

# The social amplification of landowner liability risk in the U.S. Northern Forest

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In the United States, limited liability statutes for recreational use of private lands remove most accident liability from the landowner and place most of the burden of care on the recreational visitor. In spite of these protections, landowners still worry about liability claims and cite accident risk as one of the primary reasons for denying recreational access to their land (Jagnow, Stedman, Luloff, San Julian, Finley, & Steele, 2006). Wright, Kaiser, & Nichols (2002) examined the gap between landowner fears about liability claims and actual recreation-related court cases in the United States, and argued that there was a substantial gap between perception of liability and reality. Bennett & Crowe's analysis of liability in the United Kingdom (2008) noted that "landowner perception of the level of liability risk appears, for some reason, to be over-stated" (p. 1). They attribute this perception, in part, to citizen concerns over a "compensation culture" or the rise of a more litigious society. However, little research has specifically examined why some landowners are more fearful of being sued in the event of an accident. Nor has past research examined how these fears translate into specific actions. Does liability fear lead a landowner to restrict all recreational use to their land? Or do limited liability statutes help ease some landowner fears, which then lead only to limited restrictions for recreational access? This paper uses landowner attitudes, perceptions, and knowledge about recreational access and liability to explore why some landowners are more fearful of accident claims, and to explore variation in the types of restrictions that landowners impose on their property.

This study used data collected in 2007 and 2008 on recreational access on private lands in the Northern Forest region of the United States, which includes 10.5 million hectares of forested lands in parts of New York, Vermont, New Hampshire, and Maine. The study included small private landowners with 400 hectares or less (n=1083) sampled from six townships per state (24 townships total). It also included large corporate landowners across the four states (n=88) with holdings that ranged from 300 hectares to over 500,000 hectares.

The analysis used logistic regression and multinomial logit modelling. In the logistic regression model, the dependent variable was a dichotomous variable (Yes/No) that asked respondents to indicate if they were "worried about lawsuits if people are injured on my land." In the multinomial logit model, the dependent variable was a range of eight types of access restrictions that ranged from "allowing people access if they ask first" to "denying a snowmobile or ORV trail right-of-way" to "denying all access to my land." These items were collapsed into three categories that represented a range of less restrictive to most restrictive activities allowed.

The study used eight independent variables in the analysis. To measure the compensation culture hypothesis, we included two indicators. 1) First was a "frivolous claims" type of measure where we asked respondents to report their attitudes about the people who make liability claims – i.e., their willingness to sue and their tendency to blame others for their accidents. 2) Second was an "ambulance chaser" type of measure that asked about respondent attitudes toward lawyers - the cost of legal counsel and their ability to find ways around liability protection. 3) Next, we asked them about their overall familiarity with liability laws in their state. 4) We also asked respondents to

report their perceptions about the adequacy of liability statutes in their state. 5) We also included a variable that asked if people thought public access to private land had changed over the previous 10 years. The Northern Forest, like many places, has experienced dramatic land tenure change over the past 25 years. This measure was used as a “culture clash” measure that served as an indicator for local fear of outsider-induced change. Finally, we used three control measures in the analysis. 6) First we controlled for state of residence. Wright et al’s (2002) analysis showed that New York had the most number of recreation-related liability cases heard in the courts of any state in the US (81 cases heard during their study interval). At the same time however, New Hampshire and Maine had only ten cases combined, and Vermont had no court cases. So fear of liability may be related to press coverage of accident claims made in the respondents’ state of residence. Finally, we controlled for 7) total acreage owned, and 8) corporate vs. private ownership. Large land holdings are frequently owned by corporations or partnerships that have financial or investment interest. Those who own larger tracts of land and have a corporate ownership structure may be more knowledgeable about recreation liability, may be more likely to have liability insurance.

The results showed that only the attitude and perception indicators were related to fear of liability risk. Those who believed recreationists and lawyers are more willing to bring liability claims were more likely to fear lawsuits. Knowledge of the laws, perception that more people were limiting access, state of residence, number of hectares owned, and corporate vs. private ownership were not significantly related to fear of lawsuits. These results support the notion of a social amplification of risk in the attitudes, beliefs and perceptions about liability risk, which likely work independently of legal reassurances and other situational factors related to location or property characteristics.

The results also showed that there were no differences in the level of restriction to one’s property. Those who were more worried about recreationists, lawyers, and lawsuits were no more likely to post their land against all use than those who were less concerned. There were differences in restriction by state and by number of hectares owned, but they did not differ across different levels of restriction.

The results suggest that fear of liability among landowners is not based on legal protection education or the small number of court precedents. Instead fear may be amplified by high profile injury claims in the press from a variety of settings (work, highway, and recreation) and perhaps by the broader socialization of risk through the insurance industry.

## *References*

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