

English Civil Law and the Foreign Motorist



**Justice or a
Lawyer's Lunch?**

Agenda

- **Basic Principles**
- **The Civil Procedure**
- **The Claim - Practice**



Basic principles

- English Law is based on “precedent” - what courts have decided before in similar cases
- Laws are interpreted by the courts
- The system is adversarial
- All costs are paid by the loser

How are claims made?

- **Direct – 1%**
- **Via Legal Expense Insurers and their solicitors – 80%**
- **Via Accident Management Companies - 10%**
- **Via own lawyer – 9%**

Better for Swiss Defendants?



- **Litigation less likely – avoided despite GC System, Protection of Visitors Agreement and the Hague Convention – areas English lawyers do not often specialise in**
- **But claims must be dealt with by MIB or Correspondents**

How does the Claimant get Compensation?

- Was the Swiss motorist responsible for the accident?
- Can it be proved? - Test is the “balance of probability” - what is most likely to have happened
- How long will it take?
- What will it cost?

Liability

- Is there negligence?
- Is there damage?
- Is there a statutory liability?
- Limitation

Negligence

- **Was the conduct of the Swiss motorist such that his driving was below that to be reasonably expected? – The foreigner is at fault**
- **Will the Swiss motorist return to give evidence?**

Damage

- **Injury – Unlimited**
Pain and suffering – General Damages
Financial Loss – Special Damages
- **Property – up to £1m**
- **Any loss proved as resulting from accident – Watch Credit Hire**

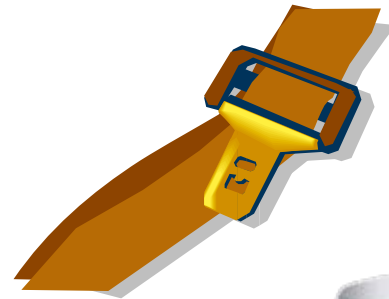
Statutory Liability

None – BUT

- **Conviction on a serious motoring offence will normally mean full liability for damages**
- **Children under 11 or victims that are mentally disabled cannot be guilty of contributory negligence**

Contributory Negligence

- Accident circumstances
- Seatbelts – 25%
- Drink – 25%



Not cumulative and must be proved

Proof

A claimant must prove his claim

- **Evidence – witnesses or documents must be produced**
- **“Expert” evidence is usually restricted to doctors and engineers**
- **Engineers’ reports are not as detailed as in Europe, but cheaper**
- **Evidence in court must be in person**

Witnesses

Where there are no witnesses to the accident—

- **Which driver tells the best or most believable story?**
- **The court will decide if possible. Split decisions are discouraged**

Limitation

- **Injury – 3 years**
- **Property – 6 years (5 years in Scotland)**
- **The court has authority to over rule limitation if it is just to do so**

Claim lifetime?

Depends on the size of claim, if liability disputed and if it goes to court

- **Whiplash injury claim – 18 months**
- **Property damage only – 3 months**

95% of cases do not reach court, but legal proceedings are started in almost every case

Legal Costs



- The most important issue – these are all the claimants costs – not just trial costs
- Costs can be recovered by the successful litigant
- Solicitors Costs are high. Normal rates for Road Accident cases are between £90 an hour for an inexperienced clerk and £230 an hour for a solicitor

Conditional Fee Agreements

- For those who have no Legal expense insurance
- Claimant must have no pre-accident legal expense insurance
- Insurance against losing must be taken out
- Contract must stipulate a level of success fee up to 100% (this is limited for smaller cases)
- Success fee has to be paid by the loser

Predictable Costs

Apply where the claim is over £1,000 for injury, but under £10,000

- **£800 + 20% damages**
- **+ 12.5 % for London**
- **+ VAT**
- **+ Expenses**

Predictably frequently exceed the value of the claim

The Courts

- **The Small Claims Court – cases up to £1000 injury, £5000 property**
- **The County Court – cases up to £50k**
- **The High Court – cases above £50k or of special importance**
- **The Court of Appeal - appeals**
- **The Supreme Court – appeals from the Court of Appeal**

Court fees?

Court fees are charged at each stage e.g.

- **To issue proceedings for a claim up to £15,000 (Fast Track) - £225**
- **Trial hearing - £500**
- **Multi Track - £400 minimum**
- **Trial hearing – £1,000**

The Civil Procedure Rules



www.justice.gov.uk

The rules governing how civil claims are made and the conduct of the parties and the Court

The Civil Procedure Rules

- Rules – govern how legal proceedings are commenced and fought
- Practice Directions – explain in detail how the rules are to be applied
- Pre action protocol – governs how a dispute should be resolved *before* litigation

The P.I. Pre-action Protocol

Intention is to:

- **encourage full disclosure of the evidence and the facts of the case, to**
- **enable cases to be resolved quickly, without litigation, but if that is not possible**
- **allow the hearing to be conducted efficiently**

The PI Protocol

- **Failure to abide by the Protocol will result in the Court applying penalties – interest and costs**
- **Can result in the legal costs doubling**

The PI Protocol

Investigation

- Insurers have 3 months after the letter of claim is acknowledged to investigate the claim – *this may be reduced to 14 days in the near future*
- Time period is 6 months if the accident is outside England and Wales

The PI Protocol

Medical Reports

- **Must be disclosed – but only if they are to be used**
- **Arranging an examination within 6 months is difficult**
- **Cost is paid by the instructing party**

The PI Protocol

Offers

- Can be made at any time – “Part 36 Offers”
- If the claimant does not beat the offer in a subsequent court hearing, he will not recover the legal costs incurred *after* the offer was made

The Accident – what happens?



- Police do not attend unless injury
- Language will be a problem
- English motorist will not complete an EAR
- Witnesses will favour the native

The Claim

- **Property damage – usually a matter of fact**
- **Credit hire and repair – inflated charges**
- **Injury – did it happen?**



Property Damage

Early inspection of the vehicle

- Must be made available
- but can repair if reasonable
- Independent engineer
- Total loss – value must be proved –
Glasses Guide



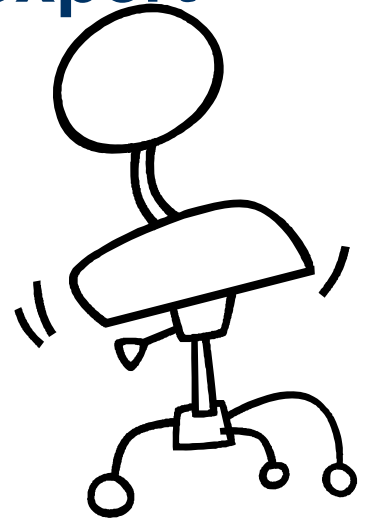
Credit Hire

Very high rates, but allowed by the court

- **Strict contract rules**
- **Must be licensed for credit**
- **Must be reasonable**
- **Operators very aggressive**

Injury

- Will be claimed in the most trivial accident
- Difficult to contest without early expert evidence
- The solicitor's office syndrome
- Doctors may be biased
- JSB Guidelines



The Legal Approach

- Letter from solicitors – after they have prepared the case
- As few facts as allowed
- Early proceedings
- No settlement under £1,000 for injury
- Time limits followed closely

Problems - The PI Protocol

Problems

- **Difficulty in meeting the time limits**
- **Medical experts – cost/time/location**
- **Attendance of witnesses**
- **Cost of litigation**

Problems - Liability

- **Police report not normally available for 6 - 12 months**
- **Witness details may be concealed by police**
- **Investigation expensive**
- **Swiss Defendants may be reluctant to go to court**

Problems - Time Limits



- **Police reports not available**
- **Medical reports can take 6 – 12 months**
- **Policyholders do not report accidents to insurers**
- **Claimant's lawyers prepare case in advance leaving little time for Swiss defendant's insurer to react**

Problems - Medical Reports

- **Picking the expert – claimant lawyers may arrange before you can object**
- **Commercial relationships between doctors and lawyers/insurers**
- **Time to arrange – good doctors may have a 6-12 month waiting list**
- **Objectivity**

Problems - Fraud

- Much easier when the defendant is in another country
- Much easier via the Green Card System
- Are the correspondents members of CUE? Or the Insurance Fraud Bureau?
- Black Spots

Points to Note

- More time and energy is devoted to the issue of legal costs than any other
- Legal costs in dealing with claims are expensive
- Further legal action to contest the legal costs is usual

Pending Developments

Proposed scheme for legal costs in Small Injury Accidents between £1,000 and £10,000

- Electronic notification
- Insurer's decision on liability in 15 days
- Solicitor submits evidence with offer to settle
- Very short time restrictions
- May be implemented in April 2010

Not helpful in foreign claims?

Conclusions

- **The system is a battle, often at a cost exceeding the amounts claimed**
- **The facts of a case are almost unimportant compared to the legal costs**
- **The advantage is with the claimant**

and Finally....



No, it is not justice, but there are many well fed lawyers.

Circa 45% of all claims payments relate to legal costs



Questions