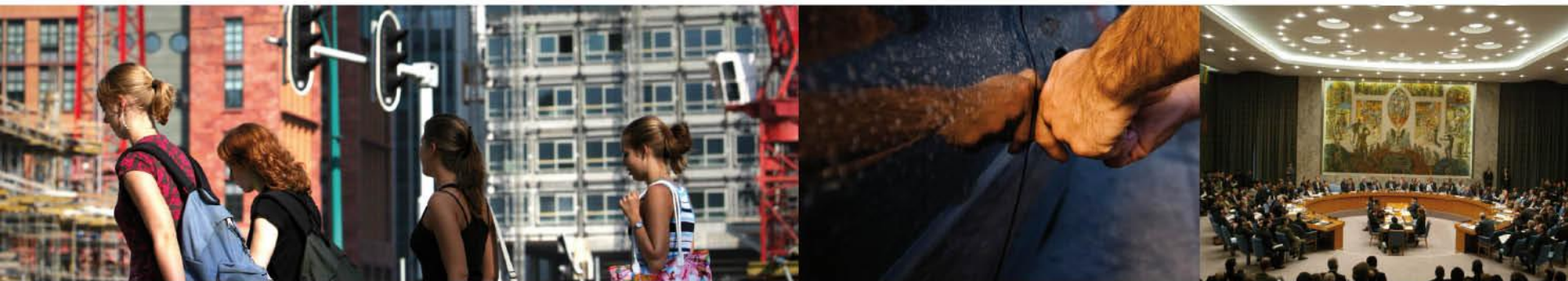




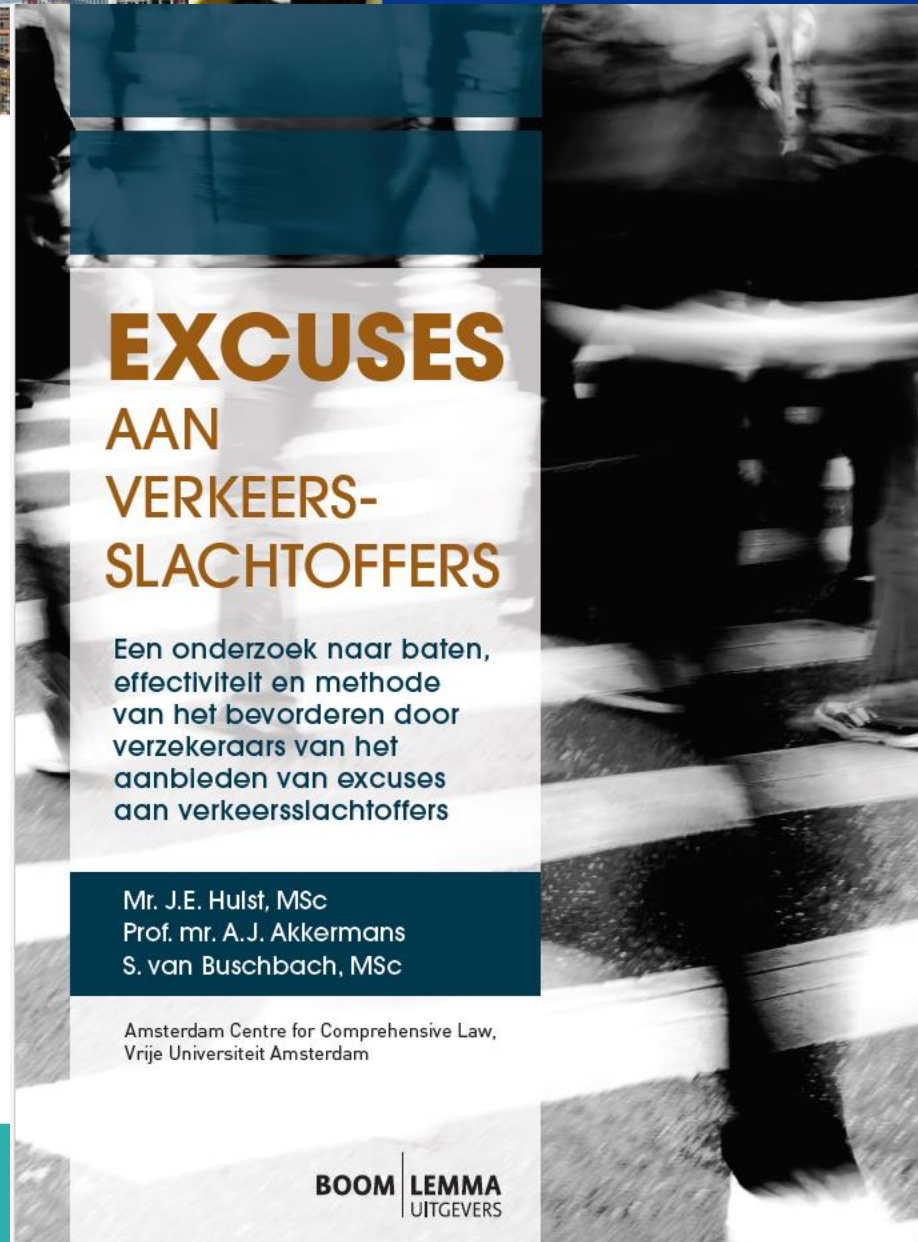
## INLAR workshop The Place of Apology in Law - Oñati, 5/6 May 2016

### Promoting emotional recovery in adversarial personal injury compensation procedure



Arno Akkermans & Liesbeth Hulst  
*Vrije Universiteit Amsterdam - Amsterdam Centre for Comprehensive Law*





# EXCUSES AAN VERKEERS- SLACHTOFFERS

Een onderzoek naar baten, effectiviteit en methode van het bevorderen door verzekeraars van het aanbieden van excuses aan verkeersslachtoffers

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BOOM | LEMMA  
UITGEVERS

Hulst JE, Akkermans AJ,  
Buschbach S van (2014),  
[http://hdl.handle.net/1871/  
51947](http://hdl.handle.net/1871/51947)



# De niet-financiële impact van schadetoebrenging en hoe daaraan tegenmoet te komen

Over excuses, actieve schadeafwikkeling en procedurele rechtvaardigheid

*Prof. mr. A.J. Akkermans en L. Hulst MSc\**

## 1. Inleiding<sup>1</sup>

Er is de laatste jaren toenemende aandacht voor de ervaringen en behoeften van toegenomen bij het verhaal van hun schade.<sup>2</sup> Onderzoek wijst uit dat slachtoffers van letselschade allerlei immateriële behoeften hebben, zoals erkenning voor wat hun is overkomen, weten wat er precies is gebeurd en maatregelen ter preventie.<sup>3</sup> Afhankelijk van de omstandigheden kunnen deze behoeften niet minder zwaarwegend zijn dan de behoefte aan een fatsoenlijke schadevergoeding. Binnen de letselschadebranche wordt dit wel verwoord met de beeldspraak dat verkeersslachtoffers door het ongeval en zijn gevolgen ook 'rood staan op hun emotionele bankrekening'.<sup>4</sup> Een van de behoeften die in dit verband veel wordt genoemd, is de behoefte aan

het ontvangen van excuses.<sup>5</sup> Voor het Personenschade Instituut van Verzekeraars (PIV) was dit aanleiding om een onderzoek te laten verrichten naar de vraag hoeveel wetenschappelijk bewijs er bestaat voor de veronderstelling dat het zinvol is dat verzekeraars bevorderen dat hun verzekerden die een verkeersongeval hebben veroorzaakt, excuses aanbieden aan de personen die daarbij gewond zijn geraakt – althans dat persoonlijk contact wordt opgenomen zodat een interactie van die strekking plaats kan vinden. Ook is onderzocht wat de voorwaarden zijn waaronder excuses effectief kunnen zijn, op welke wijze verzekeraars het aanbieden daarvan kunnen bevorderen, en hoe dat aanbieden het beste kan plaatsvinden. Deze vragen zijn in de bredere context geplaatst van de vraag wat verzekeraars, naast het bevorderen van persoonlijk contact tussen veroorzaker en slachtoffer, kunnen doen aan de omstandigheid dat verkeersslachtoffers door het ongeval en zijn gevolgen ook rood staan op hun emotionele bankrekening. Van het onderzoek is inmiddels een onderzoeksrapport gepubliceerd onder de titel 'Excuses aan verkeersslachtoffers'.<sup>6</sup> In deze bijdrage wordt beknopt verslag gedaan van de belangrijkste onderzoeksuitkomsten. Ingegaan wordt op de niet-financiële impact van schadetoebrenging en wat er voor mogelijkheden zijn om daaraan tegemoet te komen. In een volgende bijdrage zal verslag worden gedaan van een aantal pilots die in het kader van het onderzoek werden en worden uitgevoerd.

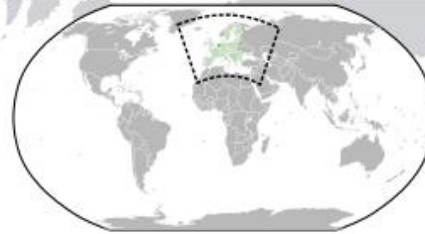
1. In deze bijdrage wordt verslag gedaan van een onderzoek dat in opdracht van het Personenschade Instituut van Verzekeraars (PIV) is verricht naar de baten, effectiviteit en methode van het bevorderen door verzekeraars van het aanbieden van excuses aan verkeersslachtoffers. Zij bevat een verkorte weergave van delen van het onderzoeksrapport dat over dit onderzoek is gepubliceerd: J.E. Hulst, A.J. Akkermans & S. van Buschbach, Excuses aan verkeersslachtoffers. Een onderzoek naar baten, effectiviteit en methode van het bevorderen door verzekeraars van het aanbieden van excuses aan verkeersslachtoffers, Den Haag: Boom Lemma uitgevers 2014 (<<http://hdl.handle.net/1871/51947>>).
2. Zie o.a. S.D. Lindenbergh & A.J. Akkermans (red.), Ervaringen met het verhaal van schade. Van patiënten, verkeersslachtoffers, geweldslachtoffers, burgers en werknemers, Den Haag: Boom Juridische uitgevers (in

Akkermans & Hulst  
(2014)

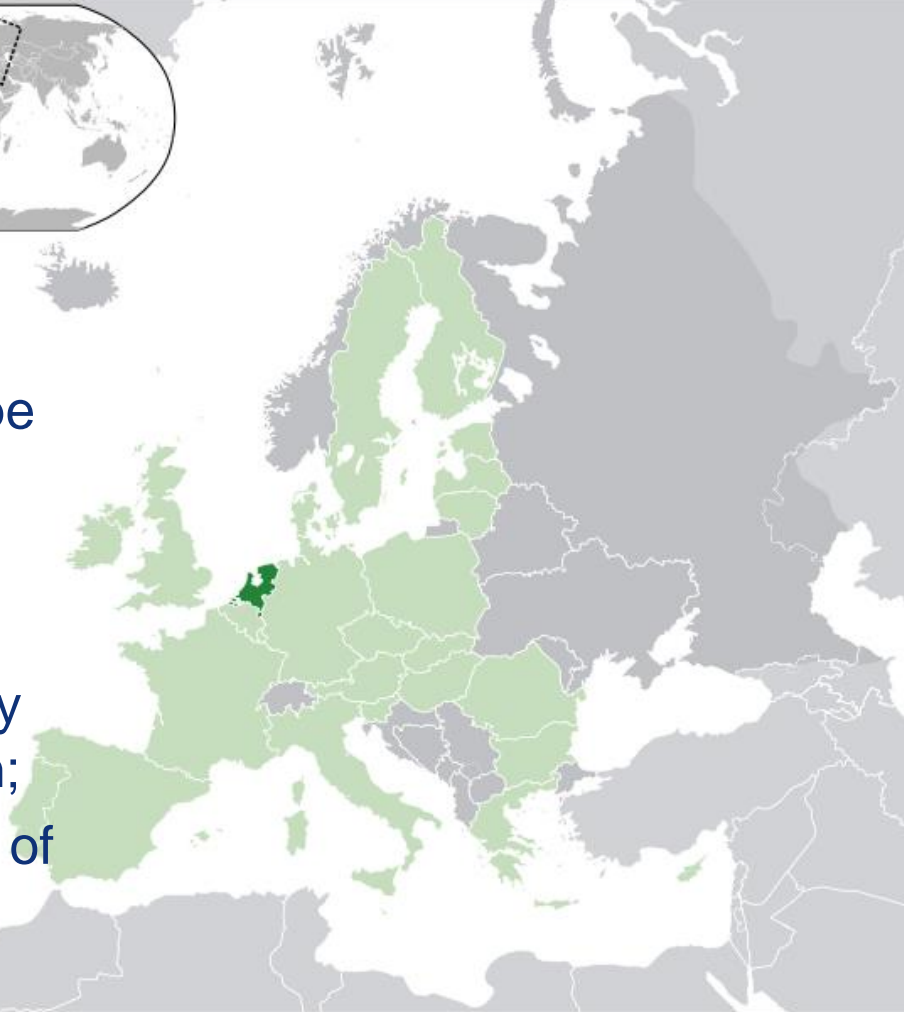
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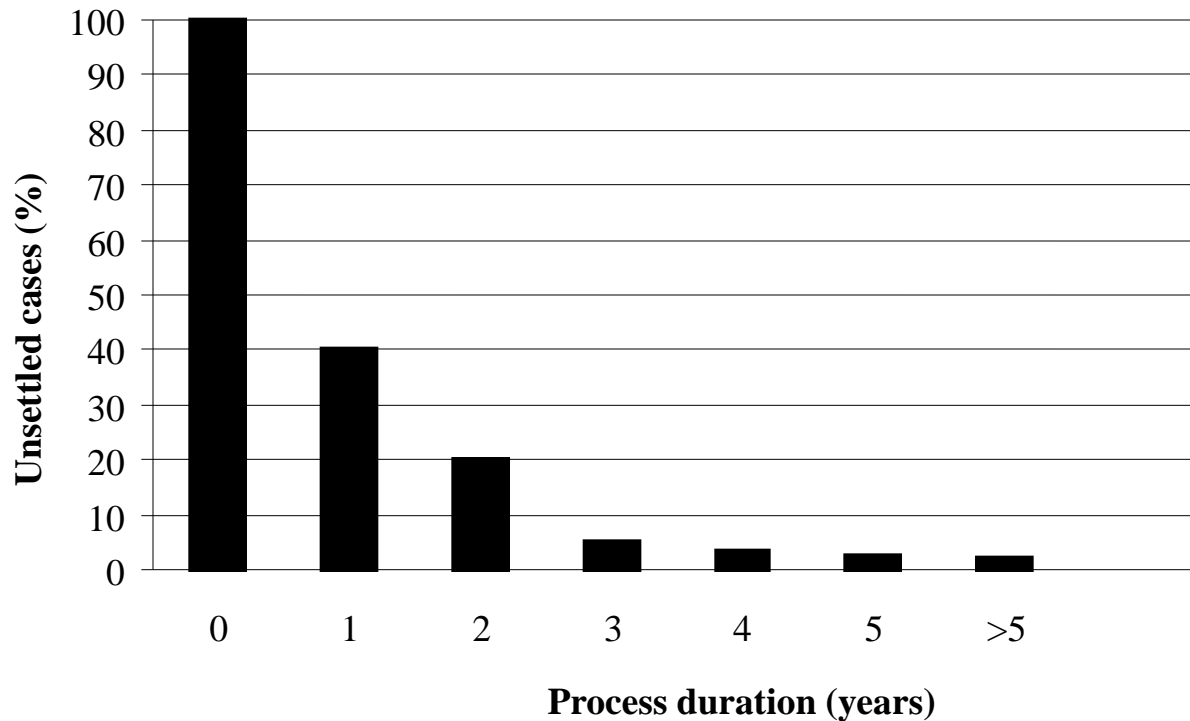
# The Netherlands



- Pop. 16,5 mil.
- Land 33,883 km<sup>2</sup>
- 487 inh. per km<sup>2</sup> – one of the most densely populated countries in Europe
- Hybrid system of PI compensation
- Level of protection of stat. system quite limited in various ways
- Tort system always amounts to a very substantive addition of compensation;
- and often constitutes the only source of compensation (e.g. non-employees, other loss than loss of income)



## PI tort cases in The Netherlands



About 50.000 new cases each year, only a few percent are brought before the courts

About 60% is settled within one year, 80% within two years, and 95% within three years. About 2,5% remains unsettled for more than five years.

# Promoting emotional recovery

- Empirical research: suffering a wrong (also unintentional) disrupts moral and emotional balance between wrongdoer (WD) and victim (V)
- Relational: restoration of status  
Being a victim is associated with a threat to one's status and power  
=> victims want restoration of their sense of power (Schnabel & Nadler, 2008)
- Moral: confirmation of violated norm  
Victims want confirmation of the social values underlying the norm that was violated (Tyler & Lind 1992, Okimoto & Tyler 2007)



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# Effective elements of apology by wrongdoer

- Acknowledgment of responsibility for wrongdoing and its consequences
- Expression of compassion
- Undertaking of action: compensation and prevention

(Robbennolt 2003, 2006, Slocum, Allan & Allan 2011)



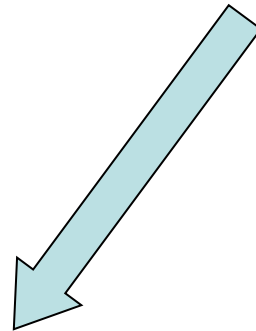


## The symbolic message inherent in present PI resolution procedure

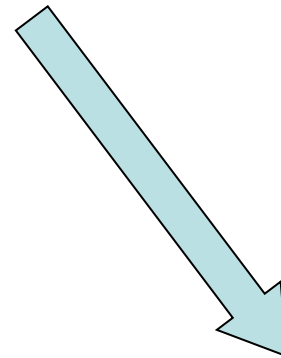
### Properties of PI claims settlement process:

- V has to make claim, take initiative, suffer the burden of proof
- Insurer appears to be able to allow himself a passive attitude  
=> carries across implicit message that not wrongdoer/insurer but V is responsible for solving problem of damage caused
- WD doesn't pay compensation himself, generally no direct communication between WD and V, WD often not even aware of consequences for V  
=> V experiences that WD does not take responsibility
- Out of court settlement – no decision by judge  
=> no formal establishment of moral responsibility of WD for accident
- Also no symbolic acknowledgement of moral responsibility of WD by insurer
- 'Taboo trade-off': PI cannot really be compensated by money

## Two ways to promote emotional recovery



Apologies by  
wrongdoer



'Acknowledgement'  
by WD's agents

# Effective elements of apology by wrongdoer

- Acknowledgment of responsibility for wrongdoing and its consequences
- Expression of compassion
- Undertaking of action: compensation and prevention

# Effective elements of ‘acknowledgement’ by wrongdoer’s agents:

- Acknowledgment of responsibility for wrongdoing and its consequences
- Expression of compassion
- Undertaking of action: compensation and prevention

## The symbolic message inherent in improved PI resolution procedure

- Insurer/agent must take and keep initiative in resolution process
- Behaviour of insurer/agent should carry across implicit message that insurer/agent and not victim is the 'owner' of the problem that mistake was made and damage was caused, which now has to be managed, assessed and compensated
- Resolution process should favour determinants of Procedural Justice:
  - Information
  - Involvement
  - Voice
  - Consultation
  - Respect

## RESEARCH ARTICLE

## Open Access

## Changing insurance company claims handling processes improves some outcomes for people injured in road traffic crashes

Frederieke Schaafsma, Annelies De Wolf, Areen Kayaian and Ian D Cameron\*

### Abstract

**Background:** Regaining good health and returning to work are important for people injured in road traffic crashes and for society. The handling of claims by insurance companies may play an important role in the rate at which health recovers and return to work is actually attained.

**Methods:** A novel approach towards claims handling for people injured in road traffic accidents was compared to the standard approach. The setting was a large insurance company (NRMA Insurance) in the state of New South Wales, Australia. The new approach involved communicating effectively with injured people, early intervention, screening for adverse prognostic factors and focusing on early return to work and usual activities. Demographic and injury data, health outcomes, return to work and usual activities were collected at baseline and 7 months post-injury.

**Results:** Significant differences were found 7 months post-injury on 'caseness' of depression ( $p = 0.04$ ), perceived health limitation on activities ( $p = 0.03$ ), and self-reported return to usual activities ( $p = 0.01$ ) with the intervention group scoring better. Baseline general health was a significant predictor for general health at 7 months (OR 11.6, 95% CI 2.7-49.4) and for return to usual activities (OR 4.6, 95% CI 2.3-9.3).

**Conclusion:** We found a few positive effects on health from a new claims handling method by a large insurance company. It may be most effective to target people who report low general health and low expectations for their health recovery when they file their claim.

**Keywords:** Road traffic injuries, Claims handling, Rehabilitation, Health status, Return to work

### Background

Injuries due to road traffic crashes happen often and have a major impact on the individual and on society [1].

The effect of financial compensation on health recovery and return to work for people injured in traffic accidents has been studied extensively over the last 10 years [2-4]. Not only financial compensation but also the approach of claims handling by an insurance system towards injured people may have effect on health recovery and return to work. Recently, Casey et al. concluded that the claims management process could be improved by the inclusion of health outcome information at claim

notification which would assist in identifying those at risk of delayed recovery [5]. Clear communication, professional assistance besides quick estimation of the severity and prognosis of the injury may also help speed up the health recovery and limit costs for insurance companies and health care systems. Insurance companies should provide financial assistance as well as health care assistance for best results and help the injured person to find the best treatment. They require a regulatory framework to assist this.

In New South Wales Australia compensation under the third party insurance scheme is available where people are killed or injured as a result of a motor vehicle

## Perceived Injustice and Adverse Recovery Outcomes

Michael J. L. Sullivan · Esther Yakobov · Whitney Scott ·  
 Raymond Tait

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**Abstract** Research is accumulating highlighting the negative impact of perceptions of injustice on health and mental outcomes associated with pain. To date, the relation between perceived injustice and adverse pain outcomes has been demonstrated with individuals suffering from a wide range of debilitating pain conditions. This paper summarizes what is currently known about the negative impact of justice-related appraisals on recovery trajectories following injury. The paper also addresses the processes that might underlie the relations between perceived injustice and adverse pain outcomes. Given the research indicating that perceived injustice is a powerful predictor of disability, it follows that interventions that yield reductions in perceived injustice should be associated with reductions in disability. Of concern, however, is that perceptions of injustice do not appear to respond to current treatment approaches used in the management of pain and disability consequent to injury. It is argued that a paradigm shift in approaches to evaluation and treatment might be required in order to yield meaningful reductions in perceived injustice. Such a paradigm shift might entail broadening the targets of assessment and intervention beyond the ‘perceptions’ of the injured individual to include potential external sources of injustice (e.g., employer, insurer, health care provider) in the treatment plan.

**Keywords** Perceived injustice · Injury · Compensation · Disability

The potentially devastating consequences of musculoskeletal injury have been described in numerous reports (Chapman & Gavrin, 1999; Keogh, Nuwayhid, Gordon, & Gucer, 2000). For some individuals, life following injury will be characterized by significant and persistent physical and emotional suffering (Berghlund, Bodin, Jensen, Wiklund, & Alfredsson, 2006; Nederhand, Hermens, Ijzerman, Turk, & Zilvold, 2003). In addition, post-injury life might be replete with loss experiences, including the loss of employment, the loss financial security, the loss of independence, and the loss of sense of identity (Harris, Morley, & Barton, 2003; Lyons & Sullivan, 1998). While some of these losses might be temporary, others might be permanent (Evans, Mayer, & Gatchel, 2001; Suissa, 2003; Watson, Booker, Moores, & Main, 2004).

Clinical anecdotes abound of persistent pain sufferers who feel they have been victimized either as a direct result of their injury, or indirectly by injury-related sequelae (Aceves-Avila, Ferrari, & Ramos-Remus, 2004; Bigos & Battie, 1987; McParland, Eccleston, Osborn, & Hezsetine, 2011; Waugh, Byrne, & Nicholas, 2014). An Internet search quickly reveals numerous attestations that emphasize the injustice of living with pain: “*What did I do to deserve this?*”, “*I wish he could see what he has done to my life*”, or “*Nothing will ever make up for what I have gone through*.” Such attestations reflect at once elements of the magnitude of loss, the irreparability of loss, and a sense of unfairness (McParland & Whyte, 2008; Sullivan et al., 2008).

Surprisingly, it is only within the last decade that justice-related appraisals have become the focus of systematic enquiry in the domain of injury and pain (Brown, Bostick, Lim, & Gross, 2012; Chibnall & Tait, 2009; McParland & Eccleston, 2013; Scott, Trost, Bernier, & Sullivan, 2013; Sullivan et al.,

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