



# PARK WATCH TM LEGAL DEVELOPMENTS NEWSLETTER

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## FTM Suits Can be Predicted by Residents' Psychological Attitude. Park Conditions?

*-May Not Matter-*

*– A Test to Measure Your Risk in 2014?*

By: Terry R. Dowdall, Esq.

### ■ Upshot

There has been considerable research into the reasons *why* people sue and do not sue when given the opportunity. The research reveals that the underlying decision is psychological, and not because of lack of belief in the *bona fides* of their injury or damage.

This information can be extremely important to the management. To my knowledge, this research has never been brought to bear in the mobilehome park litigation context.

Truth is, the one common fact shared in all "Failure to Maintain" ("FTM") cases is a *decision to file suit*. The decision is a mental process to take a certain action. The psychological predisposition to file suit reflects a cognitive act which may have little (or nothing) to do with the quality of maintenance, repair or function of the park. Since it is the *decision* to file, *not necessarily park conditions* that determine when suit is filed, *understand that we can avoid FTM's by shaping resident attitude and building "good will."* Some park owners have avoided FTM suits for years by "working" resident attitude; understanding that "good will" is key, not always remediation of a defective condition.

A resident may decline suit over, say, a sewer backup where the park owner apologizes, smiles and offers the resident one hundred dollars discount off rent for a few months. A special deal "for you" keeps the resident isolated from other potentially disgruntled residents as well. While most owners make sure conditions are adequate, the truth is that psychology is "king" in evaluating FTM risk. All it takes is a spark—some event that "galvanizes" the residents together (to quote a prominent property management president) to then set the FTM into motion.

Based on the common, typical, allegations from one FTM suit to another, it seems clear that individual park conditions and defects are not the pivotal basis on which suit is brought. It is not enough to say the tenants sued because the park was in "poor condition." Many residents do not sue and never would, even if they observed raw sewage running down the street. *Why?* Because

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#### In this Issue:

- *Why the Psychological State of Mind of your residents Is the Only Predictor of the "Failure to Maintain" Lawsuit.*

#### Coming Events:

#### WMA New Laws Seminar, Jan. 29th

Presenting changes to the MRL and other changes in law and regulations; how the changes affect operations in 2014. Get Title 25 training from Brad Harward, HCD, THE government authority on Title 25.

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the underlying disposition is absent. Do the residents like the owner/manager? Are there other factors, such as tangible and intangible rewards, which build “good faith” to compensate and balance out burdens we place on them? Have residents been well-treated? Do they see management working and sympathize? Is the rent low so they accept imperfection?

Whatever the reason, how do we maintain the resident attitude to reject legal action, when a GSMOL rep is pounding on the door to sign them up for the FTM case? *What makes them decide to file suit?*

In every case, the many studies reflect that anyone’s decision is based, ultimately on a psychological attitude. Conversely, therefore, the condition of the park may be entirely irrelevant.

Imagine a meter with a needle that can sweep continuously left to right. If we define all the factors into one of two categories, “good will” and “bad will,” we can create a measurement or a continuum of possible attitude toward the management which shifts depending on the perception of the residents over time (from “bad will” (*here comes the lawsuit!*) - to - “good will” (no risk)).

Where the needle stays in the “no risk” zone, FTM is unlikely because no matter the park condition, the residents feel good about management. But the converse is also true.

### **MEASURING FTM RISK**



### *So, what are the indicators which define the onset of the FTM?*

These indicators are based on the scientific study and analysis of why suits are brought. The empirical analysis of why and when the FTM case is filed in the setting of mobilehome park has not been explored to our knowledge. The science pertaining to propensity of lawsuits, generally, can definitively measure the level of exposure you face to suit from your tenants. Win or lose, lawsuits are expensive and destructive of respect and certainly rapport with the community. Avoiding suits should be a very high priority.

If the risk assessment test we propose (as set forth below) puts the management at more than a 50% negative indicator, the risk of an FTM case against management is high, likely awaiting merely the single event or occurrence that sends residents into a rally to bring suit.

. . . In every case, it is the psychological attitude of the residents that is decisive. Conversely, therefore, the condition of the park may be entirely irrelevant. . . .

## **Discussion**

The good will of the tenants is essential to positive relations and avoidance of liabilities, i.e. litigation. The key objective we always keep in mind is the building of profit and the avoidance of liabilities – more specifically, expense which can be avoided.

### **1. “Good Will” Is an Asset.**

Here is a quote from the Los Angeles Times about a FTM case—this example is typical of the common bases of these cases.

The landlord collected the tenants' rent, [JUDGE] O'Brien wrote, "for which the tenants received in return endless insults to their sensibilities: Years of noise, mud, dangerous conditions, a studied neglect of simple services, a clubhouse with no furniture, a badly maintained pool and spa, and inexcusably rude, petty and bullying behavior."

O'Brien . . . awarded the group \$350,000 in back rent, or about \$90,000 per household, and decided that [management] should pay punitive damages as well as the plaintiffs' attorney fees and court costs.<sup>1</sup>

*The single most important factor in forecasting FTM risk? The psychological perception of treatment of tenants based on interpersonal contacts.*

“Good will” can be increased; or, it can morph into a seething dislike. The more you ask of the residents, the more you tax the “good will” of your relationship. If the “good will” meter swings to the negative due to repetitive new burdens on residents— *i.e.*, if you are asking more of the residents than you are giving back, “good will” becomes a brooding resentment and the breeding ground for mischief. Residents become more open and receptive to organized attacks on the park owner, to strike back at the accumulation of demands which together detract and diminish the good will within the park.

The notion of “good will” in the landlord-tenant relationship is directly comparable to a bank account – a deficit in “good will” is like an overdrawn bank account. An overdrawn good will account creates exposure to the immediate risk of friction and conflict for anything else you demand (a rent increase), anything else that may go wrong (a utility failure, a sewer spill).

### **2. The Mobilehome Park Is a People Business.**

This is a concept taught in the psychological study of business management. It is an asset. It has value. It has prophylactic value to insulate against lawsuits. The plain fact is that mobilehome parks are a people business. Greater efforts at maintenance, both physical and psychological, are required to operate a mobilehome community.

<sup>1</sup> From the Los Angeles Times 7/26/09

*Keep the Residents Informed.* Owners take great pains to maintain infrastructure and repair common area services and facilities. And the chances are good you have not informed the residents and taken credit for the hard work. Bulletins are an inexpensive way to build “good will,” by building the respect of residents who become aware of the effort, the work, the time, the cost. Keeping residents informed, from the scientific research, is a way to improve good feelings for management, or at least the respect for meeting the owner’s responsibilities and reduce propensity to sue.

. . . Why should we care about the feelings of a few single-wide owners who paid less for their units than we paid for a used work truck? There is a simple response to this quite pervasive property ownership. . .

What of the psychological measurement? How have you gauged or measured – or have you ever consciously thought to scrutinize – the attitudes and perceptions of your residents? Isn’t tenant attitude the singular criteria by which to measure the risk of a FTM action? Have you ever heard of a FTM action against management that the residents liked and respected?

Maybe resident sentiment is not a concern—not on your radar. After all, we are in charge. We call the shots, decide the rent increases, pay the bills, taxes, utilities. *Why should we care about the feelings of a few single-wide owners who paid less for their units than we paid for a used work truck?* There is a simple response to this quite pervasive property ownership orientation: nothing else matters to determining the risk of the FTM action. Nothing.

## ■ *Synopsis of the Causative Factors of the FTM Case- THE TOP 12 FACTORS BEHIND FTM CASES*

### **1. Injustice Should Result in Action Restoring Justice.**

“In any given claim-prone situation, the relational model of justice suggests, the likelihood of claiming will be enhanced if the person feels that he or she has been *denied dignified treatment* (i.e., if the employee feels denied his or her due as a member of the group), if *his or her views and needs seem to have been ignored* (which would lead an employee, for example, to feel little trust in the benevolence of superiors), or if the person feels that decisions and decision makers *have not been neutral*.

“Because feelings of unfair treatment shift people from cooperative, accepting modes of interacting with the organization to competitive, self-interested modes of interacting, the model predicts that the a person who feels unfairly treated will want to complain and to pursue his or her complaint until a feeling of fairness has been restored.” In other words, once a tenant feels that he or she has suffered a substantial injustice, he or she will engage in a search for some forum or action that will restore justice.

The stated allegations in the lawsuit are not telling. FTM complaints are virtually identical. If you read ten of them side by side, you could not tell what the real spark actually was that precipitated the lawsuit. *Example:* The well kept 55+ community, with high rents and well kept facilities but without external manifestations of management care and concern, can easily be the subject of a FTM action if there is strong resident leadership with organizing skills.

### **2. Justice May Forgive Defects Where Property Rights Not Fully Exploited.**

Rent increases which are not accompanied by park improvements, even superficial cosmetic updating, are an example of exercising a right which may be judged as unjust. Residents are paying more, but see no improvement or enhancement to justify the increases. Not because it really is, but because your residents view it in this manner. Your residents have the sole discretion whether to sue you; and if you care, taking good account of their psychological disposition is crucial to you. Seeking concessions from the residents such as rent increases, should be accompanied by proactive and positive change in the park. Paint something. Plant something. Fix something. Replace something.

### **3. Reduction in Expectations Means Less Injustice.**

On the other hand, a “working class” park with moderate rents, where residents leave early and come home late, are generally happy if the utilities work and the managers greet the residents with a smile, are seen out and laboring; cleaning, painting, planting, sweeping: *in other words, working*. The manual work of the manager may be an effort with which the residents identify. Does this identification further project to the owner? If the rents are low and management is active and perceived to be caring, even raw sewage will be tolerated and excused if it is the manager in boots and brooms dealing with it – that is the image the residents remember and may appreciate (comparatively, someone has it worse than they do).

### **4. Is the Onsite Management in the Owner’s Corner?**

The residents expect the manager to be loyal to the owner, as this is a sign of management competence. Tenants will not respect the management if not because the tenants perceive the manager is not doing his job. Some residents are very hard working, some very decent people. The read from the good tenants is that the manager is not worthy of respect.

. . . resentment of the owner resulted in the lawsuit—attitude was more important than maintenance . . .

If the manager is seen as upset with the owner, the residents will also feel the *management could turn on them too*. (Resident may think: “If the manager acts that way to the employer, my gosh, imagine what he or she would be willing to do to us!”) The manager must appear loyal to the owner to keep the respect of the tenants. Some residents would see the manager as weak and susceptible to suggestion from action-minded residents. But there will never be the respect needed to maintain the rejection of lawsuits.

If the manager is not loyal to the owner, the residents own hostility is validated—it is okay to be hostile to the owner, “even Bob [the manager] grouses.”

Indeed, the actions of management heavily influence whether the park will be the subject of a FTM action. The toxic manager must be replaced to stop a needless self-inflicted harm to the owners.<sup>2</sup>

## **5. Is the Onsite Management in the Resident's Corner?**

Does the manager engender hostility? Are people skills lacking? *Often*, tenants just need someone to talk to. In a park in Los Angeles County, the ongoing settling of a landfill called for frequent re-leveling of coaches. For many years, a property manager attended to that, and kept the residents happy. It was nearly a full time job. After the park sold to a new owner, that service was suspended. The park was sued for FTM within a year. *A \$5.5 million dollar settlement resulted.* This is an example of when, despite defects, the park residents did not previously sue because the resident knew property management was in their corner and making changes to accommodate the residents. The injustice was being balanced. Once that good faith 'hand holding' ceased, the concomitant erosion of "good will" sent the "lawsuit prediction meter" into the red. The new dislike, hatred, resentment of the owner resulted in the lawsuit—attitude was more important than maintenance.

## **6. Is the Rent Increased No More than Once per Year?**

In some cases, rent policies trigger tenant lawsuits. The lawsuit is not about a rent increase, but because of the collateral disputes rents engender. Or because rent adjustments are threatened to occur up to every 90 days. This threat is an empty one used by GSMOL to seek local rent controls. But on occasion, it has been employed. Cases of continuing interest at <http://www.dowdalllaw.com/Cases.shtml> reveal some of these ill-fated strategies.

Rent adjustments should be viewed with an attitude that a *quid pro quo* is called into question. Yes, we have the right to increase rents on 90 days' advance notice under *Civ. Code §798.30* (or as set forth in a lease, and to impose rent adjustments unilaterally). But again, it is the perception we must address. The first FTM case we handled was in 1981, spurred on by *three rent increases in one year without consulting with us, but relying on a property management firm's advice.* While the rents were behind market and all the adjustments were proper, the tenants did not see improvements being made along with the increases. The park still looked the same to them. No advance communication, no consulting as to the plan of the owner, the tenants were left in a maze of anxiety. The increases looked like they would never end. They felt powerless and so they struck back. Their perception was they had no other choice.

. . . Leaving the residents "in the dark" causes them to feel disrespected and hence a resentment grows at the perception of being devalued. This is a key determinant in the decision to sue. . .

A tenant thinks, well, higher rent, yet *the park looks exactly the same.* This is not fair she may think. The result, 120 rent control laws in the state, and FTM cases often in areas without rent controls. Some questions owners already wisely consider: How high are rents compared to market? How often are rents raised and by how much? Are rent increases staggered so all tenants aren't increased on the same date? If there is a "catchup plan," advise the residents *and city fathers* in advance. An option to lease up to secure the increases is also wise—or roll out the increases in one notice covering multiple periods or years. Leaving the residents "in the dark" causes them to feel disrespected and hence a resentment grows at the perception of being devalued. This is a key determinant in the decision to sue.

## **7. Is the Park Operated by an Independent Management Company?**

Parks operated by professional management companies are generally sued less because legal compliance and consistency of treatment is often a higher level than owner-management. This does not mean a management company is necessarily unavoidable or always prudent. Certainly being prepared to show you are doing a good, professional job in managing will be beneficial. Sometimes distance between the owner and residents is a positive factor. If contact with the owner is abrasive, it is far better to have a buffer to alleviate the needless accrual of ill will. Ill will between the parties makes every attorney smile. Don't fall victim to legal costs resulting from unproductive dispute resolution.

## **8. Is the Park Involved in Selling /Subleasing Mobilehomes?**

Some believe that if the community owner or manager is involved in selling mobilehomes, there may be a greater risk of tenant unhappiness and lawsuits. If there is a problem with the mobilehome, the anger of the resident goes back directly against the owner. Subleasing of homes may also engender resentment, but usually because a claim is made that the owner is not doing enough to police and discipline the renters or other tenants in the park. Subleasing alone has not been seen to result in FTM suits, as a triggering cause for other claims or as a single action claim.

## **9. Does the Park Plan to Reduce Services or Go out of Business?**

A major reductions in services, high vacancy rate or scuttlebutt of going out of business to convert to another use is another common cause of resident lawsuits. In such instances, concessions to maintain a "justice-injustice" even balance should be considered.

. . . The conditions of the park do not sue, the tenant sues because of what he or she makes of them, you and the managers. . .

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<sup>2</sup> The job of a manager includes loyalty. Avoidance of conflicts of interest. And, of course, not doing anything which may cause a rift, or contribute to one, between the owner and the residents. We assume that the manager is saying positive things about the owner. How accurate is your assessment? And conversely, is the owner receiving accurate feedback from the manager regarding tenant attitudes and sentiments? Are the residents fearful of reporting trouble to the manager due to risk of retaliation? Little things, such as fear of social ejection, may mean nothing to us, but the world to the residents. Managers are not fulfilling the implied terms of their employment unless they are both respectful to tenants and cheerleaders for the owners.

## **10. Maintenance and Repair?**

Maintenance and repair are not unimportant. But the point is that other intangible factors, based on what the tenant sees and believes, are the key factors to focus on. Conditions, per se, do not file suit. Tenant's do so, based on interpretations of those conditions intertwined with other perceptions and the ensuing emotions which are inferred. Suits are caused by a tenant's decision about you, management, rental *value*, and the conditions. Or perhaps their desire to simply get the tenant ring leaders to leave them alone.

## **11. Have You Been Sued by Your Tenants?**

Although my experience is that once sued you're usually not sued again, this is an issue that with passage of time is becoming a concern. Ending a prior case in a truly dispositive and final fashion may be very important later, and it is a step which should be carefully reviewed.

So, it's no longer enough to do a good job maintaining our parks. Even the best maintained community may be sued if management practices result in poor resident relations. Then, well-written residency documents can do more than any other preventive measure to ensure reasonable rents and conditions, promote liability limitation, minimize liability generating policies and practices, and finally include "damage control" strategies to deal with baseless FTM claims sparked by unscrupulous community organizers.

## **12. Conclusion re Causation: FTM's Are Psychologically Driven. What You "Believe" Is Irrelevant.**

I believe that most FTM's are not justified. But what I believe is irrelevant. I have news for you. *What you believe is also irrelevant.* The point is that suing, litigating, and the perceptions and choices that surround these actions are psychologically and socially conditioned. The sense of injury or injustice sparks the cognitive process of considering suit. *It is not the job you do, it is the perception of the job you do by the residents, that matters in the decision to sue or not.* These perceptions can be accurate or plain wrong, but whether true or not it is the tenant's perception which predicts action. The world through *their* eyes determines their actions.

Some FTM's are legitimate, even the most strident of us must concede. But not all, not even most. If the legal system does its job well, legitimate claims will be successful and illegitimate ones will not, but this expectation (the perception of the legal system) does not mean that removing legitimate bases for claims will likewise eliminate lawsuits. Unless one can assure that no tenant *feels* unjustly treated, regardless of whether he or she is in fact unjustly treated, there will still be lawsuits.

There are several ways to reduce the exposure to FTM risk. The risk is always avoidable. The fact that FTM actions are still with the industry reflect that owners have not addressed this issue of management practice. Assessing the "temperature" of the residents individually and collectively.

### **■ *How are YOU doing So Far?***

Key indicators that the resident perception of the owner and management is sub-par, and hence the park is exposed to an FTM lawsuit for that reason alone, are the following factors. *How have you been doing so far?*

#### **1. There Is a Gsmol Chapter in the Park, or Being Started.**

If there is a chapter being started, isolate the identities of the organizers and assess their likely efficacy. An effort to start a GSMOL chapter may reflect the activities of an alienated resident renegade. On the other hand, an articulate retired union organizer may succeed in playing up the shortcomings of the owner or manager. The GSMOL chapter is a reflection of a perceived failing of some kind by the park owner. It may not be popular today, but the vehicle is in gear to swell the ranks when something else dissatisfies a few dozen residents. And then, it is easy to get resident signatures on a clipboard. That means a FTM for the park.

#### **2. HOA in the Park?**

The resident HOA in a rental community may choose to avoid the costs of joining GSMOL, which continues to diminish in numbers and influence, but nonetheless reflects the motivation of some residents to form a collective voice for possibly a few of several reasons. One is good, one not so good. The notion is still alive and well that the tenants are actually homeowners. Homeowners have HOA's. However, in a rental mobilehome park, the re-casting of the tenant as a "homeowner" is a legislatively crafted illusion. The legislative counsel has opined, years ago, that a tenant, renamed "homeowner," is still a tenant. <http://www.dowdalllaw.com/legislative-counsel-opinion.pdf>

**Friend?** The HOA may fuel a drive to acquire the park at some point. If you are considering selling to the residents via non-profit mutual benefit cooperation, or subdividing, the HOA is a possible ally to that end. For now, however, this group is purely voluntary and without significance, except for notification of the listing of the mobilehome park for sale.

**Foe?** As such, it may react to new developments in a negative way. Complaints about utility issues may be brought to the HOA. The HOA may wish to hear from lawyers; they may be more bold than an individual resident, because of the safety of numbers, and the greater propensity, like a conspiracy, to act on a plan of action more so than the individual resident. In sum, the HOA may look a lot like a GSMOL chapter, characterized by disgruntlement toward the management or owner, resentment at their own lives because they live in mobilehomes and not 'real' homes, chronically scripted to garner satisfaction at being unhappy, and always characterized by a glaringly absent sense of humor. Hugh Hewitt, for what it is worth, real property attorney and conservative pundit, says that HOA's are the "spawn of the devil."

*Again, it is the psychological attribute of this group dynamic to account for.* If the HOA is friendly, park owners are wise to contribute to it. Give the HOA a budget, invest them into the success of the park; entwine them into the fabric of the park owner's quid pro quo for rent

increases. Pay for their parties, sponsor Thanksgiving and holiday dinners so no religious groups feel slighted, to include Kwanza, Chanukah, Ramadan, Boxing Day, Christmas. The friendly HOA's success can be the park owner's success. This positive public relations effort softens the blow of the next rent increase and buys patience when the lights go out or the sewer backs up. In other words, contributions keep the "good will" balance sheet in the black. On the negative side, the HOA will be supportive because they are dependent on the park owner's contributions for such activities they will sponsor. If the park owner pulls back on financial contributions, the HOA self-perceives it is being seen by the other residents as losing influence or failing; the HOA leaders have their individual egos and self respect tied into the success of the HOA.

### **3. Are There Locally-influential People or Their Relatives Living in the Park?**

Community leaders know how to bring matters to the attention of your city. Public comment time at every council meeting is used to bring matters to the attention of a concerned and empathetic council (who wish to be re-elected). Monitoring public communications of the city council in your area and staying sensitive and aware of local politics are important to keeping the seeds of the FTM from your community.

### **4. Is There Economic Hardship on Residents Causing Significant Eviction Activity?**

The problem here is whether or not the activity is viewed in any respect as the fault or responsibility of the owner. The loss of neighbors, friends and even relatives who reside in the same neighborhood can be distressing to residents. If the owner is not seen as working or willing to work with resident hardship cases, residents may be quick to blame the landlord as participating or sharing in the guilt for loss of home and friends. That resentment may be pooled into a FTM effort, a catalyst to start seeking ways to obtain relief against the park management.

### **5. Policies of Mutual Respect, Quid Pro Quo, Balancing Demands with Benefits?**

Do you have respect for the residents? Do you listen to them, welcome their comments? Do you let them have their say? Do you explain management decisions? Do you explain the policies and procedures of management? Are your management practices safely guarded state secrets? Are your policies fair, even handed? Are you consistent? Do you keep favorites? Do you discriminate against certain tenants? Are you threatened by your residents in terms of legal action, are you reported to local government leaders or representatives? Do you receive demand letters? Do you receive any letters at all? Does your manager take care of all resident relations? Answers to these questions should be considered, as they relate to the likelihood of an FTM suit, and as you see, have virtually nothing to do with park conditions.

## ■ *The Business Reality for Many.*

Many owners have substantial insurance, including umbrella policies of insurance. Umbrella insurance provides additional coverage in the event that the limits of the CGL are exceeded. Why a lot of insurance? Aggressive action may be expected to generate a FTM action in some cases. So, owners may fully and foreseeably expect to be sued due to aggressive landlording. And the plan in such an event is to pay the deductible, endure the aggravation of the discovery, the inspectors, the time and effort to assist the defense, and eventually have the case settled. The additional cost derives from paying private counsel to watch the progress of the defense, avoid overreaching by the insurer, and deal with "claw back" claims for defense costs expended for issues which are not covered by insurance.



This may lead to subsequent expensive premiums in the future, dealing with lower rated insurers due to the litigation experience, and smearing of the reputation of the owners. No matter that FTM's directly affect the value of mobilehomes because the lawsuit is a material fact which a seller is required to disclose to the buyer. The park owner must also disclose the factors and claims made in the lawsuit. High quality buyers will run — not walk — to get away from such a park. Lesser quality buyers will not care about a litigious history, claims of nuisance, compliance with rules, or respecting neighbors, the management or the community. Thus, the entire quality of the park, the residents and home prices all suffer. An FTM is an indelible pockmark on the reputation of the park.

## ■ **Eliminating the Obvious Predictors of the FTM.**

The study of the psychology of lawsuits suggests that the first and greatest rule of how to avoid litigation should be to treat people fairly, to be considerate and to seek to humanize and dignify the tenancy experience for the homeowners in your community. From the psychological viewpoint, when management decisions are made honestly, with human — as well as economic — values in mind, and if these aspects of the decision-making process are obvious to the potential litigant, litigation rates will drop substantially.<sup>3</sup>

"Another way of saying this is to note that lawsuits are generally the result of someone feeling that they have suffered an injustice."<sup>4</sup> The best way to avoid lawsuits is therefore to make the tenancy experience seen as *just and based on fair management decisions*. While this may sound like economic anathema to some, the conventional approach of making decisions on purely economic criteria and coping, *post hoc*, with litigation problems that arise from aggressive financial planning may not be the most prudent policy. There are two goals in operating a

<sup>3</sup> Robert A. Giacalone, Jerald Greenberg, *Antisocial Behavior in Organizations*, 1997, Ch. 8, E. Allan Lind, *Litigation and Claiming in Organizations: Antisocial Behavior or Quest for Justice?*

<sup>4</sup> See n.1.

mobilehome park: 1. Make money; 2. Avoid loss.

## ■ *The PIE ["Perceived Injurious Event"] Model of FTM Activity?*

### ■ *The Wealthy Can Afford to Pay and Hence Must be At Fault.*

It is common sense to park the Rolls before going to visit the park. Why? Because residents who perceive the owner to be wealthy, thus able to pay a judgment, are also psychologically tied to a belief the owner is more likely to be at fault.

The scientists who have analyzed the probabilities, costs, and benefits associated with initiating a lawsuit and with continuing with the suit or terminating it at various points in the litigation process, have come to find that despite real cost associated with litigation from the tenant's perspective, potential targets, such as large corporations who can pay large awards, are more likely to be sued than are defendants with lesser resources. A group of researchers (Harris, Maclean *et al.*, 1984) explained that those who *are most likely to pay* are also *most likely to be seen as responsible*. For example, consider automobile accidents. More claims are aimed at other drivers with insurance than on the governmental entity that built the road, a harder target.

### ■ *There Must be a Perception of Injury: The "PIE" Model*

Some scientists<sup>5</sup> theorize there are at least three stages of a blossomed lawsuit.

- (1) "naming" the event as an injury or harm,
- (2) "blaming" someone or some organization or institution for causing the harm, and
- (3) "claiming" compensation or restitution through a legal or administrative forum.

The key target of these analyses is the "perceived injurious event"<sup>6</sup> or "PIE," which must be identified, attributed, and acted upon before it becomes a cause of action in a lawsuit.

**Naming:** A person must decide that they actually have been hurt. That is, they must identify the event as injury in their thinking. It is not the actual injury that matters. The issue is whether or not the tenant has formed the belief that an injury has occurred. You and I may slip, curse, get up and walk away, because everyone must take a few lumps in life. Your tenants may see the situation differently. Slipping on the HOA's portable step placed next to the clubhouse stage is not the fault of the park owner, you may think. But what does your tenant think?

Just because some have in fact been injured--or discriminated against, or otherwise harmed--does not mean that they necessarily *know* that they have been harmed. "A prime example of how the absence of naming can forestall claiming outside organizational contexts is a recent study of potential medical malpractice claims (Harvard Medical Malpractice Study, 1990). The researchers found that most potential claims are never realized because the *patient does not know that they have been injured*. Apparently, many patients who might have had real, legitimate claims simply thought that the longer recoveries or additional surgery they experienced were part of the normal consequences of their original problem."<sup>7</sup>

On the other hand, the perception of one resident can spread to the entire park, as it does in the FTM. It takes just one effective organizer. "Consider, for example, the example of the discrimination claims by Black GM employees, . . . The claim began with a single employee deciding that he or she had been discriminated against in pay, but it spread to include more than 3800 other employees as they too named their pay discriminatory." *Id.*

**Blaming:** Once a "perceived injurious event" has occurred one must decide whether someone is to blame for the injury. The "blaming" part of the sequence involves the injured person deciding that the injury is not only caused by someone's actions, but that the person is somehow at fault. "If I slip on a floor because my shoes soles are slick, I am hurt because the owner did not foresee I would wear slick-soled shoes. It is the owner's fault." If the owner's actions were somehow outside the realm of normal, i.e. unreasonable, the loss could more readily give rise to blaming. Blaming involves the judgment that actions or consequences are somehow outside the normal scope of things. Blaming seems to be one of the key elements in the development of a claim. Research<sup>8</sup> shows that the attribution of blame is one of the most important single factors in personal injury claiming. It seems very likely that blaming is just as central to claiming in organizational contexts, although I am aware of no research at this time that demonstrates such an effect.

Perceptions that treatment is fair or unfair serves as a global evaluation of their positive or negative relationship with management. . .

If management gives the impression they seek to do the right thing, that they are considering all points of view, trust is engendered.

<sup>5</sup> Felstiner, 1974, 1975; Felstiner, Abel, & Sarat, 1981; Kritzer, Bogart, & Vidmar, 1991; Kritzer, Vidmar, & Bogart, 1991. Felstiner, Abel, and Sarat (1981).

<sup>6</sup> See n.1.

<sup>7</sup> See n.1.

<sup>8</sup> Hensler, Marquis, et al., 1991.

**Claims Consciousness:** The final step is claiming compensation for the injurious event. Research on suits for personal injury suggests that often it is *not the claimant* who thinks up the idea of a suit, *but instead someone else who suggests the possibility to the injured person.*<sup>9</sup>

More than half of the people who file claims for personal injuries say that the idea of claiming came from someone else, *usually a relative or a doctor*. Presumably because the social and normative factors surrounding a PIE are generally less than perfectly clear, people may well want and seek some social reality before they take action. The same processes seem likely to occur in a group context: Residents may talk to others about the fairness or reasonableness of their experiences in the park and only after discussion *decide* that they have been treated badly and that they should sue. It does not help that lawyer advertising rhythmically trumpets the benefits of lawsuits and the possibility money could be owed. Knowledge that others have successfully pursued claims could also provoke a transition from “blaming” to “claiming.”

Will the attorney accept the case? The FTM involves pitching tenants on the benefits of the FTM suit. The attorneys may say, “look, I do not see problems, I see money.” An additional factor is the *willingness of an attorney to take the case*.

## ■ What Motivates People in Organizations and What Leads Tenants to View Their Treatment as Fair or Unfair?

Tenants use their membership in their HOA, or tenancy in the park, not only as the choice for shelter, but to define their social self-identity. For most, membership in various groups, voluntary or immutable, is a large part of who we are. People who are tenants tend to see themselves in terms of their community and as members of that group. There is identification with other residents.

Researchers have argued that because people define themselves in this way, they are very sensitive and aware of these relationships. If a tenant feels that his or her relationship with the management is fundamentally positive, that he or she is viewed positively by the park owner and protected from arbitrary or adverse actions, the theory is that the tenant will tend to adopt a very cooperative orientation toward management. If, on the other hand, the tenant feels subject to exploitation or not valued, he or she will adopt a much less cooperative, more self-interested orientation and hence become adversarial or be more easily susceptible to suggestion to become adversarial. *Perceptions that treatment is fair or unfair serve as a global evaluation of their positive or negative relationship with management.* Thus, justice is considered “relational,” because what people mean by just or fair treatment is treatment that tells them their relation with the organization is positive or negative.

**What is the conclusion of the researchers?**<sup>10</sup> People tend to use the nuances of interpersonal process to arrive at the “justice judgments.” They look to such things as whether they are treated *politely* and with *dignity*, whether they *feel that their views are listened to and considered*, and whether they feel that *decisions they care about are being made on a factual, rather than biased, basis*. Three aspects of process have emerged as being particularly important. We term these elements “status recognition,” “trust in benevolence,” and “neutrality.”

**Status recognition**<sup>11</sup> is the belief that those in positions of authority view the tenant with respect – as a tenant with rights and entitlements in the park – as opposed to treatment by others in a disrespectful or demeaning fashion. Simply, the research reveals that people who are treated with dignity emerge from experiences, even from experiences that entail substantial negative outcomes, with a feeling of fairness.

**Trust in benevolence**<sup>12</sup> refers to the belief, again usually engendered by the quality of interpersonal treatment, that *management* and those *with power in the organization* are *well-intentioned* and *honest in their decision-making process*. The tenants must have a sense of respect for the management. Trust involves attributions about the motives of the management and inferences about motive. One of the strongest sources of these inferences is the feeling that one is being listened to and that one’s views are being considered. *If management gives the impression they seek to do the right thing, that they are considering all points of view, this sort of trust is engendered.*

**Neutrality.**<sup>13</sup> The perception of neutrality turns on inferences drawn from *interpersonal process and treatment*. Some tenants may believe management is biased or unfair in a totally unrelated belief system or standard, as when one hears a superior use racial or gender epithets. “If unfair to them, they may be unfair to me too” one may think. If there is perception that the management wants a level playing field and that organizational decision makers will base their judgments on facts, rather than rumor, false information, personalities, or other extraneous factors, people will feel fairly treated. On the other hand, if cronyism or favoritism seem to be major factors in decision making, as evidenced by the way organizational authorities act, or by the unavailability of information on the way in which decisions are made, then people will feel that their treatment has been less than fair.

People use fairness judgments -- their perceptions of fairness --to decide whether to behave cooperatively or competitively, whether to obey or ignore authorities, and whether to extend themselves in the interest of the management or to look after their own narrow self-interest. And whether to listen to others who exhort a new FTM in the park.

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<sup>9</sup> Harris, Maclean et al., 1984; Hensler, Marquis et al., 1991

<sup>10</sup> E.g., Lind, MacCoun et al., 1990; Tyler, 1990, 1994; Tyler & Lind, 1992

<sup>11</sup> Robert A. Giacalone, Jerald Greenberg, Antisocial Behavior in Organizations, 1997, Ch. 8, E. Allan Lind, Litigation and Claiming in Organizations: Antisocial Behavior or Quest for Justice?

<sup>12</sup> See n.9.

<sup>13</sup> See n.9.



## ■ Conclusion: It Is about the People.

*Profit is expressed as avoidance of loss. Loss occurs through suits. Can they be avoided?* This research tells a lot about what might predispose tenants not to claim, complain, or sue. If a person experiences some treatment that reassures him or her about their relation vis-à-vis the organization, a feeling of fairness might be restored, and the inclination to claim might disappear.

If management explains the reasons for treatment that *seems* unfair (and if the explanation is seen as honest and reflecting unbiased decision making), or if the organization offers an apology or acts quickly and convincingly to remedy the situation, the injured person may feel reassured about his or her standing with respect to the organization, and the claim may die at that point. Absent some restoration of dignity, trust, or some reassurance of neutrality, either via explanations, apologies, or a grievance process of the sort described above, the person may feel that they can only find reassurance of their personal worth by prevailing over the organization in court.

Taken together, all the work that has been done to predict lawsuits stemming from social and psychological dynamics of organizational litigation suggests that respect, fairness and the development of trust, coupled with a personal, proactive approach to remedying injuries and resolving complaints, works better than current approaches that surprise, demean, insult or hide decision-making from the tenant.

The lesson from the research is that *if one wants to avoid litigation, one must be fair and be perceived as being fair*. If instead of worrying about whether any given decision might be objectively actionable, managers worried about whether each decision is fair and is viewed as fair, litigation would be a far smaller problem. If mistakes are made, apologies and explanations should be forthcoming, quickly and publicly.

In other words, if more attention were paid to the issues commonly raised by organizational behavior researchers in general, and organizational justice researchers in particular, and less attention were paid to the issues commonly raised by lawyers, the company in question might be better off in financial, as well as human terms too.

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Please Feel Free to Contact Us with Any Questions!



Robin



Diane



Kasey



## RISK ASSESSMENT - Failure to Maintain Lawsuit

("100" points or more is a "fail" [i.e., unreasonable risk: note, this is no more than an admonition and is not intended to be predictive])

1. Do you have a common date for park-wide rent increases? ..... No  
 ..... Yes \_\_\_ 20 pts
2. Do you take a specific proactive effort to beautify / update the  
 park with each rent increase ..... No \_\_\_ 10 pts  
 For rolling increases, do you have a plan to beautify / update for predominate increases  
 taking effect? ..... No \_\_\_ 10 pts  
 Do You Increase Rents More than Once per Year? ..... Yes \_\_\_ 100 pts
3. Do you explain your reasons for rent increases? ..... No \_\_\_ 10 pts
4. Do you explain policies backing up management actions, decisions? ..... No \_\_\_ 10 pts
5. Does owner solicit / make available avenues for resident opinions? ..... No \_\_\_ 10 pts  
 Meetings ..... Yes \_\_\_ (deduct) 20 pts  
 Only through Written P.O. box or suggestion box? ..... Yes \_\_\_ (deduct) 10 pts  
 Positive Interactions with the Owner? ..... Yes \_\_\_ (deduct) 20 pts  
 Interaction limited to the managers (except urgent situations)? ..... No \_\_\_ 10 points
6. Are Management Decisions Perceived as Just (even if disliked)? ..... No \_\_\_ 10 points
7. Do you respond Promptly to Tenant Complaints re Park Responsible Issues? ..... No \_\_\_ 10 points
8. Is the manager respected? ..... No \_\_\_ 10 points
9. Is the manager perceived as Loyal to Owner? ..... No \_\_\_ 10 points
10. Do You Employ Professional Property Management? ..... No \_\_\_ 10 points
11. Do You Sell Mobilehomes in Your Park "As- Is"? ..... Yes \_\_\_ 10 points
12. Is there a program to reduce services or cease doing business? ..... Yes \_\_\_ 90 points
13. Pattern of Utility Failures? ..... Yes \_\_\_ 90 points
14. Are Your rents Below Market? ..... No \_\_\_ 10 points
15. Are You Currently Pro-actively Coming to Market rents? ..... Yes \_\_\_ 40 points
16. Did You Do Something to Cause Formation of a GSMOL Chapter? ..... Yes \_\_\_ 40 points
17. HOA in Park? ..... Yes \_\_\_ 10 points  
 Friendly? ..... Yes \_\_\_ (-) 10 pts  
 Not Friendly? ..... Yes \_\_\_ 80 points
18. Tenants with Union, Labor or other Community Organizer Experience? ..... Yes \_\_\_ 50 points
19. Vacancy rate dropped to more than 20% since mid 2000's? ..... Yes \_\_\_ 10 points
20. Do the tenants think that your decisions are unfair? ..... Yes \_\_\_ 50 points
21. (Combines all previous) Are you running at less than half a tank of  
 "good will"? ..... Yes \_\_\_ 90 points



**Total:** \_\_\_\_\_\*

**(\*If more than 100 points, a re-examination of resident relations policies should be made with counsel)**

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