



Association Internationale de Droit des Assurances
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Asociación Internacional de Derecho de Seguros
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MOTOR INSURANCE WORKING GROUP BULLETIN

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At the beginning and at the end of the year 2002 we were stricken by the demise of two personalities who have characterized and who continue to enlighten through their works the evolution of law and of the insurance sphere. We lost first Prof. Antigono Donati who promoted AIDA and founded the review *Assicurazioni* and with his studies influenced besides Italian laws also the Iberolatin American Nations laws. Later that same year we lost Prof. Reimer Schmidt who was the founder of the German Chapter of AIDA, President of *Aachener und Muenchener Beteiligungs*, of the *Deutschen Verein fuer Versicherungswissenschaft* – the German Association for Insurance Science – and of the Geneva Association for economic studies. He was the author of several jurisprudence works and of a dictionary of insurance terms that set a landmark. In 1967 in Rome, during the AIDA study days, that is some ten years before the institution of our Working Group, Prof. Reimer Schmidt dealt from a scientific point of view with the issue of compulsory motor third party insurance.

In March of this current year we suffered yet another bereavement with the untimely demise of Dr. Brando Battistig who, by closely cooperating with Prof. Donati in the supervision of the review *Assicurazioni* and of the Italian Chapter of AIDA, for over 35 years dedicated his best endeavors to the Association, also by realizing the *International Yearbook*. In his capacity as Chief of the Documentation Office of *Istituto Nazionale delle Assicurazioni*, besides contributing articles to *Assicurazioni*, he was also in charge of the News bulletin included in the review to report on all international AIDA events, as well as of the pages on Italian and European legislative news. He was a member of the international AIDA Secretariat and, since 1990, Dr. Battistig also run the Motor Insurance Working Group Secretariat. We shall preserve an everlasting memory of this exquisite and amiable person.



The Working Group

Letter sent on 11th March, 2003 by Prof. Agostino Gambino, vice chairman of AIDA, to the Presidents of the Regional Chapters and to the Council Members of Italian AIDA

Dear Friends,
with deepest grief I must inform you of the untimely demise of Brando Battistig, our most precious secretary general both of the Italian Chapter and of international AIDA, who for many years dedicated his full commitment and eager enthusiasm to our Association.

As a temporary arrangement, my office shall take care of the secretariat, you may therefore send any communications to my address at via dei Tre Orologi 14/a - 00197 Rome.

Warm regards
Agostino Gambino

THE MOTOR INSURANCE WORKING GROUP: FROM NEW YORK TO RIO DE JANEIRO

An updated version of the international comparison study on normative and market practice peculiarities relevant to the management of motor third party liability insurance was presented both at the XI World Congress of AIDA held in October 2002 in New York and at the VII AIDA Insurance Colloquium held the following month in Budapest which hosted representatives of many AIDA Chapters, specially those from Central-Eastern Europe who had been unable to attend the New York event. After an additional updating based on the information collected at the 2nd May meeting of the Working Group to be held within the frame of the VIII CILA Congress in Rio de Janeiro, the study shall be published and sent to all AIDA Chapters, to control authorities, insurance associations, single insurance companies, as well as to all institutions that contributed to it by supplying information on their respective Countries. Upon request, the study shall be supplied to any other companies and public bodies.

The decision to start working on this study had been taken, as you are aware, by the Motor Insurance Working Group meeting held in 1990 within the frame of the

Copenhagen VIII AIDA World Congress. Ever since the time of its establishment at the 1978 Madrid Congress the Working Group, under the chairmanship of Prof. Simon Fredericq, realized a series of most rigorous studies on the normative and technical features of motor insurance, with the contribution as far as tenets of the main national Chapters. The study, however, lacked a comparison at international level among the legislative frameworks governing compulsory motor insurance and the management criteria prevailing in the different markets. The subsequent Chairman of the Group, Dr. Raffaele Deidda, accepted this commitment on behalf of the Italian Chapter and appealed to Assicurazioni Generali to secure their cooperation and support. Indeed, already at the time this Company was part of a Group having worldwide establishments, which afforded a practicable way to carry out wide-ranging investigations and to certify the quality of the study's contents. Far from having merely theoretical purposes, by providing a detailed comparison of the various international frameworks, the study was meant as a spur for legislators to enact compulsory motor insurance laws in the Countries still lacking them and everywhere else to improve existing laws by implementing more advanced rules to better protect people, policyholders and damaged parties. Dr. Armando Zimolo of Assicurazioni Generali was appointed to accomplish the work with the support of the Rome Office of the Company.

Even in times of economic globalization and of transnational travelling, the dramatic numbers in terms of road accident victims and the associated excessive expenditure have not yet awakened a commonly shared worldwide comprehension of the motorization phenomenon and of the legislative and technical tools apt to prevent risks and guarantee fair compensations for bodily injuries and damages to property. In fact our study highlights the persisting discrepancies among the applicable laws and compensation limits even in the various EU member Countries and in various Federated States. Also prevention measures and Highway Code rules are handled without any coordination among Countries and, often, within a single Country there is no harmonization between public authorities and private businesses operating in the field, with insurance companies in pole position.

The study started with two questionnaires sent to the 70 AIDA Chapters worldwide, they consisted of a total of 50 questions aimed at achieving a global outlook of normative and market conditions relevant to motor third party liability insurance. A series of economical data on each Country were later added to the study in order to represent each Country's production and wealth rate, the number and type of circulating vehicles and the development of its road network.



Not all AIDA Chapters replied exhaustively. The initial draft studies incorporating the provided data, specially with regard to jurisprudence and law issues, necessarily evidenced a number of dissimilarities in the accuracy, rigor and quantity of details, therefore the Office engaged in the work carried on a selective action of analysis and synthesis, also checking out any missing data with other sources. In the subsequent years contacts were taken with control authorities, insurance associations, companies of the Generali Group, embassies in Italy of the various Countries with a view to furthering the international contents of the survey and, as a matter of fact, also Countries without an AIDA Chapter were involved. At the 1994 IX Sydney Congress the study reported on 114 Countries. The fragmentation of a number of federal states, such as USSR, Yugoslavia, Czechoslovakia, Ethiopia, led to an overhaul of the study in order to take into account the new states that had emerged. At the 10th World Congress in Marrakech in 1998 the comparative study involved 132 countries. In that year the chairmanship of the Group, following the premature death of Raffaele Deidda, was taken up by Louis Carrère d'Encausse, who held the post up to the Budapest meeting in 2000, when Armando Zimolo was appointed. Since then the study has been further widened: 166 countries have provided information regarding the adoption of compulsory TPL, while 138 have answered the questions concerning legal aspects and market characteristics. To these countries, the 51 federal states of the USA, the 13 provinces of Canada and the eight Territories of Australia should be added, so that 210 legal systems have been analysed.

It has not been possible to receive information from a few countries in Africa and Asia and from a number of island states in the Caribbean and Pacific, which have little or no impact on world car circulation.

The decision that was taken at the New York Congress was to consider the work as a permanent observatory on the normative and management characteristics of motor TPL in the world by inviting all the AIDA chapters, supervisory authorities, insurers' associations and insurance companies that have taken part in the survey to inform the Office that edits the work about all the changes taking place in their respective countries in the years to come. These changes will be reported on this Bulletin, which is published on a half-yearly basis by the Office on behalf of the Working Group, and in-

serted in the study itself, which will thus be once again presented in an updated form at the next AIDA world congress scheduled to take place in Buenos Aires in 2006.

This issue of the Bulletin, published in coincidence with the MIWG meeting at Rio de Janeiro, provides a summary of the basic report in the central insert, which also contains accounts of the other three studies carried out by the Working Group under the supervision of respectively vice chairmen Dieter Pscheidl and Jan Misana and of the deputy general secretary of Comité Européen des Assurance Jean Louis Marsaud. The works "Trends in compensation of bodily injuries", "The protection of the minors and of the other weaker parties in road accidents", "Fraud in insurance and means to combat it" currently cover the principal countries in Europe. The Rio congress will thus provide the opportunity to extend their scope and transform them into fully fledged international comparative studies. We also publish in this edition the questionnaire that has been drafted so as to give a uniformity of answers on the evolution of compensation for bodily injuries. This same method will also be applied for the other two studies so as to gradually increase the volume of information, which will then be discussed in the Group's two annual meetings. The aim is to present at the 12th AIDA World Congress in Buenos Aires international comparative reports on these topics that will be in line with the basic study in terms of breadth.

Alongside these topics, the MIWG also tackles the issues that are each time indicated by the hosting AIDA Charter. During the 7th AIDA Insurance Colloquium of Budapest a comparison was made between the Guarantee Funds in France, Italy, Austria and Hungary on the basis of the reports by Lewis Frank, Armando Zimolo, Dieter Pscheidl and Kocis Kálmán. This issue of the Bulletin publishes a summary of the report presented by Mr Pscheidl with the co-operation of Thomas Hurmer. We plan to publish the other reports in the next issue.

The Bulletin represents the only information tool that is available for all AIDA chapters as far as motor insurance is concerned. We invite all AIDA Chapters to send to the review's editorial office all information about motor insurance in their respective countries that deserves to be spread in the framework of the international comparative studies that are currently conducted by the Motor Insurance Working Group.





THE MIWG QUESTIONNAIRE ON TRENDS IN COMPENSATION FOR NON PECUNIARY LOSSES

The Motor Insurance Working Group is currently conducting a study, under the direction of Dieter Pscheidl, on "Trends in compensation for non pecuniary losses". The aim of this study is to give an overview of the legal situation in various countries, since this special field of tort law is subject to constant and important changes. The constant increase of international traffic and the development of new international legal regimes, as for example the 4th EU-Motor Directive, make it necessary to take an in-depth look into the different national legal systems.

In order to get a better insight into the different national legal systems, especially concerning recent developments, we have prepared a short questionnaire. We kindly ask you to answer this questionnaire, which would help us to get a better understanding of your legal system.

Questionnaire

I. Compensation for bodily injury arising from traffic accident - legal framework:

- a) Is compensation for bodily injury governed by:
1. general 3rd party liability law
 2. legal provisions specific to traffic accidents
 3. insurance market agreements?
- b) is the bodily injury compensation system based on:
1. a strict liability regime (risk liability)
 2. a subjective liability regime - proof of fault of the liable party - presumption of fault
 3. a combination of the two regimes (based on fault in certain cases)?

II. Liability:

Is the fault (or contributory negligence) of the victim acknowledged as a means of defence - total or partial - for the perpetrator of the accident?

III. Legal assessment of damages-procedures:

- a) Is bodily injury damage assessed globally or is there a distinction made between economic and non-economic damage?
- b) please list the heads of damage giving rise to compensation in your country.
- c) How is the value of damaged goods such as health, life, enjoyment of life, etc. calculated? Is there any kind of objective evaluation (fixed statutory sum, tables, tariffs,

etc.) based on a medical assessment or rather a subjective evaluation according to the victim's suffering?

- d) If there exists a system of objective evaluation, to what extent does the court have the power to deviate from the standard awards?

IV. Medical assessment of damage:

- a) Who is responsible for assessing traumatic after-effects consequential to the accident:
1. the family doctor?
 2. a medical expert:
 - with a mandate from insurance companies?
 - with a mandate from the court?
 3. a doctor mandated by social protection institutions?
- b) is a list of specific questions provided to the medical expert?
1. on a case by case basis?
 2. based on the type of injury?
- c) are bodily injuries assessed on the basis of a medical scale (including the assessment of pain and suffering)?
1. is this scale generally applicable to all cases of accident or specific to injury arising from traffic accident?
 2. what is the theoretical basis of the scale (law, agreement between insurers, derived from court praxis)?
 3. is the application of the scale mandatory for the expert?
 4. If such a scale is applicable in your country, please enclose with your reply.
 5. are there any special scales in force for assessing aesthetic damage?
- f) are these scales recognised by court authorities or simply indicative?
- g) can medical reports be challenged by the victim?

V. Death of a victim:

- a) Does your system allow a claim for non-pecuniary losses by the relatives (compensation for bereavement)? Under which conditions?
- b) Does your system allow a claim for non-pecuniary losses by the estate of the victim? If yes, what is the theoretical basis?

VI. Fear without injury:

- a) does your system allow damages where fear is suffered before or even without any physical injury
- b) if death occurs some time after the initial injury, and the victim meanwhile suffers pain and/or is aware of the prospect of death, does the victim or its estate have a claim?



VII. Procedure for settlement of damages:

- a) in your country, are there legal or regulatory provisions governing time limits for the payment of compensation for bodily injury? If yes, please specify.
- b) what are the sanctions in case of non compliance?
- c) interests
 1. what is the legally applicable interest rate?
 2. from which point in time does the calculation of interest start?
 3. is the victim entitled to claim for interest in out-of-court settlements, too?

VIII. Procedures for payments of compensation:

- a) what is the procedure for payment under your bodily injury compensation system?
 1. payment in capital form?
 2. payment in annuity form?
 3. a combination of the two procedures? Please specify.
- b) is the victim under legal obligation to signify an agreement by signing a discharge form?

IX. Relationship between social institutions and insurance companies:

- a) do the social institutions pay for non-pecuniary losses (SUVA in Switzerland does this)?
- b) are social insurers entitled to recover their outlays against the insurer of the party responsible for the accident? If yes, please specify what detailed procedure is applied.
- c) is there an agreement between 3rd party liability insurers and hospital or social institutions governing reimbursement of medical and care costs arising from treatment given to victims of traffic accidents?

X. Current awards:

- a) what are the current highest sums that might be recovered for non-pecuniary loss?
 1. death of spouse (bereavement, without psychiatric/mental illness)
 2. death of child (bereavement, without psychiatric/mental illness)
 3. death of parent (bereavement, without psychiatric/mental illness)
 4. quadriplegia
 5. simple fracture of the forearm with full recovery
- b) are the sums awarded for non-pecuniary losses in your system generally regarded as too high or too low?
- c) in evaluating the compensation, is the economic or social situation of the tortfeasor or the victim taken into consideration to increase/decrease the award for the victim?

- d) does your system have minimum levels (thresholds), i.e. the injury has to have a minimum intensity in order to justify an indemnification, or maximum levels (caps), i.e. the amount awarded can not go beyond a certain level. Are these levels, if they exist, imposed by legislation or by court practice?
- e) does your legal system award punitive damages, e.g. if the tortfeasor or the tortfeasor's insurance company refuses to pay compensation without adequate reasons, i.e. if this denial can be qualified as chicane?
- f) regarding the double function of evaluated indemnities: is the compensation function or the satisfaction function more important?
- g) to what extent are non-pecuniary losses compensated outside the tort system (e.g. guarantee funds for victims of road traffic accidents if the tortfeasor is uninsured or unknown, social security, workers' compensation, compensation of victims of crimes [provided by the state, or a special fund], etc.)?

XI. New trends:

- a) Have you noticed an increase/decrease in the awards for non-pecuniary losses over the last two years?
- b) Do you think that it is desirable to harmonize or standardize the different tort law systems?

If yes, do you think that there should be an absolute harmonization, i.e. the same amount for the same type of injury in every jurisdiction, or do you rather think that, on the one hand, there should be the same heads or titles of damages in all jurisdictions, and on the other hand, there should be the same relation between the different titles or between different kinds of injuries. For example, the maximum amount = 100 % = for Quadriplegia. The injury of a forefinger is X % of the maximum amount. The percentage X is the same in all jurisdictions, however, the absolute amounts vary from jurisdiction to jurisdiction, taking into account different factors, such as for example cost of living, average income, etc.
- c) Are there any other remarkable trends in this field of law in your country?

Please send your answer directly either by e-mail, by fax or by mail to:

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Articles

FOURTH MOTOR INSURANCE DIRECTIVE: THE DIFFICULT HARMONISATION OF EUROPEAN LAWS

The mechanisms to be implemented under the 4th Motor Insurance Directive relate to improved procedures (such as identification of the vehicle owner and insurance company, communication in the language of the accident victim, 3 months deadline for a "reasoned reply"). The specific legal problems of a road accident abroad, however, continue to exist, because foreign law will continue to apply. The mere fact that a claims representative is available in the accident victim's own country to handle the claim does not make a foreign accident claim into a national one.

The reasons for a Fourth Directive on Motor Insurance

The idea of a Fourth Directive on Motor Insurance no. 2000/26 of 16th May 2000, effective since 20th January 2003, was born in 1997 thanks to the joint awareness and commitment of a few influential insurers – mindful of the image of their companies vis-à-vis the public opinion – and of a group of European officials and members of Parliament who were the recipients of a growing number of claims by victims of international traffic excluded from the Green Card guarantees because they were involved in motor accidents occurred in countries other than their home countries. Thus the need for a law impacting solely on this type of international traffic claims became of vital importance. The insurance industry as well as European Union and national institutions were aware of the limits of a system of guarantees that had been established fifty years before, in January 1953, with the fundamental objective of providing protection in their home countries for the victims of international traffic accidents caused by vehicles circulating outside their respective country of registration. An effective system of guarantees certified by the Green Card issued by the motor TPL insurer for the circulation of a vehicle outside the country of registration but ineffective as regards the compensation of damages suffered by victims outside their home countries and involved in accidents in the countries they are visiting.

Even today the victims of international traffic can do nothing else but adapt themselves to the applicable procedures, rules and deadlines which *lex loci* (local law) dictates in a foreign language and must deal, either by themselves or, whenever possible, with the assistance of their Motor TPL Insurers, with distant liable parties, against whom the dam-

aged parties can take no action in their country of residence.

The intended goals: "swift compensation" and "minimum legal costs"

This being the situation, it was unquestionable that these shortcomings had to be dealt with immediately, first and foremost the recognition of the damaged party's right of direct action against the insurer in such countries, like Ireland and Great Britain, where this right did not exist, and nomination by the victim's insurer of a proxy empowered to handle, settle and pay the claim in the victim's home country according to modalities that are "familiar" in terms of procedures, communication and language. This was the way to achieve similar claim settlement conditions as those existing in the damaged party's country of origin through an insurer having its registered or representative office in that country for the purpose of settling Motor TPL claims on contracts concluded in freedom of service by an insurer operating in another Country. Such conditions surely better favour the damaged party. Within this frame, the Fourth Directive is aimed at reaching two main goals: "swift compensation" and "minimum legal costs", goals that were clearly stated and just recently recalled by the European Commission when presenting the Proposal of Fifth Directive on Motor Insurance, a measure that, as we shall see, under many aspects treads much in the wake of the Fourth Directive. However, only the "swift compensation" goal is sustained by specific norms which, instead, are regrettably non-existent as regards "minimum legal costs". The Fourth Directive is in many ways a basic directive because it does not prevail over any national norms that might better favour the victim. It must however be stressed that this is solely applicable to claims relating to accidents occurred outside the victim's home country.

The "range" of protection of victims

The damaged party enjoys a rather ample protection, consisting of many rights and of very few duties. Within this frame, the following should be stressed.

- The establishment in favour of RTA victims of an Information Centre (in Italy entrusted to ISVAP, the insurance watchdog), funded by national insurers, which must be able to supply "without delay" information to victims on the identity of the insurance company, its local representative as well as the owner of the damaging vehicle (and, if allowed, of the customary driver of same). Moreover, the Centre keeps all necessary contacts with the other national Information Centres and with the Bodies in charge of motor vehicles registration in the various Countries.
- The considerable geographic coverage provided by this measure – much exceeding its original scope, the 18 Countries of the European Economic Space (EES), be-



cause its provisions are applicable in all Green Card Countries, i.e. 43 Countries since 1st January 2003 with the admission of Bielorussia – a merely geographic reference which turned out to be decisive at the moment of definition, during the conciliation procedures between Parliament and European Council, a satisfactory compromise also for those who aimed at making the Directive applicable to all accidents occurred in third countries on the sole condition that the Motor TPL insurer had there a registered office and the damaging vehicle was registered in any EES country other than the victim's home country;

- The deadline for the insurer and his proxy to make a fair compensation offer. A deadline which, from the six months initially provided for, by a Parliament approved amendment to the original Proposal of Directive, was later reduced to three months starting from the victim's request by a political vote of the Council. Thus the victim is granted the choice of the most useful time – also from the point of view of gathering evidence – to start the procedure towards the insurance representative and the insurer;
- To further protect any victim, the insurer is denied the right to interrupt or at least suspend the three month deadline given to the representative in case of failure to reply on the part of the victim. (“... *To the legitimate requests of the insurer or of his proxy for the purpose of completing the file relevant to the compensation*”, as stated in the Parliament approved amendment). This creates, on a first reading, some doubts in the comparison with Italian regulations that by art. 5, comma 1, of Law no. 57 of March 5, 2001, rules that – in case of incomplete request on the part of the victim - a new time limit of 60 and 90 days is granted for a fair offer starting from the date of receipt by the insurer of the integrative data o documents requested to the victim;
- The right of victims to start legal proceedings at any time against damaging parties and their insurers remains unchanged but any such legal action shall stop other out-of-court settlement on the part of the proxy or of the mandating insurer as well as of the compensation Body;
- The Directive lacks whatever provision on specific measures to concretely achieve the goal of limiting legal expenses to bare essentials, even though the European Committee had asserted it
- Finally, the possibility for the compensation paid by the Body to have a subsidiary nature is provided by this Directive but, in any case, does not represent a sufficient condition to impose on the damaged party the preliminary obligation to try to get compensation from the liable party.

The legal problems of a road accident

The mechanisms to be implemented under the 4th Motor Insurance Directive thus only relate to improved procedures

(such as identification of the vehicle owner and insurance company, communication in the language of the accident victim, 3 months deadline for a “reasoned reply”). The specific **legal problems** of a road accident abroad, however, continue to exist, because foreign law will continue to apply, and, if it is necessary to take legal action, the matter will have to be brought before a foreign court. The mere fact that a claims representative is available in the accident victim's own country to handle the claim does not make a foreign accident claim into a national one. In practice, contacts with the foreign country, for example for an inspection of police files (often the true cause of delay in out-of-court claims settlement) will continue to play an important role.

A significant weakness of the Directive is that the victim is left alone with the burden of legal problems resulting from an accident abroad. It is of vital importance for the victim to receive qualified legal advice from the start. However, many legal systems provide no or very limited possibilities of recovering lawyers' fees if claims are settled out of court. A claims representative's activities can never replace a lawyer's advice, because the claims representative is on the insurance company's side. It must therefore be emphasised that the victim's situation can only be expected to improve to a certain extent. To create a situation comparable to a national accident, it would have to be ensured that the victim receives **independent and qualified legal advice** at the cost of the liable insurance company. Improvements are also needed with regard to establishing the facts of the case, especially regarding the creation of a procedure for cross-border inspection of files and use of a standard accident report form. A crucial issue, for example, will concern the harmonisation of tort law, namely the harmonisation of provisions aimed at protecting vulnerable road users in view of the existing different conditions in the Member States. It appears that the EU has no competency to regulate this matter by a directive. Substantive tort law falls in fact under the competency of each individual Member State. Harmonisation by means of a European directive does not seem to be possible, at least for the time being, because of the principle of subsidiarity.

Further, one must be extremely cautious when trying to harmonise a component part of an overall legal system. Any new regulation of such a component part may strongly disturb the balance of the overall system, including social security systems. It is therefore particularly important to observe the principle of proportionality in this respect. Prior to a harmonisation of European tort law, modifications to a Member State's overall legal system should only be made in exceptional cases.

In any way there will be hard work to do and it surely will take a long time again until the regulation of the rights concerning road-traffic-accidents will be harmonised.



THE GUARANTEE FUND IN AUSTRIA

by Dieter Pscheidl & Thomas Hurmer

The Austrian **Guarantee Fund** is established at the Austrian Special Association of Insurance Companies (*Fachverband der Versicherungsunternehmen Österreichs*, Schwarzenbergplatz 7, A-1030 Wien, Phone: +43 (0)1 711 56 0, Fax: +43 (0)1 711 56 270, internet: www.vvo.at).

The **history** of the Austrian Guarantee Fund goes back to the year 1958, when the Austrian insurance companies gave a voluntary promise of reward for certain cases of lack of insurance cover in order to protect the victims of such accidents. However, since this was a voluntary promise, victims had no absolute protection, the promise could have been revoked at any time. In June 1977 the *Road Traffic Victim Act* (*Verkehrsofferschutzesetz*) was enacted and the Austrian Guarantee Fund was officially established. The latest amendment to this law was in November 2002.

There are 4 cases in which the Guarantee Fund covers the losses (§ 2 Abs. 1 Z 1-5 Road Traffic Victim Act):

1. no contract of insurance exists despite the fact that this is compulsory
2. it was not possible to establish the identity of the person who was liable
3. the vehicle was used without the permission of the keeper insofar as this is not covered in accordance with § 6 of the Railway and Motor Vehicle Liability Act (EKHG); so-called *real operation without permission*
4. the damage was caused with intent or
5. insolvency proceedings had been commenced in respect of the insurer involved whereby the proceedings had been rejected due to insufficient funds

There is one exception to these cases. According to a decision of the Austrian Supreme Court (OGH 1994/02/17, 2 Ob 4/93) the Guarantee Fund is not liable for foreign uninsured vehicles. In such cases the Green Card Bureau has to cover the losses.

It seems to be interesting to explain the 4th point. According to § 152 *Insurance Contract Law* (*VersVG*), the motor-TPL insurer does not have to cover accidents, which were caused intentionally (e.g. suicide drivers). Therefore it was necessary to protect the victims of such accidents. The solution that the Austrian lawmaker found was to oblige the Guarantee Fund to cover these cases.

The original **purpose** of the Guarantee Fund was to protect victims of road traffic accidents in those cases in which no insurance company had the obligation to cover the loss. The range of titles was very narrow. The intention

was just to avoid cases of hardship. The Guarantee Fund covered primarily claims for bodily injuries and in fatal cases the claims of the dependents for maintenance. Over the years the number of titles increased.

Today the Guarantee Fund settles claims basically as if it were a TPL-insurer. The heads of damages covered are:

- compensation for injuries (pain & suffering)
- medical treatment
- all other non-pecuniary losses
- funeral costs
- claims of dependents
- material damages

There are some restrictions for material damages. First of all, the Guarantee Fund does not cover material damages in cases of untraced or unknown vehicles. The reason is quite clear: fraudulent claims shall be prevented. It would be too easy to pretend to be a victim of an unknown car in order to recover, for instance, a loss that the owner caused himself. Secondly, there is an excess of € 220,00 for material damage. Thirdly, no recovery claims are allowed under subrogation, e.g., a social insurer cannot recover the costs of medical treatment.

Until June 1992 only once-off payments were allowed. This led to complications especially in severe bodily injury cases. Annuities had to be calculated for decades and then had to be capitalised. Since June 1992 it has been possible for the Guarantee Fund to grant annuities.

Another restriction was lifted in January 1979. Prior to this date claims for pain & suffering and disfigurement were excluded.

The circle of **persons** who are **entitled** to claim compensation from the Guarantee Fund is defined in § 3 *Road Traffic Victim Act*. This provision states that all direct victims are entitled to claim from the Guarantee Fund, that is to say, physical persons and corporate bodies. Even foreign victims can claim from the Guarantee Fund without restriction. However, as already mentioned above, there are no claims under subrogation.

The **claimant** has to fulfil some **obligations** in order to receive an indemnification:

- the accident must be reported without undue delay to the nearest station of police or Gendarmerie in cases of personal injuries
- notification of the accident must be made within three months of its occurrence to the Guarantee Fund
- where possible, assistance must be given in establishing the facts, and
- all necessary measures must be taken to keep the damage to a minimum



INSERT

Motor Insurance Working Group Meeting at VIII CILA Congress Rio de Janeiro, May 2, 2003

- Normative and Management Characteristics of Motor Third Party Liability Insurance in the World (Armando Zimolo)
- Trends in compensation of bodily injuries in Europe (Dieter Pscheidl)
- The protection of the victim (Jan Misana)
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NORMATIVE AND MANAGEMENT CHARACTERISTICS OF MOTOR THIRD PARTY LIABILITY INSURANCE IN THE WORLD

By Armando Zimolo

In 1953, Assicurazioni Generali's consulting body, the General Council, launched an appeal to the Italian government, asking it to broker the adoption of a common traffic code and motor insurance policy at a European level - a policy which contained common contractual conditions and which should be compulsorily implemented throughout the continent. The General Council could not have imagined that its far-sighted resolution would still be urgently discussed forty-five years later. According to the latest available data, as many as 100m vehicles circulate in the world today; and each year 150,000 die and 5m are injured as a consequence of car crashes. It has been calculated that in the first century of the Motor Age - from 1898 when 1,000 cars panted and heaved on dusty and bumpy roads until today - eight million people have lost their lives as a consequence of road accidents.

These basic figures alone can give a picture of the entity of the phenomenon - a phenomenon that also bears a primary importance in terms of the money involved inasmuch as motor-related insurance premiums and compensation produce today a turnover of US\$300bn, a sum that corresponds to approximately 1% of the world's GDP.

Clearly, the social consequences of the phenomenon were foremost in the mind of the Motor Insurance Working Party (MIWG) - elected at the VIII AIDA World Congress at Copenhagen and chaired by the late Raffaele Deidda - when it decided to initiate a survey on the normative framework of motor TPL and on the way it was managed in countries worldwide. In the intentions of the MIWG, the aim of the study was to gather the required information in order to understand the true entity of the phenomenon and to find out how many countries still did not apply motor insurance on a compulsory basis. The Italian Section

of AIDA was chosen to carry out the survey, which in turn entrusted it to the Rome Office of Assicurazioni Generali.

AIDA Sections - present in approximately 70 countries - received in two successive stages two questionnaires containing some fifty questions concerning norms, legal principles, general conditions of the insurance contract, reserve allocation policies adopted by insurers, government supervision and control, tariff setting criteria, claim settlement procedures and prevention measures. In order to widen its international scope - and thus enhance its function as a comparative tool - the survey was successively extended to cover those countries where AIDA sections did not operate and to involve supervisory bodies, insurers' associations, Embassies as well as companies of the Generali Group.

At the IX AIDA World Congress held in Sydney in 1994, the study was considered as a work in progress with the recommendation that it be terminated in such a way that it include the largest number of countries possible. The study of the MIWG was officially presented at the X AIDA World Congress held in Marrakech in Morocco in May 1998, which was attended by over 600 delegates, including university professors, legal experts and insurers, from 38 countries.

The study - encompassing 138 countries - underlined numerous common aspects but also the significant differences still remaining between countries, even those within economically and politically integrated federations or confederations. In this light, what forcefully emerged at the Congress is the crucial necessity to work - in a world that is becoming smaller each day - towards a standardisation and homogeneity of norms, especially in view to providing a more comprehensive coverage.

A lot has been done in the EU with the issuing of the four directives on motor insurance - and a fifth due shortly - however, differences continue to exist, for example, in the way fault is conceived and hence on the way compensa-



tion is paid. It is at a world level, however, that the task is at best uphill. The study revealed a number of disconcerting facts: many countries do not enforce compulsory insurance; 15% of circulating vehicles are uninsured; the Guarantee Fund for the victims of road accidents does not operate in half the countries taken in consideration; maximum limits in many countries are unlimited as far as material damages are concerned while in some others they are limited to a handful of dollars for bodily injuries.

The diffusion of compulsory TPL

143 countries, out of the 166 that answered the first topic on compulsory insurance, enforce compulsory insurance, while 9 more countries enforce partially compulsory insurance. 14 countries have not enforced compulsory insurance and no information could be gathered for 25 countries, mostly island countries in the Caribbean and in the Pacific.

Compulsory insurance was introduced for the first time in Sweden in 1929, followed by Austria and UK the next year. In the course of the Thirties, motor TPL became compulsory in Germany, Czechoslovakia, Switzerland, Luxembourg, Finland, Latvia and the Monaco. In the other continents, insurance became successively mandatory in a number of British colonies, namely Burma in 1934, India in 1939, South Africa in 1942, Hong Kong, Ceylon and Uganda in 1951. It was in the Fifties, though, that with the spread of mass motorization, motor insurance became compulsory in France, Belgium, Denmark as well as in Japan and in a number of African countries, namely Egypt, Ghana and Nigeria.

Following the institutional and economic changes that have occurred following the fall of communism, motor TPL has become compulsory in nine former Soviet Republics (Belarus, Estonia, Georgia, Latvia, Lithuania, Moldova, Kazakhstan, Kyrgyzstan and Ukraine) as well as in Albania. Consequently, in Eastern Europe the biggest country that still has not formally implemented compulsory insurance continues to be the Russian Federation, because the law that enforces it – after a four-year wait in the Duma – still requires the President's endorsement.

Compulsory motor TPL in Asia is not only widely diffused but also has a consolidated tradition in Japan where it was enforced, as mentioned previously, as early as 1955, long before many European countries. In this light, exceptions to the rule are the Former Soviet Republics, namely Azerbaijan, Tajikistan, Turkmenistan and Uzbekistan, North Korea, a number of countries that had, or still have communist regimes, by some Arab countries, namely Yemen and Lebanon (where Parliament was about to approve it when civil war broke out). On November 20, 2002, Saudi Arabia will pass compulsory TPL legislation.

China deserves a particular mention. Though motor TPL is officially compulsory at a national level, it is left to local government to implement it. Authorities nonetheless "strongly recommend" - with considerable success - car owners to subscribe adequate insurance cover when they purchase a car.

Insurance is compulsory in the greater part of African countries, with the exception of Eritrea and Ethiopia. It must be mentioned here that French-speaking countries signed in 1992 the *Conférence inter-Africaine des Marchés d'Assurances*, whose aim is to establish a common insurance market among those countries that in this sector have adopted a French-based legislation.

As far as North America is concerned, in the USA - where each federal state maintains an autonomous legislation - eight states out of 50 (Alabama, Florida, Iowa, Mississippi, New Hampshire, Tennessee and Wisconsin) do not officially foresee compulsory insurance, however the financial responsibility regime that is enforced in all states - a system by which drivers must prove they have some form of financial responsibility, i.e. surety bond, certificate of self-insurance, cash deposit, etc - has a strong moral suasion effect, obliging car-owners to buy insurance in any case, as also testified by the car premium to overall non life premiums ratio which in the USA is higher than those registered in Europe and Japan (44% compared to 38%). On the other hand, insurance is compulsory in all the Provinces of Canada, as well as in all the States of Australia. In New Zealand comprehensive or third party property motor insurance is not compulsory, however personal injuries and death resulting from vehicle accidents are covered by a no-fault compensation scheme for all people including visitors, as set down in the Accident Rehabilitation and Compensation Insurance Act of 1992, which abolished the right to sue for damages following injuries or death in any Court of the country.

The situation in Latin America is much less uniform, hence indicating a delay in the process leading to the standardisation of liability-related legislation. Here, in fact, alongside those countries that have enforced compulsory insurance throughout the national territory (Chile, Colombia, Costa Rica, Dominican Republic, Haiti, Peru and Venezuela) there are those that have introduced it only in urban areas where traffic is densest or for the transport of passengers and dangerous cargo. In Argentina, a 1992 federal law introduced compulsory insurance legislation in the capital, a law that local authorities have successively endorsed in their respective legal systems. In Mexico, public transport must be insured, including taxis, but only in the capital and in a few other states. In Bolivia and Honduras, insurance is compulsory only for cars which bear a diplomatic plate; in Colombia for transiting vehicles and for those reserved for special purposes (school buses and tankers) or circulating in specific areas of the country, namely in the Andes; in



Uruguay and in Guatemala exclusively for public transport vehicles. It must be mentioned that citizens of Mercosur countries (Argentina, Bolivia, Brazil, Chile, Paraguay, Uruguay) working in any one of these countries must necessarily subscribe an insurance policy against both material damages and bodily injuries. In Brazil compulsory insurance covers only bodily injuries but the subscription of policies is largely disregarded, ignored by 70% of drivers in 1999. Ecuador, Nicaragua and Panama do not enforce compulsory legislation.

The purpose of the insurance contract

Everywhere insurance covers the vehicle, except in South Korea and Nicaragua, where it is linked to the driving licence, while in Nigeria insurance is *ad personam* when transport of passengers for working purposes is involved. Insurance is compulsory for all types of vehicles, although in several countries - in Europe, in other continents as well as in four states of the US - the principle according to which the solvency of the state is unlimited, provides an exemption for government-owned vehicles. This principle, for example, is applied within the EU in Denmark, Finland, Greece and in Austria, where in addition to government-owned vehicles, those belonging to Laenders and cities with a population of over 50,000 are also exempted. In Portugal, Yugoslavia, Malta as well as in Illinois (USA), no insurance is required for tractors and other agricultural vehicles, while in Romania, Moldova as well as in Colorado and Montana, motorcycles are exempted. No insurance is necessary, in addition, for trolley buses in the Czech Republic and in Slovakia, for taxis in the District of Columbia in the USA, and for vehicles whose maximum cruising speed do not exceed a certain limit, from 6 km/h in Germany to 35 km/h in Luxembourg.

The Guarantee Fund

In many countries there operates a Guarantee Fund for the victims of road accidents, or an equivalent system, which in most cases was established at the same time compulsory insurance was introduced. There are, however, numerous exceptions. In fact, though insurance is compulsory, the Fund does not exist in India, Kenya (established but never operational), Zimbabwe, in Arab countries (with the exception of North Africa), and in Latin America (with the exception of Brazil). A number of former communist countries in Eastern Europe have introduced the Guarantee Fund in the past few years: Romania in 1994, Bulgaria in 1997, the Czech Republic in 2000. In Macedonia, as part of its institutional role, the Fund also provides backing to those insurance companies that are facing financial difficulties. However, the types of coverage that the Fund provides for material damages or bodily injuries vary greatly and depend on whether the accident is caused by an untraced driver, by an uninsured car or by

someone who is insured with a company placed under forced liquidation. In most cases, the Fund only settles bodily claims, while material damages are generally compensated only if they have been caused by an uninsured vehicle. In the USA, where the Fund does not exist, insurers offer clients a coverage against uninsured or under-insured insured drivers.

The countries that answered the questionnaires also provided data regarding the number of claims received by the Fund. In this light, two peculiarities must be mentioned: the high number of claims settled by the Fund in Sweden for accidents involving reindeers, and the fact that in South Africa the number of claims received by the Fund is equal to the total number of accidents incurred because the Fund compensates the insurance companies that are authorised to settle claims. In South Africa, in fact, motor TPL is provided by the government which entrusts insurance companies with the task of settling claims, while the insurance premium is substituted by an additional tax on fuel. A similar system is also in force in Lesotho.

The Non-Insured

The answers received revealed that the percentage of uninsured cars continues to be high even in those countries where insurance is compulsory. Though the percentage is higher in developing countries, there are a number of noteworthy exceptions also in the developed world, in the USA and in Greece, for example, where the percentage of uninsured vehicles is approximately 14% and 13% respectively. The highest percentage of non-compliance was recorded in Indonesia, with 78%, and in Brazil, with 70%.

The extension of the coverage

Generally, the insurance guarantee provides a coverage against both bodily injuries and material damages. However, 33 countries in the world, most of which adopting a Common Law legislation, have limited the compulsory coverage only for bodily injuries. Though most of them are part of the Commonwealth (Australia, New Zealand, Hong Kong, Malaysia, Singapore), other countries as well have adopted this principle, namely Argentina, Brazil, China, Costa Rica, Indonesia, Israel, Japan, Malaysia, Philippines, South Korea, Thailand and Vietnam.

Naturally, the maximum insurable limits differ widely. In 46 countries, liability limits for bodily injuries are unlimited, while in 15 they are unlimited also for material damages. Though most are developed countries (Western European countries as well as Japan, Australia and New Zealand), in recent years a growing number of developing nations have also introduced unlimited coverage. Currently, out of the 15 EU members, six have imposed no ceilings: some, like Belgium and Luxembourg, for both bodily injuries and



material damages, some others, like Finland, France, UK and Ireland, only for bodily injuries. In this light, Sweden, no doubt, deserves a special mention because here the maximum limits for both categories of damages is so high (US\$45m) that they are de facto unlimited.

In 1997, Germany increased its limits for bodily injuries from 1 to 5 million DM, bringing up those for material damages to DM1m. Slovenia also increased them in the same year, by six times.

Maximum limits progressively decrease in the other countries. In Haiti, Guatemala, Malawi, India and Iran, they are under US\$ 1,000 for material damages, in Uganda, Indonesia, Guatemala, Haiti, Estonia and Iran also for bodily injuries.

With the exception of Hawaii - where there is no ceiling when the accident involves two or more persons - in the US maximum limits range from US\$ 10,000 in Alabama to US\$ 100,000 in Alaska, while a consistent group of states have imposed a maximum limit of US\$50,000. Here, the law sets down relatively low levels of compulsory coverage, which, if anything, are purely indicative inasmuch as most claims are settled in court where damages awarded are invariably much higher, a fact which persuades drivers to subscribe insurance with much higher limits.

Legal principles

The basic principle on which compulsory motor TPL insurance rests on is that of fault. The object of the guarantee, therefore, is the liability deriving from the behaviour of the policyholder, who, without having the intention to damage others, is the cause - by way of negligence, imprudence or unskillfulness, i. e. by not observing rules or by improper conduct - of an occurrence that has harmed others. Though this principle is widely shared, it is the way it is applied that most glaringly brings to light the differences existing between legal systems. The differences in the way damages are assessed and paid are in fact so wide, that there is de facto no uniformity whatsoever even within institutionally integrated areas such as the EU, the USA, Australia and Canada.

If the UK, common law countries, but also Japan and many others, continue to apply the general principle of fault - according to which it will be up to the damaged party to prove that the damage was caused by the car owner - Italy and France, as well as Poland and Albania in Europe, 12 French speaking countries in Africa and Venezuela in Latin America, award damages on the basis of the principle of presumed fault, according to which it will be up to the driver to prove that he or she had done everything possible to avoid the accident.

Many countries adopt mixed systems. In Finland and Sweden, for example, the principle of fault applies only for material damages, while strict, or objective liability is en-

forced for bodily injuries; in the Netherlands and Belgium, in order to protect weaker parties, the car driver will not be held liable with regard to pedestrians and cyclists only if he can prove that the accident was caused by *force majeure*. French jurisprudence has also established this principle. With the draft Fifth Directive that is due to be discussed in the European Parliament, this principle, by which more vulnerable parties are always entitled to a compensation, will be applied throughout the Union.

The absolute presumption of fault, i.e. strict liability, according to which the damaged party must be compensated in any case, is currently adopted for both bodily injuries and material damages in about a fifth of the countries included in the research. In Europe, strict liability is applied in Scandinavian countries - in two of which with the limitations described above - in Germany, Austria, Switzerland, Greece, Hungary, Czech Republic, Slovakia, Iceland.

In the USA, liability for an accident was generally attributed to the driver, except when he or she could prove that the victim had contributed to the accident with his or her conduct, in which case the victim could not claim damages. This principle, otherwise known as contributory negligence, has been gradually replaced by comparative negligence, according to which the liability of the driver is proportional to the negligence of the victim in a percentage that is established in court. A number of states (Alabama, Illinois, Indiana, Nebraska, Ohio, South Carolina, Texas) enforces the so-called guest statute according to which the third party cannot sue the driver of the car in which he or she was travelling, unless he or she can prove that the driver had acted negligently. Among those states that enforce this law, only Texas limits its field of application to the policyholder's family members. 21 states apply the family car doctrine which establishes that the proprietor will be held liable if his or her car has been negligently driven by a member of his or her family. This principle is applied in an even stricter form in four of these states, namely Idaho, Iowa, Minnesota, New York, where the owner is liable not only for the conduct of his or her family members but also for anyone else who drives the car with his or her implicit or explicit consent.

In all countries, the rules and regulations governing the way TPL is applied have had to take into consideration the need to settle claims fairly and swiftly. A number of countries in Northern Europe have solved the problem by law, in Sweden by applying the principles of social security, in Finland and Norway by taking into account liability in any case.

Other countries have encouraged agreements between insurers, among which the knock-for-knock agreement and the *constat amicable*. The knock for knock agreement was much in use in the British market in the 70s before it was gradually replaced by the development of compre-



hensive policies. The agreement, though, is still in use in many Commonwealth countries. As to the various types of *constat amicable*, it is currently in force in France (where it was established), Belgium, Italy, Portugal, Spain and Greece.

The evolution of TPL insurance towards forms of direct insurance is represented by the agreements reached by insurers to regulate those accidents where liability is difficult to discern such as multiple car crashes. In such cases, in fact, the need for fairness as well as the social function of insurance have led insurers to extend the application of the direct indemnity system - generally limited to the settlement of material damages - also to include bodily claims which would, consequently, be directly settled by the insurance company to its own policyholder. In this light, agreements have been signed by insurers in the Netherlands, Belgium and Italy.

Assessment of damages

The way damages are assessed also differs extensively from country to country. For the determination of the entity of bodily injuries, most markets take into account, apart from hospital and rehabilitation costs, the income of the victim, though in Denmark, Spain, UK, Thailand, Brazil and Chile insurers rely on fixed tables. Other countries, like Morocco, establish a maximum and minimum limit. Only a maximum limit is set in Israel and in Canada, where, however, the ceiling varies from Province to Province. In Belgium, as in other countries, previous sentences are taken into consideration for the determination of the compensation to be awarded to non-income earning victims such as students, housewives, pensioners. In Norway, where generally that amount of compensation is based on the income, predetermined tables are used if the victim is under 16.

While bodily injuries and damage occurred to relationships are within certain limits and characteristics always considered, the *pretium doioris*, intended as an additional compensation for the physical and moral pain undergone, is not acknowledged in the compensation to be awarded in Greece, Portugal, Malta, Norway, Russia and in the

other former Soviet Republics, in the UAE, in Costa Rica, Ecuador and Venezuela.

Sharia Laws are enforced in a number of Arab countries, namely Syria, Saudi Arabia, Yemen and Oman. Sudan in this context deserves a special mention. Here the maximum amount of the basic unit of compensation is equal to the value of 100 camels or their value in money. If the injury involves a single part of the body, the victim is entitled to the entire compensation. If it involves one of a pair (eyes, arms, legs, hands), the victim is entitled to only half of the compensation set down. In Kuwait, the death of a road accident victim entails the payment of what is called "blood money," which must be paid to the wife and relatives up to the second degree. If the death was caused by an untraced driver, blood money is paid by the state.

The study also analysed other topics ranging from the statute of limitations to the time taken to settle claims, from the role played by the government to the way insurers set their rates to the characteristics of the insurance contract. A number of economic indicators, aimed at outlining the way motor TPL operates in the world, have also been provided. These - more than other issues tackled in the article - have once again confirmed the profound differences that exist in the world today.

It is increasingly becoming apparent that the problem is a common one. And it is all the more apparent if one considers the fact that road networks are increasingly interconnected, that personal mobility is on the rise and that market deregulation policies are being implemented in vast areas of the world as well as in all industrialised countries with the WTO accord.

The work carried out so far can therefore be considered not only as a contribution towards an increased awareness, but also - at least in the intentions of AIDA - as a tool of proposal to be used by lawmakers in their task of writing more uniform normative frameworks. The work carried out may in fact be turned into a permanent observatory whose aim is to continuously monitor motor TPL insurance around the world and to produce an up-dated report at each World Congress.





TRENDS IN COMPENSATION OF BODILY INJURIES IN EUROPE (GENERAL DAMAGES)

By Dieter Pscheidl

I. Introduction

Non-pecuniary loss giving rise to a claim for monetary compensation is becoming increasingly important. The judgements of the Supreme Courts show a tendency which is derived from a respect for the bodily integrity of a person. This attitude is combined with that of the state vis-à-vis an individual. It is therefore easy to imagine that the valuation of non-pecuniary losses must differ in all the countries of the world depending on their degree of development and the social, economic and political situation.

Increasing motorisation has led to a constant increase in the number of compensation payments for bodily injuries arising from traffic accidents (25% bodily injuries, 75% property damage). The pattern that is emerging is as follows: a specialised doctor must give an opinion on the extent of the loss and then the judge decides. (The development of the law and practice governing claims depends on the judges).

The extent of non-pecuniary loss arising from bodily injuries can only be determined by a doctor, not by jurists nor lawyers. A non-professional attitude can only lead to a false judgement. On the other hand many criteria are given in the non-medical field which are subject to a free decision by the judge or other persons so called upon. The German pain & suffering tables (Hacks-Ring-Böhm: "Schmerzensgeldbeträge" 17. Aufl., bzw: "Slizyk", 2, Aufl.) are an example of this, where a fair decision is reached at an advanced stage of the law which does not depend upon judgement resulting from inspiration and feeling for the situation. The question of legal equity, predictability of the judgement and the rationalisation of legal practice demands attention. Without the collection of precedents, no fair and legally equivalent award of damages can be contemplated regardless of which system of calculation is used.

In the former Soviet Union, claims for non-pecuniary loss were not allowed, while grotesque awards of damages are made in the US. Neither of these extremes are desirable. The correct approach may well lie in the middle, as proven in European jurisprudence and claim settlement practice. A discussion as well as an outline of the practice of evaluation of non-pecuniary damages is a step toward European integration.

II. Definition of the term "pain & suffering" (*dolor pretium*) and "Non-pecuniary loss (non-patrimonial damages)"

All the languages of present day Europe contain very different words which endeavour to explain the term "non-pecuniary loss". This has led to considerable confusion.

Where, e.g., the term "pain & suffering" relates to the pure bodily intensity and period of pain suffered, nearly all civil codes contain the further term "non-pecuniary-loss" which covers a fair and adequate compensation in cash. This shows that not only physical pain alone is meant, but that the psychological component must be included.

Both types of pain must be looked upon as occurring simultaneously, whereas psychological pain may be the result of physical pain which is sustained over a long period. The purely physical pain differs in intensity, extent and type. Psychological pain is however, much broader and its scale reaches from slight discomfort to a fear of death which results in a loss of enjoyment of life and of the feeling of happiness. In order to assess the full extent of the damage in an individual case, it is necessary to demonstrate the complete harmony which exists in a healthy state. Here the definition laid down by the World Health Organization (WHO) may be applied:

Healthiness is complete physical, psychological and social well-being.

Pain & suffering is a monetary award for non-pecuniary damage sustained in the past or to be expected in the future (i.e. physical or psychological pain of all types, which serves to reduce the loss of enjoyment of life) of the injured party in an equitable manner which also gives rise to satisfaction.

III. A review of the past

Historical sources demonstrate that compensation in the field of non-economic damage was based on pure satisfaction and payment of a penalty and not on the present view of the equitable function of monetary compensation for pain suffered.

In pre-Babylonian times, ca. 2000 BC, the Codex Hammurabi laid down severe penalties without examination of negligence, resulting from bodily injuries by doctors, i.e. as a result of unsuccessful operations. The penal character was predominant, resulting in the amputation of a hand of the surgeon in the case of death of a patient or blinding in one eye. Such punishment was only rendered where the patient was a free man.

Payment of pain & suffering was not mentioned, and only the penal character of liability was expressed. The beginnings of compensation for pain & suffering also appear in the Ancient Roman Empire.

Attempts have been made to base a claim for pain & suffering on Roman law; this occurred in the 16th and 17th centuries and links were attempted in the "actio iniuriarum" and "actio legis Aquiliae" as well as "actio utilis" and "mores hodiernie". In Germany (Wittenberg Faculty), the "actio legis Aquiliae", issued around 1700, is the legal basis for an award of pain & suffering.



The mixed penal and private law character of such actions were therefore problematic. Criminal acts which are comparable to present day typical misdemeanours were penalized by private fines. This resulted in pain & suffering being given the character of a penalty.

An understanding of present day law cannot be complete unless the tendencies which led to the development are viewed openly. For this reason it is necessary to refer to the *actio legis Aquiliae de danno iniuria dat*, because this covers the question of under which circumstances non-contractual damage which has been sustained must be compensated, and it answers one of the fundamental problems which confronts every system of law.

Initially, penalizing the act was the main consideration. At a later date a more developed legal system combined the primitive and destructive revengeful character of the penalty with the constructive idea of reparation. With this development the function of reparation is equivalent to that of satisfaction.

The actual dispute regarding the obligation to pay damages for non-pecuniary losses in the personal field resulting from bodily injury first began in the course of the 16th century.

IV. Development Criteria

The historical review shows that, with increasing civilization, the value of the individual becomes enhanced, which gives rise to a heightened valuation of immaterial things.

The evolution of mankind starts from the rude cave man and has now reached the refined and civilised modern man - in other words, from the forest drum beat to the 9th of Beethoven. For the members of the privileged classes of the 18th century, accepting money was considered inconvenient, and as such compensation in money was paid only at the lower levels of society. The focus on the level of wealth of the damaged party takes place in English Law, where the damaged party, though already rich, received a *pretium doloris* which was higher than that received by a farmer. (This distinction took place within the framework of an interpretation according to which compensation of the *pretium doloris* would not be satisfied with a compensation in money of the same amount, because the two classes conceive compensation and satisfaction in different ways. This consideration has greatly influenced legislation).

V. Function of Indemnities

Non-pecuniary-loss damages have a double function:

Compensation - Satisfaction

The purpose of pain & suffering must fulfil the function of being an equivalent and in some countries it still has the

function of giving satisfaction. According to the theory of equivalence, the combination is made that non-pecuniary damage can be equated to money. This corresponds to the equivalent of extending the field of enjoyment as a means of compensation.

The satisfaction theory lays down that it is impossible to equate money to an aesthetic injury. Money can only restore the injured balance of the subject by compensating for the injured rights. Money is therefore neither compensation nor punishment but a payment of satisfaction.

The obvious trend is towards compensation.

The penal principal is involved and it becomes quite clear that pain & suffering developed from the criminal law. The tendency, however, is for compensation and adjustment to be in the forefront, although in some countries the penal character is emphasised more highly.

VI. Assessment

This extent and the measure of the impairment must be taken into account when assessing non-pecuniary damages. In addition, all the circumstances can be taken into account which give each individual case its particular relevance.

These particular circumstances include the degree of liability of the tortfeasor, the circumstances of the injury and, in addition, the economic circumstances of both parties including whether or not a liability insurance covers the claim. (Except in those countries where assessment is by means of tables, i.e. Denmark, Czech Republic, Spain).

The main points which must be observed are the extent, severity and period of the pain & suffering, the non-pecuniary loss sustained, whereby the impairment stands in direct relation to the other relevant circumstances.

Further developments and trends are to be seen in the fact that claims for pain & suffering or non-pecuniary loss can be left to relatives without the necessity for legal proceedings.

The assessment of monetary damages in respect of non-economic loss is one of the most important forms of protection of the personality.

The only question which arises is of which development tendencies are to be preferred, and of whether regulation shall be by Statute of Decrees of judgements in the courts.

The fundamental question, therefore, is whether to sustain or not to sustain the difficult quest of extending without limits the protection of man's personality with the purely formal framework of laws. I refer, in this light, to the recent developments in Italy and France.



VII. Visible important Trends

1. The evolution of the law and practice of damages depends on the judges. The jurisdiction in the Courts of Appeal controls the judgements of the lower courts which are not allowed to infringe legal precepts, as the laws of logic and the teachings of experience.
2. "De minimis non curat lex". Small claims are not compensated, very severe injuries lead to substantially higher awards (Germany)
3. Increasing pressure brought by organised "Plaintiff lawyers" (NL, GB, HR, ...)
4. The question of compensation becomes ever more dominant, whereas that of satisfaction becomes less important.
5. Introduction of the right of direct action in all states (except IRL, GB, CZ, SK, ...)
6. Claims across borders give rise to new systems of access to the law through Visitors' Protection Agreement and the preparation of the 4th Motor Vehicle Insurance Directive in the European Union.
7. The future planned obligation of the liability insurer to settle the claims of the accident victim in his own country.
8. Increased awards of damages resulting from unprofessional conduct by insurers who are only interested in selling policies and obtaining premium payments, but are not interested in efficient and qualified settlement of claims.
9. Technical research leads to improvements in the safety of vehicles reducing the number of personal injuries and reducing their seriousness.
10. Innovative insurance products with "lex damni" cover.
11. An increasing frequency and extent of damages in the severest personal injury cases. Medical advances have increased the chances of survival of severely injured accident victims. Ten years ago the reduction in the expectation of life of a Tetraplegic was between 30% and 50%, today a 15% reduction is realistic.
12. There is a trend that injured parties are no longer willing to accept full and final settlement.
13. In cases of very severe injuries the awards for pain & suffering by the Supreme Courts are increased considerably, i.e. in Germany a Tetraplegic, 36 years old man, DM. 600.000,—. In Austria a decision of the Supreme Court dated 14th January 1993 awarded ATS 1.500.000,— plus damages for disfigurement of ATS 300.000,—. In Italy under the heading in "danno biologico" a massive increase of the overall claim for non-pecuniary damages has been in force since 1985. For 75% invalidity an amount of Lire 1.125 Billion was awarded, whereby, however, the "danno morale" was not included, so that additional damages of approximately Lire 500 Million are to be expected for bodily pain & suffering and moral damages.
14. A particular problem arises in respect of whip-lash injuries. The importance of these cases is considerable in some countries and in part is frightening. The peculiarity arises that without any technical proof or pathological results, physical and psychological problems can arise such as headaches, tiredness, forgetfulness and concentration problems. In Switzerland, the whip-lash-trauma has developed into the biggest problem of many liability insurers leading to many fraudulent claims not only in Europe (Switzerland, Norway and the Netherlands) but also in the USA where the abuse of the system of compensation by accident victims led to unbelievable awards including punitive damages for pain & suffering and has led to opinions being raised that claims for pain & suffering should be abolished.
15. It is necessary to record, however, that in spite of the increasing number of civil actions the greater percentage of personal injury claims are settled out of court due to the uncertainty which applies in respect of court judgements, resulting in a preference for out-of-court settlements.
16. Due specifically to the difficulty in assessing a monetary award as an equivalent for a painful experience, the attendant possibility of healing and reducing the pain must be taken into account. Psychotherapy come to our assistance here. The 3rd Vienna School of Psychotherapy of Victor Frankl began in 1928 to institute advisory clinics for people in mental distress. He opened the first institute for Logotherapy in 1970 in California. In contemplating the purpose of life as the central question of human existence, Dr. Frankl recognized the meaning of suffering and pain.

Monetary compensation does not heals wounds.





THE PROTECTION OF THE VICTIM

By Jan Misana

Introduction

During the most recent decades as far as traffic liability is concerned there has been a growing social and legal awareness with regard to the protection of victims of traffic/road accidents.

For that purpose various solutions have been found both in jurisprudence and legislation, which of course vary due to different social views and/or legal approaches. These differences occur because of underlying cultural historical and economical conditions, also depending on the systems of insurance based on civil and public law or combinations of same.

Some examples of current legal approaches are:

- Total *no fault-solutions*;
- Partial *no fault-systems*;
- *Liability in fault* combined with *strict liability* for certain -more vulnerable- road-users; and
- Full strict liability.

Children

In this context children are in an extraordinary position. However, in the opinion about *children* we see different ideas:

- Should children be fully or partially protected?
- Can children be blamed?
- Until which age do we consider an individual to be a child with a moral code?

In order to create a deeper understanding of the situation I will mention several examples by country. Unfortunately in doing so I have to restrict myself since I am not aware of the legal position of children in all relevant countries, whereas -this being a working paper- in this context mentioning a number of countries should be able to give sufficient insight in the problem.

Austria

Austria does not have a specific system to protect children in road traffic accidents. Common law principle of negligence is applicable. In justice low ages of children are taken into account, but formally they can be held liable for their own faults.

Belgium

In Belgium children are protected until the age of fourteen. The "faute inexcusable" does not apply to this category.

Denmark

Denmark does not have a special ruling for children. All traffic victims are protected as far as the victim does not deliberately cause the damage. Gross negligence committed by the victim can lead to a reduction in compensation. The courts reluctantly apply this rule.

France

In France children are protected until the age of sixteen. Moreover people of seventy years and older have the same protection, as well as all other people with injuries resulting in at least 80% of disability. The "faute inexcusable" can be taken into account.

Germany

In Germany children were protected until the age of seven. Discussion was pending to change this level up to ten years. January 2001 this item was again on the agenda of the "Verkehrsgesichtstag" in Goslar. Since 1st august 2002 the German legislation was adjusted in this respect that children now are protected until the age of ten years included. § 828 (2) BGB. Furthermore the legislation was adjusted in respect of motorist's passengers. They also are protected for 100% (§ 7 (1;8) StVG) and § 8 a StVG).

The Netherlands

In the Netherlands children are fully protected until the age of fourteen. Liability of children against motorists is excluded. Other vulnerable traffic participants (cyclists and pedestrians) are protected up to 50% of their damages.

Romania

No legal rulings are existing in respect of protecting children in road traffic accidents.

Spain

Spain does not have a special ruling for children in traffic accidents. There is, however, a strict liability system for motorists linked to an obligatory insurance for motor vehicles. A pardon based solely on the exclusive negligence of the victim himself is possible, but seldom applied.

Sweden

Sweden has a system of protection for non-motorist victims similar to the Danish situation. In addition a rule exists in cases of gross negligence. The possible reduction of compensation is limited. The compensation for income may not be less than 90% of the basic income under social security law.

United Kingdom

The English situation is still based on the historic common law principle of negligence. The application of the case law practice shows a protection for children up to ten or twelve years old. However, this may vary according to the circumstances of individual cases and the type of negligence and the knowledge necessary. If the other person was not negligent, then the child receives no compensation at all. If the other person was partly negligent, he cannot plead partial negligence, because the child is not capable of fault. Therefore even the partially liable person must pay the 100% of the child's compensation. A discussion is pending and suggestions are made i.e. by the Royal Commission on Civil Liability and Compensation for

Personal Injury. The Lord Chancellor's Department makes similar suggestions. Both proposals are based on a direct road traffic insurance system.

So far for the differences in the approach of liability.



1. The organization of loss adjustment

Another subject to be raised is the organization of loss adjustment of those claims whereby children are seriously injured in a way that in later life they will not be able to be self supporting and independent individuals. In these cases very often there is a lack of organization between several players, which can lead to a delay in handling these cases and a form of polarization in the discussion between parties/lawyers. In The Netherlands research is done to organize the handling of these cases in a specialized way. The research is done under auspices of PIV – the Dutch Insurers' Institute on Personal Injury Claims (*Personenschade Instituut van Verzekeraars*). In the near future solutions can be presented.

Introduction

In February 2001 UNICEF published a report "*First league table of child deaths by injury in rich nations*". One of the eye catching results is that in every individual nation the spectrum is dominated by road traffic accidents, which in total account for 41% of all child deaths by injury throughout the industrialized world. (UNICEF "A league table of child deaths by injury in rich nations" Innocenti Report Card No.2, February 2001., UNICEF Innocenti Research Centre, Florence, Italy).

Immediately after a severe accident the victim and his environment are confronted with many different disciplines and possibly a lot of additional questions. The loss adjustment is a complicated procedure, leading to an unclear situation for both the victim and his environment. There is no coordination whatsoever, making it virtually impossible to reach an optimum as far as the medical and social guidance and the financing of the recuperating and care process are concerned.

Apart from the disciplines for medical treatment it is the healthcare insurer who is the first one involved in financing of the recovery process. He is restricted by the policy conditions. Most of the time this is different for other financiers in the process of damages. Based on law, jurisprudence or case law third party-insurers are held to concretely and fully indemnify damages with regard to matters of financing, however, these parties can be so different from each other that an adequate total guidance is non-existent. The confusion gets even worse since employers, disablement/incapacity-, sick pay- and personal accident-insurers, government funding (personal budget),

TOG (Relieve expenses for maintenance of disabled children who live at home) and a number of local possibilities for subsidies can play a role as well.

The impact on family life is enormous when children suffer injuries in accidents and certainly when the injuries are serious and permanent.

From a medical viewpoint any treatment/care can be taken care of in The Netherlands. However, in the field of care management improvements can be made. As far as medical guidance is concerned activities can be developed through (coordination of) care management, leading to more a effective and shorter treatment. A coordinated model of financing opens the door to extra and timely (care) measures. Because of their responsibility and emotional involvement in general, parents will burden themselves with more tasks/duties than necessary or even desirable.

In case of full nursing/care at home the normal way of family life gets under pressure. The parents' increasing burden leads to disruption. If both parents work for a living the new family situation might lead to dwindling or even loss of that work and thus income.

A structural approach could lessen or avoid this disruption.

2. Complicating matters

2.1 Diagnosing the injury

When diagnosing the type and amount of injury the various financiers of the claim/loss ratio execute assessments and examinations. The variety of types of these examinations (most of the time taking place on different locations) has a negative effect.

The assessment of the consequences of an injury needs to be made based on information supplied by the medical administrator. Such an administrator, which is appointed in unison by all financing parties, tries to – if need be in deliberation with medical advisers – come to a conclusion. The necessity of a medical specialist's assessment is exceptional.

2.2 Causality

Because of to-day's laws and rules in the Netherlands especially in traffic cases, the establishment of liability in combination with young children seldom leads to problems. Still, much time might be lost in other fields of liability as far as the question who is to blame and the insurance coverage are concerned. In particular in case of injury slow loss adjustment should be avoided. The administrators have ample means to have all relevant documents at their disposal I due course.

In case of a delay in the official police report or labor inspection services on the spot, examinations can be done. In view of the diversity of steps to be taken and the dura-



tion of same a protocol is desirable. It goes without saying that a quick decision on this strategy will influence the process of loss adjustment in a positive manner.

2.3 Financing/Payment of claims

The financing of the recuperation cost is a complicated matter. Almost immediately the victim will have to deal with the medical expenses insurance. Other money sources are incapacity/disablement-, accident-, sick pay- and third party-insurances, employers and a large variety of subsidies (social security insurances).

Bringing these financiers together requires care management and is not restricted to possible medical treatments or care.

3. Stock taking/Inventory

3.1 Parties involved

Loss adjustment involves a large number of parties to be brought together in order to come to a more effective treatment.

Parties involved are:

1. Family and social circles
2. Employer/Educational institution
3. Loss adjuster
4. Caretaker
5. Family doctor/Specialist/Paramedics
6. Victims' Bureau
7. Automobile Association (Triple A, ANWB)
8. Working condition agencies
9. Police/Judicature/Fire brigade/Ambulance personnel
10. Private insurers
11. Executors of corporate insurances and services (in The Netherlands 11 different institutions!)

So far the PIV-working party has approached various actors. Full cooperation can be expected in the medical field from the Dutch Association of Traumatology. The financing third party-insurers have a positive attitude.

4. The Care Manager

The working party sees a role for a neutral expert party having both medical knowledge and insight in the above mentioned financial matters and additional possibilities such as medical and care management, (re)integration, rendering of social service and relevant guidance.

Based on its expertise this party should be given the necessary confidence both by the liability insurers as well as the victim's lawyers.

As yet talks have been held with three potential candidates.

In concert with principals PIV could play a supervising role.

FRAUD IN MOTOR INSURANCE

By Jean-Louis Marsaud

It is reckoned that fraudulent claims account for at least 10% of the total cost of claims worldwide. This figure has been confirmed by the Motor Insurance Working Group questionnaire and by the investigation carried out by the Comité Européen des Assurances in a number of countries.

In 2001, motor TPL premiums in the EU amounted to € 99,456 million; the claims-to-premium ratio averages range from 100% to 110%. Thus in 2001 claims ranged from between € 84.5 million to € 89.5 million, with fraudulent claims accounting for € 8-9 million of the total amount.

Frauds may be connected with the accident reports or may involve an exorbitant compensation request as compared to the damage actually suffered. Most typical cases are deceitful reports as to the circumstances that caused the damage, reports of accidents that never occurred, car repair invoices with amounts that are higher than those actually paid. In most cases these circumstances may be ascribed to lack of control on the part of the insurance companies claims adjusters.

The commitment to combat these phenomena must be targeted to drawing the attention of insurance markets by means of information campaigns aimed at customers (as in UK, Belgium and Denmark), at the claim settlement departments of insurance companies (so far this has been done in Germany, Spain and Poland), at public authorities, including police and magistrates (Italy, Poland, Spain, Sweden and Switzerland have signed data exchange agreements). France has endorsed the Alfa project that provides the certification of private detectives and the establishment of a technological phone and internet platform affording an expertise on the cost of single damages. In Italy, a decree rules that repairs should be carried out in workshops that have signed an agreement with the insurers' association.





The Guarantee Fund is financed by all Austrian insurance companies according to their market share in motor-TPL insurance premiums. The Guarantee Fund has a right of recovery against the liable person. This *cessio legis* is stated in § 7 *Road Traffic Victim Act*. Approximately 10 to 20 % of the Funds payments can be recovered. The Austrian Guarantee Fund handles about 600 cases each year. Unfortunately no official figures exist about the total amount of payments.

§ 2 *Road Traffic Victim Act* states an important protection for the victim. The Guarantee Fund cannot reject the claim of a victim (if the general conditions are fulfilled) even if other TPL insurers are possibly liable.

Since the Guarantee Fund is a public body, the victim can sue the Guarantee Fund directly (*actio directa* against the Guarantee Fund). This is very important to ensure that the victim can pursue his rights.

Another interesting aspect in connection with the Guarantee Fund is the question to what extent Austrian motor-TPL insurers have to give coverage after the termination of an insurance policy. § 24 *Motor Vehicle Liability Act* (KHVG) states that a motor-TPL insurer has to cover losses up to three months after the termination of an insurance policy.

Report at the VII AIDA Budapest Insurance Colloquium



ROAD SAFETY STRATEGY IN THE UK

Around 3,500 people are killed on Britain's roads and 40,000 are seriously injured every year. In total, there are over 300,000 casualties. These cause inestimable human suffering and represent a serious economic burden – the direct cost of road accidents involving deaths or injuries is in the region of £ 3 billion a year. Though Britain has a comparatively good road safety record - the casualty reduction targets for deaths and serious injuries, set in 1987, have been achieved - there has been little change in casualty figures since 1993. Nor does Britain's record for child pedestrian deaths compare well with other European countries. There is no room, therefore, for complacency and new measures are needed if are to be further reduced.

Every year, around 3,500 people are killed on Britain's roads and 40,000 are seriously injured. In total, there are over 300,000 casualties. These cause inestimable human suffering. And they represent a serious economic burden too – the direct cost of road accidents involving deaths or injuries is thought to be in the region of £ 3 billion a year.

Britain has a comparatively good road safety record. The casualty reduction targets for deaths and serious injuries, set in 1987, have been achieved. Road deaths have fallen by nearly 40% and serious injuries by 45% compared to the 1981–85 average. However, there has not been such a steep decline in the numbers of road accidents, nor in the numbers of slight injuries. Nor does Britain's record for child pedestrian deaths compare well with other European countries. There is no room, therefore, for complacency. It is against this background that the new strategy has been formulated. And why there is special focus given to reducing the numbers of children who are killed or injured in road accidents.

By 2010, the British Government wishes to achieve, compared with the average for 1994–98:

- a 40% reduction in the numbers of people killed or seriously injured in road accidents;
- a 50% reduction in the numbers of children killed or seriously injured; and
- a 10% reduction in the slight casualty rate, expressed as the number of people slightly injured per 100 million vehicle kilometres.

The strategy

Tomorrow's Roads – Safer for Everyone contains many specific recommendations, but is not intended to be a rigid blueprint. The strategy and targets will be reviewed every three years to take account of new ideas and new technologies. A Road Safety Advisory Panel will be established to assist in that review process.



Safer for children

Children should be able to walk and cycle in safety. They need the freedom to use the roads for their social development and exercise for their general health and fitness. The aim is to make it safer for everyone to encourage healthy travel choices. Yet road traffic accidents are the leading cause of accidental injury amongst children and young people. Every year, over 130 children die and more than 4,500 are seriously injured while walking and cycling, many of them close to their homes. Another 60 die and over 1,100 are seriously injured travelling in cars. Britain's overall rate of serious road injuries to children is better than the European average. But, despite recent improvements, the country's child pedestrian record is still particularly poor, especially compared with other European countries.

Children will benefit from the broad range of proposed road safety policies but some measures, such as traffic calming, produce greater than average benefits for children. This, combined with a range of child safety specific policies, make the more stringent target of 50% feasible. Action will be taken to equip children with the life skills needed to ensure they can travel safely and become responsible road users. We have a duty to teach children the basic skills appropriate to their age and help parents and teachers to get them across.

The action plan below identifies the four key stages in road safety education to be tackled:

- babies and very young children – through advising their parents and first teachers on protection in cars and teaching safe behaviour on the road;
- primary age children – through child pedestrian training schemes and, later, cycle training, alerting parents to the risks of cycling in particular traffic conditions;
- older children – by providing road safety information as they change schools and go on longer journeys on their own; and
- older teenagers – providing advice as they contemplate much more independent mobility.

Safer drivers – training and testing

Better driving skills and better driving behaviour would make an enormous difference to reducing the number of road casualties. Driving is an acquired skill, and a demanding one. As well as the right skills, drivers need the right attitude – towards speed, other road users, alcohol, drugs and fatigue. The British government aims to make learning to drive more relevant to today's road conditions, and those of the future. The government is thus introducing measures to:

- instil in young people the right attitudes towards road safety and safe driving;

- guide learner drivers to take a more structured approach to learning, to prepare them for their driving career, not just to pass a test;
- raise the standard of tuition offered by driving instructors;
- improve the driving test in the light of better understanding about what needs to be examined and effective ways to do it;
- focus on the immediate post-test period for novice drivers;
- enhance the status of advanced motoring qualifications;
- address the needs of professional drivers; and
- bring safety benefits for all categories of motor vehicle.

Safer drivers – drink, drugs and drowsiness

To drive safely means having to be physically and mentally alert. Drink, drugs and tiredness contribute to driving accidents. Over 16,000 casualties in 1998, including 460 deaths, were caused by accidents where at least one driver was over the legal alcohol limit. Even a very small amount of alcohol affects driving. Drugs too, both illegal and medicinal, can impair driving skills. And according to the latest research, fatigue may be the principal factor in around 10% of all accidents.

The Government is to:

- introduce new measures to reduce drink-driving further;
- develop more effective ways to tackle drug-driving;
- carry out research to improve understanding of drug-driving;
- strengthen and enforce laws on driving time for lorry, bus and coach drivers; and
- make people aware how much tiredness contributes to road accidents and advise drivers and employers how to cut the risks.

Safer infrastructure

The White Paper *A New Deal For Transport: Better For Everyone* made clear that simply building more and more new roads is not the answer to traffic growth. The emphasis is now on making best use of the existing highway network, giving priority to treating the places with the worst safety, congestion and environmental records. In England there is a new role here for the Highways Agency as well as new responsibilities and funding for local authorities. Key elements of the approach in England include:

- a recognition that good engineering reduces the risk of accidents;
- on national roads, a strategy focused on better maintenance and a targeted seven-year programme of road improvements. Twenty-one of the 37 schemes have as their primary objective "safer and healthier communi-



ties" and the other 16 are in part designed to help prevent road traffic casualties. Route Management schemes and use of electronic information and signing has also helped safety;

- on local roads, the introduction of longer-term, more co-ordinated local planning and improvements for walkers and cyclists as well as motor traffic through local transport plans. The devolved administrations in Scotland and Wales are taking a similar approach.

The Government will:

- ensure safety continues to be a main objective in designing, building, operating and maintaining trunk and local roads;
- ensure safety continues to be part of the planning framework for main and local routes;
- publish guidance about engineering for safer roads based on sound research and experiment;
- use local transport plans to promote safer neighbourhoods; and
- monitor progress on local efforts to reduce casualties.

Safer speeds

Too many people take a cavalier attitude to speed. Yet research has shown that speed is a major contributory factor in about one-third of all road accidents. This means that each year excessive and inappropriate speed helps kill around 1,200 people and to injure over 100,000 more. This is far more than any other single contributor to casualties on our roads.

The government has carried out a complete review of speed management policy, to establish where the problems lie, what measures work and what do not, and what additional information is needed to develop some policy recommendations more fully. In a number of areas there is the need to carry out studies to develop policies further.

The Government will:

- publicise widely the risks of speed and reasons for limits;
- develop a national framework for determining appropriate vehicle speeds on all roads, and ensure that measures are available to achieve them;
- research a number of speed management problems to gain the necessary information to develop and test new policies; and
- take into account environmental, economic and social effects of policies when assessing their ability to reduce accidents.

Safer vehicles

Modern vehicles are overwhelmingly better than they used to be in every way, and not least safety. Improvements in vehicle safety have contributed significantly to re-

ducing road deaths and injuries and will continue to do so. Technology is thus viewed as a vital ally of the government's overall transport policy, and particularly in safety issues. The Motorists' Forum, made up of a wide range of motoring interests and including manufacturers and managers of the road network, has been asked to advise on safer, smarter, cleaner innovations driven by new technology. It is because vehicle design can influence such a broad area of road safety that it is worth making continuous improvements, either through regulation or by other means.

It is necessary to work in partnership with the industry to ensure the improvements in safety continue. It is also vital that cars already on the road are fit to be there. It is in everyone's interest that owners maintain their vehicles to avoid unnecessary safety risks.

The Government is determined to improve vehicle safety further, by encouraging:

- improvements which prevent accidents happening in the first place;
- improvements which protect car occupants in the event of an accident;
- improvements which protect other road users;
- better information for consumers, helping them to choose safer vehicles;
- better standards of vehicle maintenance; and
- renewed emphasis on new vehicle safety inspections by manufacturers and dealers.

Safer motorcycling

Mopeds and motorcycles can present environmental advantages on some journeys. They are a sensible means of transport for many journeys where public transport is limited and walking or cycling unrealistic. However, motorcyclists represent a large proportion of road casualties in relation to their numbers. They make up less than 1% of road traffic, but suffer 14% of deaths and serious injuries.

These casualty figures can be improved through better training and testing for both riders and drivers and through better engineering construction and design, which will help to make motorcycling safer than it is now. The strategy is:

- to improve training and testing for all learner riders;
- to publish advice for people returning to motorcycling after a break, and people riding as part of their work;
- to ensure the quality of instruction;
- through training and testing, to help drivers become more aware of how vulnerable motorcyclists are;
- to promote improvements in engineering and technical standards which could protect motorcyclists better; and
- to work with representatives of interested organisations, in an advisory group, to look at issues of concern.



Safety for pedestrians, cyclists and horse riders

Making it easier for people to walk or cycle short journeys is a key part of integrated transport strategy and of wider government objectives. It is also consistent with the aims of the Urban Task Force report *Towards an Urban Renaissance*. As well as reducing car dependency, congestion and local air pollution, walking and cycling can improve people's health and fitness. Guidance to local authorities makes clear that we want higher priority for walking and cycling, as well as public transport, in their local transport plans. Pedestrians and cyclists are vulnerable road users so improving their safety will be an important element in the plans. Local authorities must set out how, in their traffic layouts and urban design, they are to encourage more people to walk and cycle instead of drive, and what safety measures they propose in support.

There are over 3 million horse riders in the UK and they all have to use the roads from time to time. Riders are especially vulnerable to inconsiderate drivers and they need well-developed skills to ride safely on the road. The strategy is both to improve conditions for vulnerable road users and to encourage them to protect themselves. The government will work with voluntary bodies to improve training for cyclists and horse riders; to promote use of protective clothing, including cycle helmets, but, most importantly, to help drivers become aware of just how vulnerable these groups can be. This includes:

- helping drivers become more aware of their responsibilities towards all vulnerable road users through better training and testing.
- working with the CTC to develop cycle training courses for adults:
- schemes to promote cycle helmets;
- supporting training schemes for horse riders through the British Horse Society; and
- improving victim support systems.

Better enforcement

Road traffic law sets the framework for using the roads safely. It provides clear standards based on experience and analysis. Enforcing the law is an essential part of reducing road casualties and the police have a central role in improving road safety. Traffic offence ranges from minor, careless errors to extremely serious, deliberate offences with devastating consequences for other road users and the drivers themselves. There has to be a correspondingly wide range of penalties. But road policing is not only about traffic offences. It will be easier to persuade people to get out of their cars to walk, cycle and use public transport if roads are largely free from crime as well as danger from motor traffic. Road policing is an important element in reducing crime, the opportunities for crime and the fear of crime and it must be recognised as such. The

aim is to maximise the contribution that road traffic law can make to reducing road casualties. As far as possible, this should be achieved through persuasion and deterrence. There is the need to have more effective penalties which are properly enforced. We want to see:

- more effective road traffic law enforcement;
- better public understanding of and respect for road traffic law;
- penalties more appropriate and proportionate to the seriousness of offences;
- more emphasis on education and retraining; and
- maximum use of new technology.

Promoting safer road use

Publicity campaigns can change attitudes and behaviour and create a climate where people understand and accept road safety measures. There have been many notable successes – such as the drink-drive advertising, and the *clunk click* campaign in the '70s and early '80s. More recently, high profile publicity campaigns have led to an increase in the number of people wearing rear seat belts.

The British government believes that what is now needed is to build a reputation for strong and effective road safety promotion, and target those areas where there is most need to change attitudes and behaviour. The motor manufacturing and retail industry should be a natural and powerful ally in promoting safety generally.

In this light the government aims to:

- run a programme of high quality, well researched and evaluated advertising and promotion; and
- build partnerships to carry through a wide, co-ordinated and sustained road safety "crusade".





News from the world

GEORGIA

Compulsory Motor TPL limits increased

In 2001, the Georgian insurance market recorded further growth. There has been an overall improvement of capacity, professional skills and international integration of the market. According to the statistical data provided by the insurance watchdog, all financial indicators have been positive. In 2001 total premium income amounted to GEL 24,641,329, up 40% over the previous year. In view of the improving insurance scenario, the limit of liability for third party motor insurance - which became compulsory in 1997 - has been set at GEL 3,750.00 for any one case of "Bodily Injury" only. This law excludes property damage. The rates depend on the engine size and vary between 0.4%-1.2%. The coverage includes policyholder's passengers and any employees of the policyholders in the vehicle.

ITALY

ROAD TRAFFIC ACCIDENTS

Years	Accidents	Deaths	Injured
1991	170,702	7,498	240,688
1992	170,814	7,434	241,094
1993	153,393	6,645	216,100
1994	170,679	6,578	239,184
1995	182,761	6,512	259,571
1996	190,068	6,193	272,115
1997	190,031	6,226	270,962
1998	204,615	6,342	293,842
1999	219,032	6,633	316,698
2000	211,241	6,410	301,559

Source "Corriere della Sera"

INTERNATIONAL

ROAD TRAFFIC DEATHS BY COUNTRY

COUNTRY	1990	2000	Difference
Austria	1,558	976	-37%
Belgium	1,976	1,470	-26%
Canada	3,963	2,927	-26%
Denmark	634	498	-21%
Finland	649	396	-39%
France	11,215	8,079	-28%
Germany	11,046	7,503	-32%
Japan	14,595	10,403	-29%
UK	5,402	3,580	-34%
Greece	2,050	2,063	+1%
Ireland	478	415	-13%
Italy	7,151	6,410	-10%
Norway	332	341	+3%
Netherlands	1,376	1,082	-21%
Poland	7,333	6,294	-14%
Portugal	2,646	1,860	-30%
Czech Rep.	1,291	1,486	+15%
Spain	9,032	5,776	-36%
USA	44,559	41,945	-6%
Sweden	772	591	-23%
Switzerland	925	592	-36%
Turkey	8,212	5,123	-38%
Hungary	2,432	1,200	-51%

Source "Corriere della Sera"

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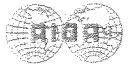
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