

A RECENT SUPREME COURT DECISION NARROWS THE SCOPE OF TRESPASSER IMMUNITY

A recent decision delivered by the Wisconsin Supreme Court has demonstrated that even a simple bar fight can have a drastic impact on Wisconsin's legal precedent. Such decision occurred in the case of *Stroede v. Society Insurance and Railroad Station, LLC*, where the court ruled that the off-duty employee who escorted a drunk patron out of a bar does not have immunity from the negligence lawsuit that followed when the patron fell down a flight of stairs and suffered injuries. *Stroede* sheds light upon the scope of immunity granted to "possessor[s] of real property" under Wis. Stat. § 895.529 against legal claims brought by injured trespassers.

The main facts of the case are as follows: David Stroede was drinking at a bar in Saukville, Wisconsin in 2014. Stroede became severely intoxicated and punched another bar patron. Initially, Stroede was removed from the bar by one of its on-duty employees. Jacob Tetting, an off-duty employee, was also in the bar that night having dinner with his family and witnessed Stroede attempt to re-enter the bar shortly after he was removed. Tetting grabbed Stroede by the shoulders and began to walk him out of the bar yet again. While escorting Stroede out, Tetting released Stroede near the bar's stairwell and Stroede tumbled down the stairs suffering serious injuries. Stroede, thereafter, filed suit against Tetting, the bar, and the bar's insurer.

Tetting argued that he was entitled to immunity under Wis. Stat. § 895.529, which states that "a lawful occupant of real property" has no duty of care to trespassers and because Mr. Stroede was a trespasser at the bar after he was initially removed for starting a fight, Tetting owed him no duty of care. However, the Court's decision hung on the determination of whether Tetting was an "other lawful occupant"[1] of the bar under the immunity statute. Ultimately, the Court found that because Tetting was simply a bar patron at the time Stroede was injured and he was not acting as an on-duty employee, he was not entitled to immunity.

Based on this ruling, off-duty employees are not entitled to immunity should they happen to injure a party trespassing at their place of employment. The application of *Stroede* is likely to be especially important in the future for employees of bars and restaurants. Thus, should a

similar incident occur while you are enjoying a meal or a pint at your place of employment, let the on-duty employees handle the incident.

If you or anyone you know should have questions about the scope of trespasser immunity, please call Attorney [Austin Malinowski](#) at (414) 276-5000.

[1] Specifically, under Wis. Stat. § 895.529(1)-(2), an “owner, lessee, tenant, or other lawful occupant of real property” does not owe a duty of care to a trespasser of real property.