable lawyer is key in cross border cases, whether you are giving or receiving the advice

## CONSTANT LIAISON

After this you should be in constant liaison with your foreign colleague for updates about the medical care and about the state and private benefits which the injured party is receiving in the foreign country, so that you can provide a similar update

relating to your country.

Liaison with your foreign colleague is vital. It has been said that information is power but particularly in a cross border claim the exchange of information from an early stage is absolutely essential.

## UNIFORM LIMITATION PERIODS

PEOPIL and other interested bodies have recently suggested to the European legislators that perhaps some kind of uniformity with regard to limitation periods (known in some systems as prescription periods) in cross border cases should be introduced. They have suggested that this should be set at a standard four year period. This proposal would seem well worth advancing.

Remember, early advice and liaison with a knowledgeable lawyer is key in cross border cases, whether you are giving or receiving the advice. ☺

Antoinette Collignon is a Dutch lawyer specialising in personal injury cases and based in Amsterdam, and vice president of PEOPIL. Angus Logan is a personal injury specialist solicitor in Edinburgh and a Scottish board member of PEOPIL. They are currently conducting a large road accident damages case in the Scottish courts.

## PEOPIL FAST FACTS

**Purpose** – to improve and promote judicial co-operation and mutual knowledge of legal and judicial systems of European jurisdictions in the field of personal injury law

**Founded** – 1996

**Type of members** – legal professionals (lawyers, judges), academics and law students

**Numbers of members** – 275 members from 18 jurisdictions within the European Union, 10 Non-European Union jurisdictions within Europe and 4 jurisdictions outside Europe

**Current President** – John Pickering, from Mitchell UK

**Website** – [www.peopil.com](http://www.peopil.com)