



2015 WSSFC Substantive Track – Session 11

Don't Step in It! Premises Liability Law in Wisconsin: What to Look Out for Including the Statute of Repose, Safe Place Law, and Recreational Immunity

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About the Presenter...

Jon Groth is the owner of Groth Law Firm, S.C. a plaintiff's personal injury firm helping injured victims across Wisconsin. A highly competitive practice area, Groth Law Firm, S.C. succeeds with the help of its superior staff, internet marketing and referrals. Groth Law Firm, S.C.'s has two attorneys and 2 full time paralegals along with part time staff. Mr. Groth is a frequent lecturer to local and state bar associations on topics related to personal injury litigation. Mr. Groth has been active in the State Bar serving as the Chair of the 2010 Wisconsin Solo and Small Firm Conference.

Don't Step In It! Premises Liability Law In Wisconsin



Save Time, Money and Trouble

- ▶ How to make friends and clients from non-clients.
- ▶ Analyze a case and be truthful about the viability of the case from the outset.
- ▶ Damages may be GIGANTIC ... if no liability the law firm will lose money. "Legal bullying" doesn't work.


Statutes of Limitations

- ▶ Nationwide lists are everywhere.
- ▶ Be careful what you find for free.
 - Free doesn't always equal accurate.
 - For example injury SOL in WI is 3 years NOT 2 per a certain popular cite.
 - Ask members of AAJ or the local Association for Justice.
 - Do the research.

SOLs

1. SOL specify the time period within which a cause of action must be commenced after it has accrued.
- ▶ 2. Limitation of action is a right as well as a remedy.
- ▶ 3. Public policy determination.
 - a. Discourages stale and fraudulent claims;
 - b. Allows meritorious claims

SOLs



SOLs - Consider 2 Things

- 1 SOLs establish time frames within which claims must be initiated after the cause of action accrues;
- 2 Statutes of repose limits time periods based on the date of act or omission and can toll/run before the injury is discovered or has accrued. This bears no relation to the accrual of the cause of action.

Statutes of Repose

- ▶ Claims for injuries including safe place claims resulting from improvements to real property asserted more than a certain number of years after completion of the improvement are barred.
- ▶ Action against a surveyor for negligent surveying are to be brought no more than 6 years after the completion of the survey.

Perfect Premises Case

- ▶ 1) No Gait Issues (no pre existing)
- ▶ 2) Perfect vision or wearing corrections
- ▶ 2) Flat Shoes with all weather tread
- ▶ 3) Commercial Building
- ▶ 4) Visiting for the first time
- ▶ 5) In the building NOT outside
- ▶ 6) If outside better if private walk
- ▶ 7) Not there for recreation
- ▶ 8) Nothing "obvious" about risk

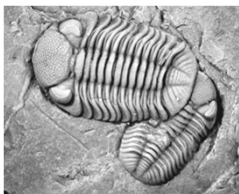
MR. PERFECT

By Roger Harragrace



Questions To Ask At Intake

- 1) When did this happen?
 - a) SOL, Notice of Circumstances
- 2) Where did this happen?
 - a) Commercial Property, private home, duplex?
- 3) Do YOU know what caused the injury?
 - a) Witnesses, pictures?
- 4) What were you wearing?
 - a) Eyeglasses, did clothes soak up any liquid?



Within A Few Weeks of Intake

- ▶ Pictures of the Site
 - Have an investigator go to site to get pictures asap or during similar conditions
- ▶ Interview witnesses
- ▶ OSHA/Industry Standard Violations?
 - Befriend a good premises expert to ask these questions.
- ▶ Objective Injuries?
 - (risk/reward of pursuing the claim)
- ▶ Video?
 - Request for spoliation argument later.
 - Ask neighbors about videos

Recreational Lands



Recreational Immunity

- ▶ Encourage land owners to allow the public use of their property for recreational purposes.
- ▶ Response to landowners fears that they would be responsible for injuries sustained by recreational users.
- ▶ Initially, "liberally construed" in favor of property owners.
- ▶ Narrowed liberalism over time.

Altered Duty Breach Cause Harm

- ▶ Eliminated common law duties
- ▶ Statutory:
 - a. no owner and no officer, employee, or agent of an owner owes to any person who enters the owner's property to engage in a recreational activity:
 - ▶ i. a duty to keep the property safe for recreational activities;
 - ▶ ii. a duty to inspect the property;
 - ▶ iii. a duty to give warning of an unsafe condition, use or activity on the property.
 - b. no owner and no officer, employee, or agent of an owner is liable for the death of, any injury to, or any death or injury caused by, a person engaging in a recreational activity on the owner's property."

Who is Protected?

- ▶ Owners
- ▶ Occupants
 - Person
 - Governmental body
 - Non profit organization
 - Gov't body with recreational agreement with another.
- ▶ Club event on municipal land?
- ▶ Village fair on public fairgrounds?

What is Recreational Activity?

- ▶ Most Frequently Litigated
- ▶ Review Portions of Statute
- ▶ Exceptions:
 - Team Sports
 - Pecuniary benefit

Sovereign Immunity

- ▶ Shields public officials from personal liability for injuries resulting from the negligent performance of acts within the scope of their public office.

- ▶ No Immunity
 - Malicious, willful and intentional
 - Ministerial (non-discretionary duties)
 - Policy to plow or salt at certain times...if not done then liable
 - Known present danger.

Discretionary vs. Ministerial

- ▶ Discretionary – within the scope of immunity
- ▶ Ministerial – not protected
 - Statutes
 - Regulations
 - Rules
 - Policies
 - Practices of the body



Safe Place Law Wis. Stat. 101.11

- ▶ Duty of Every Employer to furnish a place of employment that is as safe as the nature of the premises reasonably permits.
- ▶ Heightened the ordinary care duties of the common law.
- ▶ Safeguards employees and frequenters.
- ▶ Trespassers are NOT protected.
- ▶ “Safety” by abiding by local codes or standards.

Nondelegable. Period.

- ▶ Once the Safe Place responsibilities attach they cannot be delegated.
- ▶ An owner or employer cannot close their eyes when they have the right of supervision and control.

Codes and Standards

- ▶ Chapter 101 creates and confers jurisdiction over safety issues in Sec. 101.02 (15).
- ▶ Local Codes and regulations may apply as long as they do not conflict with department orders.
- ▶ Industry, Labor and Human Relations standards (ILHR)
- ▶ OSHA
- ▶ Industry standards (established through expert testimony).

Cases To Discuss?

- ▶ Questions about specific fact scenarios?
- ▶ Examples: email me
- ▶ e.g. Jury Instruction and Special Verdicts

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