



April 2005

## THE LAWSUIT CRISIS IN AMERICA

Fact or Fiction?

- *Stephen F. Rufer MSBA Certified Civil Trial Specialist*

I read in the paper nearly every day that someone is saying that there are “too many lawsuits” of one kind or another. Usually there aren’t a lot of facts presented to back up the claims of “crisis” in our courts.

Those of us who practice law in the court system (and I have done so for 30 years) see that here in Minnesota, at least, the jury system still works pretty well – that it was a pretty good idea to put trial by jury both in the Bill of Rights and Minnesota’s constitution, and still is.

In the Midwest, at least, I can report that judges and juries are for the most part sensible, conservative, and fair.

Here are some national statistics that back up my observations:

**1. The number of civil trials dropped by 47% between 1992 and 2001.** The number of tort (personal injury) cases decreased by 31.8% during the same period. The decrease was reflected across specific case types. The numbers of automobile cases dropped 15%, premises liability 52.1%, medical malpractice 14.2% and product liability by 76%. "Civil Trial Cases and Verdicts in Large Counties, 2001," Bureau of Justice Statistics, U.S. Dept. of Justice, 2004

**2. The trend in damage size was also down.** The median inflation-adjusted payout in all tort (personal injury) cases dropped 56.3% between 1992 and 2001 to \$28,000. "Civil Trial Cases and Verdicts in Large Counties, 2001," Bureau of Justice Statistics, U.S. Dept. of Justice, 2004

**3. Tort (personal injury) filings by individuals are steadily decreasing while contract cases are greatly increasing.** Tort filings have declined 4% since 1993. Contract filings, which are more likely to involve businesses than tort cases, rose by 21% over the same period. "Examining the Work of State Courts, 2003," National Center for State Courts, 2004

**4. Business cases account for 47% of all punitive damage awards** (to punish for near criminal behavior). In contrast, only 4.4% and 2% of punitive damage awards are due to product liability and medical malpractice cases respectively. Rand Institute for Civil Justice, 1996

**5. Overall civil filings decreased 5.4% from 1998 to 2003 in federal courts alone.** The percentage of cases that were personal injury cases decreased 2.9% during the same time period and made up only 18.3% of all federal cases in 2003. "Federal Judicial Caseload Statistics, 2003," Administrative Office of the U.S. Courts, 2004

Conclusion? There is no reason to rush into weakening our Seventh Amendment right to trial by jury, one of our cherished freedoms, and one which gives all of us the chance for justice by our peers.

*Stephen F. Rufer has been with the firm since 1974 and has practiced primarily in the areas of personal injury law and other litigation. He is a certified civil trial specialist and has tried many jury cases to a conclusion.*

### Pemberton, Sorlie, Rufer & Kershner, PLLP Five locations

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## Blatti & Hastings Named Partners



The Pemberton, Sorlie, Rufer & Kershner law firm is pleased to announce that Robert O. Blatti and Kristi A. Hastings have been named as partners.

Blatti and Hastings have both been with the firm since 2001. Blatti's primary areas of practice are family law, social security disability, estate planning, and general litigation. Hastings works in the area of labor and employment law, and general litigation. The law firm is located at 110 North Mill Street in Fergus Falls, Minnesota, and has satellite offices in Wadena, Battle Lake, Henning and Ottertail, Minnesota.

## Zoning Lakeshore

### How Coming Regulation Changes May Affect You

- Robert W. Bigwood MSBA Certified Real Property Specialist

In the summer of 2004, the Otter Tail County Board of Commissioners passed a moratorium on the creation of new cluster developments in the County. "Cluster development" is a broad term used to encompass a number of uses, including mobile home parks, resorts, campgrounds, motels, condominiums, and apartment buildings. It appears that one motivation for the moratorium was the dwindling number of small area resorts, which seem to be rapidly converting to other cluster development uses and reduce the number of lakes tourism opportunities in the area. Another apparent motivation was the development of larger cluster development projects in areas that could be deemed of marginal environmental characteristics, in particular the project known as Blue Heron Bay on Dead Lake.

A reference to history provides the necessary background to all of this—we all know that Otter Tail County has great recreational lakes, probably the best in the State. As a result, and more so than in other areas of the State, (think Brainerd or Detroit Lakes), the lakes of Otter Tail County were developed very early, with many small lots and high density seasonal cabins occupying the best locations. That left two main consequences. First, there were few larger lakeshore areas upon which to develop larger tourist-oriented resorts, so those just didn't develop in Otter Tail County, and despite the best lakes in the state, it lacks a widespread reputation as a tourist destination. Second, the larger areas of land remaining for development are more marginal in quality and arguably more environmentally sensitive.

Public meetings for input concerning the moratorium were held in several different locations in the County, and following that, a broad-based volunteer committee was formed-- the Shoreland Rules Revision Committee. This Committee has since been meeting to look not only at the question of Cluster Developments, but has undertaken to look at changes to the County's Shoreland Management Ordinance as a whole.

A special meeting of the Otter Tail County Board has been scheduled for April 14, 2005, at 4 pm at the Otter Tail County Board Room in the Government Services Center, 510 W. Fir, Fergus Falls, to hear the Committee's comments on the Shoreland Ordinance and to begin the task of redrafting the Shoreland Ordinance. There is potential that changes will be considered of significance well beyond those dealing with cluster developments, affecting anyone with an interest in lakeshore, whether as an owner, developer, interested future owner, economic development director, tourism business owner or environmentalist. Therefore, plan to be informed and participate in the process!

The Revision Committee has not necessarily reached a consensus on many points, but some general themes of leaning and sentiment can be seen in the minutes and comments of its meetings. The ordinances adopted by Otter Tail County must be at least as restrictive as a set of minimum standards promulgated by the State of Minnesota. Although the current County ordinance is already more restrictive in many ways than the State requirements, the Committee seems prepared to take the County restrictions and requirements well beyond the current requirements.

Many changes under consideration will greatly affect lot and density requirements. Some of the following sentiments the Committee has expressed may well be reflected in ordinance changes:

- Increase lot size requirements well above DNR required minimums—possibly lake specific
- Bar further commercial development on GD lakes
- Revised rules might allow larger resort development than are now barred (Arrowwood in Douglas County would currently not be allowed in Otter Tail County but require greater setback—up to 1000 feet—and other requirements that may effectively prevent any large resort development
- Restrict number of docks
- Bar or limit any development in "sensitive areas" (or possibly just stricter standards)
- Exclude bluffs, wetlands, and right of ways from lot area calculations
- Require all development to identify with surveys and scale drawings all "sensitive areas"
- Increased lot and water frontage requirements that are at least double the current (and state standard) requirements, e.g. lot size on a recreational development lake of 90,000 sq. ft. and lake frontage of 250 feet

As the saying goes, they aren't making any more lakeshore. By their nature, zoning regulations restrict a property owner's rights, and can have both intended and unintended effects, whether to alter or preserve the social or natural environment, or to encourage or discourage development. In the upcoming months, you will have the opportunity to voice your opinion on the proposed benefits.