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King's Bench Walk

## John-Paul Swoboda

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### AREAS OF EXPERTISE

Personal Injury, Industrial Disease, International & Travel, Clinical Negligence, Inquests, Professional Negligence, Aviation

John-Paul practices in all aspects of Personal Injury law. He has particular interest and expertise in Asbestos Litigation, International and Travel litigation, Clinical Negligence, and Inquests. He undertakes higher value work and a significant proportion of his work relates to fatal accident claims. Most of his work results from repeat instructions. He prides himself on being approachable and thorough. John-Paul enjoys working as part of a team with his instructing solicitor and has a reputation for establishing a good rapport with lay and professional clients.

In relation to asbestos claims he is instructed by most well-regarded firms with an established asbestos team. Many of the claims John-Paul is instructed in involve difficult issues such as low-level exposure mesothelioma claims, lung cancer claims, and difficult quantum issues such as recovery of immunotherapy costs. Recent reported cases include *Stacey (Executrix of the Estate of Mr Perry) v Triplex Safety Glass Company Ltd* [2017] EWHC 1945 (QB).

John-Paul's expertise in International and Travel litigation is reflected in his ranking in the Legal 500 for Travel Law including Jurisdictional issues. He brings experience and knowledge to private international law matters, which typically involve the consideration and application of Rome II, Brussels recast, the doctrine of forum conveniens and service of the claim form out of the jurisdiction. John-Paul also has a wealth of experience in relation to claims arising from the Package Holiday Regulations and international conventions such as the Athens and Montreal Convention. He is also an editor of the *International & Travel Law blog*.

John-Paul's clinical negligence work is high value and he receives instructions from many well-respected firms. He enjoys the medical and scientific aspect of such matters and works closely with his instructing solicitors and experts. He has experience of cases involving amputation, unnecessary and negligent surgery, delayed diagnosis, cosmetic surgery, disclosure of risk and the negligent administration of clinical drugs. He is an editor of the *Clinical Negligence Law blog*.

John-Paul regularly acts for bereaved families, and occasionally acts for other interested parties, at Inquests. John-Paul has particular interest and expertise in Article 2 ECHR enhanced Inquests. Invariably John-Paul is instructed in civil proceedings following the Inquest. He has acted in high profile Inquests such as the Inquest touching the death of Toni Speck a death in police custody where the deceased was detained under the Mental Health Act 1983.

## Personal Injury

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Personal injury John-Paul practices in all aspects of Personal Injury law and receives instructions from respected national firms representing both claimants and defendant insurers. His work involves higher value claims and fatal accident claims.

He has vast experience and expertise in relation to road traffic claims, employer's liability and public liability matters. He has an excellent understanding of post Enterprise Act employer's liability claims having lectured and written about the subject. John-Paul is adept at considering all liability issues.

John-Paul is instructed in claims of the utmost severity. For example, John-Paul has experience of amputation claims, claims requiring the involvement of the Court of Protection because of severe brain injury, claims where periodical payments are required and fatal accident claims.

John-Paul has significant expertise is in relation to amputation cases, where he has a good knowledge of prosthetics and other relevant experts, brain injury (both subtle and gross) where he has developed a good working relationship with neurosurgeons, neuropsychologists and neuropsychiatrists and 'pain cases' involving fibromyalgia, CRPS, neuropathic pain, psychiatric and psychological disorders.

A number of the recent claims John-Paul has been instructed in involve large loss of earnings claims and claims for a loss of a chance of success in a particular career. In such cases the claimant is typically young at the date of the accident and severely injured. Recent cases include military claims (RAF and army), medical students (doctors), and claims involving sports people (jockeys). Such cases inevitably involve complex future predictions about the claimant's lost earnings and pension and require close collaboration with solicitors and experts to assess the probability of the success in the particular career and the extent of the loss.

## Industrial Disease

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John-Paul main interest is in asbestos work. He is instructed by most respected firms with an established asbestos team including firms with links to trade unions. All his instructions are received from claimant firms. Many of the claims John-Paul is instructed in involve difficult issues such as low-level exposure mesothelioma claims, lung cancer claims, and difficult quantum issues such as recovery of immunotherapy costs.

Recent work includes:

- Stacey (Executrix of the Estate of Mr Perry) v Triplex Safety Glass Company Ltd [2017] EWHC 1945 (QB). A claim where the Defendant's argument that the cause of death was unrelated to asbestos was rejected.
- A mesothelioma claim where compliance with the Control of Asbestos at Work Regulations 1987 was in issue. Led by Harry Steinberg QC. Settled at a JSM.
- A lung cancer claim which raises Heneghan v Manchester Dry Docks [2016] EWCA Civ 86 causation issues (led by Harry Steinberg QC).
- A living mesothelioma claim where the Claimant seeks to recover the costs of immunotherapy (ongoing).
- A fatal mesothelioma claim where the Claimant seeks to recover for the loss of a chance of becoming a property developer and the costs of alternative therapy (ongoing).

John-Paul regularly writes about and provides seminars through chambers, third party organisations such as MBL, or at the request of solicitors firms.

In addition to asbestos claims John-Paul has significant experience of COSHH claims and other disease claims.

## International & Travel

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John-Paul acts for claimants and defendants, including major tour operators and overseas hotels and suppliers of

services, in accidents which occur abroad. His expertise in International and Travel litigation is reflected in his ranking in the Legal 500 for Travel Law including Jurisdictional issues.

As well as writing and regularly providing seminars on International and Travel Law topics John-Paul is an editor of the popular blog, [International & Travel law](#).

John-Paul is a fluent Spanish speaker which is often helpful where the accident has occurred in Spain or a Spanish speaking country. He has experience of providing prospective advice to multi-national companies and national firms on private international law matters.

Recent interesting work includes:

- Representing various Spanish families in fatal accident claims arising from a collision between a lorry chartered by a Portuguese company and a minibus containing Spaniards involving multiple fatalities. (ongoing)
- Advising a national claimant law firm on claims brought under the Denied Boarding Regulations
- Advising a multi-national company on the consequences of operating an adventure holiday scheme
- A claim involving a road traffic accident in Norway where the applicable law, pursuant to Rome II, is Norwegian law
- An anti-suit injunction where a claimant was seeking to pursue an action in the United States despite the English courts holding exclusive jurisdiction
- Representing a tour operator at an Inquest following a number of deaths at a holiday resort thought to be linked to the legionella pathogen
- Mass actions arising from alleged food poisoning and noro-virus outbreaks

## Clinical Negligence

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John-Paul enjoys the medical and scientific aspect of clinical negligence claims and works closely with his instructing solicitors and experts. He undertakes high value work mainly receiving instructions from highly regarded claimant firms. He has considerable experience of cases involving amputation, unnecessary and negligent surgery, delayed diagnosis, cosmetic surgery, the negligent administration of clinical drugs, and disclosure of risk.

Recent cases include:

- Failure to diagnosis a dermoid cyst on a 15 week old baby leading to severe brain injury.
- A brain injury claim arising from a delayed diagnosis of a brain tumour.
- A claim arising from delay in A&E resulting in an above knee amputation (led by Frank Burton QC)
- A claim arising from unnecessary surgery performed on a minor with complex congenital conditions (club feet and bowed legs) which left the claimant severely disabled.
- A claimant who suffered destruction of vestibular system by being given a toxic dose of antibiotics. As a result, the claimant has little, if any, sense of balance and disturbed vision
- A failed radical prostatectomy giving rise to complete urinary incontinence.

He is an editor of the popular [Clinical Negligence Law blog](#). He regularly provides seminars and write articles for AvMA, and at the request of national firms. He recently published an article in the *Journal of Personal Injury Law* calling for an end to the *Bolam* test to determine breach of duty.

## Inquests

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John-Paul regularly acts for bereaved families and occasionally other interested parties, at all types of Inquests but has particular expertise in Article 2 ECHR enhanced Inquests. John-Paul has most experience in dealing with deaths in custody, 'jury' inquests, deaths in a clinical setting and deaths arising from road traffic accidents. Invariably John-Paul is instructed in civil proceedings following the Inquest where a civil claim is brought.

Recent inquests include:

- Representing the family of Toni Speck in this high profile Inquest. The death occurred in police custody where Toni was detained under the Mental Health Act 1983. The jury decided that the death should have been avoided.
- Representing the family of Irene Rzepa in this Inquest which concerned the death of this lady following repeated failures by general practitioners to consider her long history of high blood pressure. The coroner concluded that the death was avoidable.

## Professional Negligence

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John-Paul's experience of professional negligence matters (other than clinical negligence) relates to solicitor's negligence arising in personal injury litigation.

John-Paul has experience of claims arising from alleged negligence by a solicitor's firm dealing with NIHL matters and clinical negligence claims.

## Aviation

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John-Paul brings experience and knowledge to private international law matters, which typically involve the consideration and application of Rome II, Brussels recast, the doctrine of forum conveniens and service of the claim form out of the jurisdiction.

He has a wealth of experience in relation to claims arising from the Package Holiday Regulations and international conventions such as the Athens and Montreal Convention.

He is joint editor of [The International & Travel Law blog](#).

Recent Montreal Convention cases include;

- Advising on whether an insulin dependent diabetic who was unable to retrieve his medication during a long-haul flight, and suffered serious injury as a result, suffered an 'accident' within the meaning of the Montreal Convention.
- Passenger in a wheelchair suffering injury whilst in the process of embarkation.
- Accidents upon disembarkation – passengers falling down the mobile steps at the side of the plane.
- Advising on claims brought under the Denied Boarding Regulations.

## Qualifications

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University of Sheffield; International European and Comparative Law (LLB) 2001 – 2004

## Memberships

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Personal Injuries Bar Association (PIBA)

Professional Negligence Bar Association (PNBA)

Association v Medical Accidents (AvMA)

Pan European Organisation of Personal Injury Lawyers (PEOPIL) Travel and Tourism Lawyers Association (TATLA)

London Common law and Commercial Bar Association (LCLCBA)

## Publications

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[International & Travel Law Blog](#)

## Clinical Negligence Law Blog

Journal of Personal Injury Law – Article *Bolam – Going, going... gone*

John-Paul lectures and writes articles very frequently. Topics which John-Paul has spoken or written about include:

- Asbestos litigation
- Low-level asbestos exposure
- Quantum issues in asbestos litigation
- Clinical Negligence – causation it's simple isn't it?
- Bolam – Going, going... gone
- Jurisdiction issues in light of Brussels II
- Recent cases under the Package Travel Regulations
- Brain Injuries – the walking wounded
- GP's missed and delayed diagnosis
- Occupational Lung Disease
- Case law update relating to Rome II and applicable law
- Fixed costs in Personal Injury and disease

## Cases

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### Personal Injury

**Ms Toni Speck (deceased) v Medacs Healthcare Plc** – John-Paul acts for the family of Toni Speck who died in police custody having been detained under the Mental Health Act 1983. John-Paul has acted at all stages of proceedings; the jury Inquest, the judicial review arising from the Inquest [**R (on the application of Maureen Speck) v HM Coroner for the District of York & ors [2016] EWHC 6 (Admin)**] and the civil proceedings.

**TM v Mohammed Hafajee** – John-Paul acted for the claimant who suffered serious injuries following a motorcycle accident. The claimant, 17 years at the time of the accident, lost the chance to join the RAF as a pilot as a result of the accident. The claim settled at a JSM for £215,000 in January 2016.

**JT v HC** – John-Paul acts for this claimant who has suffered massive brain injury as a result of a road traffic accident. The claimant no longer has capacity and will require 24/7 care for the rest of her life. The claim involves periodical payments.

**ABCC v AM** – John-Paul acts for various claimants in this multiple fatality RTA arising from a Portuguese lorry driving on the wrong side of the road. The dependency claims are made complicated by the differences between Spanish and English culture.

### Clinical Negligence

**TB v Northampton NHS Trust v Kettering NHS Trust** – John-Paul, led by Frank Burton QC, acted for the claimant who suffered an above knee amputation following a slip. The claim was valued at £1.7million. The matter was listed for trial in the High Court in 2016 but settled in December 2015.

**SA v Dr Czajkowski & 4 others** – John-Paul acted for the claimant who suffered serious brain injury from a brain tumour and negligent misdiagnosis and delay by five GP's. The claim is high value and complex. The claim settled at a JSM days prior to the 12-day trial in the High Court.

**CI v York Teaching Hospital NHS Trust** – John-Paul acted for the claimant who suffered destruction of vestibular system by being given a toxic dose of antibiotics. The claim settled for £750,000 at a JSM shortly prior to the 6-day trial

listed in the High Court.

**JM v The Mid Yorkshire Hospitals NHS Trust** – John-Paul acted for the claimant in this high value claim relating to unnecessary knee surgery. The claim was complex because the claimant suffered from pre-existing disability. The claim settled at a JSM for £370,000 in September 2015.

**AL v Northumbria Healthcare NHS Foundation Trust** – John-Paul acts for the Claimant in this high value claim arising from a failure to diagnosis a dermoid cyst on a 15 week old baby leading to severe brain injury such that the child will require care for the rest of their life and will be unable to work. The claim is ongoing.

### Industrial Disease

**Stacey (Executrix of the Estate of Mr Perry) v Triplex Safety Glass Company Ltd [2017] EWHC 1945 (QB)**. A claim where the Defendant's argument that the cause of death was unrelated to asbestos, but rather related to a general decline in the deceased's health, was rejected.

**IT v Amstech Contracts Ltd** – John-Paul, led by Harry Steinberg QC, acted for the claimant in this mesothelioma claim relating to the Control of Asbestos at Work Regulations 1987. The claim settled at JSM.

**JB v Lend Lease Construction v TE Cundy & Son Ltd** – John-Paul, led by Harry Steinberg QC, acts for the claimant in this asbestos related lung cancer case. Causation post Heneghan remains fiercely contested.

**PA v E.On UK Plc** – A living mesothelioma claim where the Claimant seeks to recover the costs of immunotherapy (ongoing).

**KD (deceased) v Evergee Ltd** – A fatal mesothelioma claim where the Claimant seeks to recover for the loss of a chance of becoming a property developer and the costs of alternative therapy (ongoing).

### Travel & Overseas Injury

**Quark Expeditions Incorporated v Ms Jacqueline Khoury High Court (Burton J) 25 November 2014 (unreported)** – John-Paul acted for the applicant/defendant in this application for an anti-suit injunction. Mr Justice Burton made the anti-suit injunction.

**Inquest touching the death of Mr Poland, Elliot and Jones** – In 2014 John-Paul represented the package holiday company (Saga) in the Inquest into the deaths of three British citizens following an outbreak of legionella in Calpe, Spain. The case was high profile receiving significant press coverage.

**DH v Thomas Cook** – John-Paul acts for the defendant/tour operator. The claim arises from an alleged assault by a hotel member of staff on the claimant. The claim concerns a novel point of law relating to vicarious liability where a claimant sues a tour operator for the alleged failure of a hotelier.

**Mr Steve Kenny & 9 others v Jewel in the Crown Holidays High Court (Blair J) 11 December 2014 (unreported)** – John-Paul acted for the tour operator in this multi-party litigation brought by 10 claimants who allegedly suffered food poisoning whilst on holiday in Spain. All 10 claimants were refused permission to rely on witness evidence by HHJ Gregory for their failure to comply with court orders. The claimants' appealed but Mr Justice Blair, adopting my submissions, dismissed the appeal.