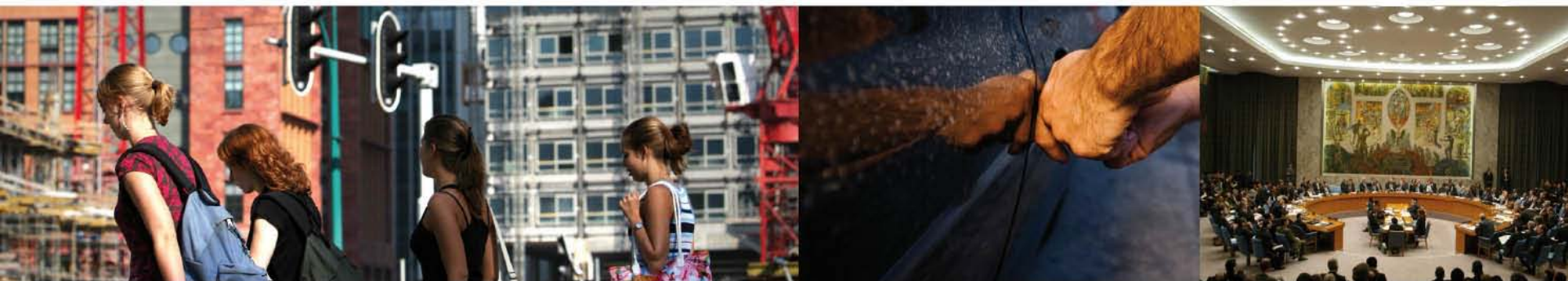




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Overdrawn Emotional Bank Account: On the Non-Pecuniary Needs of PI Victims and the Promotion of Emotional Recovery



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Presentation outline

- Compensation of PI victims: its not just about the money!
- Suffering harm from a wrong disturbs emotional balance ('overdrawn emotional bank account')
- Proper settlement of PI claims should not only aim to redress pecuniary harm, but also to close emotional deficit
- Law on damages can be held to imply a duty to this effect
- Important non-pecuniary needs: acknowledgement of responsibility, empathy, action
- Behavior and procedures often contain an inherent symbolic message to the contrary
- More active posture and more conscious approach of emotional dimension could greatly improve settlement process



Compensation: its not just about the money!

- Constant outcome of any survey: claims for compensation are not only made for the money, non-pecuniary needs always play an important role
- e.g. Survey among victims of crime who receive compensation from Dutch Criminal Injuries Compensation Fund => over half of the victims who receive compensation say money is not the most important reason to apply
- Survey of VU University Amsterdam among PI victims (crime, traffic accident, workplace accident, medical malpractice) => similar results

Non-pecuniary needs of PI victims and their relatives

<p>1. 'Acknowledgment'</p>	<p>A. Specifically by the opposing party</p> <ul style="list-style-type: none"> • that he was at fault • that he realizes the consequences for the victim • by offering apologies • by his making the situation as bearable as possible <hr/> <p>B. By the opposing party, the outside world and the victim's own social environment</p> <ul style="list-style-type: none"> • of what has happened to the victim • by being taken seriously • that not the victim, but the opposing party is responsible • that the opposing party is liable <hr/> <p>C. By the receipt of financial compensation</p>
<p>2. Wanting to know what precisely happened</p> <p>3. Calling the opposing party to account</p> <p>4. Not wanting to suffer for someone else's error</p> <p>5. Wanting to obtain justice</p> <p>6. Wanting to prevent the same thing from happening to someone else</p>	

Discrepancy in PI compensation process

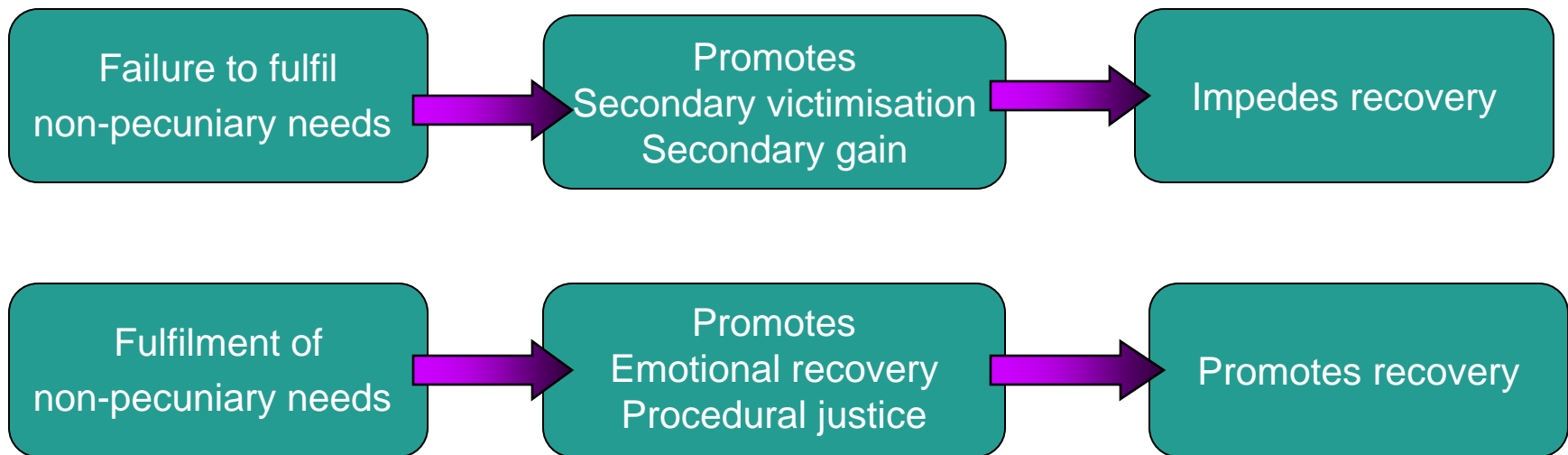
The virtually exclusive
focus on
financial compensation



The great importance victims
attach to needs of a non-
pecuniary nature

Discrepancy in PI compensation process

This discrepancy is all the more problematic because of the following:



And this while recovery should take precedence over compensation!

Legal duty of liable party (and his agents) to promote emotional recovery as well

The law on damages holds that recovery takes precedence over compensation

=> legal duty of wrongdoer/agency/insurer to shape behavior and compensation procedure in such way that it favors emotional recovery as well as financial recovery

(and, of course, also a financial interest: reducing damage)

Feldthusen et al. 2000

Provisional frame of reference for reform of PI process

Positive aspects	Negative aspects
Being provided with adequate information (in terms of content, comprehensibility, dosing and timing)	The feeling of not being provided or being insufficiently provided with information
Participation in and control over the settlement process	The feeling of having no control over the settlement process
Opportunity to tell one's own story	Wrongdoer/opposing party avoids direct contact concerning emotional dimension
Being able to confront the wrongdoer	Unnecessary polarization of the relationships between the parties
Respectful and dignified approach	The feeling of not being taken seriously, of being mistrusted and not being believed. The necessity of undergoing repeated medical examinations
Friendliness, openness and justification by the opposing party of his conduct in the interaction	Perception of the opposing party as impersonal, cold, cynical, and solely bent on minimizing the compensation as much as possible
Confidence in the impartiality of the decision when a third party has to decide the dispute	The feeling of also losing out in court to the omnipotence of the insurance company

Promoting emotional recovery

- Empirical research: suffering a wrong (also unintentional) disrupts moral and emotional balance between wrongdoer (WD) and victim (V)
- V experiences moral and emotional injustice
- Need for ‘emotional recovery’ as well as financial recovery
- Paramount need of V: that WD (and his agents – e.g. insurer) takes responsibility for incident and its consequences (‘acknowledgement’)

The symbolic message inherent in many compensation procedures

- V has to make claim, take initiative, suffer the burden of proof
- Agency/insurer appears to be able to allow himself a passive attitude
=> carries across implicit message that not wrongdoer/agency/insurer but V is responsible for solving problem of damage caused
- Often: WD doesn't pay compensation himself, no direct communication between WD and V, WD often not even aware of consequences for V
=> V experiences that WD does not take responsibility
- In case of out of court settlement – no decision by judge
=> no formal establishment of moral responsibility of WD for accident



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



Improving the symbolic message inherent in settlement process

- Insurer/agency must take and keep initiative in resolution process
- Behavior of insurer/agency should carry across implicit message that insurer/agency 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
- Compensation procedure should favor determinants of Procedural & Interactional Justice:
 - Information
 - Involvement
 - Voice
 - Consultation
 - Respect

