



Calculating Damages in Negligence Lawsuits Against Departments of Human Services

Governments, be they city, county, state, tribal, or federal, administer a wide range of social welfare services and have a duty to properly discharge those obligations. Professionals hired by government agencies, regardless of the tasks they perform, are expected to exercise a reasonable degree of skill and care in their work. When a department of human services is legally negligent in delivering or overseeing those services, our tort system is designed, in some cases, to allow victims to make claims against it. Of course, negligence is a technical legal concept; not every failure or error made by a department worker will be negligent.

There are perhaps as many examples of departmental negligence as there are different types of services offered. A few examples can be gleaned from the headlines:

- ◆ DSHS settles Tacoma foster child's abuse case for \$11 million¹
- ◆ DSHS settles suit over hospital sex abuse case for \$3 million²
- ◆ Oregon agrees to pay \$1.5 million to settle wrongful death lawsuit³

How often do human service departments get sued for negligence? The number is unknown. Howard Talenfeld, a Florida-based attorney who focuses his practice on protecting the rights of vulnerable children, civil rights cases, personal injury cases, and systemic reform litigation, suggests that "many cases have been settled confidentially to avoid the negative publicity concerning defendants who want to stay off the public radar and avoid governmental and public scrutiny



concerning their dangerous child welfare practices."

Damages cover the consequences of negligence. The damage award equation is more complicated than can possibly be addressed in this brief note. Not all acts of negligence can easily be valued in terms of money. However, since compensation can be given only in money, a dollar value must be calculated. Naturally, high value cases attract media interest, and such cases may lead to misunderstanding about how damages are customarily calculated. Generally, the amount of compensation awarded depends upon the nature and severity of the responsible party's negligence and the damages sustained. Some specific elements that are often taken in account are:

- ◆ The nature and severity of the injury
- ◆ Time duration of any physical or emotional suffering

- ◆ Time duration and cost of treatment and rehabilitation
- ◆ The nature of the negligence
- ◆ Cost of essential lifestyle changes
- ◆ Present and future income loss

When a department's negligence results in death, the compensable damages will often depend on state law. Many states distinguish between wrongful death and survivorship damages. Daryl L. Zaslow, a New Jersey attorney who frequently handles claims against state agencies responsible for protecting children, explains: "Under New Jersey law, when a person dies as a result of the negligence of a state agency there are two potential causes of action that may be brought. The first is called a survivorship action. The administrator as plaintiff seeks damages for the decedent's hospital and medical expenses, loss of earnings as well as any disability and

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impairment, loss of enjoyment, and pain and suffering which the decedent sustained between the accident or negligent act(s) and his/her death. Legally, the victim is entitled to recover the damages which the decedent sustained during this period of time. The recovery then passes via the laws of intestacy.”

The second cause of action is a wrongful death claim. Under this law, the plaintiff brings a lawsuit as the representative of the survivors of the decedent and seeks to recover damages from the defendant, contending that the defendant department's fault was responsible for the death of the decedent. The monetary damages sought on behalf of the survivors of the decedent represent the actual financial loss that the plaintiff contends has been

and will in the future be suffered by the survivors due to the death of the decedent. This claim for pecuniary or financial loss is distinguished from any physical injuries or suffering that may have been sustained by the decedent, such as any pain and suffering or disability sustained by the decedent. Zaslow notes that “in most cases against human services agencies that fail to protect children and result in death, the survivorship damages exponentially exceed the wrongful death damages due to the age of the decedent and the family dynamics which necessitated the involvement of social welfare.”

There is no exact science in calculating damages. It may be relatively simple for some claims. For more complex ones, the plaintiff's attorneys and the department's

attorneys will retain experts ranging from doctors, statisticians, actuaries, psychologists, social workers, and accountants—all of whom will opine on a multitude of factors that will need to be considered. ¹

Reference Notes

1. http://seattletimes.com/html/localnews/2019884510_dshs12m.html
2. <http://q13fox.com/2013/03/15/dshs-settles-suit-over-girls-hospital-rape-case-for-3-million/#axzz2Si016bFN>
3. http://www.oregonlive.com/politics/index.ssf/2012/02/oregon_agrees_to_pay_15_millio.html

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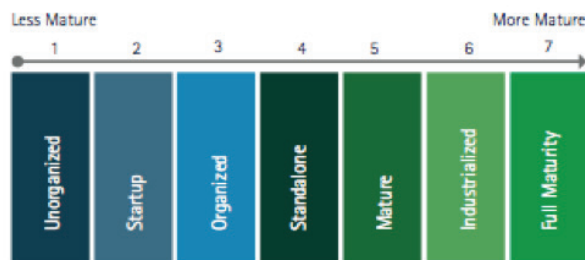


Figure 2. The SOA Governance Maturity Model outlines a series of phases and associated objectives.

to publish a service's existence. The registry allows potential clients to “discover” the service and communicates the web services-based interface, operations, and message types employed by the hosted service.

It will also be important for the governing body to use other tools to monitor performance and service metrics. Selected metrics may include total transactions, service errors, service up-time, service latency, and service re-use.

A Measured Path to Success

With these enablers in place, human service organizations should start small and work their way up to a more

sophisticated governance structure. As the SOA Governance Maturity Model reveals, this process will mature over time—moving from unorganized to full maturity over at least five years (see Figure 2). Within each phase of the maturity model, specific objectives are set for people, processes, and technology.

Organizations that are implementing SOA, but struggling to establish an effective SGI, should conduct an “as is” assessment of current capabilities. From there, they can create a “to be” plan, with a clear timeline and associated actions for meeting the objectives for each phase. Not every organization will need to progress through all seven

levels. The increased cost associated with higher levels of maturity should be balanced against the expected benefits of achieving those levels.

Driving Return on Investment

Contrary to popular belief, one of the biggest reasons that SOA implementations fail has nothing to do with technology—and much to do with the lack of an effective SOA governance infrastructure. With the right governance approach, human service organizations are well positioned to realize the expected benefits of SOA—and maximize their return on investment. ¹

Reference Note

1. The Standish Group, “CHAOS Summary 2009.”

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