

**A different approach to whiplash claims in the Netherlands**  
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Author: Francie Peters

When it comes to claims in the insurance business, the claimant has to prove that the claim is valid. That's a golden rule. Proving that a claim is valid does not necessarily have to be very complicated. Sometimes all it takes is a receipt, other times a government employee will make a report and sometimes it's the loss adjuster who will make sure that the claim is validated.

When it comes to whiplash associated disorders, life is not that easy. Whiplash injuries are very difficult to diagnose and because most of the time no evidence of injuries can be visualized by MRI-scans or X-rays, medically speaking it is impossible to give objective proof that the claim is valid.

You might say, well that is the end of the story then and in some countries (France) that is indeed the case. But in other countries, and one of those countries is the Netherlands, it is more complicated than that. And in this presentation I will tell you more about the way whiplash claims are being handled in my country and I will specify why, in my opinion, a different approach is needed. I think that we should look at a different field of expertise for the solution of this problem and that is behavioral science. I will tell you more about rehabilitation coaching and about the active input that is needed from the claimant

When it comes to Motor Insurance, there are about 60.000 claims each year. About a third of these claims are whiplash related claims and they also constitute about a third of the total cost of claims and again a third of these claims take longer than 2 years to settle. We may assume that when the claim takes longer than 2 years to settle, the inability to work will play an important role.

What are the most common injuries when it comes to whiplash? Usually there is a mix of injuries. Most of which are named below. Most of the times these injuries are invisible on X-rays/MRI-scans and doctors have no treatment, other than treatment of symptoms (most commonly people are sent on to a physiotherapist)

#### Medical complaints

- Headaches
- Insomnia
- Loss of concentration
- Tiredness
- Apathy

How about the evidence? How does a claimant prove that his claim is valid? Liability is almost never an issue as most whiplash injuries are caused by rear-end collisions.

When it comes to probable cause, It is important to recognize that whiplash associated disorder is a bodily injury claim where it's the lawyers who have established when a claim is valid and not the doctors.

How does it work: when a claimant has had no record of injuries associated with whiplash before the accident and after the accident he does have a record of injuries, it must be assumed that the injuries are probably caused by the accident

What if there was pre-existence of injuries? Then we find out if the situation has worsened since the accident

How are whiplash claims handled? There are a lot of professionals who may be involved. I will stick with the most common ones. It is important to understand that the vast majority of claims is settled outside of court. In most cases the claimant will appoint a legal representative on his behalf, this can be a lawyer specialized in bodily injury claims, but there are also other professionals who often work for claims management companies. The legal representative will also appoint a medical advisor who will act as party expert for the claimant. The insurance company will appoint a loss adjuster when the claim is potentially high and will also appoint a medical advisor who will act as party expert for the claimant.

What happens next? The legal representative of the claimant will often start the process by collecting medical documents that record that after the accident whiplash injuries have occurred. These will be sent to the medical advisor of the claimant who will make a statement that according to the medical documents it was documented that whiplash injuries have occurred. This will be sent on to the medical advisor of the insurance company who will state that the documents show no objective proof of the injuries sustained and this medical advisor will scan the documents thoroughly on signs of previous similar injuries. Sometimes a discussion will follow about the seriousness of the injuries, often the advise is to wait for a few months and see how it goes then.

A lot of professionals in Holland are unhappy about this procedure when it comes to whiplash claims. Every insurance company has it's own strategy when it comes to whiplash claims, with on the one hand the so called 'hardliners' who take the medical point of view as the basis for their approach and who demand solid proof of the injuries and on the other hand the insurance companies that are less strict in their demands of proof and which are more focused on a practical and swift settlement. This means that every claimant is treated differently and ultimately this leads to legal inequality. Therefore it is often said that 'your license plate is your lottery number when it comes to whiplash'. Other

downsides are that because 2 party experts are involved and therefore often 2 different opinions about the medical side of the claim are given, a distrustful environment is created. Furthermore there is a huge emphasis on the financial side of things and doctors still play a very important role.

Why do I think this system is not the best way to deal with whiplash claims?

First: when it's lawyers and not doctors who have made the rules for probable cause and when we know it is unlikely that objective proof of the injuries will be presented, why do we ask doctors to give their opinion? Second of all: often we wait to see what happens. Because we know that roughly 2/3rds of the claims will be settled relatively easy. That is very re-active way of dealing with claims. Thirdly the process takes a long time. Usually more than 6 months is needed to gather all the evidence and have the medical advisors say something about it. We often see that some of the claimants situation has gotten worse and that they are in a negative spiral when it comes to their well-being. Last but not least: claimant satisfaction is very low when it comes to the evaluation of whiplash claims

In the Netherlands we have started experiments with a different, pro-active, approach called rehabilitation coaching. The target of this approach is to see if the negative spiral can be prevented, if the process can be shortened, if the cost of claims can be reduced and if claimant satisfaction can be upgraded.

With these targets in mind, rehabilitation coaching was developed. At the basis lies the conviction that we should not look at mainstream medicine, but at a particular field, namely behavioral science. When you ask a mainstream doctor why some people sustain serious, and indeed lifelong, injuries as a result of whiplash and others don't, he will not be able to tell you why. When you ask how to treat people with serious injuries, he will tell you there is no treatment. In short: mainstream doctors have no answers when it comes to whiplash claims.

When you ask a psychologist the same questions, he will give you an answer. He will tell you that for some people the car accident is a traumatic incident. Each individual handles traumatic incidents in a different way. It is dependant on their character structure and coping style. A psychologist will tell you that treatment is possible

Before I tell you more about rehabilitation coaching, I feel it is important to address the issue of fraud. All the claimant has to do to provide evidence of his/her claim is go to a doctor and have him/her make a record of injuries sustained. This is obviously a system that can easily be abused. And some insurance companies seem to think this is the reason why there is such a large group of claimants. I think it is very important to have a keen eye on possible fraud at all times. We must not be naïve to the possibilities this claims system opens to potential fraudsters.

At the same time, I think we must prevent looking at whiplash with a tunnel vision. Psychologists will tell you that it's often the (lack of) coping strategies of the claimant that will lead to a negative spiral and indeed I have seen that this may lead to life long health issues for claimants, which are in my opinion genuine. It is often assumed that the claimant is mainly interested in money, but I think it is often the professionals who have their eye on the money, whilst the claimant really wants his life back.

Rehabilitation coaching may be one of the ways to give a claimant his life back. When we look at rehabilitation coaching, we see that the basis of that form of coaching lies in a specific stream in psychology founded by Carl Rogers, where it is believed that the patient itself knows best how to deal with a traumatic incident.

What a rehabilitation coach does is;

- Let the claimant make his/her own choices
- Have the claimant make a commitment to said choices
- Define goals that are smart

So we no longer tell the claimant what he has to do, we ask the claimant what he wants to do. The rehabilitation coach doesn't have an opinion about the contents of the solutions the claimant may choose, he is open minded and non judgmental. He is more of a buddy or process coach than director.

All parties involved in rehabilitation coaching (including the claimant) must be convinced that it is possible to recover from whiplash injuries within one year. The main goal of the process is not the compensation in money, but to make the claimant self reliant again. Money is a secondary issue in this process.

What is very important is that from the start all parties start working on achieving the 1-year goal. Discussions about the validity of the claim do not take place. If the claimant states that he/she has headaches 3 times a week, then that is what the rehabilitation coach will work with. This means the claimant will not have to put energy in anything other than his/her recovery.

Because the claimant must be fully committed to the solution that will be chosen, it is very important that he/she makes that choice himself. The claimant must be convinced that the solution works and must show commitment by approving targets that are SMART before the investment is done.

The insurance company is being asked to invest in the self-insight of the claimant. This is completely new and scary for a lot of insurance companies because through the years they have developed a distrust of whiplash claimants and because they are used to make investment decisions on more or less solid proof.

What are the benefits of this approach?

Because the medical advisors are no longer involved, the claims process no longer starts with a huge debate about evidence or pre-existence. This speeds up the process by 6 months on average. That and the fact that parties act in a cooperative environment helps to prevent the negative spiral

When it comes to reducing the costs, most people will agree with me that a shorter process will be a beneficial factor. The largest reduction will be found once again in the prevention of the negative spiral. Because this will mean that claimants will be able to continue working.

When it comes to claimant satisfaction, we can look at the results of project Pandora, in which the rehabilitation coach was first introduced. Claimant satisfaction was up by almost 1 point.

Final comments: despite the fact that rehabilitation coaching has been around for a couple of years now, it is still in the experimental phase. Rehabilitation coaching is not THE solution for all whiplash associated claims. As an industry, we must keep our eyes open for potential fraud. What I have tried to establish with this presentation is the feeling that it is important to not look at whiplash claims with a tunnel vision and not treat every claimant as a potential fraudster. I think a huge reduction of costs can be established by preventing the negative spiral, but at the same time we must prevent unnecessary interventions when we know that 66% of claimants will get better without an intervention. Rehabilitation coaching is not the answer to our problems with whiplash claims, but what it can provide is a new way of looking at this matter. What I find difficult to believe is that the vision of insurance companies when it comes to whiplash associated disorder is often determined by assumptions. Isn't it time that Insurance companies fund proper research into this matter, so we can start building a vision based on facts?

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