

# PERSONAL INJURY

Joanna Wielgolawska, Attorney at Sołtysiński Kawecki & Szlęzak (SK&S)

Kicking off our Expert Insight section on Personal Injury, *Lawyer Monthly* talks to Joanna Wielgolawska, an attorney at Sołtysiński Kawecki & Szlęzak (SK&S), a Polish law practice specialised in business law.

Joanna is a member of the firm's Litigation Department, which is top-ranked in the most respected ranking of litigation departments and law firms in Poland annually. Having started out as a general litigation lawyer, Joanna now specialises in litigation concerning personal injury, in particular medical negligence, and is a member of PEOPIL (Pan-European Association of Personal Injury Lawyers).

**Over the last five years, have you seen a significant increase in personal injury claims?**

Yes, particularly regarding medical negligence. These cases attract a lot of media attention – the wider media comments on every significant case and judgement. The media focuses on the compensation awarded, which is steadily increasing. This encourages other injured persons to file their claims.

**As the personal injury sector has developed over the last decade, how have you experienced change as a more recently qualified attorney?**

I remember in 2006, just after graduating, I wanted to work for a law office dealing with medical negligence cases, but I could only find three such law offices in Warsaw. Nowadays, a lot of individual practitioners and small to medium size offices handle cases concerning PI.

However, qualified attorneys have to compete with non-qualified lawyers (that is, people who hold law degrees but who have not qualified as an attorney) and do not have equal means at their disposal. As attorneys we must follow our professional code of ethics which e.g. forbids us from advertising our services or to act only on a success-fee basis; whereas, it's mainly those factors that attract clients to so-called "compensatory offices" led by non-lawyers.

**What issues might arise for foreign claims regarding incidents that occurred in Poland? What difficulties do clients face when taking personal injury action in foreign courts?**

Article 4 Sec. 1 of Rome II states that these cases must be examined under Polish law. The regulation provides exceptions but they are seldom applicable. To apply Polish law, the mere

knowledge of legal provisions is not sufficient. A lot of rules, in particular in the field of PI, come from Supreme Court judgements.

The main difficulty in taking action in a foreign court is the necessity to apply foreign-court procedures. Therefore I always recommend seeking professional assistance. The domestic attorney will look after deadlines, provide correspondence with the court, and examine court files when it is necessary.

**Have there been any significant regulatory developments in Polish personal injury law? How have these affected your work?**

I would mention two, which in my opinion are the most significant. First, the change of the limitation period of PI claims. Previously, the limitation period for claims based on the law of tort was three years from the day on which the injured party learnt about the damage and a person liable to redress it; however, not later than ten years from the day on which harmful action happened. As a result, some claims were time-barred before the injured party learned that a claim exists, e.g. claims based on infection by hepatitis. This provision was found contrary to the Polish Constitution and amended in 2007. After the change, the limitation period

shall not terminate earlier than after the lapse of three years from the day on which the person who suffered the damage learned about it and about the person liable to redress it.

The second development was the establishment of a direct ground for a pecuniary compensation for the pain and suffering experienced as a result of the death of a closest family member. Both changes contributed to make the Polish legal protection system more complete.

**In your personal injury experience to date, have there been any cases that have proved particularly challenging?**

In this area of law, it's often difficult to keep your emotions in check to provide objective and professional legal services. For me, the most emotive cases involve children. I still remember the case of a two-year old boy who aspirated a bean grain. His parents took him to hospital where the doctor failed to perform basic checks and sent the child home, convincing the parents that everything is fine. The bean grain swelled and moved into the boy's larynx causing the boy to suffocate. The boy was beyond medical help by the time the ambulance arrived and he died in his parents' arms. **LM**



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