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Current Study

Abstract

This research attempts to assess if there is a relationship between regular exposure to tort litigation media stories, advertising promoting personal injury legal services and solicitation, and a person's likelihood of filing a sidewalk claim against New York City. Tort litigation costs tax payers billions of dollars. Data suggests that over the last decade the number of claims and settlements in New York City has increased. The proliferation of mass media-television, radio, internet and print media covering tort stories and legal advertising promoting personal injury legal services and solicitation has also intensified. Therefore, this Capstone studies the media's influence on claims arising from alleged defects on public sidewalks. The research found there is a weak correlation between people with regular exposure to tort litigation media stories and advertising promoting personal injury legal services and solicitation and a likelihood of filing a sidewalk injury claim against the New York City. Examples of *lumping* whereby the cost in money, time, and aggravation outweigh the potential benefits of suing were investigated. The main reason people did not file a suit was because they presumed it would take too long to receive compensation. Other factors such as stigma, avoidance of the law, or a lack of understanding/and or faith in the law also came into play. The research was carried out at one site in Staten Island where over a hundred park-goers were interviewed and surveyed. Due to resource limitations, a representative random sample of NYC residents could not be obtained. The results are suggestive of the influence of media on filing tort claims and I conclude that a City-wide random sample is justified to further investigate the saliency of media exposure to filing personal injury tort claims.

Introduction

What is the likelihood of filing a personal injury sidewalk claim against NYC based on exposure to media stories and legal advertising and solicitation?

The City government participates extensively in New Yorker's daily lives. It has built and maintains a vast network of roads, bridges, parks, public buildings, and other public facilities. This provision of facilities exposes the City to wide tort liability. The New York City Law Department handles over 70,000 active or ongoing legal matters each year. The City is involved in literally thousands of tort cases each year. Each year there is a discrepancy between settlements paid and reserved funds (NYC Law Department). Settlement funds and the costs of civil litigation come from tax dollars costing \$83 per person in 2016 alone (Claimstat). This exorbitant amount of money spent on the tort law system could be better used on education, healthcare, housing and other social welfare programs. The purpose of this paper is to provide a framework whereby the emergence of information reported in the media reflects actualities of the current tort law system in hope to deter people from filing frivolous unnecessary claims, while making way for suits of substance.

Tort litigation allows a person to recover monetary damages for personal injuries or property damage caused by negligent or intentional behavior. Municipalities often avoid liability by creating sidewalk regulations to protect themselves. Unlike private property owners who can easily maintain their sidewalks, government authorities are often responsible for hundreds, even millions of square feet of sidewalks. New York City has 12,760 miles of sidewalks and thousands of acres of parks. Personal injury claims are the most frequently filed and the most

Slip n' Slide, A Guide: Media's Influence on Civil Tort Litigation in New York City costly to resolve (Claimstat). Current laws pertaining to sidewalk liability are not reaching the audience they were intended for. Moreover, despite the current New York Rules of Professional Conduct, legal advertising and solicitation is impacting the ability for the public to make informed and reliable decision-making.

In this study I will examine an individual's likelihood to file a claim with city for a personal injury due to a sidewalk defect under New York City jurisdiction as the dependent variable. Independent variables that may affect the outcome include: access to media (T.V, outdoor advertising, radio, newspapers, internet, social media, unsolicited mail) promoting legal services/ and or embellishing news worthy cases; the amount of knowledge an individual may have on the success rate of winning a case; the demographics of potential plaintiffs including age, income, access to affordable healthcare, employment status, and education, as examples.

The Law

Legislation enacted in 2003 has limited the City's liability for injuries caused by alleged sidewalk defects. New York City Administrative Code § 7-210 requires prior notice to the City of the defective condition and generally limits the City's liability to (1) sidewalks adjoining Cityowned property, or (2) sidewalks that are in front of owner-occupied residential property having no more than three units. The courts have traditionally said it's unreasonable for a municipality to have to patrol every square foot of sidewalk. That would require hundreds of people patrolling, just to look for defects. Sidewalk claims include pedestrians claiming injury because of an allegedly defective sidewalk such as, broken or uneven sidewalks, broken curbstones, protruding bolts, grates, or parking meter or traffic sign stubs, defective boardwalks, and snow

and ice claims. Unless the municipality has actual or constructive notice of the defect or dangerous condition, they have no liability for injuries. Actual notice is a citizen's written complaint. However, even with notice, if the defect or dangerous condition is minor, the municipality might not be held liable. Constructive notice refers to conditions that are so obviously dangerous the municipality should have addressed them. This might include a large, easy to see pothole, or a piece of sidewalk that separated more than several inches. If you tripped and fell on a piece of sidewalk that had a small crack in it, the city is probably not liable because defect in the sidewalk was minor enough to escape the city's notice. In order to prove the city government was negligent, the government must have received prior written notice of the defect within a sufficient amount of time to have corrected it. Some municipalities have regulations stating an elevation must measure more than 2 inches high, or a crack must measure 6 inches long before the city becomes liable, whether they had notice or not.

In addition, the Local Law 49 that went into effect in 2003 shifted the duty for damage or injuries caused by sidewalk conditions in front of residential properties from the City of New York to property owners. Now, property owners – with the exception of owners of one-, two-and three-family homes – are liable for "the negligent failure to install, construct, reconstruct, repave, or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt and other material from the sidewalk". Property owners also are required to have insurance. This law expected to move \$40 to \$60 million in annual sidewalk claim payouts from the City of New York to New York City's property owners and their private insurance carriers. All of this current information is subject to change in the upcoming years depending on political powers and reform.

Literature Review

Introduction

The literature review conducted for this study presents information in five areas. The first addresses the lack of good data available to answer important questions about the tort system and how it relates to a so-called tort epidemic. The second section questions why victims of personal injury or property damage do not file suit at all. Prior studies to why people are inclined to solve problems with litigation are extensive, but studies on the latter are limited. In addition, a section was added to review advertising and solicitation as a form of persuasive communication employed by lawyers. Next, a study aims to guide future research by suggesting methods that could better answer questions related to tort litigation. The final segment delivers information on how news media reporting influences decision making and public perception in and out of court.

A Tort Epidemic and Lack of Data

A common thread in the articles studied is that there is a lack of data driven evidence available to prove a sudden increase in the amount of tort law suits filed in recent years. There is a lively debate over whether an epidemic actually exists. Authors William Haltom & Michael McCann attempt to explain an explosion. They claim that tort reformers have used the media to emphasize their claims of a tort crisis and believe the reason for this is to divert attention from the failure of government to adequately provide social services (Haltom & McCann, 2009, p.345). Haltom and McCann blame media reporting, political elites, celebrities and comedians for promoting an image of litigious disease among citizens and their lawyers. They criticize media sources for vilifying users of the law system, yet ignoring social welfare shortcomings. Their empirical evidence for these claims included case studies, anecdotal and statistical evidence, as well as conceptual analysis (Haltom & McCann, 2009, p. 11).

Michael J. Saks's (1992) reviews existing empirical evidence on the behavior of the tort litigation system and demonstrates its inadequacy. He is skeptical that an explosion in the tort system exists at all. In his study, he analyzed a survey of lawyers, legislators and physicians in South Carolina. He found that the lawyers' results varied greatly when trying to pinpoint the median tort award. Twenty-two percent of attorneys believed that awards had more than doubled in size in the preceding decade. State legislators overestimated by an even larger margin, and physicians were the farthest from the mark. Only 1.8% correctly estimated the medium tort award (Sak's, 1992, p.1156). Saks goes on to say that the use of anecdotal reporting has aroused emotions and has been used as a persuasive device. He adds that the retelling of a handful of stories, some of which may be fabricated, is weak in proving anything. Ultimately, is was decided that the available evidence provided a poor basis for making any conclusions about the behavior of the litigation system.

Furthermore, details of civil disputes settled before a trial are not reported to the courts and hence are not included in publicly available data. Therefore, the data shows only part of the picture. New York lags behind other cities in embracing data-driven risk-management techniques that would examine the thousands of cases filed against the City every year to identify patterns and improve practices (Claimstat NYC Comptroller Office). Record-keeping and reporting are primitive amongst city and state agencies and records that exist are relatively recent (Friedman, 1986 p25). Saks maintains it is generally believed that there has been an explosive growth in litigation and that society has become litigious. The argument is that basic data offers little

Slip n' Slide, A Guide: Media's Influence on Civil Tort Litigation in New York City support to prove or disprove a tort crisis, and that basic data is inadequate in providing answers to important questions about the system.

To Sue or Not to Sue

Most commentary on tort litigation focuses on what leads a person to sue. Saks (1992) asks what explains why so many people who have suffered actionable injuries do not seek compensation. To investigate this question Saks used a study of California medical malpractice to compare cases of negligent injury with insurance company records. The study which was conducted in 1986 found that only 10% of negligently injured parties sought compensation for their injuries. He discovered 25% complained to their doctors, and 9% contacted lawyers, but none of them actually filed suit. As a result, it was found that there are about sixteen times as many patients who suffer an injury from negligence as there are persons who receive compensation through the tort system (Marlynn L. & Daniel B. Stengel, 1990). Saks examined a landmark British study of injury and illness to see what people are doing after an incident. Saks believes one reason for low rates in claims is ignorance – many do not realize they have a claim or do not know the procedure to file. ¹

To further illustrate the notion of why some people do not seek compensation, David M. Engel (2013) states that nine out of ten people who become victims of injury never file a claim. He uses the term "lumping" which refers to instances in which an injured person does not lodge a claim. These individuals depend on community and family to take on the burden of financial and

¹ See Sally Lloyd-Bostock, Fault and Liability for Accidents: The Accident Victim's Perspective, in Donald Harris Et Al., Compensation And Support For Illness Andinjury 139 (1984).

Slip n' Slide, A Guide: Media's Influence on Civil Tort Litigation in New York City psychological consequences (David M. Engel, 2013 p. 294). The logical explanation for lumping is when the cost in money, time, and aggravation outweigh the potential benefits of suing. To file suit is simply not worthwhile compared to inaction. The research conducted for this study used cases of injury victims. Their perceptions and decisions were used to explain the widespread preference for lumping over claiming. Engel's uses methods that study a person's psychological state and maps the sequence of choices used in decision making about whether to file, or not. He draws up pyramids and decision trees to illustrate injury perception and decision making.

According to a RAND Corporation study (2010), when surveyed, over four fifths of Americans believe that litigation is too slow and too costly. The cultural explanation provided by Engel suggests complaining and litigating leads to stigma whereby society may label and disvalue litigants. Also, the cultural justification for lumping may provide insight about why some people avoid the law. Critics' claim, "Americans are guided more by the fear of law and less by the rule

Furthermore, Engles determines that the environment also plays a key role in injury perception and response. Engle's uses the environment as an example to why some victims may view their injuries as tortious while others see them as innocent or natural occurrences. The social networks to which an individual belongs could influence decision making. Prior interactions with coworkers, family members and friends could shape an injured persons conscious or subconscious response to an incident. Engle's explains that the physical environment and how one moves through it could lead some people to view their injuries as a normal consequence of the world they live in. These types of people expect hazard from everyday situations and assume responsibility. They feel injuries are inevitable, nobody's fault, or due to their own carelessness.

of law" (Zuckerman M., 2003).

The author uses an example of stairways. "Stairs enable movement from one level to another and whether stair-like formation exist naturally on hillsides, or are man-made, the ability to move between lower and higher locations is a "natural" part of life" (Engel, 2013 p. 316). Because stairs seem such a natural part of our physical environment it is likely injury victims would blame themselves for their own mistakes rather than blame the company that engineered the stairs. Furthermore, perceptions of causation and responsibility are driven by differences in worldview, social status, and power. In conclusion, he thinks further study needs to be done whereby interaction between injury victims and those who they interact with regarding their experience.

Legal Advertising and Solicitation

Under New York's Rules of Professional Conduct, originating in 2009, certain rules govern attorney advertisements and solicitations. One rule within this code of conduct states that: "attorney advertising may not contain a statement or claim that is false, or be deceptive or misleading". Moreover, "advertisements other than those appearing in a radio, television or billboard advertisement, in a directory, newspaper, magazine or other periodical (and any website related thereto) or made in person under Rule 7.3(a)(1) must be labelled 'Attorney Advertising" (New York Rules of Professional Conduct, Amended 2017).

Few significant studies relevant to my research have been done after this code of conduct became effective on April 1, 2009. However, authors Gene W. Murdock and Patricia Pattison conducted research in 1984 to evaluate lawyer's attitudes toward solicitation and advertising. The authors looked at several cases involving solicitation that had been brought before the law.

The legal issues surrounding solicitation were identified and tied to a basic communications model. This model labeled solicitation as "noise". Solicitation was analyzed at all stages (source, message, media and receiver) and tracked the lawyer's motive, message, client vulnerability, and related it to the case being studied. At this time, the courts maintained that to be of value to the client the message should be "truthful, non-coercive and informative". However, the problem that emerged was subjectivity to definitions. It was difficult to pinpoint the definition of deceptive advertising, and specifically, what was truthful, non-coercive and informative. The survey findings concluded that the attitudes of the surveyed lawyers were not favorable toward solicitation as a form of consumer communication. Interestingly, the survey was found to have limitations despite respondents' being instructed to use the definition of solicitation provided on the questionnaire. They found the extent to which this did not occur could have influenced the results (Murdock & Pattison, 1984 p. 283).

If professional conduct rules for lawyers exist, yet lawyers employ methods to acquire speedy clients who may be urged to make uniformed decisions via advertising and solicitation, it could be assumed that is it difficult to enforce professional rules, especially in the case of direct mail. Fred C. Zacharias explores underenforced rules in the professional codes of lawyer responsibility in an article involving legal advertising regulation. The author looked into how many California lawyers have been disciplined for violations of the advertising rules within a thirteen year period starting from 1988. He could only find three reported cases that resulted in attorney discipline. He determined three possible conclusions occur to a lawyer when considering advertising and solicitation. First, the advertising rules do not mean what they say. Second, the advertising rules mean what they say, but are not enforceable. Third, the rules mean what they say and are

Slip n' Slide, A Guide: Media's Influence on Civil Tort Litigation in New York City enforceable, but the regulators do not deem violations important enough to prompt disciplinary action. (Zacharias F., 2002).

Inconclusive Methods and Proposed Improvements

Further studies on the tort litigation system are inevitable. Authors Pleasence, P., Balmer, N. & Sandefur (2013) explore ways in which future research can lead to better outcomes. Their study offers guidance on methodologies, how to integrate findings, and provides resource for the development of surveys pertaining to legal problems. Furthermore, it is noted that direct evidence would require future studies with different research strategies. "While legal need surveys have been found to provide a rich source of data concerning peoples experience in the legal system, there are limits to their utility. Some suggestions for better practices include: promoting generalization by avoiding under-coverage of the target audience; avoid changing tried and tested questions; more defined problem categories to allow comparisons between surveys; and increased focus on capturing groups who are typically excluded from sample frames, to name a few" (Pleasence, Balmer & Sandefur, 2013p.17).

Another area found to be in need of improvement is in research that relies heavily on anecdotal evidence. Saks reports that anecdotal evidence is often discounted. It does not determine frequency of occurrence, or cause and effect. Not only is anecdotal reporting ineffectual as a research method it is thought that anecdotal reporting on the most newsworthy tort cases receive disproportionate attention (Saks.,1992). Deborah L. Rhode explains that "looney litigation" offers an alternative to boring statistical details about potential plaintiffs who are priced out of the justice system. The thinks that the anecdotal glimpse is not put in context. Moreover, what

Slip n' Slide, A Guide: Media's Influence on Civil Tort Litigation in New York City qualifies as a frivolous claim depends on the eye of the beholder. In short, relying less on anecdotal reporting and conducting surveys that produce useful data could benefit the results of the question/s at large.

Media and Public Perception

While Saks talks about why some people are not suing, authors Christina A. Studebaker and Jennifer K. Robbennolt (2003) focus on civil litigation media reporting and specifically what is not reported. Methods used to conduct this study included the examination of newspaper coverage of 351 personal injury cases and retroactive data analysis of court records. The article defends the argument that news reporting of civil litigation presents a distorted picture of civil litigation and that this reporting can influence perceptions and outcomes of civil litigation in various ways. The authors found that the media favors coverage of frivolous lawsuits, greed and high damage awards, and very rarely included stories of when the defendant won a case. They feel that since mass media plays a key role in arousing attention from Congress, there is an opportunity to focus on advocacy and reform.

The authors hypothesize that the news media have the potential to act as a powerful influence on the civil litigation system. It can influence decision making in particular cases and also on the system generally as media reports influence the decision making of various participants in the system. Moreover, media reports have a big influence on the decision making of participants in the system. Media reports also determine how decisions are made about what events and topics are appropriate for media coverage. Furthermore, when civil cases are reported, they question why news about the damages awarded receive more attention than other information.

They found that information reported by the media influenced outcomes in various ways. First, it was found to influence decision makers at trials. It was found that both lay and professional actors had beliefs based on incorrect information presented to them via the media. It was discovered that attorneys, doctors, and legislators in South Carolina who were surveyed in the 1980's tended to overestimate the rate at which cases went to trial and the size of the award. The media displayed a skewed picture because of lack of data, and when data was available it was more likely to be presented to the public by the media to attract an audience by opting for the most newsworthy stories. They noted there are many gaps in the existing research that need to be filled, for example the frequency and content of news reports on civil litigation.

Very few tort cases go before a jury because most are settled out of court. Authors DS Bailis and RJ MacCoun set out to answer the question: "Do media sources provide a biased representation of the proportion of tort filings that actually result in a jury trial?" The article hypothesizes that media coverage would exaggerate the proportion of tort cases decided by a jury. To test their hypothesis they conducted a content analysis of articles featuring tort litigation from Time, Newsweek, Business Week, Forbes, and Fortune. Their goal was to compare the "typical" tort as described by each news source, for each year, with the "typical" tort as described by objective data from RAND's Institute, the American Bar Foundation, the National Center for Courts, and other sources. From the sampled data they drew percentages for time, source and categories of accidents, tort filings, tort trials, and reported suits.

It was found that media sources do not appear to exaggerate the proportion of disputes that results in trials. Results of analysis of media suggested that 90%-95% of tort lawsuits were resolved without trial. However a reason for this could be that litigants have mutual incentives to save on litigation costs by settling out of court. Also, data presented from actual plaintiffs wins rates were much less than expected. The final report reveals that national news magazines present a distorted picture of tort litigation arena by overrepresented plaintiff victories. This information provides a dubious basis for sound decision making, the study was unable to establish a causal link between media coverage and public or elite beliefs about the tort system. In conclusion, the message from this study was that systematic monitoring and dissemination of reliable data is imperative if the media is the primary source of information to the public on tort reporting.

Conclusion

The literature reviewed for this study presents information on how the media depicts the tort law system and a debate to whether or not a tort epidemic actually exists. There is public perception that tort litigation has increased and society has become more litigious. Reportedly, the data available and the retelling of stories, some of which may be fabricated, is weak in proving anything. Furthermore, study related to media reports and their influence on the decision making of participants in the system leads to questions what is not reported in the media and how the platform could be used to advocate for tort reform. It also looks into why some people do not file a claim. Possible reasons include stigma, avoidance of the law, a lack of understanding litigation, and how the process is too slow and too costly. Also, a person's environment may determine whether or not they lodge a claim, or not. Finally, the literature reviewed takes a look at the law advertising arena and how the rules for professional conduct laws are for the most part are

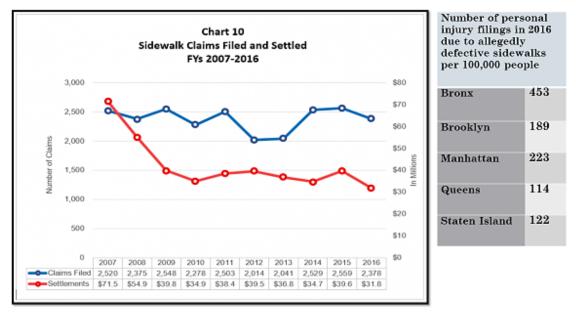
Slip n' Slide, A Guide: Media's Influence on Civil Tort Litigation in New York City underenforced. Deceptive and coercive advertising reaching many outlets is an additional strain on our tort law system. I am in agreement that the nation has too much frivolous litigation and that too many meritless claims are filed. However, the diagnoses for a tort explosion is largely anecdotal. There is overwhelming support for research to be conducted void of anecdotal reporting, instead research that produces useful data could benefit the changing environment of tort litigation.

Research Methods

Introduction

My research question is: What is the likelihood of filing a personal injury sidewalk claim against NYC based on exposure to media stories and legal advertising and solicitation? I hypothesize that people with regular exposure to tort litigation media stories and/or are barraged by advertising promoting personal injury legal services and solicitation are more likely to file claims against the City. Recent studies conducted by the New York City's Comptroller's Office offer comparative information on NYC agencies and agency specific data reporting. This quantitative data provides a snapshot as to what types of tort lawsuits are filed most frequently, how often, and what it costs the City. To narrow the study down to a specialized look at claims and suits, I have limited the research to personal injury cases and not property damage, and sidewalk related cases over other topics such as police misconduct, medical malpractice and civil rights issues. I further zoomed in to study potential claims generated for the borough of Staten Island. The reports sourced from the NYC Law Department and Claimstat reports from the Comptroller Office include: the number of personal injury filings in 2016 due to allegedly defective sidewalks per 100,000 people by borough; the number of sidewalk tort claim settlements and judgments for

personal injuries from 2007 to 2016; the dollar amount of sidewalk tort claim settlements and judgments by claim type: sidewalk/personal injury for fiscal years 2007-2013, refer to *Figure 1*.



Sidewalk claims decreased to 2,378 claims in FY 2016 from 2,559 claims in FY 2015. The total cost of sidewalk claims in FY 2016 was \$31.8 million, down from \$39.6 million in FY 2015, or a 20 percent decrease.

Figure 1. Claimstat chart showing settlements and claims for FYs 2007-2016 & total number of personal injury sidewalk claims per \$100K people per borough for 2016.

A survey questionnaire was used as a method to examine characteristics relating to the likelihood of filing a claim or suit based on the main independent variable - media exposure. From the answers to the survey questions two indices were created to analyse the relationship between the variables. This quantitative data measured the dependent variable, an individual's likelihood of filing a claim, against the various independent and intervening variables. The respondents were assigned categories to which intervening variables could be examined including comparisons between knowledge of the tort law system learned via media verses knowledge on current rules, regulations, administrative codes and demographics.

Instrument Development

An analytical survey was used to collect data. Initially two separate surveys were designed. One survey was to capture information for people who had never filed a claim with the city. The other was designed for people who had filed in the past. However, after an initial testing period only the survey directed at individuals who have never filed a lawsuit against the City was used. It was determined that people who had filed in the past were less available for interviewing. Also, the testing period offered an opportunity to fine tune the questionnaire based on answers left blank or questions needing clarification.

The analytical survey asked 23 questions in total (refer to Appendix A). The questions are broken into three parts. First, a set of multi-choice questions are asked to determine the likelihood of filing a suit or the perceived degree of ease/difficulty in a filing or winning a case presented based on minor injuries to self, an injured minor, or permanent injury. Respondents were also asked if their decision to file would be affected if they knew it could take a long time to receive compensation and lawyers were to take a high percentage in fees. Second, a set of questions were aimed to identifying which types of media sources respondents recalled seeing and acquired information from. Choices were made from the following selection of categories: media news items via T.V and internet; legal services advertising and solicitation; travel media; and family/friends/social media. Finally, the last set of questions was to gain information regarding descriptive demographics, such as; age, gender, how respondents describe themselves racially, income, education, housing, and healthcare.

Procedure

A total of 103 people were administered surveys to investigate the relationship between media, legal advertising and solicitation and personal injury sidewalk claims against NYC. The goal to collect at least 100 usable surveys was reached. The population for is study was comprised of pedestrians who are "park goers", specifically those people who have used or will use a paved surface within a NYC Park or perimeter of a park or boardwalk in the borough of Staten Island. The surveyed population are over the age of 18, reside in the borough of Staten Island. Ineligible respondents were identified early and screened out.

I personally administered most of the surveys in parks and boardwalks on Staten Island. I also trained an appointee to help distribute surveys amongst eligible candidates. Monitoring the rate of interviews and the rate of non-responses was taken into consideration. Trying to ascertain the reason for refusal and replacing ineligible respondents with eligible individuals was a necessary step. Furthermore, because of constraints in time and manpower, the goal was not to collect a random sample. I am aware that investigator bias could be introduced into the data collection process and it stands as a limitation to the study. In encouraging a high response rates, care was taken to abide by research ethics in not pressurizing people to participate or to answer questions they find intrusive. The survey contained a disclosure and participants were assured anonymity. If the questionnaire was not anonymous many of the eligible candidates would have been reluctant to complete.

Measuring the Dependent Variable

At the coding stage, a unique identification number was assigned to each respondent. The answer options were also assigned a number for each question. Based on answers to "likelihood of

filing" questions from numbers four through ten on the survey, an index rating was assigned to each respondent to rate the likelihood of filing a personal injury suit against the city either for themselves or a minor. Each of these questions were rated from one to four with the highest score assigned to "very likely". Respondents who checked off "don't know" are rated zero for that question. Respondents who scored between zeros to seven were categorized as having a low likelihood of filing a claim. Scores yielding an eight to a twenty were assigned to a medium category, and a score of twenty-one to thirty were categorized as having a high likelihood of filing. From these ratings correlation analysis estimated the relationships among the primary independent variable being exposure to media sources, and intervening variables generated from the demographics section. It is anticipated that the results of this study will offer current information on the tort law arena as it pertains to New York City agencies and its litigants.

Results

Ouantitative Data

This section will present the findings pertaining to the likelihood of filing a personal injury sidewalk claim against NYC based on exposure to media sources and legal advertising with demographic results as intervening variables. The results from this study are based on 100 survey-respondents who use, or will use a paved surface within a NYC Park or perimeter of a park or boardwalk in the borough of Staten Island. This data is presented in a quantitative form. The findings reveal coefficient correlations between the dependent variable and multiple independent variables. The population of this study was 46% male (46), 53% female (53), and 1% no answer (1). The mode age range was 34 to 44 years with 27% (27) of the respondents. Initially, respondents were asked if they had ever tripped on a city sidewalk, and if yes, their

reason for not filing a claim. From the total population 22% (22) answered yes to tripping and falling on a city sidewalk while 78% (78) had not had a sidewalk related incident. When determining the reasons for why people did not file 7 respondents claimed it takes too long, 5 answered they had a lack of understanding of the law, another 5 stated they did not need the money, 6 left the section blank, and 9 checked "other". Only 4 people offered explanations of "other". These reasons were: "no need to upset my neighbors", "I didn't know or think about it", "I didn't think I'd get paid", and "Not a serious injury". Refer to *Figure 2*

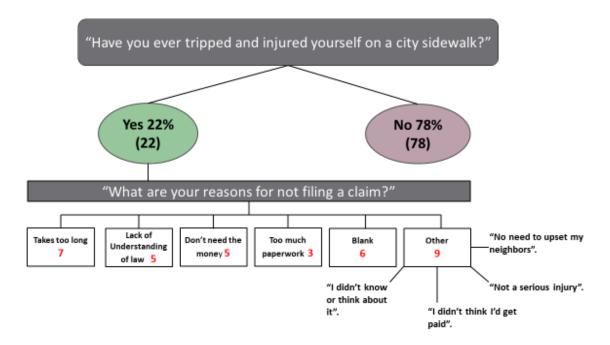


Figure 2. Number of people who have tripped yet did not file a claim and reasons got not filing

When asked: "Who is responsible for compensation if an accident was to occur on a sidewalk outside a city park? A total of 36 people responded the adjoining city agency, 24 though the private property homeowner was responsible, while 35 people answered "don't know".

In order to test the main hypothesis of an individual's likelihood to sue NYC for a personal injury due to sidewalk defect based on their exposure to media and legal advertising two indices were created. The first was to measure the dependent variable of likelihood of filing a claim. When graphed onto a bell curve to take standard deviation into consideration, 19% (19) of respondents fell in a "low" category, meaning there is a low likelihood of these people filing a personal injury sidewalk claim against the city based on their answers to the survey questions. 58% (58) of respondents were categorized as having a "medium" likelihood with 23% (23) categorized as having a "high" likelihood. This is illustrated in *Figure 3*.

Dependent Variable: A persons likelihood of filing a personal injury sidewalk claim.



Figure 3. The likelihood of a person filing a claim rated from 0-30 for 100 respondents.

The second index assigned a score for the amount of exposure a respondent received and how influential media stories about winning a law suit against the city could affect their decision to file. When asked how likely media stories about winning a suit against the city would influence respondents' decisions, 33% (33) answered "very likely" or "somewhat likely". Of the total

group 38% (38) said "somewhat unlikely" or "not very likely", while 29% (29) stated "don't know". When asked where they had seen legal services advertised they reported television, newspapers, and the internet as the most regularly seen at 23%, 16%, and 15% respectively. They were also asked if they recalled the name of a law firm advertising legal services. A total of 42% (42) could recall the name of a law firm from memory. From this information the respondents were assigned scores ranging between 0 and 10. A bell curve plots and places 26% (26) of the respondents in a high exposure category, 41% (41) were considered to have medium exposure, and 33% (33) low, see *Figure 4*.

Independent Variable: Exposure to tort litigation media stories, legal services advertising and solicitation.

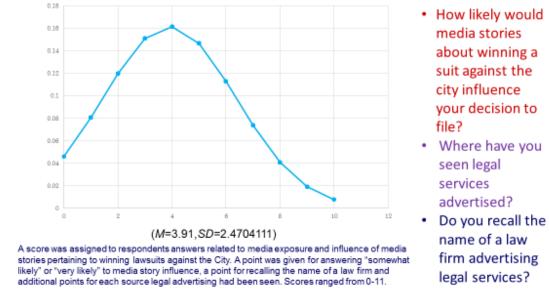


Figure 4. People's exposure to media rated from 0-11 for 100 respondents.

The two sets of data were analyzed to determine if there is was any correlation between the dependent variable a respondents' exposure to media sources as the independent variable. It was found there is a weak relationship with regards to Pearson's r as demonstrated in *Table 1*, and a

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Scatter Chart, Figure 5.

Y Variable (Dependent)	X Variable (Independent)	Absolute value of Pearson's Coefficient Correlation <i>r</i>	Significance
Likelihood of Filing	Exposure to Media	0.256542268	Weak Correlation
Likelihood of Filing	Age	0.06189	No significance
Likelihood of Filing	Household Income	0.14186	Slight Correlation
Likelihood of Filing	Education	0.13218	Slight Correlation

Table 1. Correlation between dependent variable and independent variable 1, and intervening variables containing ordinal data.

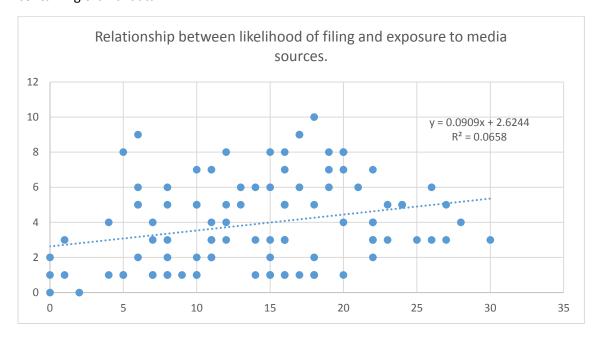


Figure 5. Scatter chart plotting correlation between dependent variable and independent variable 1.

From the information captured in the descriptive and demographic section of the survey three categories displaying ordinal data were also analyzed using the Pearson's r to find correlations. First, age as an independent variable did not yield any significant results. Next, household

income and education showed a slight correlation but not enough to be of significance in this study. However, those in households earning over \$90,000 a year yielded the highest likelihood scores compared to those earning \$60,000 and below shown in *Figure 6*.

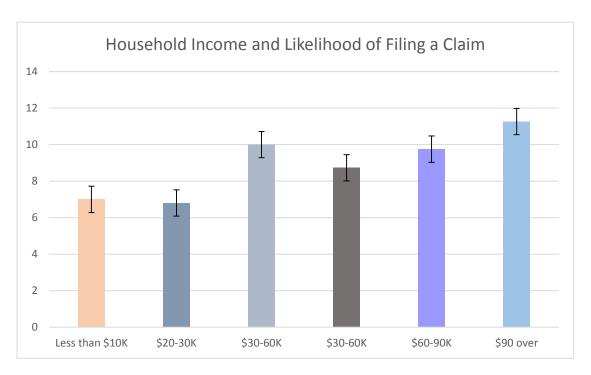


Figure 6. Measurement of dependent variable and "Household Income" as an intervening variable

To measure the categorical data labeled gender, race, employment type, health insurance, and home type bar graphs were created to plot the standard deviation with an error bar. From these categories the only significant markers were from race whereby Black and "Other" reportedly have a higher likelihood of filing over American Indian or Alaska Native, Asian, and White, see *Figure 7*.

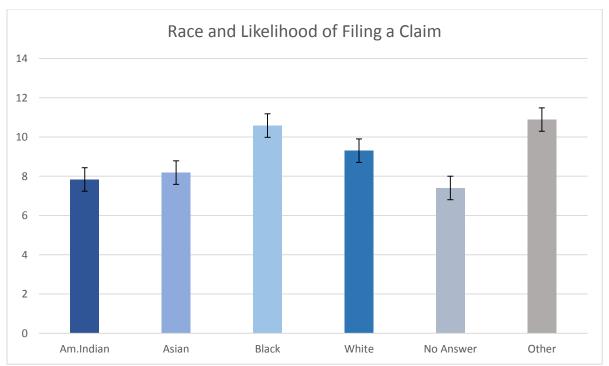


Figure 7. Measurement of dependent variable and intervening variable "Race".

People employed part-time and retirees collecting a pension showed higher likelihood scores than all other categories as seen in *Figure 8*.

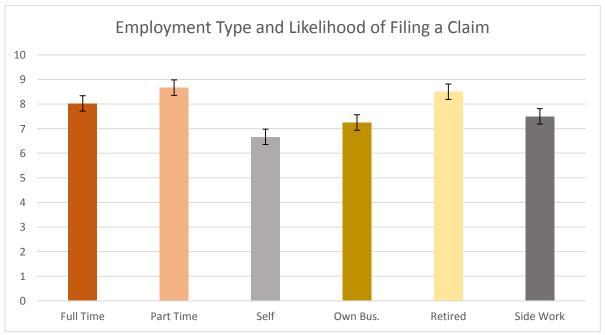


Figure 8. Measurement of dependent variable and intervening variable "Employment Type".

In addition, people with third party health insurance showed to have a stronger relationship than any other insurance type, even those with no health insurance at all. Refer to *Figure 9*.

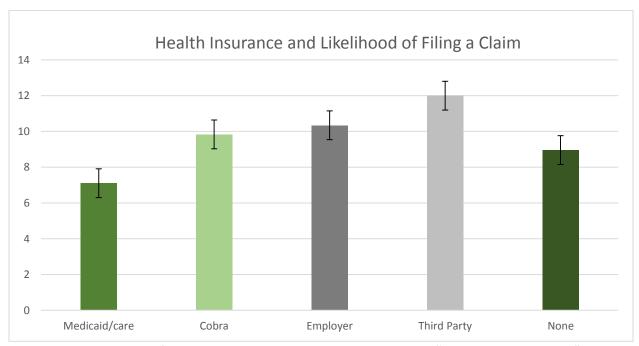


Figure 9. Measurement of dependent variable and intervening variable "Health Insurance Type"

Finally, it appears that people living in public housing have a stronger relationship to filing over those who own or rent private homes, refer to *Figure 10*.

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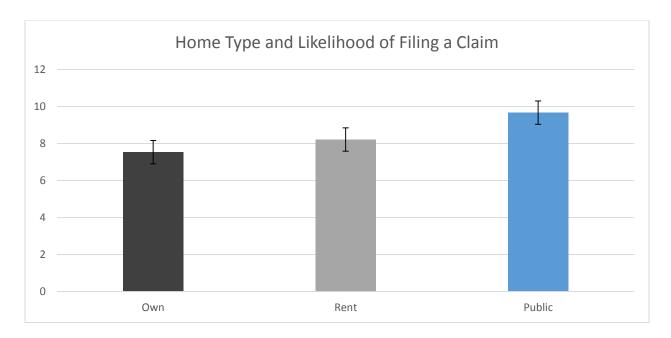


Figure 10. Measurement of dependent variable and intervening variable "Home Type".

Limitations

The leading limitation for this study was a smaller than ideal sample size. It was difficult to find significant relationships from the data because the statistical tests would require a larger sample size to ensure a representative distribution of the population. This is evident from the distribution when measuring the dependent variable. Since the sample size was relatively small it increased the margin of error. The categories of high, medium, and low for the likelihood of filing were disproportionate. Furthermore, to take into consideration the number of personal injury filings in 2016 due to allegedly defective sidewalks filed in NYC all five boroughs would need to be included in the sample. Due to constraints of time and manpower the sample population for is study for this study comprised of pedestrians who were "park goers", specifically those people who have used or will use a paved surface within a NYC Park or perimeter of a park or boardwalk in the borough of Staten Island. Staten Island also happens to have a less diverse population with regard to racial mix, home types, and average household income.

Another limitation which could have affected the results of the survey relied on self-reported data whereby the researcher relied on the honesty of the participants and in some cases selective memory. For example, questions 13 and 14 required the recollection of information memory. In addition, this some of the survey questions dealt with matter that may have been foreign to the respondent to which distorted answers could have been yielded.

Discussion

The 23% (23) respondents who were categorized as having a high likelihood for filing agreed it could take a lot of time to receive compensation for an injury, however, this coupled with the knowledge that an attorney could take between 50-75% in settlement fees still lead them to consider filing. Also, 43% (10) of this group agreed that the process would not be straightforward, 26% (6) did not know, while the remaining 23% (7) felt it would not be complicated process. When asked where these people would go to seek legal advice the most popular source was from family/friends and social media. From this information it could be inferred that the public has a less informed opinion of tort law actualities and are confident in using less reliable sources to gain information.

In this study, even though the correlation between household income and a person's likelihood to filing a claim was only slight, when looking at the breakdown of income it shows that household reporting incomes of \$90,000 and over yielded the highest likelihood scores compared to those earning \$60,000 and below. Furthermore, those with health insurance through their employer were more likely to file than those with no health insurance at all. The reason for this could due to uninsured individuals' immigration status which was not included in the survey. These

outcomes confront a popular assumption that our most litigious citizens are in the low income and low employment bracket. This assumption is reinforced by lawyers who employ methods to acquire *speedy* clients who may be urged to make uniformed decisions via advertising and solicitation. In this study television, newspapers, and the internet rated as the highest source of "noise" with regards to legal advertising and solicitation of legal services. These methods employed by law firms seem reliant on capturing a vulnerable target audience with daytime T.V, tabloids and urban myths. Is it possible they are marketing to the wrong audience, or already

know they have a market in the high income demographic and are diversifying?

People employed part-time and retirees collecting a pension reported a higher likelihood than all other categories. Since part-time employees may have less access to good health insurance and pensioners are on a fixed income it could be logically explained as a way of recouping medical costs. In addition, pensioners could have a higher rate of accidents due to their age.

Those paying for health insurance out of pocket with a third party insurance scored higher than all other categories including those with no health insurance at all. Since there was no measure of a person's immigration status, it could be assumed that individuals' without legal documentation would be included in this category and would not volunteer to ousts themselves legally in search of compensation.

When determining the reasons for why people did not file some respondents claimed it takes too long. This is an example of *lumping* whereby the cost in money, time, and aggravation outweigh the potential benefits of suing. To file suit is simply not worthwhile compared to inaction. Others answered they had a lack of understanding/ and or faith in the law, stating, "I didn't know or

Slip n' Slide, A Guide: Media's Influence on Civil Tort Litigation in New York City think about it", or "I didn't think I'd get paid". In addition, another group stated they did not need the money. These individuals depend on community and family to take on the burden of financial and psychological consequences. Finally, there is a group of people who fall into the "stigma" category. These people answered: "no need to upset my neighbors", and "Not a serious injury". The logical explanation for this is that complaining and litigating leads to stigma whereby society may label and disvalue litigants. A cultural justification for *lumping* may

provide insight about why some people avoid the law.

Legal (success rate) knowledge was inadvertently tested in the questionnaire. The first instance of this was in likert scale questions 8a,b,c, 9 and 15. Results of questions 8 and 9 were used to place the respondent into a likelihood category. Question number 15 was designed to discover if people generally know who would be responsible if an accident was to occur within city jurisdiction. This resulted in a fairly even split between people choosing the correct answer and people claiming they did not know the answer it the question. Approximately a quarter of the respondents answered incorrectly by thinking a private owner or themselves were responsible. Overall 59% (59) did not know the answer to who is responsible for compensation outside a city property.

There are some assumptions about the correlation between litigants and the health of the economy and political situation. It is true settlements could help an uninsured plaintiff recover the cost of recovery, or file due to lack of employment opportunities based on a host of demographics. Since there is no real-time correlation between claims filed and claims paid, between the dates a claim is filed and the date a claim is resolved, the data reported by the

Comptroller's office shows wavering results. This research examines the relationship between media and potential litigants while simultaneously depicting their characteristics.

Conclusion

I have taken you on a tour of the New York City tort landscape. It is a slippery topic. Frivolous cases make entertaining reading but are a dubious source of information for citizens and reformers. It is difficult to recover from the limitations of the study's design, whereby, the inability to have a random and large sample resulted in weaker than desired results. This is not a study to evaluate how media is doing its job, but instead to suggest that unfettered information on tort law portrayed in the media is counteracted by current factual information on the laws and how the tort system works. Generally people are unaware of the ever changing administrative rules and regulations, though by no fault of their own. Somewhere along the line, whether it be from media reports or legal advertising, the blame has been put on users of the system rather than the system itself. Potentially, victims who cannot pay for loses themselves, or feel the system is difficult to circumvent, must somehow make do without compensation. I have tripped and fallen, and hopefully recovered to show the many points of entry to which media reporting has potential influence on future litigants, and feel there is a need for further development in this area. Ideally, reducing the amount of law suits filed is the desired outcome, but limiting the right to bring suit would also diminish the public's check on government. There is an opportunity for media sources to act as a platform to inform instead of misinform. The group categorized as being most likely to file a claim sought legal advice from family/friends and social media. An overwhelmingly 59% (59) respondents did not know who is responsible for an accident outside a city property. Access to reliable legal advice rather than members of the public relying on a heuristic approach to learning about city administrative codes and regulations in contrast to

Slip n' Slide, A Guide: Media's Influence on Civil Tort Litigation in New York City individuals equipped with factual information on the tort law system may impede future claims and suits against the City. Large amounts paid out in settlements are damaging to the city, and without some measures of immunity and reform the financial burden could result in bankruptcy.

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Appendix A

This survey is <u>confidential</u> and any personal information will <u>not</u> be used publicly.

I ask if you can help me and complete this survey on the relationship between media and personal injury sidewalk claims against NYC. The information from the survey is only for the purpose of my master's degree. No one will have access to the individual surveys or the results except my professor, classmates, and myself.

Yes		ripped and injured yourse No	If on a city sid	ewalk?			
2. Have	e you ever	filed a personal injury laws	suit against a	New York Cit	ty agenc	y? (If yes use	survey 2)
☐ Yes	1 <u></u>	No					
Tak	kes too long	d "yes" to question 1 what	of the law		-	•	ne City?
		elihood of you filing a side	walk claim wit	h a New Yorl	k City ag	ency for a mir	nor injury
•	d knee) to y likely	yourself? Somewhat likely	☐ Don't know	ı □s	Somewha	t unlikely	☐ Not very likely
		elihood of you filing a side	walk claim wit	h a New Yorl	k City ag	ency for a mir	nor injury
•		your child? Somewhat likely	☐ Don't know	ı □s	Somewha	t unlikely	
	n bone) to y	lihood of you filing a sidew yourself?	valk claim with ☐ Don't know		City age		ious injury Not very likely
		lihood of you filing a sidev	alk claim with	n a New York	City age	ency for a seri	ous iniury
`	bone) to		□ Б '//				_
` Ver	y likely	☐ Somewhat likely	Don't know	_	Somewha	•	☐ Not very likely
` Ver	y likely		_	_		•	☐ Not very likely
` Ver 8. What	y likely	☐ Somewhat likely	_	_		•	☐ Not very likely
` Ver 8. What	y likely t is your op that	Somewhat likely binion regarding winning a	lawsuit again	st a New Yor	k City ag	ency for the f	☐ Not very likely
Ver 8. What	t is your op that I would I persona	Somewhat likely binion regarding winning a	lawsuit again:	st a New Yor Somewhat	k City ag Don't Know	Somewhat unlikely	Not very likely following? Not likely
Ner Ver 8. What I feel a.	t is your op that I would I persona It would process	Somewhat likely sinion regarding winning a specific compensated for linjury	lawsuit again: Very likely	st a New Yor Somewhat likely	Don't Know	Somewhat unlikely	Not very likely following? Not likely
Ver 8. What I feel a. b.	that I would I persona It would process It would	Somewhat likely sinion regarding winning a see compensated for l injury be a straightforward	Very likely	st a New Yor Somewhat likely	Don't Know	Somewhat unlikely	Not very likely following? Not likely
Ver 8. What I feel a. b. c. 9. What	that I would I persona It would process It would t is this like	Somewhat likely binion regarding winning a be compensated for linjury be a straightforward take a lot of time	Very likely if it could take Don't know	Somewhat likely many years	Don't Know to receive Somewhar	Somewhat unlikely compensate tunlikely	Not very likely Following? Not likely Cion? Not very likely

11. How likely would media stories about winning a suit against the city influence your decision to file?
☐ Very likely ☐ Somewhat likely ☐ Don't know ☐ Somewhat unlikely ☐ Not very likely
12. If an incident occurs, where would you seek legal advice? (Check <u>all</u> that apply) Internet search Family/friends/social media Govt. Legal Aid office Private Law Office Print advertising Don't know Other
13. Where have you seen legal services advertised? (Check all that apply) T.V. Internet Newspaper Mobile Law Office Billboard Family/friends/social media Direct mail Metro/MTA Radio Don't know Other
14. Do you recall the name of any Law Firm advertising legal services? Yes No
15. Who is responsible for compensation if an accident occurs on a sidewalk outside a city park? ☐ Adjoining City Agency ☐ Self ☐ Private Property owner ☐ Don't know
16. What is your main source of income? (Check all that apply) ☐ Employed Full-time (more than 20 hrs/week) ☐ Self-Employed ☐ Own my business ☐ Collect pension (I'm retired) ☐ Work side-jobs for extra money
17. What is your gender? Male Prefer not to answer
18. What is your age? 18-24 34-44 25-33 45-54 55-65 66 or older
19. How would you describe yourself? American Indian or Alaska Native Asian Black or African American Native Hawaiian or Other Pacific Islander White Prefer not to answer other
20. Do you? Own your home Rent private home Public Housing Homeless
21. Which range includes your estimated total household income (Check one): Less than \$10,000
22. What is the highest year of schooling that you have completed? Less than high school High school/GED Associate's degree/ Some college Advanced /Professional degree (e.g. MA, MD, Ph.D)
23. What kind of health care coverage (insurance) do you have? Family Health Plus or Medicaid Medicare Military, CHAMPUS, TriCare or VA Cobra Insurance through my employer Third Party (I buy my health insurance) No health insurance
Thank you!