Insurers' Institute on Personal Injury Claims

Annual Report 2009

Preamble

Insurers have long been of the opinion that entering into agreements with legal representatives about the settlement of personal injury claims offers advantages for all parties involved, not least for the victim.

On a macro level, there are for example the Code of Conduct for Handling Personal Injury Claims (GBL) and the Guidelines of The Personal Injuries Board, whereas on a micro level accords that are geared towards a specific claim file, such as action plans are pertinent.
In addition there are framework agreements, to which both insurers and legal representatives can 'subscribe', an example of which is the PIV Agreement Costs of Legal Assistance.
These agreements have unequivocally proven their value in daily practice. Procedural standardisation, such as the GBL is conducive to an efficient and transparent claims settlement process, whereas quantum standardisation helps to avoid tedious discussions about individual items of claim.

In recent television broadcasts of TROS Radar, a negative side of such agreements has been considered: insurers and legal representatives allegedly are in collusion with one another, primarily for their own profit (and consequently to the financial detriment of the victim). This would even entail secret deals.

This, apparently, is the paradox of standardisation: one is of the opinion that one does something good, but it is sometimes interpreted in exactly the opposite way.
This certainly is not a reason to stop making these agreements, but it does mean that we -as an industry- must be even more transparent about these arrangement and emphasise their importance for the victim even more than before. Insurers' and legal representatives' websites are an ideal tool for this.

We are pleased that an organisation such as the Dutch Victim Support Organisation does appreciate the usefulness of these agreements. It is after all not desirable to "wage the same war" in every claim file. That certainly would not be in the victim's interest.

By and large, the media are not waiting for positive news from the personal injury field. To the contrary: it hones in on issues that allegedly go wrong.

It must therefore be a challenge for the coming years to prevent the media from casting its attention on the field of personal injury settlement. Only then will we know that the abovementioned agreements really work.

The PIV and a large number of legal representatives can be counted upon. It's now up to the media to follow suit!

Theo Kremer, Managing Director
May 2010.

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1. Double or quits

In the extended media coverage of the practices of legal representatives of victims of injury claims, a number of things tend to get mixed up. “Double invoicing”, inappropriately accepting cases on a *no cure no pay* basis or secret deals with insurers are all alluded to in one breath, whereas in essence they are all entirely different matters. But these -correctly or incorrectly- ‘dubiously’ dubbed practices of legal representatives discredit the whole personal injury industry.

Two legal relations

A victim engages into a contract with a legal representative to the effect that he authorises the latter to settle his personal injury case. A tariff is agreed, which is generally based on the number of hours spent on the case for a certain hourly remuneration, or the legal representative receives a previously agreed percentage of the compensation figure. That is the legal relation between the victim and his legal representative.
In addition there is the legal relation between the victim and the liable party, to the effect that the latter has to compensate the victim for the cost of legal assistance (the so-called BGK) as an intrinsic component of the total claim, on the proviso that these legal costs meet with the double reasonableness test. This test can be seen as the hinge between the aforementioned two legal relations.
In an ideal situation, the money streams coincide: the responsible party pays the legal representative’s entire profits costs as a reimbursable component of his claim, and the victim consequently gets all of his other items of claim compensated in full (i.e. 100%!).
Although it often happens like this, there are also regularly injury cases in which the victim receives no or only partial compensation of his legal representatives’ fee, for example in cases where

- liability cannot ultimately be established;
- there is contributory negligence on the part of the victim;
- the insurer evokes (in particular) the second reasonableness criterion and argues that the amount of the fee claimed as BGK is not reasonable, for example because of an excessive *no cure no pay* percentage, respectively an elevated hourly tariff.

The number of hours that are billed can also be a point of contention.
In all of these cases the victim himself would have to contribute towards his legal representatives’ bill to the detriment of his full compensation. What often happens in these cases is that the legal representative waives the difference.

Agreements about the cost of legal assistance

Discussions about the cost of legal representation generally have a detrimental effect on the settlement climate and are therefore harmful to the victim
For this reason, there have been agreements in force for many years between insurers and legal representatives about a standardisation of this item of claim, with as prime example the PIV-scale.
An organisation such as for example the Dutch Victim Support Organisation sees the clear advantages of these kinds of agreements and endorses them completely. The advantages for the victim are twofold: firstly the discussion between his legal representative and the insurer only centres on the settlement of his “real” losses and secondly he generally gets these losses reimbursed in full by the liable party.

But these agreements are not always appreciated to their full value by the media and some members of the Dutch House of Commons. They are, to the contrary, sometimes depicted unfavourably and portrayed as secret deals. Insurers and of course also the legal representatives must be even more transparent on this subject.

Double invoicing

It sometimes happens that legal representatives not only receive the pre-arranged fee from the client (generally a certain percentage of the compensation), but in addition also pocket (part) of the BGK from the insurer, whereas this should be deducted from the billable fee. This is known as double invoicing. In these situations legal representatives take advantage of the ignorance of the victim of his entitlement to compensation of his legal costs.
Practices of this nature border on criminal offences such as fraud and embezzlement and must therefore be stamped out. Fortunately, the majority of the legal representatives (particularly those who carry the accreditation Keurmerk Letselschade) is bona fide.

No cure no pay

Is a fee agreement on the basis of no cure no pay always reprehensible?
No, it is not: in cases where a discussion about the question of liability is foreseen from the outset -for example in cases of occupational or medical liability- such an arrangement can be attractive to the victim, because he does not run a cost risk in case liability cannot eventually be established.

With regard to the majority of injury claims resulting from traffic or industrial accidents, *the no cure no pay* regime is not in the victim's interest, however. Liability is generally often not an issue in these cases, and the costs of legal representation are consequently mostly for the account of the responsible party, albeit that these costs must comply with the double reasonableness test. In any event, agreements whereby the payable amount of legal costs are standardised make a *no cure no pay* arrangement generally superfluous.

Although full (100%) compensation must be the underlying objective, this figure decreases to between 75% and 80% in cases where double billing takes place. Let's talk about double or quits!

2. Apologies to victims of road traffic accidents

Time and again it is proven that personal injury victims find it not only important that their financial claim is settled smoothly, but also that the perpetrator admits fault, apologises, and shows compassion and awareness of the consequences for his victim. The PIV has therefore initiated a study into issues such as whether it is advisable for insurers to stimulate that injury victims of traffic accidents receive apologies, to ascertain what the conditions must be for these apologies to be effective, as well as how these apologies should best be extended. This in the broader context of the question of how insurers, in addition to stimulating apologies, could improve on the fact that as a result of the accident and its aftermath, these victims of traffic accident have `a deficit on their emotional bank balance'. The study was carried out by Prof. Arno Akkermans and Dr. Liesbeth Hulst M.Sc. of the of the Vrije Universiteit Amsterdam (VUA) and the VU Medical Centre.

Two components

In the course of the study the results of existing empirical research conducted abroad into the advantages of, and the conditions under which apologies are effective, were analysed. Practical experiences and suggestions by insurers were inventoried by means of a questionnaire and a meeting of experts on 28th October 2009, for which the insurers participating in the PIV were approached. The main conclusions were presented at a meeting of the participating insurers on 10th December 2009.
The researchers concluded that it is absolutely worthwhile for insurers to take initiatives to encourage their insureds to apologise to victims of accidents caused by them. The effect of an apology is generally that a victim feels better, which can also bring about actual improvements in his health, thereby ensuring that the claims settlement negotiations run smoother.
Apologies can be divided into two components:
(1) accepting responsibility for the fault that was made, and
(2) expressions of empathy towards the victim.
For the effectiveness of an apology, the first element is generally considered more important than the second, although (solely) the second element is certainly also effective. The most effective apologies are those which encompass both categories. For the element `accepting responsibility' it is important that liability has already been established. In situations where this is not (yet) the case, empathy will, practically speaking, have to suffice.
The compensation of financial losses remains important. If financial compensation remains outstanding, this can be experienced as a failure of actually accepting responsibility. The combination of apologies and financial compensation proves to be most effective.

How?

Promoting a climate where apologies are made, would best take the format whereby insurers encourage their insureds to take an interest in and show compassion for the consequences of the injuries for the victim and -if responsibility has been or will be admitted- to acknowledge to the victim that he is responsible for the accident and the damages caused. Possibilities to be considered are contact by phone, personal or written contact. In this context two different approaches are evident:
1. coordinated contact, in which the insurer (or a third/external party instructed to this end) fulfils a certain preparatory and coordinating role with regard to the exchange of communication between the victim and

the insured (such as arranging a face to face talk or providing a questionnaire that has to be completed); and

2. uncoordinated contact, where the insurer only encourages the insured to contact the victim. It transpired that there exists some limited experience with this second approach. Apparently one insurer does (occasionally) advise their business line insureds (haulage companies) to contact victims if there are signals that the victim so desires. There is only one insurer who for the last two years has had a policy in place where the insured is advised in writing to phone and show empathy towards the victim. The mere recommendation of calling has several advantages, but the extent to which this recommendation is followed up and its effects is unknown. In case of very traumatic accidents (death, very severe injuries, young children) the question arises if uncoordinated contact is the best approach.

The responsibility rests with the insured

In addition to encouraging their insureds to apologise, insurers could also take steps to minimize the deficit on the victim's 'emotional bank balance'. Insurers can offer 'recognition' by expressing – both in writing and through their actions – the very same components apologies consist of, namely
(1) by making it explicit that the mistake lies with their insured, and
(2) by showing empathy.
As with apologies, the liability element appears to weigh heavier than the empathy element. It would therefore be most effective if the insurer, in addition to expressing sympathy for the consequences endured by the victim, states unequivocally to the victim that the fault for the accident and the resulting losses rests with the insured (or in any case: not with the victim). The moment which ideally lends itself for this is when liability is admitted. This could be given an explicit symbolical meaning, rather than the mere legal-practical formality in the claim settlement process that it presently is.

Pro-active approach

Another way in which the insurer can contribute towards the victim's `emotional bank balance' is through an emphatically pro-active approach to the whole claim settlement process. By manifesting himself explicitly as `co-owner' of the problem that damages were caused, and being cognisant that a number of tasks must now be performed to make an inventory of these losses, to minimise them where possible and to compensate them as adequately as possible, the insurer makes clear, not just in words, but also through his actions that he accepts responsibility (on behalf of his insured) for the accident and its consequences. This also meets with one of the main desires of injury victims, namely that responsibility is taken for the accident and the ensuing losses. A `wait and see' attitude is considered as inappropriate by victims. They have involuntarily fallen prey to somebody else's mistake, and it is not seen as just by them if they have to chase up the settlement and wait a long time for compensation of their damages and the costs they have incurred. They feel more justly treated if the opponent demonstrates, both in correspondence and action, that he unambiguously seeks to remedy the consequences of his mistake.

Existing research into the so-called `fairness of the process' shows that providing information (about the anticipated course of the settlement process, which steps and decisions must be taken), direct personal contact (if only once), a respectful and friendly treatment, and an open ear for the victim's experiences and requirements (giving him a voice), are of importance to the degree to which people experience the system as just and fair. Recent studies has even revealed that direct deliberations with the victim can have comparable psychological advantages to offering apologies.

The final report will be available in the spring of 2010. At that point it will also be decided what follow-up will be given to the study.

3. Quality - Making the quality of the personal injury settlement visible

For a number of years various initiatives have been employed to develop the quality of the injury claims settlement. The PIV has been involved for some years now in a number of projects, such as the PIV Satisfaction Survey among Victims, the PIV Audit and the PIV Personal Injury Statistics. In order to consider the current status, and what conclusions can be drawn from these projects, it is time for a short retrospective of two studies, the Satisfaction Survey and the Personal Injury Statistics.

PIV Satisfaction Survey among Victims. The central role of the victim

Personal injury settlement is very much in the focus of the media and politicians. Liability insurers work hard to change the image that has arisen as a result of negative press in consumer programmes, where `the central role of the victim' is a contentious issue. But what does the victim himself hold of this?
Since 2005, the PIV, in cooperation with Q-Consult, organises the Satisfaction Survey among Victims. Immediately upon settlement of the personal injury claim, the victim receives a questionnaire. Subjects such as disclosure of information, the handling of the claim, communication and time scales are dealt with in the questionnaire. The victims are also asked what aspects of the settlement they deem important in relation to the satisfaction score. Through this, the participating insurers gain an insight into the rating of the claims settlement process, both on an individual level, as well as the overall benchmark score. The study also gives points of departure to optimise the quality of the personal injury settlement.
How did victims rate the quality of the injury claims settlement in 2009? In 2009 more than 1,500 victims completed the questionnaire on behalf of the seven participating insurers. Compared to the result of 2006, the general satisfaction level increased from 6.8 to 7.3 in 2009. Victims are satisfied about the communication by the insurer and the handling of their claim (score 7.5, respectively 7.4). With regard to the latter, victims have indicated that insurers stand by agreements and deploy professional claims handlers. The time scales do not meet the victims' expectations, however; especially the duration of the settlement process, which, according to victims, can be improved upon.

PIV Personal Injury Statistics – 5% of the very complex injury cases amount to 50% of the total claims burden

Statements like the above are often heard in our profession. But are statements like these credible? The PIV Personal Injury Statistics provides up to date market information on response times, the claim burden and quantum of the individual claims components and thus renders important information to underpin pronouncements like the above.
The project started in 2009 with nine participants and will be expanded in the course of 2010 to eleven participants. This means that a significant part of the market is represented. By participating, the insurer gains more insight into his own results in relation to the comparative average scores. It provides the insurer for example with an answer to the question if its compensation for a certain fracture lies under or above the benchmark average. It is also a tool to measure the influences of changes in general policy. Moreover, the statistical data can be used for external purposes, for example the media and the courts.
The information is made available through an online management information tool. This enables the participants, apart from a set number of tables and graphs, to display the data in a manner they consider important.

4. The PIV as Knowledge Centre

PIV Annual Conference

On Friday 27th March 2009, the bar, lobby, lounge and conference rooms of Congress Centre Orpheus in Apeldoorn were coloured a bright blue due to the blue bags which were handed out to over five hundred participants to the conference, which was titled and devoted to *LEF (Courage) in the Personal Injury Settlement; en Route to a Positive Change of Atmosphere.*
Speakers were in order of appearance Dr Theo Kremer (PIV): *New vision of insurers on whiplash: from `How did I get it' to "How do I get rid of it'*, Dr Raoul van Dort (Van Dort Letselschade): *From Devotion, Honesty and Decency to Preferably Invoicing First!*; Professor Ton Hartlief (Maastricht University): *Courage in the Law of Tort: Compensation of injury claims outside the accepted boundaries*; and Dr Jan Sap (District Court Utrecht): *The role of the judicairy: from passive to guiding"*. After the initiators or proponents of initiatives

such as *Click and Settle; Pandora; Coaching and Training; Compensation in Kind*; and *Mediation,* had also pleaded their cases and all speakers had briefly defended their points of view in a forum discussion led by Dr Chris van Dijk (Kennedy Van der Laan Solicitors), it was the audience's turn to come up with `radical suggestions' to improve the injury settlement process. This lead to no less than 118 `radical ideas' which were published in April 2009 on our website under the heading "Many `wild ideas' during the 2009 PIV Annual Conference".
The first PIV Injury Claims Award, in the form of a big giraffe, to someone who truly stuck out his neck was awarded to Dr. Henk den Hollander (Reaal Verzekeringen), who conceived the idea of and initiated the PIV Injury Plaza.

PIV Injury Plaza

On 19th May and 14th October 2009 the PIV Injury Plaza took place in Restaurant De Roskam in Houten. The objective of the Injury Plaza is to give delegates from both legal representatives and insurers an opportunity to meet informally and -if they so desire- to discuss claim files.
Both meetings were attended by approximately 70 delegates. A significant number of legal representatives and insurers had agreed beforehand which files they wanted to discuss with each other. In an informal atmosphere, agreement was reached in a large number of cases; in other claim files (tentative) steps were made towards a final settlement. Some attendees availed of the opportunity to informally talk about points of contention or to make acquaintance with people they only knew of from correspondence. As was the case on previous occasions, the attendees were very positive about the Injury Plaza. The first meetings took place in 2008. The idea for organising an Injury Plaza stems from Henk den Hollander (presently Reaal Verzekeringen), who received the PIV giraffe on 27th March 2009 at the PIV Annual Conference, an award the PIV handed out for the first time to someone who really "stuck out his neck".

PIV Agreement Costs of legal Assistance

The PIV Agreement Costs of legal Assistance in 2009 contributed to a sharp decrease in the number of discussions on legal fees between participating insurers and legal representatives. The basis for the PIV Agreement Costs of legal Assistance is the PIV-scale, which is based on the concept that there exists a correlation between the compensation amount and the remuneration.
When a final settlement has been reached, a fee corresponding to the level of indemnification is paid and can therefore never give rise to any form of contention. The participating parties experience this as positive. The fact that there is no discussion about the fee has a twofold positive effect on the claim settlement: on the one hand, the claims settlement climate is not disrupted by disagreement about costs and on the other hand, no time is lost on correspondence about the legal fee, time which could of course be better spent on the `real' settlement of the victim' claim.

The PIV Agreement Costs of legal Assistance stipulates that the scale automatically applies to cases with a financial interest not exceeding € 75,000. Insurers and legal representatives do, however, have the possibility to apply the PIV-scale to claims up to € 250,000. There was initially some reluctance towards this among the participants, but by now all insurers and virtually all legal representatives have opted for this higher amount.
The full text of the agreement, the PIV scale and a listing of the participating insurers and legal representatives can be found on www.stichtingpiv.nl
In 2009, the BGK Agreement for Legal Assistance Insurance was introduced, whereby legal assistance insurers also receive reimbursement of their costs by means of a similar scale.
The participants sometimes find the wording of the Agreement convoluted. For this reason, the PIV, in collaboration with insurers and legal representatives, will endeavour to arrive at a less complex text. In so doing, it will be considered whether the wording of the agreements with the legal assistance insurers and other legal representatives can be brought in line.

PIV-Bulletin

In 2009, eight editions of the PIV-Bulletins were published. These publications dealt with a wide variety of topics. In addition to the ubiquitous jurisprudence, a number of medical topics were dealt with, for example, the closing two articles in a series on collision speeds and the Delta V factor; Chronic Toxic Encephalopathy (CTE, formerly referred to as OPS or Organic Psycho Syndrome), and the CBO Guidelines (Kwaliteitsinstituut voor de Gezondheidszorg CBO, founded in 1979 as **C**entraal **B**egeleidings**O**rgaan).
There were also reports on a number of seminars, such as the seminar on the occasion of the tenth anniversary of Maarten Tromp Solicitors in November 2008, the fourth lustrum of the LSA-Conference and

the ninth PIV-Annual Conference, traditionally held on the last Friday of January, respectively March; the Beer Seminar at the beginning of March; in the early the summer the festive presentation of diplomas of the Moderate Injuries course (MzL); the celebration of the fifth lustrum of the Dutch Victim Support Organisation on the last day of September; the fourth PIV Injury Plaza in October and the Raasveld seminar at the end of November. Only two columns were published.
Particularly 'house lawyers' of insurers submit many articles and although we are of course very pleased with these contributions, we keep urging our own `rank and file', i.e. the insurers' employees, to submit interesting articles.

Current Developments Lecture 2009

Since its inception, the Current Developments Lecture has been meant as a refresher course for graduates of the former PIV Training for advanced injury claims handlers/claims adjusters. For a number of years, graduates of its predecessor, the OSR Moderate Injuries (Mzl) Course, are also a target group. Because this latter training is also open to candidates not employed by insurers, there are increasingly more participants from legal representatives. On Thursday 1st October 2009 and Tuesday 6th October 2009, 120 people attended the seminar in the building of the Association of Dutch Insurers in The Hague.
Before the break, Dr. Chris van Dijk of Kennedy Van der Laan Solicitors informed the audience of current jurisprudence, covering the period October 2008 -October 2009, as well as developments which were (media) hot-items. Afterwards, Professor Siewert Lindenbergh of the Erasmus University of Rotterdam lectured on the seemingly contradictory differences in jurisprudence on employers' liability, in particular regarding the articles 7:611 and 7:658 of the Dutch Civil Code.
As per tradition, the seminar was concluded with informal talks and drinks during an elaborate warm buffet.

Meeting of Experts – Care: pecuniary compensation alone is no longer of this time

On 14th October 2009, the PIV organised a meeting of experts on the subject of 'care' and 'case management' as well as compensation in kind. This meeting of experts was a follow-up from the PIV Annual Conference of 2008, where by various quarters a desire was expressed to investigate if insurers could deploy more initiatives in this field.
The meeting was attended by representatives from insurers, legal representatives and by people with a rehabilitation background. The discussion took the form of a number of propositions.
All attendees agreed with the theorem "*Pecuniary Compensation alone is no longer of this time*". It was considered of primary importance that the victim was assisted in resuming his life. One of the possibilities that was discussed to help the victim with this, was the appointment of a coach or case manager. This person would have no involvement in the claim settlement. His instruction would solely consist of assisting the victim. There were diverging views on whether it is prudent to introduce a separate party in the claims settlement trajectory. Is this not primarily one of the legal representatives' tasks? And who will then have the lead?
It emerged (as a red herring) from the meeting that it is of uttermost importance that there exists mutual trust between parties; where there is trust, the question of whether the coach/case manager is instructed by the insurer or if the legal representative takes that initiative, loses importance.

Another idea that was discussed related to offering compensation in kind to victims, for example with household chores, DIY and gardening.
Some insurers have had good experiences with this; the victims, too, were very positive about these schemes.
The comments from the Meeting of Experts constitute a solid basis for the PIV to take this further. In 2010 the PIV intends to investigate the possibilities in more detail.

5. Child and Injury: where do we go from here?

On 26th November 2009, the latest significant PIV publication was presented, entitled *Child and Injury: where do we go from here?'* The main authors of this book are Siewert Lindenbergh – Professor of Private Law at the Erasmus University of Rotterdam – personal injury lawyer Maarten Tromp and PIV Director Theo Kremer. It is the sixth publication in the series in which the PIV addresses a specific theme.
The previous five PIV-books dealt with Traffic Liability, Legal Costs, The Family as Prejudiced Party, Personal Injury and the Internal Revenue and Time is Money respectively. In 2009 the Settlement of injury claims of seriously injured (young) children.

The PIV endeavours to cover the topics dealt with in this publication from as many different angles as possible.
This book has a multidisciplinary approach, dealing not only with legal points, but also with medical aspects such as the role of the paediatric rehabilitation specialist and the paediatric neurologist. Additionally, social security legislation for the handicapped as well as rehabilitation support, are discussed.
The first book was presented to Peter Langstraat, chairman of the Dutch Association of Injury Lawyers.

'Nothing new' or 'Something different'?

Two different legal settlement regimes are discussed. Personal Injury Lawyer Raoul van Dort advocates that the loss of earning capacity must be taken as a starting point (i.e. the question what career the child would have attained without the accident).
Theo Kremer, on the other hand, wants to depart from this question and prefers to take as a starting point for the claims settlement the financial costs for the child to acquire the most agreeable and most independent circumstances for its future, with adequate care and (medical) support. Contrary to the settlement regime advocated by van Dort and called the 'nothing new' version by Kremer, he calls this the 'something different' alternative.
There is jurisprudence to be found to support either method, but it is limited, and there is not yet a uniform strategy
In any case, it is desirable that the claims settlement in cases involving severely and permanently injured children, is taken up as swiftly as possible. The inherent human tragedy aside, there must be no unnecessary financial uncertainties.

"Lessons from the past"

The first chapter, written by Lindenbergh, deals with the vicissitudes of four 'famous' children in liability legislation, namely: Tamara van Uitert (as a baby the victim of a leaking hot water bottle), Eabele Dillema (a severely injured traffic accident victim), Lars Ruröde (seriously injured by agricultural machinery) and Hanneke Kruidhof (a severe burns victim subsequent to a school accident).
A record of the experiences of these children give an impression of how they perceived their accident and the ensuing damages, the litigation for compensation and what the compensation they finally received meant to them.
These children have not only contributed to the evolution of liability- and compensation legislation, but through their stories they can also contribute to a better future for children with severe injuries.

Looking towards the future

In his introduction, Professor Arno Akkermans, lecturer of Private Law at the Vrije Universiteit of Amsterdam, concludes that we should, at the very least, do everything in our powers and within the boundaries of what is achievable, to improve the position of severely injured young children and their families. The PIV, too, is of the opinion that serious injuries, sustained by young children, merit attention from all parties concerned for a number of reasons.
Not only are we here looking at young people, whose lives are nipped in the bud, and who (often literally) in one sweep have all of their opportunities destroyed, but their situation undisputedly also impacts greatly on the rest of the family.
These injuries might be caused by a traffic accident, but also as a result of medical negligence or a faulty product.
The book is not only intended for professionals who deal with personal injuries, but also for all those who, in one way or another, are or will be involved in (policy making) relating to personal injury settlement and injuries sustained by young children in particular.
The PIV hopes that the book will be a source of inspiration to improve the settlement of damages suffered by young children and that it will make a positive contribution to a more balanced and efficient claims settlement trajectory.

6. Code of Conduct Transparency of Medical Incidents, better Management of Medical Liability (GOMA)

Traffic liability versus medical liability

At least three significant differences exist between the claims settlement resulting from traffic accident and that ensuing from the mistake of a physician (the so-called medical negligence).
In the first place, traffic liability legislation is governed by *hard* and *fast* rules, for example the person who runs into the back of someone else, is virtually always liable. Objective causes of a traffic accident, such as the failure to give right of way or speeding generally lead to responsibility of the perpetrator. In short, with traffic accidents there is limited discussion on liability. This is juxtaposed to medical liability, where the premise of a 'reasonably and competently acting physician' can give rise to a discussion and where the boundary between negligence and a normal complication is sometimes difficult to determine. The next aspect to be considered is that a traffic accident victim is an 'ordinary Dutchman', and that in the last century the Dutch Supreme Court has introduced the criterion that "*You have to take the victim as you find him*".
In medical liability cases that is somewhat different, because the very reason for someone to visit a physician is because there is something wrong with him.
In addition, in cases of medical malpractice, imponderables need to be addressed such as what would have happened if the physician had not made this mistake. A discussion on causality can therefore ensue, which is far less frequent in traffic accidents claims.
There is yet another major difference between traffic and medical liability: with traffic accidents, the perpetrator, respectively the liable party will generally not play a role in the claims settlement. His motor insurer will take over that role entirely, especially because there exists a direct right against the insurer. That is completely different with medical liability, where the physician plays a prominent role in the early phase; after all it is he who must inform the patient of his error and he holds the medical notes on which the victim must consequently base his possible claim for compensation.

Towards a separate Code of Conduct

One of the recommendations in the report "About life in the medical claims settlement practice", published in 2008 by Stichting De Ombudsman, was that medical liability insurers should sign up to the Code of Conduct for Handling Personal Injury Claims (GBL). In all fairness, it must be mentioned that this code had traffic accidents in mind when it was drawn up, if only because these occur most. This code is also specifically geared towards the trajectory of the calculation and settlement of personal injury claims, on the supposition that the question of liability is not at issue or can be resolved within three months.
The aforementioned disparities demonstrate that this code cannot automatically be applied to medical liability, where the claims settlement is preceded by an entirely different trajectory.
Insurers have therefore resolved that a separate code is required for medical liability cases. Towards the end of 2008 the project Gedragscode Openheid medische incidenten, betere afwikkeling Medische Aansprakelijkheid or GOMA — was started under the auspices of The Personal Injuries Board (De Letselschade Raad), then still called National Platform Personal Injury (NPP).
The project group that was formed for this task is headed by Professor Siewert Lindenbergh (Erasmus University Rotterdam). The steering group was initially led by Paul Procee, director of The Personal Injuries Board. After his departure in June 2009, this role was taken over by PIV-Director Theo Kremer. In addition to insurers, representatives of the KNMG (Royal Dutch Medical Association), the NPCF (Nederlandse Patiënten Consumenten Federatie – Dutch Patient Consumer Federation), the Ministries of Justice and Health, lawyers (both representing victims and insurers), GAV (Dutch Association of Medical Officers in Private Insurances) and academics, are involved in this project.

Main points of the Code of Conduct Transparency of Medical Incidents, better Management of Medical Liability (GOMA)

The GOMA gives recommendations with respect to various human and legal interactions. In the first place on the interaction between the medical health provider and the patient as victim of a (possible) medical fault. This mainly concerns the manner in which the patient is informed and the caution that must be taken into account when doing so.

Research has revealed that an adequate reaction from the health provider in this phase can help to prevent misunderstandings that lead to unnecessary complaints or claims and that it reduces tension in the relationship between the medical health provider and the patient.
The other recommendations from the GOMA relate to the situation where the medical health provider has been held culpable.
There are then three relations to be discerned:
a. between the patient and his (potential) legal representative;
b. between the medical health provider and his liability insurer; and
c. between the liability insurer and the patient and/or his legal representative.
The GOMA recommendations deal with time limits that must be observed, advice aimed at expediency, the taking of position by the insurer and the process relating to the instruction of a medical expert. This all relates to the goal of an open and transparent communication with clarity for all parties involved in the trajectory that is to be followed.
It is expected that the GOMA will be introduced in June 2010.

7. Organisation

Board of Management

In the course of 2009, The General Insurance division of the Dutch Association of Insurers appointed the following members:
- Dr. J.F.M. Hennekam – Unigarant. This is an extension of the Board, of which Hennekamp was a member on behalf of Univé from its inception until the middle of 2002.
- Mrs. Dr. Ing. A.H.A.M. Jeuken, MBA was appointed in the vacancy left by the withdrawal of E.J.M. Cooker, both of Delta Lloyd Group.
- F.N.A. Toussaint in the position opened by the departure of Dr. R.Th. Veldhoen, both on behalf of Nationale-Nederlanden.

Advisory Board

In 2009, the PIV Board of Management appointed the following members:
- Mrs. Dr. V. van der Does, as successor of R.H. de Groot, both Delta Lloyd.
- J.J. Smits – Motor Guarantee Fund
- Mrs. Dr. R.M. Voragen as successor of F.N.A. Toussaint, both Nationale-Nederlanden.
- Dr. O. Sleurink – ASR Nederland – to take over from Dr. H.J. Den Hollander, who took up a position with Reaal as per 1st January 2009.

Dr. den Hollander stayed on as chairman of the Advisory Board.

Editorial Board

In the course of the year both Dr. A.E. Santen – Centramed – and R.H. de Groot – Delta Lloyd Group – joined the Editorial Board.