Legal Notes by Ross Seymour

With the current "news" about the dangers of sledding and the alleged rash of sledding hills closing because of the "lawyers," I wanted to re-run an article on recreational immunity from 2007:

Now that summer is here maybe it's a good time to look at a law that is the source of much confusion: the recreational immunity law. In Wisconsin, this law is quite a powerful source of immunity for landowners. However, the law is a bit confusing and there are a few big exceptions.

As a preliminary note, I'll be talking only about Wisconsin, not other states, such as Minnesota or Iowa. This is a state law, and as with most state laws, they vary from state to state.

In a nutshell, the law gives immunity to landowners from liability for injuries from recreational use of their property.

Recreational activities are defined broadly in the statute (Sec. 895.52). There is a long list in addition to a definition. The definition is "any outdoor activity undertaken for the purpose of exercise, relaxation or pleasure…." The list then goes on to include just about anything you may want to do outdoors in Wisconsin, including a couple that may not (at least in my opinion) fit in that definition such as cutting wood and trapping. The big (and only listed) exception to the definition is organized (as opposed to unorganized?) team sports sponsored by the owner of the property. Property is also broadly defined. It includes the real estate (land) and water, as well as improvements to the property, such as buildings and other structures. Residential property is subject to an exception that I'll discuss later.

Not only does the statute give immunity, it also relieves property owners of certain duties. Property owners have no duty to keep the land safe for recreational use, inspect the property or warn users that come on to the property about unsafe conditions, use or activity on the property.

All in all, a significant source of protection for landowners. But there are some exceptions and court rulings to take note of.

This immunity will not apply under the following circumstances: If you charge money for admission to property and such charges are more than $2,000 per year. There are number of exceptions or clarifications to this exception about what is meant by "charge," but I won't go into them here. If you maliciously fail to warn of a known danger or maliciously set up a known danger on your land (like a man-trap). Malicious is a variable term, but generally means you really hated someone and acted because of that hate.

Here is one of the more important exceptions, that for social guests. Landowners are not generally immune for the injuries of social guests. A social guest is someone whom the landowner has specifically invited for a specific occasion, and the injury occurs at that time. Also, for the immunity not to apply, the injury to the social guest has to occur on or near the person's residence or a commercial building. For example, if you invite someone to a pool party

at your house, no immunity. If someone just shows up at your house and jumps into the pool without a specific invite, immunity. If you own forty acres and don't live there, invite someone to go hunting (and don't charge them), immunity.

As you may imagine, this statute is well litigated here in Wisconsin and the cases cover a number of oddball situations (e.g. saying hello to your neighbor is not a recreational activity). The cases are very fact specific. However, there is a basic rule of immunity that should allow most landowners some peace of mind for those who come onto there land for recreational purposes.