The Monetary Worth of Psychological Injury

What Are Litigants Suing For?

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There exist public perceptions that a "litigation crisis" or "litigation explosion" exists, and that this crisis is wreaking havoc on our civil court system (Endelman, Abraham, & Erlanger, 1992; Galanter, 1986; Saks, 1992). This public perception of a litigation crisis appears to be the result of media attention given to very large damage awards (Bailis & MacCoun, 1996; Lind, 1997; see Greene et al., this book, for illustrative examples). However, the existence of this "explosion" of litigation has been seriously questioned by legal scholars. Michael Saks refers to the tort litigation system as a "mouse with an otherworldly roar" (1992, p. 1287), and emphasizes that we lack proper longitudinal base rates to make any claims about alleged increases in litigiousness. Regardless, the media, policymakers, politicians, and other professionals apparently believe that litigation runs amok, and the public appears to accept these commentators' perceptions as factual. Given these widely-held beliefs, it behooves civil forensic psychology researchers to investigate the factors that influence individuals'}
decisions to claim and litigate. An understanding of the factors driving people to proceed with civil litigation is intimately related to the question of what losses litigants are attempting to redress.

Undoubtedly, one of the oldest known motivations for human behavior is financial incentive. When litigating, plaintiffs are apparently seeking both justice and economic compensation (see Wayte, Samra, Robbennolt, Heuer, & Koch, this book). Therefore, it seems that legal scholars and the courts need greater knowledge of the magnitude and nature of economic loss associated with different types of tortious events and mental health conditions. Economic theories of litigation, as addressed in our previous chapter, suggest that the magnitude of loss should be associated with decisions to litigate and the outcome of litigation. In fact, injury severity (a legally relevant factor) has been demonstrated to be a reliable predictor of damage awards (see Greene et al. chapter, this book). One class of loss of particular interest to psychologists is the loss associated with deficits in mental health.

In this chapter, we review the known literature on direct and indirect losses associated with different mental health conditions, and tortious events commonly resulting in mental health conditions, which may be litigated in civil proceedings. We then discuss the conundrum of litigation – that is, the extent to which litigation or compensation systems are thought to exacerbate the losses of plaintiffs and thus complicate judgments of liability and damages. We conclude with a discussion of promising areas for future research.

THE ECONOMICS OF MENTAL INJURIES

In this section, we will review: (a) the mechanisms through which reimbursement for psychological injuries may be obtained; (b) approaches to estimating mental health costs; and (c) the economic costs and other losses associated with specific mental health conditions and tortious events.

MECHANISMS FOR OBTAINING REDRESS FOR PSYCHOLOGICAL INJURIES

The compensability of psychological injuries is increasingly being recognized (Douglas, Huss, Murdoch, Washington, & Koch, in press; Melton, Petrila, Poythress, & Slobogin, 1997), although there still exist restrictions in both Canada and the United States on the degree and types of compensation that may be received for psychological injuries (Douglas et al., in press; Goodman-Delahunty & Foote, 1995). There are two primary