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## Insurance surgery: English drama or Greek tragedy?

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Peter Allchorne translates the message from *Moreno v Motor Insurers' Bureau* for motor accident victims

- **A motor accident victim's entitlement to compensation will be measured on a consistent basis by reference to the law of the state in which the accident occurred.**

Ms Moreno, a UK resident, suffered life-changing injuries whilst on holiday in Greece, when she was run over by an uninsured driver. Responsibility for the accident was not in dispute.

The appeal to the Supreme Court brought by the Motor Insurers' Bureau (MIB) related to whether Ms Moreno's damages were to be determined in accordance with Greek or English law, the former being compatible with Rome II as "the law of the country in which the damage occurred", but the latter being more generous in damages for the claimant (see *Moreno v Motor Insurers' Bureau* [2016] UKSC 52, [2016] All ER (D) 17 (Aug)).

The claimant argued that reg 13(2) of the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body Regulations) 2003 (SI 2003/37) (the 2003 regulations) required that the MIB should compensate her "as if the accident had occurred in Great Britain" following the interpretation in *Jacobs v Motor Insurers' Bureau* [2010] EWCA Civ 1208, [2011] 1 All ER 844 and *Bloy v Motor Insurers' Bureau* [2013] EWCA Civ 1543, [2013] All ER (D) 344 (Nov)

## Questions for the court

The Supreme Court set itself two questions:

- Whether the various Motor Directives prescribed any particular approach to the scope or measure of damages applicable in a claim against a compensation body; and
- If they did; whether reg 13(2)(b) of the 2003 regulations reflected the approach under the Directives, or required a different approach.

## The Motor Directives

One needs to consider the history and evolution of the Motor Directives to fully understand the Supreme Court's answer to these questions.

Prior to the Directives the Green Card System provided for "insurers of vehicles in participating states to issue Green Cards guaranteeing compensation to victims of motor accidents caused by the driving of such vehicles abroad...in conformity with legal and regulatory provisions applicable in the country of accident relating to liability, compensation of injured parties and compulsory insurance".

The overarching purpose of the series of Motor Directives which followed was to ensure that compensation was available for victims of motor accidents occurring anywhere in the EU. In the UK the MIB acts as both bureau and guarantee fund as prescribed in the Second Motor Directive.

Fast forward to the Fourth Motor Directive and it is the transposition of Art 7 into English law which largely causes the difficulty in this case. Article 7 confirms that the injured party may apply for compensation from the compensation body in the member state where he resides, whereas reg 13(2) states: "[T]he compensation body shall compensate...as if it were the body authorised...and the accident had occurred in Great Britain."

This point of interpretation was considered in *Jacobs* by the Court of Appeal, which reached the conclusion that damages were to be assessed in accordance with UK law. Conversely, in *Moreno* the Supreme Court looked at the "holistic development" of the Directives and concluded that *Jacobs* was construed too narrowly, stating: "The scheme of the Directives is clear. A victim's entitlement to compensation will be measured on a consistent basis by reference to the law of the state of the accident whichever route to recovery provided by the Directives he or she invokes."

As such, the court found that reg 13(2)(b) must be read as having a purely mechanical or functional operation. Once it is concluded that the scheme of the Directives is to provide a consistent measure of compensation there is no need to regard reg 13(2)(b) as having any purpose or effect.

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## An acrobatic journey

The Supreme Court have taken an acrobatic journey around the legislation, and concluded that the Directives do not permit the individual member states to provide for compensation in accordance with any such law that they may choose. Rather they must proceed on the basis that a victim's entitlement to compensation will be measured on a consistent basis by reference to the law of the state in which the accident occurred.

It seems only fair that compensation should be the same for all victims, regardless of whether they are injured by an insured, uninsured or untraced driver.

As a footnote, with UK's impending exit from the EU, domestic legislation around such issues will require even closer scrutiny and consideration going forward.

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