



Frivolous Lawsuits

by John D. Whitaker

There has been a lot of talk in the media about frivolous lawsuits. This is coming in conjunction with the national debate on healthcare but it is continuing to come up when we pick juries in almost any kind of case. There are people that think that every lawsuit filed anywhere on the planet is frivolous. What is a frivolous lawsuit really? The answer depends upon whether you are suing someone or someone is suing you. I find that most people who are being sued consider themselves victims of frivolous lawsuits. The people that file them don't think they are frivolous. Another funny thing I have noticed is that people that scream the most about frivolous lawsuits are the first people to run to their lawyers when they have been injured somehow.

I went down south to visit some friends last month. They had invited a number of people to dinner one night and I sat next to a guy who owned a large RV dealership in California. When he found out I was a lawyer he started complaining to me about frivolous lawsuits. He told me that his company had been the victim of a frivolous lawsuit and that he was forced to pay a lot of money to settle the case. He said paying was cheaper than going to trial. I explained to him that the Courts have an effective way of dealing with lawsuits that have no merit. They can be dismissed quickly if there is truly no basis for the suit.

Being curious by nature, I began asking him about the facts of his case. As he explained the case it became clear that he was not a victim of a frivolous lawsuit. His company had committed fraud in the sale of an RV and they were caught red handed. That is why he got sued. Here is the story. He took one of the new RVs out of his inventory from the California dealership and took it up to Oregon for the summer and fall where he and his family enjoy spending time. After using the RV for 4 or 5 months they stored the unit at a friends RV lot in Oregon. During the winter a fire in an RV parked beside this unit spread to their unit. The roof on their unit was destroyed. They got the insurance money for the damage and were able to use their own body shop



to repair the unit for less than the amount of money the insurance company paid them, so they made a profit on the fire. Then they sold the unit to an unsuspecting elderly customer in California as a new unit for full price. Later the customer needed some work done on the unit and discovered that what had been represented to him to be a new RV was in fact a used and damaged unit. This guy sold this unit as new when he knew it had been used and damaged.

First, this guy committed fraud in selling this RV as new. In this instance, the fraud consists of the dealer knowingly making a false representation of a material fact with the intent of inducing the buyer to buy the RV. The buyer paid full price for the RV relying on the dealer's false statement that it was new, and as a result was damaged because this RV was not worth near what he paid for it.

Second, most states including Wyoming have strict consumer protection laws which protect people from deceptive trade practices. In Wyoming the law is called the Wyoming Consumer Protection Act and it provides that it is unlawful for a person to engage in deceptive trade practices concerning a consumer transaction. Representing that the merchandise is new when it isn't is a violation of the statute. If this happened in Wyoming the dealer could not only be forced to give the victim his money back and pay the victim's attorneys fees, but also he could be forced to pay a hefty civil penalty. If the person deceived by a deceptive trade practice is over the age of 60 or suffers a disability then the civil penalty is even larger. Based upon the money this guy paid to settle his case it sounds like California's consumer protection statute is even harsher than Wyoming's.

This guy was a crook, and it sounded to me like he got just what he deserved. The term "frivolous lawsuits" has become a catch phrase to cover everything that people think is wrong with the legal system. The next time you hear somebody complain about frivolous lawsuits, ask them to tell you all about it. You might just discover what Paul Harvey liked to call "the rest of the story."

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at jdwtl@mac.com or by calling his office at 307 265-6204. Past Legal Brief columns can be found at WyoInjury.com