

## **INFORMATION FOR CLIENTS WHO HAVE SUSTAINED INJURY FOLLOWING A LOSS-CAUSING OCCURRENCE**

### **Introduction**

The incident causing your injury not only has far-reaching implications for your personal life, but can also affect your social position drastically. The extent and complexity of the consequences of the injury call for the assistance of a lawyer who specialises in personal injury. *Beer advocaten* offers this type of specialised legal assistance. This firm has taken a conscious decision to take briefs from victims only and not to represent any liability insurers. Although not complete, this fact sheet aims to set out the main points of the settlement process. The lawyer handling your case will be happy to answer any questions you may have.

### **Liability**

Compensation can be sought only if someone is liable for the occurrence of the loss-causing incident. This could be a driver causing a traffic accident, an employer who is responsible for unsafe working conditions or a doctor who has made a medical error. In most cases the liable party has insurance and the loss and damage will actually be compensated by the insurer concerned.

### **Comprehensive Representation**

Chances are you have never had anything to do with personal injuries or damages resulting from death in which a liable party has been involved. There will be a lot happening. Your life has been turned upside down. You are drawn into legal procedures against your will, in which you may have to deal with many different parties. Here's some of what you can expect.

- If we represent you we will hold the party responsible liable for your loss, if the attorney thinks this is necessary. In case of medical liability we will first consult our medical advisor(s).
- It is very likely that liability will become the subject of an extensive legal discussion, in which liability will be established, or not. Compensation is enforceable only if the responsible party has admitted it was liable, or if the Court so decides or if (the insurer of) the responsible party has explicitly stated it will pay compensation. Once liability has been established, the following will apply.
- If you have personal injuries, we will make a list of your injuries and the symptoms and limitations caused by those injuries, together with our medical advisor(s). Only if you have reached the point where your doctor decides that you are fully recovered or does not expect any further recovery (so-called Maximum Medical Improvement or MMI), can your case be settled definitively.
- In anticipation of your recovery your lawyer will try to recover your loss from the liable party (or that party's insurer) by asking for an advance. You play a big part in this, as you have to provide the documents and evidence that support your loss. Your lawyer will also decide what other action has to be taken. Maybe independent medical specialists will draw up a more detailed overview of your

injuries and their impact. Or perhaps an occupational consultant or other external party will be asked to support you in your recovery, or provide evidence supporting your loss.

- If your lawyer and the liable party (or that party's insurer) cannot reach agreement, your lawyer and you may decide to start court proceedings or mediation.
- You will understand that this entire procedure can take a long time. Although this can be difficult for you, it is in your interest that we take the time necessary to get certainty about suitable compensation. Only then can we represent you in the best possible manner.
- Eventually your lawyer and the liable party (or that party's insurer) will negotiate about the final payment of compensation and the terms of settlement. Your lawyer will provide you with regular updates every step of the way.

### **Communication**

As soon as you have engaged the services of a lawyer, he or she will take over from you and handle all communications with the other party. Once they know that you have legal representation, the insurer or the insured (the person causing the accident) may no longer contact you directly. Your lawyer will maintain all contacts and keep you informed of any developments. Having just one point of contact will make communicating easier for you.

If at any point the insurer or the insured still tries to contact you directly in any way whatsoever, we advise you to refer them to your lawyer and to inform your lawyer. Please inform your lawyer also if your healthcare insurer or accident insurer contacts you about the accident.

### **Medical Data**

For a personal injury case it is important that – with your consent – medical data can be requested from the treating physicians. It is also important that you keep your lawyer up-to-date of the progress of the medical treatments. This information serves to assess the nature and severity of the injury caused and of the medical treatment given. This information is appraised by the lawyer and the medical advisor. The liable party's insurer, too, will engage its own medical advisor to assess the medical data. Frequently an independent physician, i.e. not the treating physician, must examine you to report on questions that are relevant to the settlement. Such examination is also called a medical expert's examination.

In general such examination will be performed only when the medical situation is expected not to change radically. This is also called 'maximum medical improvement'.

It often takes a long time before the injury's consequences in medical terms are clear. In many cases it may take several years before a case is settled definitively.

### **Compensation of Loss**

As a rule loss is compensated by means of payments. At some point a personal injury

case will be settled by the payment of a final sum. Until that point a personal injury victim is entitled to interim advances paid by the liable party. These advances are of course set off against the definitive compensation.

### **Types of Loss**

There are two types of loss. These are economic and non-economic loss. Below both types will be explained.

#### *a. Economic Loss*

Examples of economic loss are:

- travelling expenses or transport costs in connection with visits to doctors or hospitals;
- costs of stays in hospitals or rehabilitation centres;
- costs of domestic care necessitated by the injury
- costs of nursing and/or care
- costs because the victim is no longer able to carry out chores or repairs in and around the house
- costs of home modifications
- loss of earnings
- costs of engaging a lawyer

In most cases it is important that you keep as much documentary evidence as possible. This means receipts, but also bills, salary slips or other documents that may be used to demonstrate the loss.

#### *b. Non-Economic Loss (pain and suffering)*

Pain and suffering is a (tax-free) financial compensation for pain and loss of enjoyment of life. The damages awarded for pain and suffering depend on the severity of the injury and the lasting restrictions or disfigurements caused by the injury.

Also relevant is the age at which you sustained the injuries. As a rule the more severe the injuries and the younger the victim, the higher the damages awarded for pain and suffering. The damages awarded for pain and suffering are determined in negotiations with the insurer or by the court if the parties fail to reach agreement.

### **Compensation and Divorce**

If you got married under a community property regime, any advances received on the compensation and the final payment become part of that community. This means that in the event of divorce the compensation must be split. In other words: in that case your partner is entitled to (part of) your compensation. This is different if you could demonstrate that the compensation is for pain and suffering (non-economic damages) or for future economic loss that is yours specifically, for instance future medical expenses or income. To be able to demonstrate this it is important for you to ensure that the compensation is distinguishable from other assets. This will be difficult if you spend the compensation (on a joint home, for instance). It is easier if you pay the (advances on the) compensation into a separate bank account that only you can access and of which you keep separate records. If you'd like to have more information, I advise you to

consult a specialist like your bookkeeper or a lawyer specialising in matrimonial property law (for a list, see <https://www.verenigingfas.nl>).

### **Statutory Interest**

A personal injury victim is generally entitled to compensation of statutory interest on the damages paid. The statutory interest rate is determined periodically by the authorities. The liable party owes interest over the period from the time when the damage was sustained until the time of payment of compensation. By paying advances on the definitive damages a liable party can limit the entitlement to statutory interest.

### **Proceedings In Court**

Most personal injury cases can be settled out of court. Sometimes, however, it is necessary to conduct proceedings in court. These can be proceedings on the merits of the case in which the court is asked to resolve the dispute. Regrettably, practice shows that such proceedings take a long time. Not all proceedings do. A preliminary hearing of witnesses (in which the court just hears witnesses), a preliminary expert opinion (for which experts can be appointed) or summary proceedings (in which in urgent cases an advance on the damages can be asked) take much shorter by comparison.

Since a few years it has become possible to submit part of a dispute to a court of law. This is called the sub-proceedings. These proceedings take less time than proceedings on the merits of the case. The objective of sub-proceedings is that following the court's decision the parties can resolve the case by themselves.

### **Legal Fees**

Once the lawyer has declared that s/he takes on your case, you have a contractual relationship with your lawyer.

Under this relationship the costs of the services provided by your lawyer are for your account. This may be different if you are eligible for government-subsidised legal aid, or if such costs are covered by your legal expenses insurance. In your first meeting your lawyer will give you more information about the fees.

As mentioned earlier, the costs of hiring a lawyer form part of the economic loss that should be paid by the liable party.

It is important to make a distinction between the costs of extrajudicial assistance and those that are related to conducting proceedings in court. The reasonable costs of extrajudicial assistance form part of the compensation to be paid by the liable party. The liable party (read: its insurer) will often be prepared to reimburse the costs of extrajudicial assistance periodically by paying those costs to your lawyer directly, which means that you need not advance those costs. Still, you should expect to pay part of the extrajudicial legal fees, for instance in the event of partial liability.

Legal fees incurred for the conducting of proceedings, however, are always for your

account. At the end of the proceedings, however, the court may order the unsuccessful party to contribute to the other party's procedural costs (according to a statutory rate). Regrettably, in practice these statutory contributions are in no relation to the actual costs of litigation.

The costs of sub-proceedings are considered extrajudicial costs. This means that if a party has admitted liability, that party should pay the costs of the sub-proceedings. The court will assess the amount of the costs to be paid. If, however, the actual costs exceed the court's estimate, you will have to pay the difference. Of course your lawyer will make every effort to ensure that all costs will be reimbursed.

Our firm has a complaints procedure to ensure quality. Upon request we can send you a copy of this procedure. We enclose our general terms and conditions.

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