

Personal Injury: The Insurer's Perspective

In search of Soteria

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In search of Soteria – the insurer's perspective

"What keeps insurers awake at night?"

"A review on the differences between the French and UK regarding the insurers' perspectives, the convergence through the EU and the continued convergence, despite Brexit."



Soteria – Greek goddess of safety and salvation – preserving us from harm



What keeps insurers awake at night?



Reserves



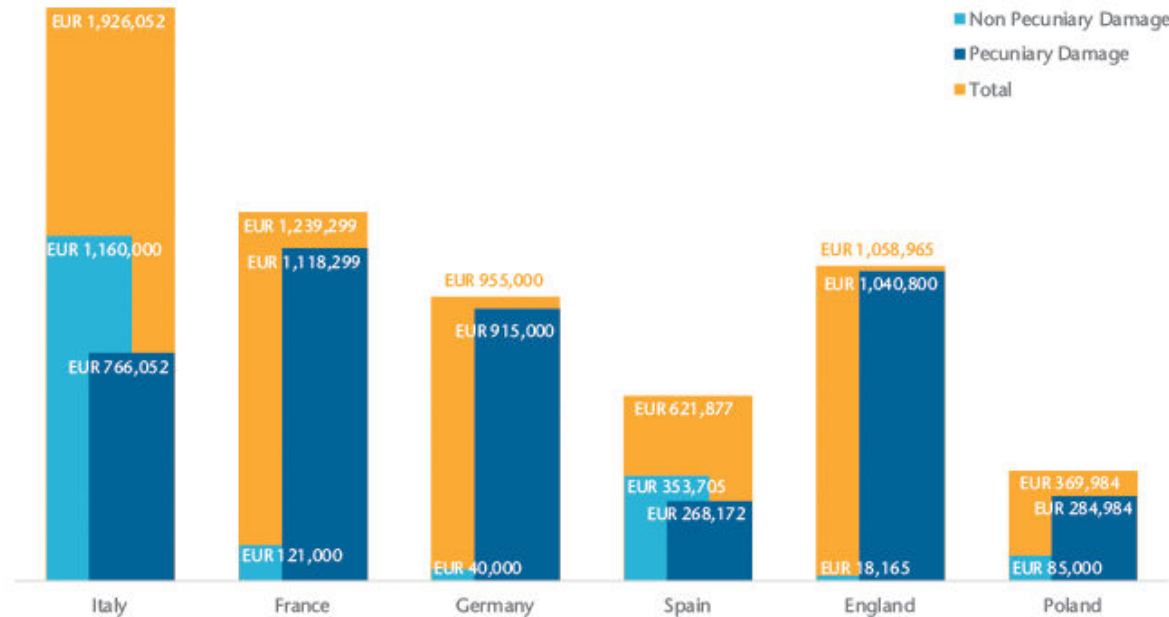
Ensuring accuracy



The pre-Brexit burden
of UK Claims

Comparison of Damages Levels Across Europe

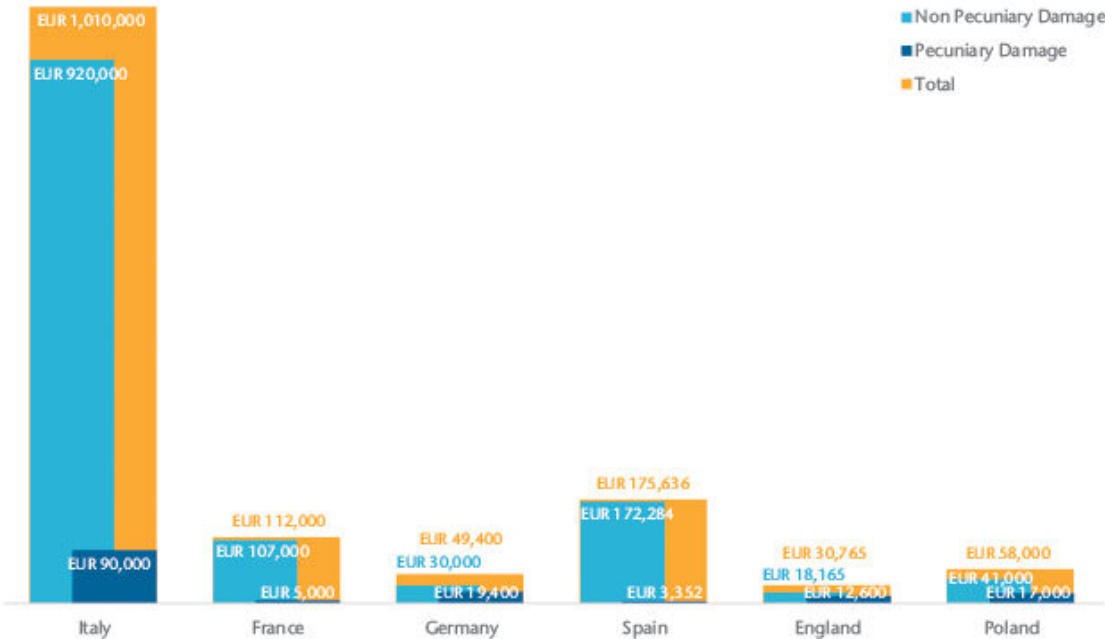
Graph 1 – Case 1: Death of a 41-year-old man, an employee with an annual income of EUR 40,000.
Heirs: wife, two sons (six and nine years old), one parent, one brother



Source – Gen Re Claims Focus, Report of June 2022 “Personal Injury Compensation in Europe: An Updated Comparison Among Different Systems Within the European Market”

Comparison of Damages Levels Across Europe

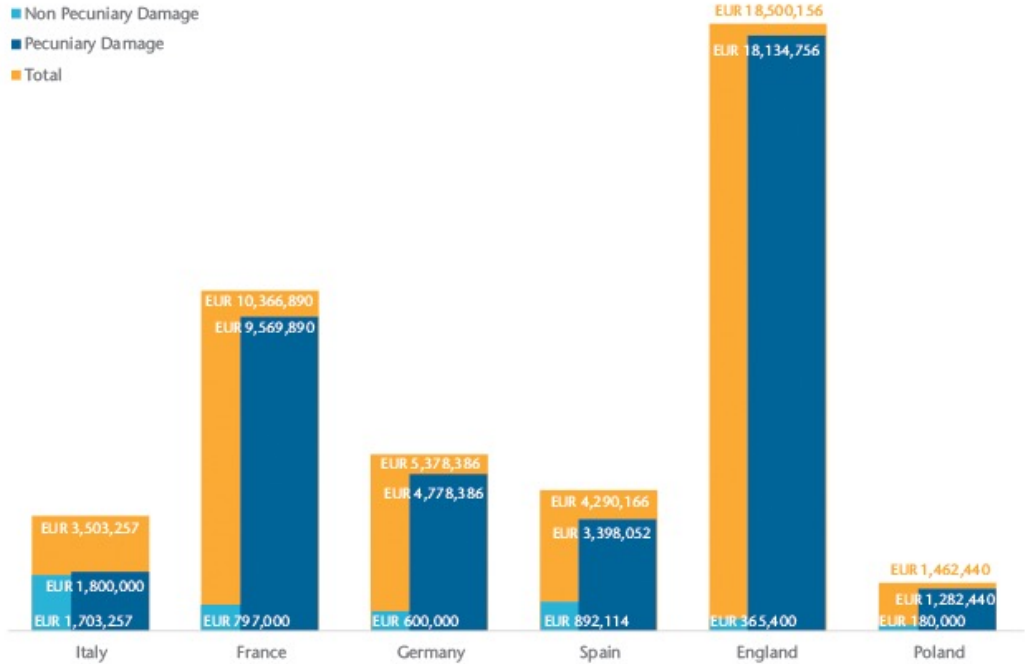
Graph 3 – Case 2: Death of a 17-year-old boy, a student. Heirs: parents, 14-year-old sister and two grandparents



Source – Gen Re Claims Focus, Report of June 2022 “Personal Injury Compensation in Europe: An Updated Comparison Among Different Systems Within the European Market”

Comparison of Damages Levels Across Europe

Graph 5 – Case 3: Quadriplegia case – 41-year-old man, an employee with an annual income of EUR 40,000.
Heirs: wife, two sons (six and nine years old)



Source – Gen Re Claims Focus, Report of June 2022 “Personal Injury Compensation in Europe: An Updated Comparison Among Different Systems Within the European Market”

What insurers need



Reserves – getting them right



Reporting to re-insurers within a policy year



Assisting overseas insurers in understanding legal costs in the UK



Adversarial versus inquisitorial legal systems

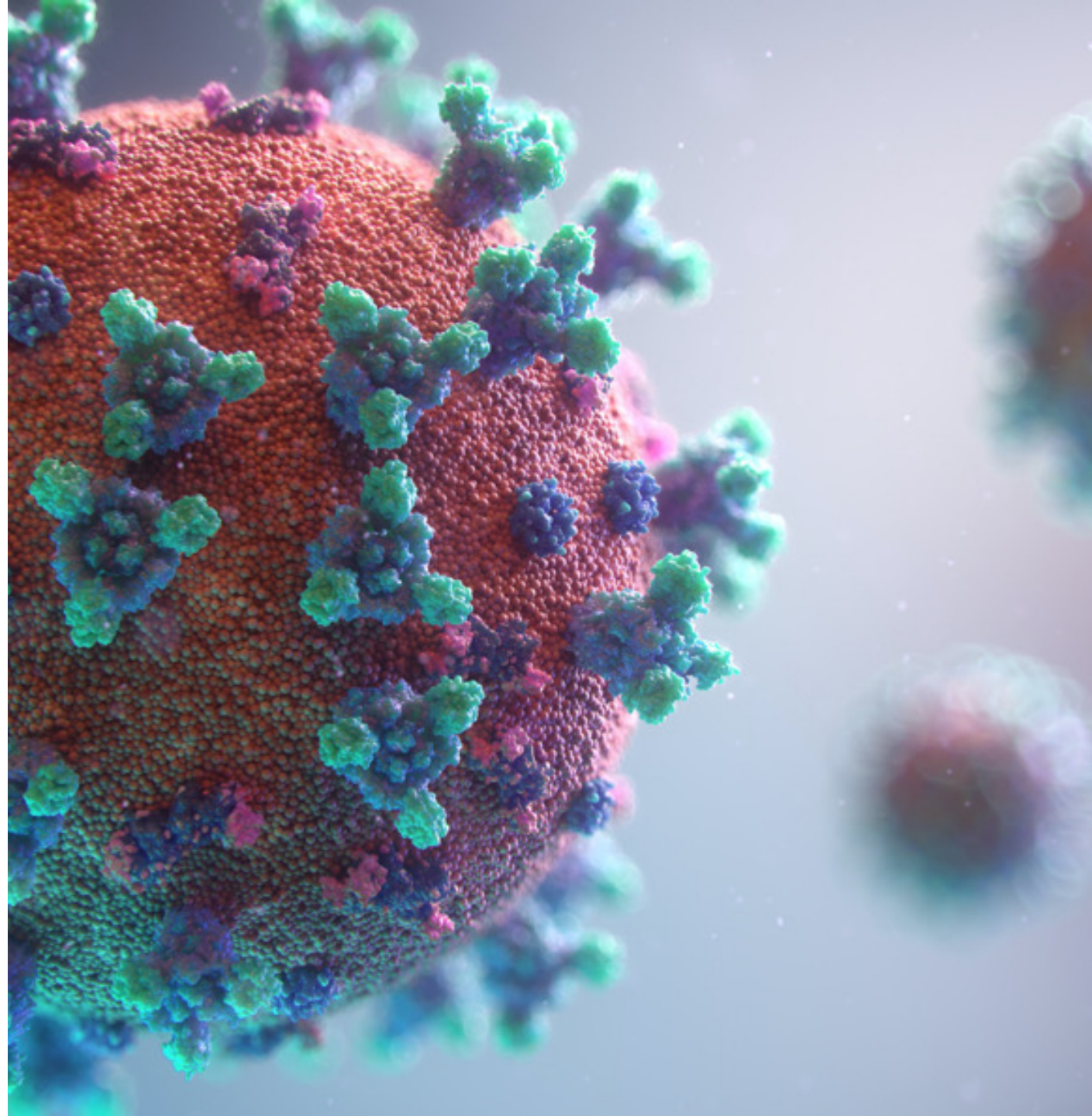


Provide fully particularised claims for mediation / Alternative Dispute Resolution

Current worries for insurers

Claims inflation

- Coronavirus
- Climate change
- The Gig Economy
- War in Ukraine
- The Energy Crisis and the Cost of Living Crisis



Current worries for insurers

Pandemic and Brexit issues

- Increase in wages
- Increase in medical costs
- Disruptions to supply chain
- Shortage of raw materials



Current worries for insurers

Higher incidence of fraud

- Increase in group actions
- Increase in Claims Management Companies
- Introduction of the Official Injury Claims Portal in England and Wales
- Increase in non-whiplash claims



Current worries for insurers

Increase in value of motor claims

- Increase in cost of vehicle parts/shortage of skills and increased operational costs
- Better, more complex technology



Current worries for insurers

Increase in personal injury damages

- Judicial College Guidelines 16th Edition

Section (A) - Tetraplegia (also known as Quadriplegia)

£324,600 to £403,990

- Increase in interest rates
- Discount rate review UK



Jurisdiction – the Common Law test

The Claim Form can be served on a proposed defendant if they are within the jurisdiction or if the courts have given permission for service to be effected outside the jurisdiction.

To obtain permission to serve outside the jurisdiction a claimant must do the following:



Pass through the gateway in CPR Practice Direction 16 paragraph 3.1



Show that the claim has reasonable prospects of success or that there is a serious issue to be tried on merits;
and



Establish that England is the appropriate forum for the claim so that the court ought to exercise its discretion to permit service out of jurisdiction (forum conveniens)



Post-Brexit case law on jurisdiction

Skiing accident in Courcheval, France on 27 January 2018 – *Klifer v Slater*

- French national injured by UK-resident
- English solicitors instructed
- Defendant's solicitor confirmed on 25 August 2020 instructed to accept service of proceedings
- Proceedings served in England and Wales on 14 January 2021
- Defendant's solicitor made application disputing jurisdiction
- Service in, so burden on Defendant
- Had to satisfy Court that France was the more appropriate forum

Moore v Macif

- Road traffic accident in France
- Proceedings issued separately for Mr and Mrs Moore in England
- Proceedings served on the Defendant in France – Service out case
- Original decision of Court to grant permission to serve out of the jurisdiction decided on the papers
- The Claimants passed through gateway, having suffered significant damage in this jurisdiction
- French law and procedure was very different from that of English law and procedure
- French courts would be best placed to apply that law and procedure



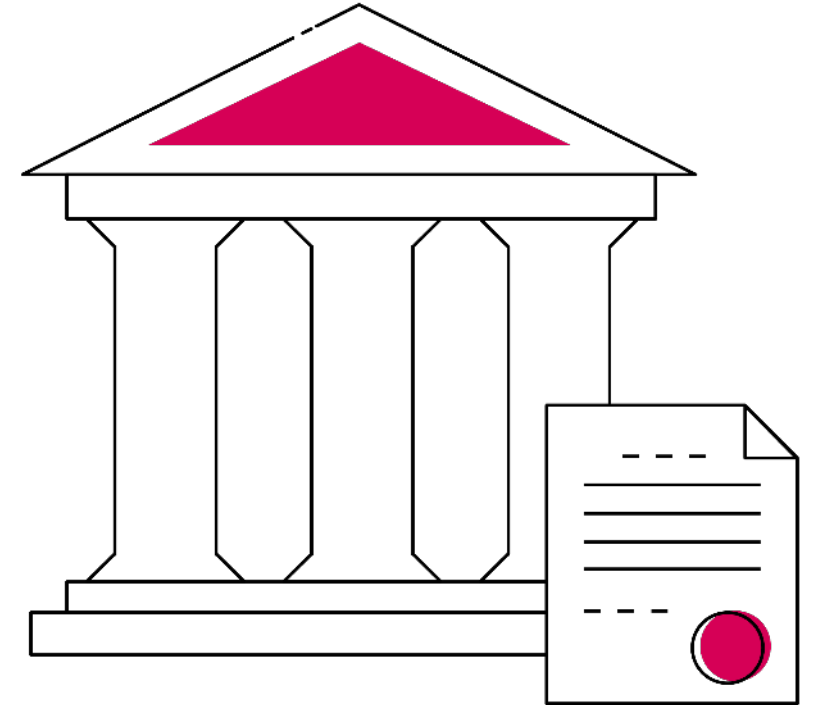
Shazad Alvi v Allianz IARD

Held:

Looking at the factors, the Judge was not persuaded that England was the most appropriate forum

- Location of damage was in France, fact that some PSLA in England was not sufficient
- The location of the tort and the governing law were not outweighed by the Claimant's arguments

The Claimant's case was stayed in this jurisdiction



Thanks for your attention



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