

Another legal loss for City Governmental immunity no defense against sewer line backup claims

For two years, the City of Cheyenne used stalling tactics to dodge responsibility for damages caused in resident's homes from sewer line backups.

Using the Wyoming Association of Risk Management to run interference and hide behind, it was still the City's call. They hid behind the skirts of the Board of Public Utilities but neither WARM or BOPU direct the City - it is the other way around.

Claims were filed on August 28, 2003 by a handful of city residents. In varying degrees and amounts, they claimed damage from sewer line backups that had happened as a result of negligence in maintaining those lines. Tree roots are responsible for much of the blockage but it can be the result of silt, gravel, sand and other material.

The BOPU takes in millions of dollars a year which is supposed to be used to keep those sewer lines clear of obstructions. Routine maintenance would prevent most of the problems but that has not been occurring in Cheyenne.

As attorneys for public entities seem to thrive on, motion after motion was filed by the City's attorney. District court case files are full of similar motions anytime a claim is made against the City of Cheyenne. Several accidents involving city vehicles have resulted in claims by residents and met the same response by the WARM attorney: "We admit fault but we claim governmental immunity." Sections of Wyoming state statute follow:

1-39-102. Purpose.

(a) The Wyoming legislature recognizes the inherently unfair and inequitable results which occur in the strict application of the doctrine of governmental immunity ...

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In the local community, it is now common for third-party attorneys to be retained to fight legal battles the City is incapable of defending. That doesn't guarantee adequate or good representation. To jump to a "governmental immunity" defense, knowing that it is contrary to state law, is unprofessional. But they count on fighting residents who don't want to spend \$5,000 for an attorney to get \$3,500 to fix their car and \$1,000 for medical costs.

1-39-105. Liability; operation of motor vehicles, aircraft and watercraft.

A governmental entity is liable for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of any motor vehicle, aircraft or watercraft.

"We were at fault but have governmental immunity," they flaunt. That is a dishonest defense and courts should penalize governmental agencies using it.

That improper defense was used on the sewer line backup claims but it didn't work. In case file documents, an admission was made that a dozen claims are made against the BOPU each year.

Chances are the same attempted defense was used previously and claimants bought the misrepresentation. Those who went away without satisfaction can now be advised that governmental immunity does not apply to claims on sewer line backups.

1-39-108. Liability; public utilities.

(a) A governmental entity is liable for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of public utilities and services including gas, electricity, water, solid or liquid waste collection or disposal, heating and ground transportation.

September 1, 2005, the City of Cheyenne, et al (defendants included Tim Wilson, the BOPU and WARM) settled with the plaintiffs by paying the entire amount of their claims.

The healthcare "wave of the future"

While residents of the state go wanting trying to afford their health insurance premiums or go broke trying to pay their hospital and doctor bills if they don't have health insurance, all of the focus is on the occasional medical malpractice claim brought against doctors for negligence which can be proven.

In an effort to reduce the claims against healthcare providers who have been reckless or negligent, the legislature put another hurdle in the path to justice. Now, claims have to pass through a panel that can decide what residents thought courts were there for.

Lobbyists for the insurance companies try to convince elected officials that the claims are never righteous - that Wyoming is filled with bottom feeders who just wait for an opportunity to sue the capable physician that removed the wrong limb accidentally.

It is hard enough to find an attorney to take their case, now those wronged have to convince still another group of joiners that they have been damaged and it was the result of medical malpractice.

The attempt to make life easier for doctors, hospitals and other healthcare providers, does not consider the people these officials were elected to represent - the residents of the state of Wyoming.

That group, not insignificant in numbers but miniscule in consideration, every year faces increased health insurance premiums, less coverage, and a greater battle to get paid for claims they file.

Nothing is likely to change in terms of reduced costs from health care providers. They may catch a break on THEIR insurance premiums but that makes up such a small part of the total costs that it will never result in lower costs to patients.

Wyoming is slow to move on new things. Fashions don't change much because today's Wranglers are pretty much what the Wranglers of the '60s were. Drinking and driving is a rite of passage here. Even wanting to take the beer can out of the hand of the driver meets great resistance. The number of beers a driver can drink between Casper and Cheyenne is the measurement of something or other.

Being reluctant to try new ideas makes it tough to convince consumers that there

is an alternative to health insurance as they've known it. That there is another way to handle their coverage.

Since Health Savings Accounts became available in 2004, they have caught on like wildfire. Elsewhere.

Consumers can make pre-tax contributions to cover their (or their family's) health-care costs and they are deductible on your federal taxes even if you do not itemize. Those contributions can be invested and earnings will be tax deferred. The money in the HSA can be rolled over from year to year. Withdrawals for medical expenses are tax-free. Once retired, the withdrawals are tax-free for whatever purpose. Those over 55 can make "catch-up" contributions to contribute more than the normal allowance. Employees can move the account from job to job.

Consumers have become aware that one way to reduce the premium for either health or automobile coverage is to increase the deductible. Employer-paid premiums lead employees to want first-dollar coverage but all must understand that whatever money is paid on behalf of an employee is money paid. Whether in the form of fringe benefits cost or wages, one costs the other.

For younger and healthier people, as well as small businesses and the self-employed, HSA's should be considered.

Healthcare costs are similar to tobacco. There is so much invested and so many people dependent on each that they are not likely to either go away or see cost reductions.

Consumers cannot solve the problem of high healthcare costs. They can only deal with their own particular situations. Costs have become a runaway dilemma. It is unlikely there will be a turnaround. To not make claims on your insurance will not dent the total cost of healthcare.

But you can have some control on your own spending. Instead of a \$250 deductible, a \$1,000 or \$2,000 deductible for those who don't max out their deductible anyway, could save money which could be used to invest for savings or for the purpose of paying non-covered items like non-prescription drugs, long-term disability insurance premiums, glasses or contact lens, etc. It isn't like yesterday but it's more like tomorrow. It's time.

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