

Legal Notes: April 2016

The long standing rule in America was that if somebody was negligent, then that person would be responsible. If a driver swerved all over the road and took out a mailbox, then the driver would be responsible for replacing the mailbox. Exception to the this rule were just that, exceptions. A current legislative trend has the exceptions swallowing the rule.

Exceptions came in the form of "immunity," a person would be "immune" from liability. Some immunities are for the general public and work well, the recreational immunity law in Wisconsin comes to mind. Others seem much more aimed at protecting certain classes of people (donors?). These immunities can also be seen as back door "tort reform." It would not surprise me if some of them originated with ALEC, the group written about in last month's Union Herald.

Our estimable local assembly representative, Steve Doyle, spoke to the local bar association last week about pending and passed legislation. In that list there were a number of new "immunity" bills. They include exemptions from liability for:

- Placement of buoys or other markers in waterways
- Certain equine (horse) activities
- Death or injury at a private campground
- Placement of certain structures in navigable waters
- Use of ski areas by bicyclists (apparently that is a regular activity)

Most of these miscellaneous immunity laws are found in Section 895 of the Wisconsin statutes. If you ever find yourself with a set of statute books and a few extra hours, read through this section (as well as the exemptions to the fair labor laws, also good reading). Immunity for people who use toilets? Damage for injury caused by anhydrous ammonia? Claims of weight loss? Does anyone really sue because they didn't lose as much weight as the package claimed? Or did manufacturers of such products just want a free hand to make whatever claims they could?

People are often under the misperception that we are somehow a more litigious people now than in the past, and that is why we need these laws. Open any law book from 75 or 100 years ago and read the many cases where our grandparents sued over trivial

matters. Lawsuits are nothing new. What is new the protection of certain classes of people from liability even before a matter can go to court.