

Why do People Sue for Bodily Injury?¹

There are many opinions, yet little direct scientific evidence that tells us why people seek compensation in civil courts for bodily injuries. There is a belief in western society that personal injury litigation is rapidly increasing and that “frivolous lawsuits for negligible injuries” are common. Politicians, some legal scholars, insurers, and members of the general public believe a “litigation crisis” exists in North America. While it is unclear whether there really is such a litigation crisis, it does seem important to understand why individuals seek compensation for their losses through the courts as this helps us to better understand the nature and extent of the losses suffered by litigants.²

Most of us implicitly believe in the concept of a “litigious personality”, possessors of which are more likely to sue. While there have been some writings on the contributions of paranoid personality disorder and somatization disorder to legal conflicts, on the whole, there are very few studies that explicitly test this hypothesis, and no supporting scientific data.

However, specific organizational characteristics influence litigiousness including the type of procedure provided by organizations to settle claims and the size of an organization. Claimants’ perception of procedural fairness predicts litigious behavior over and above the actual dispute outcome. “Voice” is a concept describing individuals’ opportunities to fully describe their grievances. Absence of voice predicts dissatisfaction with dispute resolutions independent of outcome. Organizational behaviors unrelated to individual claims may also promote litigiousness. Individuals view corporate defendants as inherently less trustworthy and fair if those defendants publicize their profits. Subsequent perceptions of unfairness predict greater litigation potential.

Social factors that influence litigation potential include “litigation crisis” beliefs, and influences from friends, relatives, co-workers and professional contacts. These latter influences impact the claimant’s perception of injury severity and loss, as well as expectations for compensation. Family members, friends and health professionals can maintain pain and other negative health behavior by sympathy and by promoting and supporting illness models that influence claimants’ beliefs in the organic (versus psychological) causes of discomfort. The relationship between litigation crisis beliefs and litigation behavior is largely unexplored, and remains an unknown but potential influence on a person’s likelihood to sue.

Internal influences on litigious behavior include personality, emotional state and coping factors that increase claimants’ distress and block their recovery. The claimant’s etiological attribution of symptoms, pain vigilance, fear of body sensations, and depressed mood all intensify pain experience, disability, and health care utilization. Factors that delay recovery include the claimant’s self-perceived inability to control his

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² This material is taken from Wayte, T. & Koch, W.J. (January 31, 2001). *What Makes People Sue? Organizational, Social, and personal Influences*. Working Paper for the Insurance Corporation of British Columbia.

or her own health and inability to identify his or her own emotional distress, among other variables.

Two important phenomena that affect personal injury claims involve biased causal attributions for pain or illness. Strictly organic (i.e., medical) explanations for pain send health professionals, claimants and adjusters on unrewarding searches for definitive evidence of single causes for the claimants' complaints. The fundamental invalidity of single cause explanations for pain or illness increases claimant/insurer conflict, thus increasing litigation potential. Individuals' retrospective recall of bodily sensations and functioning is less accurate than immediate self-monitoring of the same body sensations and functioning. Individuals' implicit models of health predictably affect the accuracy and outcome of their retrospective recall of symptoms. Individuals who believe in organic causes of illness more than in psychological causes (e.g., that headaches are a consequence of stress) will attribute current headaches to an identifiable injury and hypothesized organic pathology, and will retrospectively recall fewer and less intense illness episodes prior to the salient physical injury. This type of bias has been demonstrated repeatedly in non-litigation samples across different symptom domains. This is relevant to bodily injury claims because such bias creates a greater pre-injury/post-injury discrepancy in reported symptoms. The claimant will thus perceive a greater loss in terms of "changed" physical health, which increases litigation potential. On the other hand, individuals with a greater appreciation of psychological causes of headache will show fewer retrospective recall biases and require fewer medical investigations for organic pathology, thus lowering litigation potential.

The Conservation of Resources Model³ predicts individual response to a MVA based on the extent of (a) perceived resource loss and (b) severity of any subsequent loss spiral. MVAs, for example, result in the loss of different resources (e.g., health, time, money, self-esteem). Unless interventions to stem such losses are immediate and appropriate, claimants' attempts to cope with such losses may lead to further loss (the loss spiral), thus intensifying psychological distress. This resulting distress negatively influences recovery from physical injury and increases litigation potential. Individuals with fewer pre-MVA resources (e.g., money, social support, work flexibility, emotional resilience) will suffer relatively worse loss spirals, an increased perception of loss, and will subsequently be more likely to litigate.

³ Hobfoll, S. E. (1991). Traumatic stress: A theory based on rapid loss of resources. *Anxiety Research*, 4, 187-197.