

VERDICTS & SETTLEMENTS

Recreational water accident not without expectations

Personal injury case resolved when recreational use law considered



Steven Kuenzel

\$175,000 settlement

A St. Louis County An exception to the Missouri Recreational Use Act was credited as the reason behind a \$175,000 personal injury settlement for a 22-year-old woman who was hit by a boat two years ago.

On June 27, 2004, Candace Swartz and a friend had left a designated swimming area at the Lake Sherwood Estates in Warren County and intended to swim to an island in the "big lake" area of the upscale residential community.

While crossing the water in what is known by locals as the "boating circle" Swartz was hit by a boat piloted by Edward Getz, according to plaintiff's lawyer Steven Kuenzel. Swartz's left leg was struck by the boat's propeller and she suffered from an open fracture that required surgery and the use of an external rod fixation device. The injury also included deep leg lacerations and nerve damage.

Kuenzel said that recreational traffic was heavy on the day of the incident and that Getz failed to keep his boat at a speed that he could navigate to avoid a collision with Swartz. He also alleged that officials with Lake Sherwood Estates failed to monitor boating activity and issue warnings that could have alerted users of dan-

gerous conditions on and in the water.

The defense, headed by lawyer William Robinson, referred to the Missouri Recreational Use Act, which on public waters would have offered his client help under an understanding that all recreational users of most state waterways enjoy boating and swimming without expecting a duty of care.

Kuenzel pointed out, however, that at private lakes such as Lake Sherwood, residents pay community fees that in turn entitle them to expect an adequate amount of security and safety. In turn, he argued, Swartz should have been able to expect a degree of exercised safety that could have prevented her injuries.

"... [A]n owner of land owes no duty of care to any person who enters on the land without charge to keep his land safe for recreational use or to give any general or specific warning with respect to any natural or artificial

condition, structure, or personal property," Kuenzel quoted the Missouri Recreational Use Act (537.345) as having said.

"Defendant Lake Sherwood raised this defense by alleging that the [p]laintiff was swimming and that there was no duty of care owed by Lake Sherwood to her. The [p]laintiff countered with the fact that the [p]laintiff's parents paid a yearly assessment which covered a Lake Patrol as well as security at Lake Sherwood. Therefore, it was not a fee (without charge) recreational use," Kuenzel said in a written statement.

Robinson did not respond to offers to comment on this case.

— Mike Nixon

Facts of the case

Type of Action: Personal injury

Type of Injuries: Open leg fracture and nerve damage

Court/Case Number/Date: Warren County Circuit Court/05BB-CC00095/June 2, 2006

Caption: Candace F. Swartz v. Edward J. Getz and Lake Sherwood Estates Association

Judge, Jury or ADR: Judge

Name of Judge: Keith Sutherland

Verdict or Settlement: \$175,000 settlement (\$100,000 paid on behalf of Edward J. Getz and \$75,000 paid on behalf of Lake Sherwood Estates Association)

Special Damages: \$65,447 medical, \$1,050 lost wages

Allocation of Fault: N/A

Last Demand: N/A

Last Offer: N/A

Attorney for Plaintiff: Steven P. Kuenzel, Eckellkamp, Eckellkamp, Wood & Kuenzel, Washington, Mo.

Attorney for Defense: William C. Robinson, Williams, Venker & Sanders L.L.C., St. Louis

Insurer: State Farm Fire and Casualty Co. (for Getz), Illinois National Insurance Co. (for Lake Sherwood Estates Association)

Plaintiff's Experts: D. Wade Hammond, M.D., (orthopedic surgery), St. Louis; Susan E. MacKinnon, M.D., (plastic and reconstructive surgery) St. Louis

Defendant's Experts: None