

Our Clients' Most Serious Injuries Are Often the Ones That No One Can See

Helping reluctant clients understand the nature of psychological injury and the importance of proving causation are the keys to maximizing the odds that they receive compensation for their injuries. Here are five steps for helping clients overcome reluctance to address psychological injuries resulting from a traumatic event.

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In personal injury cases, physical injuries resulting in medical bills, lost wages, pain and suffering, and other damages are often the focus. But physical injuries are only part of the story. In many cases, the injury that most changes a client's life is the one no one can see: a psychological injury.

Even when accompanying physical injuries heal, unseen psychological injuries can transform a person's life, outlook, and demeanor forever. They can change a person's ability to work and enjoy hobbies, and to care for and be present for their loved ones. Many injured clients find themselves feeling disconnected from the life they once enjoyed, struggling with changes that are difficult to explain but impossible to ignore.

Psychological injuries deserve compensation just as physical injuries do. However, some clients' hesitancy to seek mental health diagnoses and treatment, perhaps fueled by a fear of being stigmatized for doing so, may cause them down the road to miss out on compensation for their psychological injuries that could make a difference in their lives, such as by funding ongoing treatment for those injuries.

As a plaintiffs' attorney, it's heartbreaking to see clients avoid seeking the compensation they're entitled to because of misconceptions about psychological injuries or fear of seeking professional help. Helping reluctant clients understand the nature of psychological injury and the importance of proving causation are the keys to maximizing the odds that they receive compensation for their injuries.

Importantly, clients (and opposing counsel) must understand that psychological injuries are not just a supplement to physical injuries. They can be their own category of damages. Sometimes, they are the most significant component of a plaintiff's suffering.

Long after their physical injuries heal, depression, post-traumatic stress disorder, cognitive difficulties, and other psychological injuries can impact clients' daily functioning.

Here are five steps for helping clients overcome reluctance to address psychological injuries resulting from a traumatic event.

Create an environment in which a client feels comfortable sharing information about their psychological injury.

While attorneys are known as "counselors," we are not clinically trained or licensed to evaluate or diagnose psychological injury; that role belongs to professionals licensed in that field. However, personal injury victims don't always recognize or understand the significance of signs of psychological injury.

The first step in helping your client determine whether to pursue a psychological injury claim is getting to know them. Most attorneys are trained to think about the physical effects of a traumatic event, not the mental or emotional injuries it causes. Some clients who have always "toughed it out" when facing adversity may not be open to discussing what they're feeling or experiencing. These clients may not even discuss their experiences with family for fear of appearing weak. They may also fear that because these problems can't be seen, opposing counsel or insurers won't take them seriously—or they'll even mock them. This hesitation may have a generational component. A client in their sixties may not volunteer that they no longer feel like themselves around their grandchildren, whereas a client in their twenties may have no problem discussing their mental health concerns.

We've found it important that clients feel safe being open and honest with us about what they're experiencing. The key to creating a safe environment so they can do so is treating them with empathy and understanding. Some psychological effects of trauma can be personal and embarrassing to speak openly about. Personal injury attorneys must give clients space to tell their full story, starting with the physical injuries they suffered and how those injuries have impacted their lives. From there, we can gently broaden the conversation beyond the physical injuries and invite the client to describe how the event has changed their daily life. Asking "How has this accident affected you?" often gets a client talking and can be more fruitful than any checklist of questions.

Educate the client about psychological injuries.

While we are not mental health professionals, plaintiffs' attorneys do need to have a basic understanding of signs and symptoms of psychological injuries. Traumatic experiences can leave a person with a persistently altered sense of safety. Psychological injury can manifest in behavioral changes, trouble sleeping, nightmares, and an inability to focus or concentrate.

Some clients will come right out and share that they have been having issues since their traumatic event. For clients who are not opening up, informing them that "some of our clients who have been through an accident or suffered injuries like you have experienced anxiety, trouble sleeping, nightmares, or loss of enjoyment in hobbies" can signal that their symptoms are common and will not be met with skepticism. Clients may also wrongly assume that because they never sought treatment, their psychological injury has no value. The absence of treatment is a problem to be solved, not a verdict on whether the injury is real.

Likewise, when an injured individual seeks legal counsel, a lack of treatment for their psychological injuries or their refusal to seek treatment doesn't mean that their attorney should forego pursuing this category of damages altogether. It will, however, require them to build a different type of case. For instance, a client might decline weekly therapy but be amenable to a forensic psychological evaluation.

If the client isn't treating with a mental health professional when they retain us, we usually ask them to consider being evaluated by one. We explain that doing so will help relieve their symptoms and support their case.

Ask to meet with the client's family members.

It is often worthwhile not to simply settle for our client's word regarding their potential psychological injury. Consider securing a client's permission to talk with family members as part of your investigation. Some clients do not recognize their own changes in behavior or link them to the traumatic event. They may also be too embarrassed to speak about their problems directly with their attorney.

Many times, clients' loved ones are the first witnesses to the psychological injuries they suffer. After all, they have been and will be in close contact with the client every day, so they are in an ideal position to observe the client before and after the psychological

injuries. Therefore, speaking with a client's family members can yield information that supports a claim for a psychological injury, such as changes they see in the client since the traumatic event and how the client's relationship with them has changed in its aftermath.

Family members can also help persuade a client to seek treatment from a mental health professional. Some clients may not feel motivated to seek evaluation or treatment for themselves, but being asked by a family member may prompt them to do so, particularly if children are involved. Family members' own losses may be independently compensable as well. Where a traumatic event impairs a client's ability to provide companionship, services, or intimacy, a family member may have a derivative claim in their own right, which is another reason to develop the family's perspective early.

Explain the process of asserting a psychological injury claim.

Even if a client feels comfortable sharing that they might have suffered a psychological injury and you've done your due diligence getting their family's input, they may have reservations about moving forward because they don't know what to expect. To get a client comfortable enough to assert a psychological injury claim, an attorney and their team should educate the client on the process.

A starting point may be explaining that injuries in personal injury cases can be compensable, including psychological injuries, but plaintiffs cannot seek damages without proof of causation; to show causation, plaintiffs need an evaluation by an experienced mental health professional. That evaluation is often performed by a forensic psychologist or psychiatrist retained to examine the plaintiff, and it commonly yields a diagnosis the expert can causally relate to the traumatic event. A thorough evaluation will also explore the client's history, including any prior psychological conditions.

Where there is a history, a qualified expert can address it by distinguishing the client's baseline condition from any new or aggravated psychological harm caused by the traumatic event, and can explain how that distinction supports the injury claim. When a client has a prior psychological history, that comparative analysis is essential because it separates the baseline condition from the post-event condition.

Some clients will want to know what litigation will entail, including having to share details about their lives and injuries with opposing counsel, judges, jurors, and others. It's never too early to explain to clients how the litigation process works, what to expect, and when and how they will be expected to share details about their injuries and personal lives. It also helps to explain why we are asking. Clients worry about how they will be perceived, and a courtroom is intimidating. But if their case is tried, the client will sit in front of a jury of their peers; what that jury understands about the client's psychological injuries will depend almost entirely on their ability to describe their experiences in their own words.

An attorney's role in these cases is to help the client become as comfortable as possible with discussing what they're going through to not only maximize their chances of recovering damages but also to move forward with the rest of their life. Candor about the litigation process is part of that counseling. Attorneys should explain, gently but plainly, that pursuing a psychological-injury claim places the client's mental condition at issue, meaning that relevant portions of the client's psychological history and treatment records may become discoverable, often reaching back well before the traumatic event, and that the defense will ordinarily be entitled to evaluate the client through its retained expert under New Jersey Court Rule 4:19-1. None of this should be a reason to leave a legitimate psychological injury uncompensated, but a client who hears it from us at the outset is better prepared, and far less likely to feel blindsided, when those requests arrive.

Build a network of mental health professionals who understand and empathize with plaintiffs wrestling with psychological injuries.

No client, especially one reluctant to seek evaluation and diagnosis, will agree to be evaluated by and/or treat with a mental health professional if they don't feel comfortable with them and confident in their abilities. Thus, plaintiffs' attorneys should build a network of mental health professionals who have experience working with people who have suffered psychological injuries from traumatic events, know how to build trust with them, can evaluate them for injuries, and can document their findings in ways that will withstand scrutiny from opposing counsel and the court. As the network takes shape, attorneys should remember that treating clinicians and retained forensic evaluators serve different functions, operate under different confidentiality expectations, and

answer different questions. Retaining a treating clinician as an expert witness can often be fruitful, but sometimes, asking one professional to play both roles can compromise the treatment relationship and invite the defense to attack the evaluator's objectivity.

Importantly, attorneys should not build this network only when they need to refer out a client. They should view this network building as an ongoing business operation, much like marketing, as it can take years for a personal injury practice to build a trusted network of medical professionals who can cover the full spectrum of clients' needs. The longer attorneys wait to build this network, the more likely they are to struggle to find the right medical professionals for their clients' specific needs, which can delay injury evaluation and the start of treatment.

Bringing Hidden Psychological Injuries into the Light

While society, particularly younger generations, has become more comfortable discussing mental wellbeing and the mind-body connection, psychological injury can still be a sensitive topic that's not always well understood by others, particularly because psychological injuries cannot be seen. By leading with empathy, reassurance, and professionalism, plaintiffs' attorneys can smooth the way for clients to understand the psychological component of traumatic events, pursue evaluation and treatment of their psychological injuries—which is as important to their wellbeing as the evaluation and treatment of their physical injuries—and seek full and fair compensation for those injuries through the court system.

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