

LAW REVIEW

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GOOD SAMARITAN GETS SUED

Being a Good Samaritan can get you sued. Just ask Lisa Torti who rescued her friend following a car crash and got sued for her gallant efforts.

California has several Good Samaritan laws protecting rescuers and medical caregivers from lawsuits. This new California Supreme Court case discusses those laws, but in my humble opinion reaches the wrong conclusion. If this case sounds familiar, it is. We discussed the Court of Appeal decision in January 2008, which finally made it to the California Supreme Court.

Car Crash

Good friends Alexandra Van Horn and Lisa Torti were in two different cars leaving a bar after a night of smoking pot and drinking. Van Horn was in the first car which crashed into a curb and light standard at 45 mph. Torti, in the second car, rushed up and believing the first car was going to “blow up,” removed Van Horn. Ultimately, it was determined that Van Horn was permanently paralyzed.

Van Horn was appreciative, but that didn't keep her from suing her friend. The trial court found Torti not liable, the Court of Appeal reversed, finding her potentially liable. Here is the Supreme Court's final word.

Emergency Medical Care Law

California has several Good Samaritan laws protecting rescuers and emergency caregivers from liability—even if they are negligent. The Emergency Medical Services law reads: “No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered.”

For a variety of sound reasons and despite the literal wording of the statute, the Supreme Court determined that the emergency services immunity protection is applicable only if emergency *medical* care is rendered. Torti did not render emergency medical care; she merely pulled Van Horn from the crashed vehicle.

If Torti had given Van Horn CPR or some form of medical care, she would have been immune from liability even if she were negligent, because the emergency medical care immunity is absolute—no matter how bad the medical care is—there is no liability.

Good Samaritan

California has a more general Good Samaritan law which provides protection for rescuers but less than if medical care is rendered: Generally, while no one has a duty to come to the aid of another unless there is some special relationship between the rescuer and the rescued, if anyone volunteers to assist another, that volunteer is not liable, even if negligent, unless he/she *increases*

the risk of the injured person's harm or the harm is suffered because the injured person relies upon the volunteer.

Dueling Laws

Like the Court of Appeal, the California Supreme Court found that because Torti did not provide emergency medical care, she was not fully immune from a lawsuit. She would have been immune if she had performed CPR or provided some medical care. Van Horn is entitled to take her case to the jury to decide if Torti increased the risk of her injury.

Dissent

I like Justice Baxter's dissent for the same reasons I editorialized a year ago-- that the Court of Appeal, and now the Supreme Court, got this case wrong.

Good faith rescuers who risk their lives should be provided full immunity if they are negligent, even if they screw up during the rescue, not only when they render emergency medical care. As a matter of public policy, we want to encourage others to assist in emergencies, and not stand by for fear of being sued.

The lesson here is if you are rescuing/helping someone in an emergency, be sure to administer some medical care, splint them, check their pulse, stop the bleeding, slap on some band-aids, whatever it takes. You want that broader immunity.

New Legislation

Several bills are being processed through the California Legislature to broaden the Good Samaritan protection for mere rescuers not providing medical care.

Other Good Samaritan Laws

Other Good Samaritan laws provide broad, absolute immunity, such as for anyone with first aid training who is asked by authorities to assist in a search and rescue operation and who renders emergency services to a victim which includes merely transporting the victim. Plus the Harbors & Navigation Code immunizes any person who provides assistance “at the scene of a vessel collision, accident, or other casualty.”

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