



Neutral Citation Number: [2023] EWHC 2540 (KB)

Case No: QB-2020-004551

IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16 October 2023

**Before:**

MR JONATHAN GLASSON KC  
SITTING AS A DEPUTY HIGH COURT JUDGE

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**Between:**

**MR MICHAEL ASHTON**

**Claimant**

**-AND-**

**EUROLIFE FFH SOCIETE ANONYME GENERAL INSURANCE**

**Defendant**

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**Mr Matthew Chapman KC** (instructed by **Irwin Mitchell LLP**) for the Claimant  
**Mr William Audland KC** (instructed by **Carter Perry Bailey LLP**) for the Defendant

Hearing dates: 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> October 2023

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**Approved Judgment**

**This judgment was handed down remotely at 10.30 a.m. on 16<sup>th</sup> October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.**

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## MR JONATHAN GLASSON KC SITTING AS A DEPUTY JUDGE OF THE HIGH COURT:

1. The Claimant claims damages for personal injury arising from a road traffic collision which occurred in Greece at around 1130 hours on 16 September 2019 (“the collision”, or “the accident”). The Claimant was on holiday at the Neilson Buca Beach Resort (“the Resort”) with his wife. On the morning of 16 September, he hired a bike from the Resort. As he was cycling along a two-way national road in the Peloponnese region of mainland Greece he collided with a black Opel Vectra motor vehicle (bearing registration mark IZM-6814) which was parked in the shade of a tree on the right-hand side of the road. Although the full extent of his injuries was not immediately apparent, it has transpired that the Claimant had suffered catastrophic spinal injuries and is permanently tetraplegic.
2. The owner/driver of the Opel Vectra (“the Opel”) was Mr Panayiotis Georgopoulos, a Greek national domiciled in Greece. The Defendant, an insurance company incorporated in Greece, insured Mr Georgopoulos and the Opel Vectra.
3. On 28 February 2022 Master Gidden ordered that liability should be tried as a preliminary issue. I heard that trial over three days and in that time I heard evidence from a number of factual witnesses as well as the parties’ respective experts in Greek law. Two of the factual witnesses, Mr Kaldor and Mr Borrowdale, gave evidence by video link but all other witnesses, including the two experts, gave evidence in person. Each party also relied on reports from accident reconstruction experts. However, because of the significant level of agreement between those experts, it was agreed that neither expert needed to be called to give oral evidence.
4. At the end of the trial, the parties submitted written notes and they also made oral closing submissions. I am grateful to both counsel for their written and oral submissions.
5. I was presented with a significant amount of documentary material. The trial bundles ran to 2 volumes with an additional set of 3 volumes of English and Greek authorities. I have considered all of the evidence so far as is relevant and set out in this judgment such of the evidence as is necessary so as to understand my reasons for determining the preliminary issue.
6. The judgment is divided into the following sections:
  - a) The applicable law;
  - b) The parties’ pleaded cases;

- c) The factual evidence concerning the collision;
- d) The accident reconstruction evidence;
- e) My findings of fact concerning the collision;
- f) The Greek law relevant to the claim; and
- g) My findings on liability.

#### **A) APPLICABLE LAW**

7. This Court has jurisdiction over this claim pursuant to section 3 of the recast Brussels I Regulation No 1215/2012 as interpreted in the CJEU decision in *FBTO v Odenbreit* Case C-436/06. Claims of this kind (pursued directly against an insurer) are to be characterised – for choice of law purposes – as non-contractual/tort claims. The laws of Greece apply to the substantive issues in this claim pursuant to Articles 4.1 and 15 of the Rome II Regulation No 864/2007 and English law applies to issues of procedure and evidence pursuant to Article 1.3 of the Rome II Regulation. The issue of the burden of proof is governed by Greek law (pursuant to Article 22 of Rome II), however the standard of proof is governed by English law, pursuant to Article 1.3 of Rome II (see *Marshall v MIB* [2015] EWHC 3421(QB) per Dingemans J, as he then was, at paras. 24-25).
8. Material propositions of foreign law must usually be proved by a duly qualified expert in the law of the foreign country and the burden always lies on the party seeking to establish that proposition of law: *A/S Tallinna Laevauhisus v. Estonian State Steamship Line* [1947] 80 Lloyd's Rep 99 and *FS Cairo (Nile Plaza) LLC v Lady Brownlie* [2021] UKSC 45, [2022] AC 995, at para 148. The task of such an expert is clearly set out in *A/S Tallinna*: “to convey to the English Court the meaning and effect which a Court of the foreign country would attribute to it if it applied correctly the law of that country to the questions under investigation”. Such experts are required to comply with the duties of an expert set out in the Practice Direction CPR Part 35 in just the same way as other experts.
9. My task is to interpret the relevant Greek legislation in a like manner to that which would be adopted by a Greek court (see *Deane v Barker* [2022] EWHC 1523 (QB), paras 36 – 53 *per* Mr Richard Hermer KC). Where there are disputed questions of foreign law, my task is to determine what the highest relevant court in the foreign law system would decide (*Morgan Grenfell & Co Ltd v SACE Istituto per I Servizi Assicurativi del Commercio* [2001] EWCA Civ 1932 para 50 and *Perry v Lopag Trust Reg* [2023] UKPC 16, para 38).

10. Finally, findings in relation to foreign law are findings of fact, albeit a question of fact of a peculiar kind (*Parkasho v Singh* [1968] P 233, p 250, *per Cairns J*).

#### **B) THE PARTIES' PLEADED CASES**

11. In paragraph 10 of his Particulars of Claim the Claimant sets out his case on breach. *Inter alia*, he alleges that the driver of the Opel was negligent in that he was in breach of Articles 12 and 34 of the Greek Traffic Code (“the GTC”) and that he failed to exercise the skill and care of a reasonably competent driver in all the circumstances.
12. In paragraph 8 of its Defence, the Defendant denied that the driver of the Opel was negligent and/or in breach of the GTC. Alternatively, it is averred that any such breach of the GTC was not causative of the accident. Further or alternatively the Defendant alleged that the accident was caused or contributed to by the Claimant’s own negligence.
13. The Defendant averred that the Claimant must prove his claim to the “*conviction of the Court: the burden of proof in Greek law is significantly higher than (sic) the balance of probabilities.*”
14. In his Reply, the Claimant claimed that the Defendant had mistakenly elided the distinction between the “*burden*” of proof and the “*standard of proof*”. Whilst the former fell within the scope of the substantive applicable law, the latter fell within the procedural law of the forum court. In the event, the Defendant did not pursue this issue at trial, and I have made my findings of fact on the balance of probabilities, the standard of the English court (see *Marshall v MIB*, cited above).

#### **C) THE FACTUAL EVIDENCE**

15. In his witness statement the Claimant explained that on the morning of 16 September he hired a Boardman bike from the Resort at about 8am. He then went for a ride with two other holidaymakers from the Resort. He said that the ride included a “*small amount of climbing but overall was relaxed, including a coffee stop*”. He says that “*being very safety conscious*”, he was wearing a helmet he had brought from England and Polaroid sunglasses to reduce the glare of the sun. When his co-riders returned their bikes to the Resort he decided to head off on his own on a “*brief ride*”. The Claimant says that he “*went up to the local village, across the main road and onto a country lane. At the end there is a T-junction at which I turned right onto main road called ‘Epar. Od.Messinis-Kiparissias’*”. He says that he had cycled along the road several times before. In the statement he said that “*the road, like other roads in the area, could be uneven and have some debris (e.g.) stones on it. As a result I was looking out for things immediately in front of my bike and looking up to assess the road further into the distance*”.

16. The Claimant was called and cross-examined by the Defendant. The Claimant explained that he has no recollection of the events leading up to the collision or of the accident itself. He was asked about the requests submitted by him for a prosecution to be brought against the driver of the Opel. He explained that what he had said in those requests was simply based on what he had been told in respect of what had happened. The Defendant asked him on a number of occasions whether he accepted the reconstruction experts' evidence as well as whether, on the basis of the photographic evidence, he accepted that the Opel was visible from 120m away. On each occasion, the Claimant declined to answer the question, each time repeating that he had no recollection of the collision.
17. In its closing submissions the Defendant described the Claimant as a "very evasive witness" and invited the Court to draw an adverse contrast between him and the driver of the Opel, Mr Georgopoulos. I accept however that the Claimant genuinely has no recollection of the accident. As such his evidence was inevitably limited.
18. Mr Kaldor was called on behalf of the Claimant. Mr Kaldor came across the accident scene just after it had happened but did not witness the accident itself. In his statement he said that he spoke to the driver of the Opel and that he had said that he had seen the Claimant "*approaching his parked car but he did not slow down and that he was approaching his car at 20 kph. He said he was expecting [the Claimant] to deviate to the left and then the next thing was a bang when [the Claimant] hit the boot of his car. The driver also said that he thought the sun might have been in [the Claimant's] eyes*".
19. The driver of the Opel, Mr Georgopoulos, was cross-examined about why he had stopped at that particular point on the road under the tree. He was asked whether it was chosen so that he would not get too hot. He said that he had stopped there because it was the most appropriate place to stop, though he accepted that it was perhaps because of the shade. He was taken to still photographs from Mr Borrowdale's video and he confirmed that those showed white lines down the road. He confirmed that those lines demarcated the lanes. Mr Georgopoulos said that he activated his hazard warning lights the instant that he parked the car. He said that they remained on after the accident although he thinks he most likely turned them off at some point after the accident after the ambulance and police had arrived. Mr Georgopoulos said he activated his hazard warning lights whenever he stopped his car. He said it was a "*common practice in Greece*" to activate hazard warning lights.
20. It was suggested to Mr Georgopoulos that he had embellished his statement for these proceedings. He was taken to his initial statement to the police which was given on oath. He was asked about why he had not told the police that he had overtaken the Claimant earlier and that the Claimant appeared to

be having difficulty going uphill. He was also asked why he had not told the police that just before the collision he had seen the Claimant in his rearview mirror and that *“his head was lowered and looking at the road and seemed to be cycling at speed”*. In relation to each question, Mr Georgopoulos responded that he regarded the statement to the police as a formality and denied that his statement for these proceedings contained embellishments.

21. The Defendant called Mr Borrowdale who at the time of the collision was the Head Bike Guide at the Resort. In his statement he explained that on the day of the accident he was asked to attend the scene by the Resort to collect the Claimant’s bike. When he arrived at the scene the Claimant had been taken to hospital. He spoke to the driver of the Opel. A day or so afterwards he was asked to prepare a report for the Resort. As part of that he took a video of part of the route taken by the Claimant at the time of the collision.
22. In cross-examination he explained that he had taken the video to help the hotel management understand the circumstances of the accident. He confirmed that he had been out to the scene of the accident the day before to collect the Claimant’s bicycle. As he approached the scene, he was waved down by the individuals at the accident. He confirmed that he could see a faded line in the middle of the road in respect of two of the stills from his video. He was asked about a series of questions he was asked by the hotel management a couple of days after the accident. Amongst the questions asked in the document was a question about whether when he arrived at the scene the Opel’s hazard warning lights were on to which he had replied *“it didn’t have hazards on to my recollection”*.
23. Finally, the Defendant relied upon the witness statement of Mr Dimitrios Dimitropoulos which was relied upon pursuant to a hearsay notice served under s.2 of the Civil Evidence Act 1995 and CPR Part 33.2. He was unable to give evidence in person as he was unable to travel for health reasons. He was not able to give evidence by video link as a court was not available in Greece for him to give evidence from (as is required under the Hague Convention of 18 March 1970 on The Taking of Evidence Abroad in Civil or Commercial Matters).
24. In his statement he explained that he did not know the driver of the Opel or Mr Ashton. He described witnessing the accident as follows:

*“I passed the chapel of the Evaggelistria and was going uphill on a left turn, after which the road begins to slope downwards. The road is then straight and downhill for several hundred metres. As I was completing the turn on to the straight part of the road, I had good visibility and could clearly see a bicycle at about 75-100 metres in front of that, I could see a car. I saw the car and the hazard lights flashing. It was parked under a*

*tree on the right hand side of the road. There was nothing else on the road. Just a few seconds later, as I was driving towards the parked car, I saw the cyclist hit the rear end of the car. I could not understand why the cyclist did that and why he did not pass along the side of the car.”*

25. He went on to say:

*“Before I left, I spoke with the driver...I recall that we were both surprised with all that had happened and we could not understand why the cyclist did not simply try to overtake the car. I had seen that the car was parked exactly along the side of the road and there was plenty of space on the left hand side of the car for the cyclist to overtake it. The car, in my opinion, was parked with absolute safety. I did not see any other car approaching from the opposite direction and therefore, there was no reason why the cyclist could not overtake the parked car, in my opinion. In fact, no other car approached from the opposite direction the entire time I was at the scene.”*

#### **D) THE ACCIDENT RECONSTRUCTION EVIDENCE**

26. The Claimant relied on an accident reconstruction report from Mr Mark Crouch whilst the Defendant relied upon an accident reconstruction report from Mr Stuart Whitehead. Both experts visited the scene of the accident for the purposes of their reports.

27. On 10 January 2023 the experts produced an admirably concise joint report in which they set out their conclusions indicating that there were no material areas of disagreement. Both parties asked me to accept the agreed evidence of the accident reconstruction evidence. Whilst there was some dispute as to whether their findings were “agreed facts”, there is no basis for me to do anything other than to accept their conclusions. Those conclusions were carefully expressed following site visits and, critically, did not usurp on factual findings which are for me alone to make.

28. The experts agreed that:

a) The collision occurred on a straight section of the road, Epar. Od. Messinis-Kiparissias. This is a single carriageway, two-way rural road approximately midway between Madena (to the west) and Messini (to the east). In September 2022 (when the experts visited the scene) there were no discernible road markings to delineate the eastbound and westbound lanes or the edges of the carriageway. The experts noted that “[a]erial imagery taken in April 2017 shows the presence of lane dividing lines and edge of carriageway lines, however photographs and videos taken shortly after the collision in September 2019 show these markings were no longer present;

*they had either worn away or the road had been re-surfaced, but not re-marked.”*

- b) There were no signs prohibiting parking at the scene of the collision. Whether or not parking was prohibited is a matter outside their expertise.
- c) During their site visits they observed that it was possible to park off the main road in some of the minor access roads within about 100m of the accident location.
- d) The road width at the scene of the collision was about 5.2-5.3m wide. The Opel was essentially 1.8m wide (with an additional 0.1m for each wing mirror). The experts commented that “[t]herefore, in this position, the left-hand tyre walls of the Vectra were approximately 3.4m to 3.5m from the northern roadway edge. Measured from the edge of the left door mirror, this remaining distance reduced to 3.3m to 3.4m. That allowed space for opposing westbound vehicles to pass the parked car, or for eastbound vehicles to overtake it, indeed this was observed at the time of the locus visit, with vehicles passing the exemplar car without issue.”
- e) The road surface at the scene of the collision was “unremarkable”. They noted that the “road surface in the area of the collision was relatively uniform with small surface cracks consistent with the temperate climate, but none that would have caused any issues to pedal cycles. During our visits to the scene we did not see any debris, such as large stones or loose gravel on the road surface in the running lanes. Inevitably there was loose gravel, soil deposits and vegetation at the edges of the carriageway bordering the verges. The road surface on the bend had degraded, where at the edge of the carriageway parts of the top surface of the road had broken away which would cause an issue to pedal cyclists if they rode on that particular section (at the edge of the lane).”
- f) The damage indicated that in the moments leading to the collision the Claimant “went over the handlebars” and struck the rear of the Opel. They commented that for the Claimant “to have been pitched forwards, his pedal cycle must have rotated about its front axle as a result of him braking very firmly with at least the front, or both brakes.”
- g) “An approximate estimate we consider it likely that in the braking phase prior to impact the pedal cycle slowed in the region of 5mph meaning that the approach speed was in the order of 20mph to 25mph”. They emphasise that there was very little published material to draw on and their estimate was based on their “combined experience”.



- h) *“If the Court considers the approach speed was... say 23mph then with a likely mid-range PRT of 1.25s [the Claimant] could have brought his pedal cycle to stop in just under 36m”.*
- i) In relation to the visibility of the Opel *“we measured a direct line of sight distance between a road user and the parked exemplar Opel of 190m. Our joint testing at the scene confirmed that it would have been apparent that the Opel presented a stationary vehicle in the road from a distance of at least 120m, due to the contrast between the upper sections of the car and the lighter road surface beyond. This detection was possible irrespective of the use of the hazard lights on the vehicle, the placing of the warning triangle in the road behind the car or the use of polaroid sunglasses.”* (Emphasis added)
- j) The Claimant was probably about 15-21m from the Opel when he first saw it. The Claimant was probably about 25-31m from the Opel when he began to look up.
- k) If the Opel was visible from 190m away, then the Claimant probably *“cycled for a distance of no less than approximately 165m without checking the road ahead. At a speed of 25mph that would take about 14s and at 20mph it would take about 18s.”*
- l) It was a matter for the Court whether or not a warning triangle should, as a matter of Greek law, have been placed by the driver of the Opel. If the Court did make that finding then they agreed that a *“warning triangle positioned 50m behind the car would (had he observed it) have afforded [the Claimant] sufficient time and distance to respond by braking and or steering and thus avoiding the collision with the car, regardless of where he is found to have been looking.”*
- m) The experts noted that it was the Claimant’s account that *“he was looking out for things immediately in front of my bike”*. Whilst they properly accepted that this was *“ultimately a matter for the Court”*, they commented that *“this could imply that he was looking at the road surface ahead of him, allowing him to take action if needed, rather than simply having his head fully down. It will remain a matter for the Court to decide what the term ‘immediately’ means, however, given the likely required stopping distance was in the order of 36m the sum of the ‘view ahead’ and the position of the triangle would need to be greater than this in order to avoid a collision with the car. For example, with a triangle positioned at approximately 18.3m, [the Claimant] would have needed to have been looking ahead of his pedal cycle at least 17.7m to have seen and ‘reacted’ to the triangle and so avoid the impact with the car by emergency braking to a stop. It should*

*be noted that given the variables in this collision, this is not a precise calculation and should be used as a guide rather than absolute values.”*

**E) THE EVIDENCE AS TO THE RELEVANT GREEK LAW**

29. The Claimant relied upon expert evidence from Ms Vassiliki Pavlakis-Moschou (“Ms Pavlakis”) as to the relevant Greek law, whilst the Defendant relied upon expert evidence from Mr Georgios Natsinas (“Mr Natsinas”). The experts had met before the trial to produce a joint statement. Whilst regrettably that meeting did not lead to agreement on a number of issues (and resulted in a 55-page joint report) there was agreement (save in respect of one specific sub-clause) as to the translation of the applicable legal provisions. Moreover, in the course of cross-examination there was also a significant measure of agreement as to the approach that a Greek court would take to this claim.
30. Each expert was cross-examined at some length as to whether or not they had exceeded their role as an expert and entered into the fray, becoming advocates rather than independent experts whose primary duty was to the court. Additionally, Ms Pavlakis was cross-examined as to whether or not there was a material conflict of interest because of the role her firm played in securing materials from the Greek authorities.
31. I do not make any adverse finding against Ms Pavlakis in relation to the criticisms made that there was a material conflict of interest. In cross-examination she fairly accepted that she could see that it might appear as though there was a conflict of interest. I am satisfied that there was no intention on her part to conceal a potential conflict of interest and that her firm’s role did not affect the views that she expressed.
32. In my judgment however there is substance to the Defendant’s criticism of Ms Pavlakis’ approach in her expert report as well as in the Joint Statement. In both instances she presumed to make findings of fact (which are for this court alone to make) and expressed herself more as an advocate rather than an independent expert: for example, she “*strongly argued that the driver of the Car acted negligently*” and asserted that “*the Claimant cannot possibly be held exclusively liable for the accident*”. Furthermore, by suggesting (for the first time)<sup>1</sup> at the Joint Meeting that there was a possibility that there were prohibitory markings in the road at the scene, she indicated an approach that lacked the requisite independence and strayed impermissibly beyond her remit as an expert on Greek law. The fact that Ms Pavlakis strayed into factual issues beyond her expertise is all the more surprising given that by the time of

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<sup>1</sup> In her report she had proceeded on the basis that there was no visible dividing line or marking in the middle (see p.686 of the trial bundle).

her expert report the accident reconstruction experts had produced their Joint Report.

33. In contrast, I do not accept the criticisms made of Mr Natsinas. His report is carefully expressed, and he was consistently concerned not to stray into factual issues which are for the court alone.
34. My findings as to the credibility of the two experts are factors that I take into account when considering where the experts disagree.
35. I will deal first with those areas where the experts were (at least largely) in agreement.

*The relevant legal provisions*

36. The experts agreed (save in one minor respect, indicated below) translations of the relevant legal provisions.
37. Article 914 of the Greek Civil Code sets out the legal basis for tortious liability and compensation for personal injury in Greek law. It provides:

*“Whoever has caused damage to another unlawfully and with fault is under an obligation to compensate him”.*

38. Article 300 of the Greek Civil Code sets out the legal approach to contributory negligence. It provides:

*“If the party that suffered the damage contributed through his or her own fault to the damage or its extent, the Court may not award compensation or may reduce the amount of compensation. The same applies where the party having suffered the damage has failed to prevent or limit the damage or has failed to draw the debtor's attention to the risk of an unusually extensive damage of which the debtor neither knew nor ought to have known. This provision shall also apply to faults committed by persons for whom the injured party is liable.”*

39. Article 330 of the Greek Civil Code sets out the criterion for negligence and provides:

*“The debtor is liable, unless otherwise specified, for any breach of his legal obligation due to deceit or his negligence or of his/her legal representatives. Negligence exists when the diligence that is required in the trade is not exercised.”*

40. Article 338 of the Code of Civil Procedure sets out the burden of proof and provides:

- “1. Each party to the litigation must prove the factual circumstances that are necessary to support its independent claim/allegation or counter-claim/allegation*
- 2. When the law prescribes a presumption of the existence of a fact, evidence to the contrary is permitted unless otherwise specified”*

41. Article 12 of the GTC sets out general provisions in respect of road users:

***“Article 12: General provisions***

*Para 1. Those using the roads must avoid any behaviour that it is probable to expose into danger, or to put obstacles to the circulation, to expose to danger persons or animals, or to cause damages to public or private properties. The drivers are obliged to drive with prudence and their attention constantly engaged, to show particular attention to children, the elderly, people with disabilities and in general to any persons requiring assistance and in general not to cause with their behaviour terror, anxiety, or nuisance to the other users of the roads, to those around, or those residing near them.*

...

*Para 4. If road users cannot avoid the creation of an obstacle or danger, they are obliged to immediately take the necessary measures to remove or prevent it and if they cannot do so, they must notify the other road users of the existence of the obstacle or danger.”*

(Emphasis by way of underlining added)

42. Article 34 of the GTC sets out specific provisions in relation to stopping and parking:

*“1. Stopping and parking are allowed if they do not pose any danger or obstruction to traffic and if there are no relevant prohibitory signs or markings.*

*2. Stopping and parking is prohibited:*

....

*h) on carriageways that are divided into two traffic lanes and if the remaining lane width between the vehicle and the prohibitory for crossing line is less than three (3) meters<sup>2</sup>, OR*

*On roads that are divided into two traffic lanes and if the remaining lane width between the vehicle and the prohibitory for overtaking (crossing) line is less than three (3) meters<sup>3</sup>,*

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<sup>2</sup> Translation provided by Ms Pavlakis

<sup>3</sup> Translation provided by Mr Natsinas

...

3. *Parking on the carriageway/road is also prohibited in the following cases:*

- a) at a distance of less than fifteen (15) meters before and after level rail crossings,*
- b) in front of the entrance and exit of vehicles from a roadside property as well as opposite of it, when the road is narrow and the entry and exit of vehicles from it is obstructed*
- c) in such a way as to prevent a regularly parked vehicle from un parking.*
- d) if the remaining free space of the road is insufficient for the circulation of vehicles*

....

4. *Outside residential areas, standing or parking is permitted only in the spaces allocated for this purpose or on the shoulders of the roads; if there are not any of them, as close as possible to the right hand edge of the road/carriageway and parallel to its axis, unless this is prohibited.*

...

9. *The driver of a motor-vehicle at the exception of (a driver) of two-wheel mopeds and two-wheel motorcycles without basket, if he is obliged to park on the road, at a position where parking is prohibited, he is obliged to place a sign or a suitable device, in accordance with Article 81 of this Code, in a manner such that the drivers who are approaching are warned at a distance. The sign is placed on the road/carriageway and at a distance of more than twenty (20) meters in residential areas and fifty (50) meters in non-residential areas, subject to paragraph 3 of Article 29 hereof. The same applies for trailers in similar conditions.*

*12. It is expressly prohibited to occupy, by any means and for any reason whatsoever, part or all of the carriageway of the road of national, provincial, and municipal or communal roads used by both motorized and non-motorized traffic. All those who intentionally violate the provision of the previous subparagraph shall face the penalties of Article 292, par. 1 of the Criminal Code, as in force. At the same time, and regardless of the penalties imposed by virtue of the previous paragraph, the competent Regional Governor may, following a previous hearing of the person against whom the measure is taken, revoke the offender's driving license for one (1) year and in case of recurrence, revoke the licence permanently, if it is a public vehicle, revoke the right of driving the vehicle as a public vehicle and simultaneously order that the vehicle's number plate is removed.” (Emphasis by way of underlining added)*

*The experts' agreed position in respect of the applicable legal principles*

43. The experts agreed that the following legal principles would be applied by a Greek court to determining this case.
44. Tort liability under Article 914 presupposes an unlawful and wrongful human behaviour (act or omission) which causes loss to another person. The elements which must be proved therefore are: (1) unlawfulness or illegality by reference to legislation in force; (2) wrongful act or negligence on the part of the wrongdoer; (3) human behaviour in the form of an act or omission; (4) loss or damage (injury) sustained by the Claimant; (5) causation between the act/omission and the loss or damage.
45. The experts described Article 914 as “*white rule*” because – as both experts describe it in the Joint Statement - it does not identify “*the wrongful and unlawful acts which, if committed, give rise to liability*”. They agreed that it was necessary to look elsewhere for the wrongful/unlawful act giving rise to liability.
46. Article 12 of the GTC sets out a general duty of care in respect of road users to drive or park without negligence. Whilst Mr Natsinas may have appeared in the Joint Statement to disagree with that principle, his disagreement was in relation to Mrs Pavlakis’ reliance on the obligation to act in “good faith” (a provision of the Greek Civil Code contained in Article 281 that had not been pleaded by the Claimant), and in cross-examination he agreed that “*the general duty of care is usually expressed by means of application and reference to the obligations and duties imposed by the wide and general articles 12(1), 12(4) and 34(1) of the Traffic Code, according to which drivers are obliged to avoid any behaviour that may cause danger or obstruct the use of the road by others, to take measures to protect others from harm and to avoid parking whenever this may cause danger or obstruction for others.*”
47. Whether or not the Opel was “*an obstacle to the circulation*”, or a “*a danger or obstruction to traffic*” were questions of fact to be determined by the court by reference to the evidence.
48. The obligations of the cyclist under the GTC are those set out in Articles 12(1) and then more specifically in Articles 19(1) and 19(2).
49. A breach of the GTC does not necessarily establish negligence on the part of a driver or cyclist. It must be proved to the requisite standard that the breach caused the loss or damage.
50. The experts agrees that causation (a necessary condition for tortious liability under Article 914 of the Greek Civil Code) can be established where the act/omission concerned is the sole/exclusive cause of damage and where the

same is a contributing cause (among other causes). Causal link is assessed, under Greek law, on the basis of the “*theory of adequate cause*” (*causa adequata*), which is deemed to exist when an act or omission leads in all probability to the occurrence of the loss incurred. In his report Mr Natsinas explained that the theory “*is the only leading causation theory applied by Greek courts, provides that a causal relationship exists, when the act or omission was, under the ordinary course of events and pursuant to the lessons derived from common experience, adequate in causing the harm. Causation will be established when, according to the lessons derived from common experience and logic, the unlawful act or omission, at the time and under the conditions in which it occurred, was sufficiently capable according to objective foresight and in the ordinary course of events - without the intervention of other irrelevant or unusual and extraordinary circumstances - to cause the damage. Causa adequata is an objective test which assesses what was the adequate/proximate cause which brought about the harm without examining the particular knowledge or abilities of the individuals involved in the accident.*” Ms Pavlakis agreed with Mr Natsinas on this point.

51. The burden of proof rests with the party who asserts liability or contributory negligence (as the case may be) pursuant to Article 338(1) of the Greek Code of Civil Procedure.
52. Finally, as to the Greek case law, the experts agreed that the case law provided guidance rather than binding precedent. Courts of first instance are not bound to follow Supreme Court decisions and each judge is “*independent*” and has “*a free hand*” (as Ms Pavlakis put it) to determine the case on its own particular facts. Similarly, whilst regard may be had to academic commentary it does not have to be followed.

*The areas of disagreement*

53. The principal area of disagreement between the experts concerned the construction of Articles 12 (1) and 34(1) of the GTC. The Claimant argued that “*obstacles to circulation*” in Article 12 (1) means any parking which prevents someone from remaining within his own lane and that Article 34(1) should be similarly construed as prohibiting an “*obstruction*” to traffic in the driver’s lane rather than the road as a whole. The Claimant argued that this reading is supported by the wording of Article 34(12) of the GTC which provides that “*it is expressly prohibited to occupy by any means and for any reason whatsoever part or all of the carriageway of the road.*” That was an interpretation which was offered by Ms Pavlakis in re-examination. The Claimant accepted that there was no decided judgment which offered an interpretation of the word “*circulation*”. He argued that the cases concerned with traffic flow and the judgment of the Appeal Court of Athens 13658/1998

in particular were generally supportive of the construction for which he argued.

54. The Defendant rejected that interpretation. Mr Natsinas pointed out that if correct it would lead to the absurd result that no parking on one side of the road could ever be legal. The Defendant relied on the fact that Ms Pavlakis had agreed in the Joint Report that “*drivers are obliged to avoid any behaviour that may cause danger or obstruct the road*” (emphasis added) and had made no suggestion that “*the road*” for these purposes was the lane in which the driver was travelling. It pointed to the fact that Article 34(3)(d) is framed as prohibiting parking “*if the remaining free space of the road is insufficient for the circulation of vehicles*” (emphasis argued). It argued that there was no legal authority supporting Ms Pavlakis’ construction of Articles 12(1) and 34(1).
55. On this point I accept the Defendant’s arguments. Mr Natsinas did not agree that Article 34(12) was relevant and explained that this was a specific provision that was enacted to impose a criminal penalty for environmental protestors occupying roads (as demonstrated by the reference to the Criminal Code). Furthermore, I do not consider that the judgment of the Appeal Court of Athens 13658/1998 assists the Claimant’s interpretation. Case 13658/1998, as with many of the cases referred to by the parties, was a judgment that turned very much on the particular facts of the collision in question and in that decision the Court did not expressly or impliedly find that Article 34(1) was to be interpreted in the way contended by the Claimant.

#### **F) MY FINDINGS OF FACT**

56. I make the following findings of fact which flow from my acceptance of the evidence of the accident reconstruction experts and are based on the evidence in the trial bundles and which was given during the hearing.
57. The road was unremarkable where the accident occurred. Although there were lines to demarcate lanes at some points of the road there were no such markings where the collision occurred. No line or lines are discernible on the photographs taken on the day of the collision.
58. There were no signs prohibiting parking at the scene of the collision. Again, that is apparent from the contemporary photographs, and it was subsequently confirmed by the accident reconstruction experts when they visited the scene.
59. At the time of the collision, the Opel was parked in a shaded area on the road. As is apparent from Mr Borrowdale’s video recording of the route taken by the Claimant, the road is tree lined and much of it is shaded.



60. I find Mr Georgopoulos to be an honest and credible witness who was concerned only to assist the Court. He accepted for example that earlier in the route road markings were discernible. The Claimant's criticisms of his witness statement as containing embellishments are misplaced. It was suggested that in fact Mr Georgopoulos had not overtaken the Claimant earlier before the collision as he had said in paragraph 8 of his witness statement. However, whilst Mr Georgopoulos had not referred to that in his statement to the police on the day of his collision it is corroborated by the document prepared by Mr Borrowdale for the Resort soon after the accident and where he noted that "[t]he driver had stated that he overtook [the Claimant] approximately 1 or 2 km previously and had been stopped for a little while".
61. I accept Mr Georgopoulos' evidence that when he parked the Opel, he switched on his hazard warning lights. That was the evidence that he gave on oath to the police on the day of the collision. Moreover, that evidence is supported by the evidence from Mr Dimitropoulos. In his report to the Resort Mr Borrowdale wrote that the Opel "*didn't have hazards on to my recollection*" but that is not sufficient to disprove the evidence from Mr Georgopoulos and Mr Dimitropoulos.
62. I also accept Mr Georgopoulos' evidence that he activated his hazard warning lights whenever he stopped the car. Again, that was what he told the police immediately after the collision and there is no reasonable basis for me to disbelieve him.
63. The Claimant argued that the fact that Mr Georgopoulos applied his hazard warning lights suggested that he recognised that by parking where he did, he was creating a "*danger*" or an "*obstruction*". I do not accept that suggestion as I accept his evidence that this simply reflected his usual practice. Moreover, it is clear from Mr Georgopoulos' statement to the police on the day of the collision that he did not consider that the car was an obstruction as there was good visibility of it to the Claimant.
64. The Opel was parked along the right-hand side of the road close to the verge. The photographs from the day of the collision indicate that the Opel was parked close to the grass.
65. I have accepted the accident reconstruction experts' evidence that there was between 3.3 and 3.4 m distance from the Opel and that this allowed space for opposing westbound vehicles to pass the Opel or for eastbound vehicles to overtake it. I have also accepted the accident reconstruction experts' evidence that the Opel was visible from 190m away and that it would have been apparent that the Opel was stationary from at least 120m away. Mr Dimitropoulos could see the Opel on the day of the accident.

66. In my judgment, the Opel did not pose any “*danger*” or “*obstruction*” to traffic where it was parked. There was sufficient room to pass it and it was visible at some significant distance: the car was neither a “*danger*” nor an “*obstruction*”.

### **G) MY FINDINGS ON LIABILITY**

#### *My starting point*

67. The Claimant argued (and the Defendant did not disagree) that the appropriate starting point for any judicial decision-making by a Greek court is always the relevant Civil Code or Traffic Code provisions. As the Claimant said in his closing submissions those provisions “*are the starting point for any enquiry into liability (indeed, in most cases the Code provisions will be the end point as well). In the circumstances, the liability and contributory negligence issues may be said to turn (principally) on “hard law” (the relevant and applicable Codes), rather than “soft law” (the decisions of the Greek Courts of first instance on particular issues of fact).*”

#### *My findings*

68. In his closing submissions, the Claimant accepted that a finding of liability on his part was likely and argued for liability to be split between him and the Defendant. Both experts commented that very often Greek courts in road traffic accident cases make a finding of split liability. Whilst that may be so, in my judgment the facts as found by me can only lead to a finding that the Defendant was not liable.
69. On the basis of my findings of fact and on my findings as to the correct interpretation of the Greek Civil Code and GTC, I am satisfied that the Claimant is unable to establish to the requisite standard that the Defendant is liable. My reasons are as follows.
70. *First*, in my judgment, Mr Georgopoulos was not in breach of Article 34(1) of the GTC as parking was allowed at the scene of the accident as the Opel did not “*pose any danger or obstruction to traffic*” in the road (that question being answered under Greek law by reference to the whole of the road). Moreover, there were no prohibitory signs or markings at the scene. I cannot accept the Claimant’s argument that Greek law requires Article 34(1) to be applied if, as a matter of fact, there are no physical road markings. Mr Natsinas disagreed with such an interpretation whilst Mrs Pavlakis’ evidence in cross-examination (in connection with whether Article 34(2)(h) was engaged if there were no road markings where she said “*you cannot expect someone to measure from a line that is not there*”) is clearly inconsistent with such an interpretation. In my judgment, there being no physical markings on the road, there is no basis to find that there was a breach of Article 34(1) of the GTC.
71. *Secondly and relatedly*, Mr Georgopoulos was not in breach of Article 34(2)(h) of the GTC for the reason given by the Claimant’s expert in the Joint

Report and in cross-examination. As Ms Pavlakis said in the Joint Report “*if there is no prohibitory line dividing two lanes, this provision shall not be applicable*”. A driver cannot be expected to measure from a line that is not there.

72. *Thirdly*, there was no breach of Article 34(4) of the GTC by Mr Georgopoulos. I have found as a matter of fact that the Opel was parked as close as possible to the edge of the road and there was nothing prohibiting such parking.
73. *Fourthly*, there was no breach of Article 34(9) of the GTC by Mr Georgopoulos as that provision is only engaged where a driver has parked a car “*where parking is prohibited*”. The cases on the use of warning triangles, signs or suitable devices, are not therefore applicable.
74. *Fifthly*, there was no breach of Article 12(1) of the GTC by Mr Georgopoulos. On the proper construction of that provision, Mr Georgopoulos did not “*expose into danger, or ...put obstacles to the circulation*” by parking the Opel as he did. That being so Article 12(4) of the GTC was not engaged.
75. *Sixthly*, the driver of the Opel was reasonably and legally entitled to park where he did. In doing so there was no breach of the GTC nor was there any breach of any general duty of care.
76. *Seventhly and finally*, even if contrary to all of the foregoing, there had been a breach by Mr Georgopoulos I would not be satisfied that causation could be established. In my judgment applying, as a Greek court would “*common experience*” (or “*common sense*” to use the Claimant’s gloss), the cause of the accident was that the Claimant did not sufficiently keep a look out as he cycled at speed. The agreed evidence of the accident reconstruction experts, which I have accepted, was that the Opel would have been apparent as a stationary vehicle from at least 120m, irrespective of the use of hazard warning lights, the placing of a warning triangle or the use of polaroid sunglasses. Mr Dimitropoulos, an independent witness, coming on the scene of the accident could not understand why it had happened and why the Claimant had not swerved around the Opel. Had the Claimant kept a proper look out the collision would have been avoided.

#### *The Greek cases*

77. I have considered the Greek law authorities which I have been referred to by the parties. As noted above, the experts agreed that the cases would be regarded as guidance only. They do not establish binding precedents. Furthermore, as Ms Pavlakis explained in cross-examination, there are sometimes Supreme Court decisions with different outcomes on similar facts.

78. All of the cases cited turn very much on the particular facts of the accident being litigated. A large number of the cases are irrelevant as they are concerned with causation and contributory negligence, an issue that does not fall to be examined in detail given my findings on breach. None of the authorities (even on the basis that they are guidance rather than precedent) undermine the findings of breach that I have made on the particular facts of this case.

**DISPOSAL**

79. I have significant sympathy for the Claimant. His life was tragically and permanently altered whilst on holiday and enjoying a favoured pastime. It was an accident with the most serious consequences for him and his family. However, it was an accident for which the Defendant is not liable.
80. It follows from the foregoing that the Claimant's claim fails.