

Immunity Caps in Wisconsin Protect Schools from Liability Claims

A topic that TRICOR Insurance School Specialists receive a lot of questions about is the immunity protection provided to our public school clients from under statute. The most common student injuries are shop class accidents where a student loses fingers or a large part of their hand in the shop equipment. The allegation against the school is for lack of supervision; however, there are some cases where the school's equipment has become unsafe over time due to a lack of proper maintenance. These cases usually have can be valued up to \$300,000, but due to the immunity protection, the claim is limited to \$50,000.

Wisconsin Statute 893.80 provides powerful tools for defense of civil lawsuits against municipalities and school districts. Subsection 1 provides for a Notice of Circumstances and a Notice of Claim which must be filed with the school district prior to the start of any lawsuit. Subsection 4 provides for immunity for the school district negligent acts which are the result of discretionary decisions or actions by school district administrators or employees. Finally, Subsection 3 provides a cap on damages for tort (negligence) claims. We will leave the Notice of Claims procedures and immunity provision for another day and focus on the damages cap.

The statute provides that the amount recoverable by any person for any damages, injuries or death in any action founded on tort against a municipality, including school districts, or their officers, officials, agents or employers shall not exceed \$50,000. It also provides that no punitive damages may be allowed or recoverable in any such action.

However, this cap on damages applies only to any action founded on tort. Therefore, the cap does not apply to contract actions against school districts or to other types of statutory causes of action which are not founded on tort. For example, claims under the worker's compensation statute or for employment discrimination under the Wisconsin Fair Employment Act are not subject to the cap on damages. The cap will also not apply to claims under Wisconsin's Open Records and Open Meetings Law or claims against school districts under IDEA. Perhaps, most importantly, the cap does not apply to any claim apply to any claim brought under federal law. This includes civil rights cases. Generally speaking, federal law will trump state law and therefore the cap will not apply to a federal law claim.

It also should be noted that if the claimant's damages result from negligent operation of a motor vehicle by a school district employee, then the limit on recovery is \$250,000 under Wis. Stat. 345.05.

Simply stated, the statutory cap applies to what might be considered traditional tort/negligent type incidents such as trip and falls on school property, injuries on playgrounds, etc.

However, a single incident can result in more than one \$50,000 cap. For example, suppose a mother of two children is visiting the school and takes a fall on a defective stairway. The recovery for her own injuries would be limited to \$50,000. However, her husband and each of her two children would also have a \$50,000 cap on their individual claims for their loss of society and companionship of their mother/spouse because of the injury to her.

But, whether or not the school district is liable for any amount of damages can often turn on whether or not the district has discretionary act immunity for the alleged negligence under Subsection 4 of the statute. That is a totally separate question.

Please contact John Gibson at TRICOR Insurance (john@trticorinsurance.com, 608-288-1800 x1714) if you have further questions.