Claims for contribution and rights of redress in the travel industry

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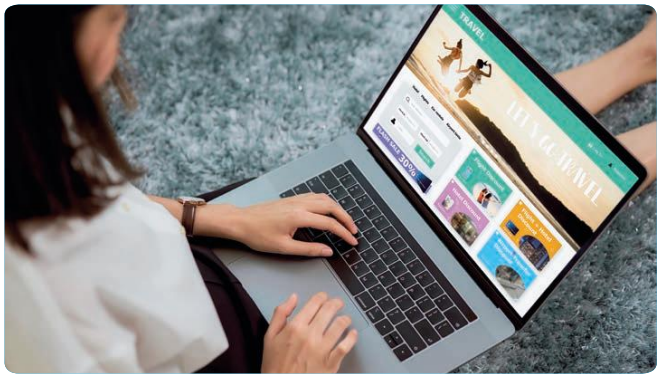
The COVID-19 pandemic has brought the rights of recovery for those in the travel industry sharply into focus. The unusual circumstances have resulted in an all-time high number of disputes brought about by the inability to travel; it is hoped that such circumstances will not be repeated.



In response to the issues arising from the last turbulent couple of years, the courts of England and Wales have been asked to tackle some thorny points concerning claims for contribution and have wrestled with the interpretation of the Package Travel and Linked Travel Arrangements Regulations 2018 (PTR) to resolve issues of law that may apply to claims for contribution against third parties.

Cases such as *The Soldiers, Sailors, Airmen and Families Association - Forces Help & The Ministry of Defence v Allgemeines Krankenhaus Viersen GmbH* [2022] (SSAFA) and *On the Beach Limited and Ors v Ryanair UK Limited* [2023] have involved requests to resolve crucial points such as the length of time a party has in which to bring a civil claim depending on the applicable law and whether Regulation 29 of the PTR creates a right of redress against third parties by way of statutory right.

While not a travel-related case, in the SSAFA matter, the Supreme Court considered the important question of whether the Civil Liability (Contribution) Act 1978 (the 1978 Act) has overriding effect so that it can apply to all contribution claims brought in England and Wales irrespective of the underlying governing law. The case involved a brain injury alleged to have been sustained through the negligence of a midwife at a German hospital by the claimant whose father was stationed in Germany while working for the UK armed forces. It was accepted that German law would apply to the alleged negligence claim against the company that operated the hospital but it was held that the 1978 Act did not have mandatory overriding effect, which meant that the claimants could not avail himself of English law to seek contribution and their claims were therefore time-barred under the applicable German law.

This Supreme Court decision is significant for cross-border and commercial claims where a foreign law may apply, especially in long-tail tortious claims. Since 2009, the Rome II Regulation has governed such claims, meaning that, as in the case of SSAFA, any contribution claim will be governed by the same law as the main claim. The practical effect of SSAFA and Rome II is that a tour operator, agent or retailer who can rely on the PTR may rely on the law of England and Wales for such claims. However, if a matter falls outside the PTR, then the law that is deemed applicable under Rome II, or indeed the effect that any contractual arrangement into which the parties may have entered, and Rome I must be considered. In such cases, specialist advice from a lawyer qualified in the applicable law is always recommended.

The more recent case of *On the Beach Limited v Ryanair UK Limited* concerned online travel agents operating websites for booking travel services offered by third parties such as airlines. On the Beach Limited specialised in package holidays and paid Ryanair in full at the time of booking with a corporate payment card. Being unable to claim chargebacks, On the Beach claimed compensation in excess of £2 million under Regulation 29 of the PTR, which states that the organiser or retailer 'may seek redress from any third parties which contributed to the event triggering compensation, a price reduction or other obligations.' In this case, the High Court ruled on a preliminary issue that Regulation 29 did provide a freestanding statutory right of redress for package travel organisers and retailers against third parties who have brought about losses sustained by those organisers or retailers. The High Court's judgment will be binding on lower courts so is of considerable assistance to those who organise packages under the PTR and who may have claims against third parties with whom they may not have any pre-existing contractual agreements.

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This High Court judgment comes at a crucial time as the Department for Business and Trade (DBT) considers the evidence collated in relation to updating the Package Travel legislation framework in which questions have been posed around Regulation 29 and whether this should be amended or removed. It is to be expected that rather than being removed, greater strength and clarity should be given to Regulation 29 so that its impact is clear to all parties, whether a package travel organiser or agent, a consumer or a third party. The results of the DBT's call for evidence are due in 2024 and we await with interest.