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Luzak, J.

**Publication date**

2008

**Document Version**

Final published version

**Published in**

Gedrag en privaatrecht : over gedragspresumpties en gedragseffecten bij privaatrechtelijke leerstukken

**License**

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**Citation for published version (APA):**

Luzak, J. (2008). Client satisfaction: incentive for service providers to warn their clients? In W. H. van Boom, I. Giesen, & A. J. Verheij (Eds.), *Gedrag en privaatrecht : over gedragspresumpties en gedragseffecten bij privaatrechtelijke leerstukken* (pp. 83-101). (Boom masterreeks). Boom Juridische uitgevers.

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# HOOFDSTUK 4

## CLIENT SATISFACTION – INCENTIVE FOR SERVICE PROVIDERS TO WARN THEIR CLIENTS?

*J. Luzak*

### SAMENVATTING

*De in de bouwsector geldende waarschuwingsplicht geldt ten behoeve van opdrachtgevers en niet ten behoeve van de in de bouwsector actieve dienstverleners. Dit artikel toont echter een verband aan tussen de tevredenheid van de opdrachtgever die door zijn dienstverlener is gewaarschuwd voor gebreken in de geleverde dienst en de kans dat de opdrachtgever loyaal blijft tegenover zijn dienstverlener en dat hij dus vaker met hem zaken zal blijven doen. Het doel van dit artikel is te illustreren dat de waarschuwingsplicht daarom ook in het belang van de dienstverleners kan zijn en dat dienstverleners zich niet zouden moeten verzetten tegen de regulering van de waarschuwingsplicht.*

### 1 INTRODUCTION

Client satisfaction has become a leading marketing concept. Companies spend a lot of money researching when and why clients are satisfied. The outcome of such research is applied in their everyday business practice.<sup>2</sup> People struggle to reach satisfaction and are often frustrated because they are not able to do so. As I will point out in this article, it is not easy to establish when someone feels satisfied. People tend to have various expectations which have to be compared to the quality of the service they have received in order

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2 Business International 1990; Wylie 1993, p. S1-S5; Higgins 1997, p. 12.

to determine whether they are satisfied. The quality of the received service is not experienced objectively. It is the perceived service quality – which is subjective, and differently perceived by every client – which is relevant. Furthermore, it needs to be taken into account that clients tend to expect fair treatment, namely, that they will get as much out of the agreement as the professional party. If they get the feeling that this is not the case, they will be less likely to be satisfied. These are only a few out of many factors which may influence clients' satisfaction. What makes satisfying clients a challenge is that most of these conditions need to be fulfilled in order for a client to feel satisfied. Nowadays, people tend to have higher expectations, partially due to having a wide variety of choices available to them, which convinces people that there is a perfect product/service available somewhere out there.<sup>3</sup> Higher expectations are more difficult to meet. Due to the wide range of products and services to choose from, a client may also often have the feeling that by picking one product or service and not another he has missed out on something.<sup>4</sup> Instead of feeling happier and satisfied, clients tend to feel confused and worried about whether they have made the best decision in the given circumstances. All in all, most of clients would say as a rule: 'I can't get no satisfaction'.<sup>5</sup>

This article will present what is understood by satisfaction, what its antecedents and consequences are. I will focus on one of the most important consequences of having a satisfied client – gaining his loyalty – and discuss what the benefits of this are for service providers. The main question this article poses is whether it is profitable for a service provider to suffer more costs by warning his client of potential/existing defaults and thus ensuring that his client is satisfied with the whole of the services rendered to him. Is this satisfaction and the resulting loyalty a sufficient incentive for service providers? In this article I apply the findings of research on satisfaction to legal research on the duty to warn of professional parties under Dutch construction law. It is mostly the renovation part of the construction sector that this article is likely to be relevant to since clients' satisfaction concerning renovation would probably be more likely to manifest itself faster in a tangible manner, i.e. additional orders for the service providers, recommendations of the service providers to friends and family, et cetera.<sup>6</sup>

<sup>3</sup> Schwartz 2005.

<sup>4</sup> Schwartz 2005.

<sup>5</sup> M. Jagger and K. Richards, '(I Can't Get No) Satisfaction' (performed by Rolling Stones, first released in 1965).

<sup>6</sup> The value and quality of a service acquired by the client in respect of the construction sector might not be easy to establish. From the economic point of view in case of credence goods, the quality of which might not be easy for clients to establish even after consumption, clients' choice of goods shall rather be based on third-party information. This means that clients' satisfaction in respect of such goods might have little significance. In case of experience goods, the quality of which can be ascertained upon consumption, clients' satisfaction and consequent word-of-mouth would matter more for service providers. Since renovation works could possibly belong to experience goods the law and economics analysis thereof remains outside the scope of this research.

Before answering the main question, it is important to note that the findings in this article have not been researched empirically by the author. All the statements and analyses cited in this article derive from research conducted by various academics specialized in psychology and economics: the author has drawn her conclusions from these.<sup>7</sup>

## 2 SATISFACTION – DEFINITION

How does Richard L. Oliver, one of the leading researchers of the influence of satisfaction on consumer behavior, define satisfaction?

*'Satisfaction may best be understood as an evaluation of the surprise inherent in a product acquisition and/or consumption experience. In essence, it is the summary psychological state resulting when the emotion surrounding disconfirmed expectations is coupled with the consumer's prior feelings about the consumption experience. Moreover, the surprise excitement of this evaluation is thought to be of finite duration, so that satisfaction soon decays into (but nevertheless greatly affects) one's overall attitude toward purchasing products, particularly with regard to specific retail environments.'*<sup>8</sup>

This definition combines the concepts of clients' attitudes and purchasing intentions to define satisfaction. The so called 'disconfirmation paradigm' is a dominant framework for explaining client satisfaction.<sup>9</sup> In accordance with it, client satisfaction and dissatisfaction may be measured by using two cognitive variables: prepurchase expectations and disconfirmation. Every client has certain beliefs or predictions<sup>10</sup> as to the attributes of a product or a service before he concludes a contract. This means that he anticipates certain qualities of the product or service he will receive. Upon the conclusion and performance of a contract, the client receives the product or service acquired by him and then evaluates whether his expectations have been met. The difference between what he expected before the contract was concluded and his perception of what he received afterwards is called disconfirmation. Thus prepurchase expectations are confirmed when the service provided or product purchased fulfill the client's expectations. If prepurchase expectations are not met, the client's beliefs of the service are disconfirmed. Client's expecta-

<sup>7</sup> In this respect, it should be mentioned that the empirical research referred to has been conducted by specialists with respect to various contracts in various sectors of business, in order to confirm their more general theories on clients' satisfaction. They based their general conclusions thereupon, which were often confirmed in different research conducted by others. It is these general conclusions that this author will draw upon and refer to below.

<sup>8</sup> Oliver 1981, p. 27.

<sup>9</sup> Oliver 1980, p. 460-469; Anderson 1973, p. 38-44.

<sup>10</sup> Olson, Dover 1979, p. 179-189; Oliver 1980, p. 460-469.

tions may be negatively or positively disconfirmed. Negative disconfirmation refers to the client's expectations not being fully fulfilled. Positive disconfirmation happens when client's expectations have not only been met but also exceeded. According to this theory, the client will be satisfied when his expectations at least are fulfilled. This means that satisfaction with a product or with service also occurs in case of a positive disconfirmation. When the performance of the service or product is worse than the client's expectations prior to concluding the contract, the client will be left dissatisfied.<sup>11</sup>

It is important to note at this point that client's estimations and evaluations are not always of a very clear sort. Clients are deemed to have expectations but they often find it difficult to clearly define what these expectations are.<sup>12</sup> When a service is provided to clients, they often also have problems evaluating what its exact quality is.<sup>13</sup> Clients' thoughts on this subject are simply often 'fuzzy'. As research<sup>14</sup> has shown, client's satisfaction is more likely to lead to a client staying loyal to his service provider when client's satisfaction judgment is held by him strongly.

Moreover, some researchers<sup>15</sup> found evidence that sometimes perceived performance influences client's satisfaction more than his expectations. This is most common when a client has knowledge of a service before he acquires it. This has been partially explained by the fact that in such cases expectations of a client are very similar to the actual performance of a product or service.<sup>16</sup> For example, when a builder has his own house being constructed, he 'knows' how the construction should go and what the end product should look like, he doesn't just have to 'expect' it. As a result of this, his satisfaction with the received house will not depend on whether his expectations have been met or not, but rather on how the house will 'perform', i.e. how it turns out to be.

The abovementioned approach to satisfaction has been used by various researchers and their results mostly support the model used by Oliver.<sup>17</sup> Still, the definition of satisfaction has been formulated in many different ways by various academics.

For instance, sometimes clients' satisfaction is determined primarily by how well a service meets the client's need – customization quality – and how reliably it does so – standardization quality.<sup>18</sup> According to this concept, the client's satisfaction seems to be

11 Peter, Olson 1996, p. 508-511.

12 Rust, Inman, Jia, Zahorik 1999, p. 77-92.

13 Parasuraman, Zeithaml, Berry 1985, p. 41-50.

14 Chandrashekar, Rotte, Tax, Grewal 2007, p. 153-163.

15 Churchill, Suprenant 1982, p. 491-504; Tse, Wilton 1988, p. 204-212; Fornell 1992, p. 6-21; Anderson, Sullivan 1993, 125-143.

16 Johnson, Fornell 1991, p. 267-286; Gupta, Stewart 1996, p. 249-263.

17 Quoted in: Peter, Olson 1996, p. 511; LaBarbera, Mazursky 1983, p. 393-404; Bearden, Teel 1983, p. 21-28; Westbrook 1987, p. 258-270.

18 Juran 1988, quoted after: Anderson, Fornell, Rust 1997, p. 129-145.

dependent mostly on these two sorts of quality. Customization quality is the quality that meets the client's specific requirements (the attributes of the service, the way in which it is delivered, etc). Standardization quality corresponds to the lack of deficiencies in the service provided to a client.

Oliver<sup>19</sup> himself characterized satisfaction using other concepts, e.g. as a pleasurable fulfillment. When a client feels that consumption of a product or service fulfills some of his needs, desires, or goals, he considers the consumption pleasurable. In this model there has to be a standard of pleasure and displeasure experienced and a client is satisfied when a service meets that standard.

Due to the fact that it is the most popular concept among researchers examining satisfaction, I will focus on the disconfirmation paradigm in this article. Furthermore, since I will be researching the influence of satisfaction on the duty to warn in the construction sector, I shall only focus on the clients' reaction to a service rendered to them and not to products they purchase.

### 3 SATISFACTION LEADS TO LOYALTY? BENEFITS OF HAVING A SATISFIED CLIENT.

As mentioned in the introduction, I am focusing on satisfaction since there are reasons to believe that a satisfied client will stay 'loyal' to his service provider. I will use Oliver's<sup>20</sup> definition of loyalty. He describes loyalty as:

*'a deeply held commitment to rebuy or repatronize a preferred product/service consistently in the future, thereby causing repetitive same-brand or same brand-set purchasing, despite situational influences and marketing efforts having the potential to cause switching behavior'* [emphasis by R.L. Oliver].

The disconfirmation paradigm suggests that if the expectations of a client are met or exceeded, a client should be satisfied with the received service and be more inclined to stay loyal to his service provider.<sup>21</sup> However, as is well known, it does not always happen this way in practice.<sup>22</sup> Even when clients complain about a specific service, they might remain loyal to their service provider.<sup>23</sup> The opposite applies as well. Even when clients are satisfied with the service they have received, they might still change their service

19 Oliver 1997.

20 Oliver 1997, p. 392.

21 Gupta, Stewart 1996, p. 249-263.

22 Stewart 1997, p. 112; Reichheld 1996.

23 Even apart from the situation where the service provider in fact has a (quasi-)monopoly, as the case may be for public utilities but also with, for instance, public transport.

provider. It might thus be said that satisfaction is a necessary factor in the beginning of a client-service provider relationship, in order to create a sense of loyalty with the client. After this has been achieved, other factors often influence a client's decision whether to stay with the given service provider or not.<sup>24</sup> Despite other factors influencing a client's choice on whether to stay with his current service provider, there is a significant link<sup>25</sup> between the client's satisfaction and his loyalty towards the service provider to justify the latter choosing client's satisfaction as one of its main business goals. The costs of acquiring such loyalty will be discussed below.

Since it seems that satisfaction has an influence on the loyalty of the client, in general, I will now try to establish how that happens and what the consequences of this are. Various studies<sup>26</sup> have shown that the greater the satisfaction of the client, the greater his loyalty is. What are the benefits of this?

It has been argued, and proven by empirical research, that due to the fact that clients' satisfaction increases loyalty future revenues of the service provider are secured;<sup>27</sup> return on investment and return on assets are positively influenced;<sup>28</sup> the costs of its future transactions are reduced;<sup>29</sup> price fluctuations are decreased<sup>30</sup> and the probability that the client will switch to another service provider is minimized, even if the quality of the future product of his provider falters.<sup>31</sup>

Furthermore, due to the simple fact that the satisfied client does not have reasons to complain, some internal costs of the service provider are bound to be lower, e.g. warranty costs, handling/managing complaints, or field service.<sup>32</sup> Even if a service is not optimal a client may still be satisfied and probably won't complain to a service provider about small defaults therein. This leads to significant savings concerning complaint management as well as on potential remedies a service provider volunteers or is forced to (e.g. by court order) provide a client with.

24 Oliver 1999, p. 33-44.

25 Seiders, Voss, Grewal, Godfrey 2005, p. 26-43; Szymanski, Henard 2001, p. 16-35; Mittal, Kamakura 2001, p. 131-142.

26 E.g. Anderson, Sullivan 1993, p. 125-143; Yi 1989, ed. Zeithmal; Oliver 1980, p. 460-469; LaBarbera, Mazursky 1983, p. 393-404.

27 Fornell 1992, p. 6-21; Rust, Zahorik, Keiningham 1994.

28 Rust, Moorman, Dickson 2002, p. 7-24.

29 Reichheld, Sasser 1990, p. 105-111.

30 Anderson 1996, p. 19-30.

31 Anderson, Sullivan 1993, p. 125-143; Gustafsson, Johnson, Roos 2005, p. 210-218; However, we are talking here about a minor quality's decline. As will be mentioned in the following paragraphs, if the service failure is serious enough, the client's dissatisfaction will reach such high levels that it will undermine his loyalty towards the service provider altogether.

32 Crosby 1979; Fornell, Wernerfelt 1988, p. 271-286; Garvin 1988; Gilly, Gelb 1982, p. 323-328.

One other factor which shows how beneficial having satisfied clients might be for the service provider is the research<sup>33</sup> conducted on a clients' retention and acquisition costs. It shows that it is relatively cheaper for service providers to retain existing clients than to gain new ones. That suggests that service providers should pay attention to their clients' needs and expectations in order to satisfy them, since the cost of gaining new clients is deemed to be higher than that of keeping the old clientele.

Findings of research on the importance of word-of-mouth is also important to consider. Word-of-mouth can be defined as 'oral, person-to-person communication between a receiver and a communicator'.<sup>34</sup> A satisfied client is bound to share his satisfaction with his friends and acquaintances. This influences the service provider's image. It is well-accepted<sup>35</sup> that nonmarketing sources of information are taken under serious consideration by clients in their decision making process. This phenomenon might decrease the costs of attracting new clients since word-of-mouth advertising is free.<sup>36</sup> Therefore, client satisfaction should lead to a reduction of marketing costs of the service provider when his clients are satisfied. The general reputation of the service provider benefits from positive word-of-mouth from its clients. This is all the more important, since research<sup>37</sup> has shown that word-of-mouth might have a long-lasting effect. When clients evaluate the service they have been provided with, their assessments are still influenced by the word-of-mouth they had received prior to acquiring a service. This means that despite having their own positive experience with the service provider, a client's level of satisfaction might still be influenced by someone else's negative experience. That is one of the reasons for service providers to avoid negative word-of-mouth from its dissatisfied clients. It is also important to avoid negative word-of-mouth because research has shown that clients are more likely to share dissatisfaction in their social circles than satisfaction.<sup>38</sup> Research<sup>39</sup> has also shown that consumers seem to put more weight on negative information in making evaluations. This means that negative word-of-mouth causes a service provider more damage than positive reviews do good. Even one bad review among other positive ones might make a potential client look for another, more reliable service provider. It has also been proven<sup>40</sup> that clients complain mostly when the problem they experienced was

33 Fornell, Wernerfelt 1987, p. 337-346; Fornell 1992, p. 6-21.

34 Arndt 1967, p. 189.

35 Richins 1983, p. 68-78.

36 Brown, Barry, Dacin, Gunst 2005, p. 123-138; Ranaweera, Prabhu 2003, p. 82-90; Szymanski, Henard 2001, p. 16-35; Luo, Homburg 2007, p. 133-149.

37 Wangenheim, Bayón 2004, p. 211-220.

38 Fornell 1992, p. 1-21; Szymanski, Henard 2001, p. 16-35.

39 Lutz 1975, p. 45-59; Wright 1974, p. 555-561.

40 Richins 1983, p. 68-78.

severe. With the increase of dissatisfaction associated with the severity of the problem, there is a greater chance that clients will share their complaints with others.

At this point, it might be worth mentioning that some economists<sup>41</sup> associate increased customer satisfaction with higher costs for the service provider, due to the necessity of improving the product's quality as well as the clients' service. Of course, in order to meet clients' needs and expectations the standard and quality of service has to be high. Still, most academics see more benefits in keeping the service provider's clients satisfied than in keeping the production costs low.

#### 4 DUTY TO WARN IN DUTCH CONSTRUCTION LAW

The aim of this article is to apply the findings of research on satisfaction to legal research on builders' and architects' (professional parties taking part in the construction process) duty to warn in Dutch construction law. In this respect, I will take into account the antecedents of satisfaction and try to determine whether it is possible that a client will be satisfied when a professional parties' duty to warn is breached or neglected. I will focus on the duty to warn in the Dutch construction sector since this duty has been widely recognized by Dutch arbitration panels and courts,<sup>42</sup> even before the duty to warn was introduced to the Dutch Civil Code in 2003. It can be said that the Dutch judiciary set certain rules for the construction sector defining when a contractual duty to warn of a professional party comes into effect and when remedies should be awarded to a client for breach of such a duty. However, since this duty usually does not originate explicitly from contractual provisions, its existence and the rules involved might still not be as clear to contractual parties as their other obligations are. It should not come as a surprise that a professional party might be reluctant to warn a client of its own initiative, especially since a service provider might believe that it would involve additional costs to be borne by him and would not bring about any material profit. This article tries to prove that it would be in a professional party's best interests to observe its duty to warn. I will begin by describing a fictitious case study on the duty to warn in construction law in order to present more clearly what kind of issues may be raised when a professional party might be encumbered with a duty to warn and neglects to fulfill its obligations.

41 Griliches 1971; Lancaster 1979; Quoted in: Anderson, Fornell, Rust 1997, p. 129-145.

42 E.g. AIBk/RvA 12 december 1978, BR 1979, p. 230; AIBk 15 januari 1986, BR 1986, p. 373; RvA 17 december 1992, nr. 15.644, BR 1993, p. 737; AIBk/RvA 19 april 1994, BR 1995, p. 534; RvA 16 november 1990, nr. 14.214, BR 1994, p. 606; RvA 4 maart 1996, nr. 17.553, BR 1996, p. 430; HR 25 november 1994, NJ 1995, 154 (Stokkers/Vegt); HR 18 september 1998, NJ 1998, 818 (KPI/Leba); AIBk 22 juni 1999, BR 2000, p. 150; AIBk 17 januari 2000, BR 2000, p. 970.

A client has a house constructed on the basis of a design prepared by an architect. Both the architect and the builder have been informed of the client's wish to include a dormer window in the construction plans. However, the architect forgot to include it in his design, and even though the builder noticed this, he did not inform the architect that the dormer window was missing in the plans. The reason for the builder to remain silent about the missing dormer window was that it was both easier and cheaper for him to build a house without a dormer window. In principle, the builder adheres to his contract when the house matches the initial (architectural) design. Moreover, the builder may consider that should the client insist on having a dormer window after all, the builder will be entitled to extra payment and thus make more profit for performing additional work. In case, the builder had warned the client and the window was added to the plans, however, his profit would probably not have changed, since the costs of construction are usually estimated upfront. He thinks, therefore, that he has a strong incentive not to inform the client of the architect's omission.

Clearly, such a scenario is disadvantageous for the client. The extra costs involved in the renovation of the house may be claimed as damages from the architect on the basis of non-performance by the architect of his obligations under his contract with the client, provided that the architect has not successfully limited or excluded his liability, which is what usually happens. And even if the client would be fully financially compensated he would still have to live with the discomfort resulting from the fact that his newly built house needed further work.

This scenario can be prevented if the builder is required to inform (warn) the client (or the architect) of the omission in the design (and is liable for failure to do so). This is even more important if the defect in the design does not lead to mere discomfort for the client, but to a possibly dangerous situation, e.g. when the architect does not take into account that the soil on which the house is to be built is unfit for the construction of a house unless it is piled. However, aside from the legal provisions obliging the builder to issue a warning, is there no *other* incentive for the builder to do so?

I mentioned that the builder might be thinking that he can count on the client coming back to him later on with an additional commission for adding the dormer window to an already built house. Research on consumer behavior shows, however, as we have seen,<sup>43</sup> that it might be questioned whether the client would actually do so. Moreover, it is doubtful whether he would use the same builder for any of the future work he might want to have performed (which will be further elaborated on in the following paragraphs). It might also happen that the client would notice himself the lack of a construction element

43 Stewart 1997, p. 112; Reichheld 1996; Lutz 1975, p. 45-59; Wright 1974, p. 555-561.

desired by him, in this case the dormer window, while the construction was still taking place and would then demand from the builder to correct the state of things immediately. This would mean that the builder would not gain anything by keeping quiet about the lack in the design.

It might be argued that in the construction sector clients' loyalty is not such a key issue to the service providers as it might be in other sectors. Construction contracts are often considered to be short term contracts, and consumers usually don't have more than one house built in a lifetime. However, even in respect of this sector a satisfied client will most probably spread positive word-of-mouth among his friends and acquaintances, thus possibly bringing new business to the service provider. And although a client might not be interested in building a new house in the next few years after the first construction was finalized, however, he might want some changes to be made within the construction, e.g. an additional garage, et cetera, thus his loyalty is still a relevant issue to the contractor.<sup>44</sup> In fact, as I have mentioned in the introduction it is mostly this renovation part of the construction sector that this article is likely to be relevant for.

##### 5 WHEN IS THE CLIENT SATISFIED CONCERNING THE DUTY TO WARN?

As was mentioned in the last paragraph, in the Dutch construction sector a professional party's duty to warn towards a client has been repeatedly recognized. The cases I mentioned<sup>45</sup> concerned the breach of a duty to warn by a professional party and the consequences thereof. Such a breach of a duty to warn could occur when e.g. the builder did not warn the client of a fault in the construction plans despite the builder noticing or being able to notice that.<sup>46</sup> In all such cases the client claimed compensation stating that the professional party on account of the breach of its duty to warn, should be held liable for non-performing or negligently performing its contractual duties.

When the duty to warn is breached by a service provider, it would lead to a service failure in the eyes of a client. When such a service failure occurs it will surely influence the satisfaction a client feels as to the given transaction.<sup>47</sup> The service failure may make a client aware of the potential detriments of dealing with the given service provider by

44 And if this reasoning applies to construction contracts, it clearly applies to relational contracts in general.

45 E.g. AIBk/RvA 12 december 1978, BR 1979, p. 230; AIBk 15 januari 1986, BR 1986, p. 373; RvA 17 december 1992, nr. 15.644, BR 1993, p. 737; AIBk/RvA 19 april 1994, BR 1995, p. 534; RvA 16 november 1990, nr. 14.214, BR 1994, p. 606; RvA 4 maart 1996, nr. 17.553, BR 1996, p. 430; HR 25 november 1994, NJ 1995, 154 (Stokkers/Vegt); HR 18 september 1998, NJ 1998, 818 (KPI/Leba); AIBk 22 juni 1999, BR 2000, p. 150; AIBk 17 januari 2000, BR 2000, p. 970.

46 E.g. HR 25 november 1994, NJ 1995, 154 (Stokkers/Vegt); HR 18 september 1998, NJ 1998, 818 (KPI/Leba).

47 Vázquez-Casielles, Belén del Río-Lanza, Díaz-Martin 2007, p. 249-264

increasing his doubts and making him more prone not to stay loyal to the service provider.<sup>48</sup> However, it might not make him give up the services offered by a service provider, altogether. I will now elaborate on some of the concepts which might be relevant when a service failure occurs due to the breach of a duty to warn.

The key concept which should be taken into account here is causal attributions. Attribution theory claims that clients come up with certain conclusions as to why the service failure has happened.<sup>49</sup> These conclusions have been categorized<sup>50</sup> as: locus of causality, stability and control.

Locus of causality describes whether a client believes that the service failure happened due to his own errors or has rather been caused by the service provider. It is important to note that clients rather tend to perceive any service failure as related to a service provider. As research<sup>51</sup> has shown, clients do not consider themselves responsible for failures and tend to attribute them to situational or external causes. This is important to realize as clients tend to complain more and spread negative word-of-mouth more when they perceive the failure to be caused by the service provider and not by themselves.<sup>52</sup>

As far as stability is concerned, a client may view the failure's cause to be either permanent or temporary (incidental). If a client views the cause as temporary, he might be more willing to stay loyal to his service provider, even though he would be dissatisfied with the received service. The perception of the cause as a temporary one might be influenced by the past experiences a client has had with his service provider. If they were positive and a client had been satisfied with the quality of the service, then he is more likely to consider the service failure as a temporary one, or a one-time thing.<sup>53</sup>

Finally, while ascertaining the control attribution a client decides whether a service provider could have done anything to prevent the service failure and whether enough has been done.<sup>54</sup> A client considers here the competence of a service provider and the effort that he believes has been made to prevent the failure from occurring.<sup>55</sup>

Research has shown that clients experience less satisfaction when the cause of the failure is perceived as having been caused by the service provider, when it is perceived

48 Chandrashekar, Rotte, Tax, Grewal 2007, p. 153-163.

49 Heider 1958; see also the contribution by Giesen in this book.

50 Weiner 1986.

51 Hui, Toffoli 2002, p. 1825-1844.

52 Richins 1983, p. 68-78.

53 Weiner 2000, p. 382-387.

54 Weiner 2000, p. 382-387; Hui, Tse, Zhou 2006, p. 151-162.

55 Narayandas 1998, p. 108-128.

as permanent (stable)<sup>56</sup> and when it is thought that the service provider could have prevented it (controllable).<sup>57</sup>

Furthermore, it has also been proved<sup>58</sup> that clients' emotional responses to a service failure are influenced by their view on how it was caused. Hence, when clients perceive service failure to be controllable or having occurred as a result of stable causes, they are prone to experience more negative emotions. "Emotions arise in response to appraisals one makes for something of relevance to one's wellbeing".<sup>59</sup> The attribution-emotion relationship proves that it is not the service failure itself which wakes negative emotions in a client, but rather the evaluations clients make about the causes of the failure. These negative emotions are bound to have a negative effect on satisfaction.<sup>60</sup>

How do these three factors relate to a breach of the duty to warn? In this article I focus on the service provider's duty to warn, not on the client's. This means that any service failure which should have been reported, should have been reported by a service provider. This does not mean, of course, that a service provider necessarily caused the default. But as was mentioned previously, clients tend to believe that their actions are not the reason for the service failure. They more readily believe that when a service provider had a duty to warn, the default was either created by the service provider's actions or could have been prevented by some counteraction.

As far as stability of the failure is concerned, it is worthwhile to note that with respect to the duty to warn in construction sector the faults mentioned had quite serious negative consequences for the clients.<sup>61</sup> This might lead to the assumption that even if a particular client has a long-lasting, efficient and profitable business relationship with a given service provider, one serious mistake which brings about serious financial negative consequences for a client, might change his attitude. Thus even if the failure is incidental in the business relation between a client and a service provider, its seriousness shall most likely make a client look at the failure as permanent (stable). One case of dissatisfaction might thus signify the end of a relationship.

The most commonly found breach of the duty to warn occurs when a service provider was or should have been aware of the fault in the service rendered and failed to report it to the client.<sup>62</sup> The whole point of warning the client of the fault is to prevent service

56 Casado, Mas 2002, p. 118-140; Tsiros, Mittal 2000, p. 401-417; Tsiros, Mittal, Ross 2004, p. 476-483.

57 Oliver, DeSarbo 1988, p. 495-507.

58 Folkes 1998, p. 548-565; Oliver, DeSarbo 1988, p. 495-507; Spreng, MacKenzie, Olshavsky 1996, p. 15-32; Oliver 1997.

59 Bagozzi, Gopinath, Nyer 1999, p. 185.

60 Vázquez-Casielles, Belén del Rio-Lanza, Diaz-Martin 2007, p. 249-264

61 E.g. roof of the client's building collapses in RvA 7 oktober 1983, nr. 11.380, BR 1984, p. 166.

62 E.g. HR 25 november 1994, NJ 1995, 154 (Stokkers/Vegt); HR 18 september 1998, NJ 1998, 818 (KPI/Leba).

failure from occurring. Thus the last antecedent of control attribution seems to be fulfilled in case of a breach of the duty to warn, as well.

On this basis, it might be quite safe to assume that when a service provider breaches his duty to warn which results in a failure, his client shall most likely not be a satisfied one in psychological terms. Since the service failures I have in mind with regard to the construction sector usually bring about serious negative consequences to a client, even his dissatisfaction with one element of the whole service rendered to him (lack of warning) could cause the dissatisfaction with his service provider in general.

#### 6 CONCLUSION – THE RELEVANCE OF SATISFACTION FOR THE NEED OF THE DUTY TO WARN

When a client is dissatisfied with a service he will likely not return to the same service provider when he requires that service in the future. This means that service providers are more likely to lose their business when they do not fulfill their clients' expectations and when they disregard the value of clients' satisfaction. Furthermore, a client who is dissatisfied by the service provided to him, is likely to share his dissatisfaction with his social circle, which might mean loss of other potential clients for his service provider.<sup>63</sup>

Since it may be fairly assumed, on the basis of the conclusions drawn from this article, that the breach of the duty to warn by a service provider shall most likely leave the client dissatisfied, all these negative consequences will probably also apply to service providers who do not observe their duty to warn.

The remaining question is whether the stated negative consequences of not satisfying clients are sufficient to make it worthwhile for service providers to pay attention to their clients' needs and expectations and to warn them if there is a fault, or a risk thereof, in the service even if there might be countervailing arguments. The presented arguments seem to indicate that this is indeed more beneficial for service providers. In other words, the negative consequences for service providers of not warning clients seem to outweigh the added costs of warning the client (and possibly the investigation/inspection needed to perform a duty to warn). Warning a client of (possible) problems therefore seems to be ultimately also in the service provider's best interest.

One might wonder, if this is indeed the case, whether and why a duty to warn should be and is regulated at all. If it is in the best interest of service providers to warn they may

63 Peter, Olson 1996, p. 511.



be expected to warn their clients without being obligated to do so.<sup>64</sup> It is important to remember, however, that the duty to warn is regulated in order to protect clients. This regulation of the duty to warn is ultimately for their benefit, not for the service providers'. Thus, the argumentation presented in this article is not supposed to constitute a justification for the acceptance of the duty to warn of a service provider, but to portray why such a duty should not be regarded as burdensome for these service providers.

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