Everybody wants to escape liability. To avoid being sued is more than essential, it is economically vital – and often emotionally draining. Good Samaritan Statutes were enacted by many states so that physicians would be more willing to assist the injured knowing that if they offered emergency assistance in situations where they do not have their usual medical equipment, staff or a clean environment, they would be immune from being held liable.

However, as with any legislation, the definitions of a statute’s key terms are significant to understanding the scope of the law. This article attempts to examine a case which was decided by the Wisconsin Court of Appeals and then appealed to the Wisconsin Supreme Court. In its opinion the Supreme Court defined the terms of the Good Samaritan Statute. This clarification of terms will give attorneys, physicians, and emergency medical personnel a better understanding of the application of the immunity statute in the future.

LIABILITY EXEMPTION

Wisconsin’s "Good Samaritan" provides liability exemption if the person who offers emergency care complies with the law. The state legislature has enacted many legal immunity statutes [See the sidebar in this article for a list of other exemption statutes]. Compliance with the statutes is a requirement to be exempt from common law negligence.

Under a recently decided case the "Good Samaritan" law was examined in detail by the Wisconsin Supreme Court. In the Mueller case¹, the Court holds that "emergency care" refers to the initial evaluation and immediate assistance, treatment, and intervention rendered to an injured person during the period before care could be transferred to professional medical personnel.²

THE GOOD SAMARITAN STATUTE

² Sup. Case ¶ 6.
One of the older legislated exemptions enacted to minimize liability when rendering emergency medical care is often referred to as the "Good Samaritan" statute. It's name was derived from the New Testament parable in which a Samaritan was the only passer-by to aid a man left half-dead by thieves.³

Wisconsin’s civil liability exemption, i.e. the "Good Samaritan" statute for emergency medical care, states as follows:

Any person who renders emergency care at the scene of any emergency or accident in good faith shall be immune from civil liability for his or her acts or omissions in rendering such emergency care. This immunity does not extend when employees trained in health care or health care professionals render emergency care for compensation and within the scope of their usual and customary employment or practice at a hospital or other institution equipped with hospital facilities, at the scene of any emergency or accident, enroute to a hospital or other institution equipped with hospital facilities or at a physician's office.⁴

In Mueller, the Wisconsin Supreme Court reviewed and affirmed a decision of the Court of Appeals⁵ which addressed the application of the Good Samaritan statute. The Wisconsin Supreme Court held that the current statute sets forth three elements:

(1) Emergency care must be rendered at the scene of the emergency;
(2) The care rendered must be emergency care; and
(3) Any emergency care must be rendered in good faith.⁶

And it stated that if all three elements are met, the alleged tortfeasor shall be immune from civil liability for his or her acts or omissions in rendering such emergency care. If any element is not met, the alleged tortfeasor is not entitled to immunity under the Good Samaritan statute.⁷

The purpose of the current Good Samaritan statute, according to the Wisconsin Supreme Court, is to encourage individuals to provide emergency care to an injured person by immunizing the caregivers from common-law liability if they fail to exercise reasonable care when rendering emergency care in good faith.⁸

THE FACTS OF THE MUELLER v. McMILLAN CASE

⁴ sec. 895.48 (1) Wis. Stats.
⁶ Sup. Case ¶ 23.
⁷ Sup. Case ¶ 24.
⁸ Sup. Case ¶ 30.
In October 2003 Merlin Switlick and Stephani Switlick held a party for friends and business associates on property they owned in Lincoln County. Guests often spent the night at the family "shack," which had a number of bunkhouse style bedrooms.

According to Apollo Switlick, age 19 at the time this incident occurred, he arrived at the party around 2 p.m. He drank what he described as a couple of twelve-ounce beers before 6 p.m. and a few more beers between 6 p.m. and 10 p.m. Sometime between 6 p.m. and 7 p.m., Lina Mueller, the Plaintiff, arrived at the party, went inside the shack with Apollo Switlick to play pool, and possibly to drink. The adult guests stayed outside the shack, near a pit where the Switlicks had built a bonfire.

The trial record showed that because the Plaintiff, Lina Mueller, suffered a skull fracture which resulted in her memory loss, there is no account by her of the events which occurred that evening.

At about 10 p.m., Apollo Switlick and Lina Mueller, the Plaintiff, joined the adults outside by the fire. Apollo Switlick testified that, once outside, he heard an ATV "puttering like it was running out of gas or was having a problem." Because Apollo Switlick knew his sister and her children had taken one of the family ATVs to check a field for deer, he thought that they might be in trouble. He got on an ATV and Lina Mueller, the Plaintiff, got on behind him. Neither wore a helmet. After checking on his sister, Apollo Switlick and Lina Mueller headed back to the shack on a trail that was not on the family property.

During that return trip, the accident occurred. According to Apollo Switlick, he hit a stump or saw an overhanging branch, slammed on his brakes, and then remembered nothing until he and Lina Mueller, the Plaintiff, got back to the shack around 11 p.m. Apollo Switlick was unclear about what occurred prior to the accident and remembered nothing about the ride back to the shack. After they arrived, both Apollo Switlick and Lina Mueller, the Plaintiff, were bleeding and vomiting.

Apollo Switlick and Lina Mueller, the Plaintiff, talked to Stephani Switlick and Merlin Switlick. Lina Mueller went into the bathroom and wanted to lie down on the floor. Stephani Switlick eventually convinced Lina Mueller to lie down in one of the bedrooms instead. Apollo Switlick also lay down in the same bed. Stephani Switlick testified that she woke Apollo Switlick and Lina Mueller approximately every hour during the evening. In the morning, after Lina Mueller responded to Stephani Switlick's questions by addressing her as "mom," Stephani Switlick called an ambulance. Lina Mueller was taken to a hospital in Merrill where she was diagnosed with a skull fracture. She was then transported to a facility in Marshfield where she was hospitalized and treated.

In 2004, Lina Mueller sued Apollo Switlick for negligence, alleging that Merlin
Switlick and Stephani Switlick were negligent in providing alcohol to minors and in providing care for her after the accident.\footnote{Note: There are other issues in the case not addressed in this article.}

**THE ARGUMENTS OF THE PLAINTIFF AND THE DEFENDANTS**

The plaintiff argued that the care rendered by the Switlicks was not at the scene of any emergency or accident. She further argued that the Switlicks did not provide emergency care -- or that the care they rendered ceased to be emergency care after their initial evaluation and immediate assistance, treatment, and intervention ended.\footnote{Sup. Case ¶ 5.}

The defendants, Switlicks argued that they were immune from liability under the Good Samaritan statute for their acts or omissions in rendering care to the plaintiff. In particular, the Switlicks argued that all their acts or omissions regarding the plaintiff occurred at the scene of the emergency and constituted emergency care rendered in good faith.\footnote{Sup. Case ¶ 4.} The defendants moved for Summary Judgment.

**THE TRIAL COURT**

After a hearing, the trial court issued a written decision and reasoned that to meet the statutory purpose, the scene of any emergency or accident should "follow the person in peril and in need of emergency care. It covers the farmer that answers the door to find the victim of an automobile accident who was able to make it to his door or the driver finding a hunter who, after falling from his deer stand, crawls out to a highway with his broken leg. The fact that the site of the accident is some distance away does not reduce an injured person’s need for assistance."\footnote{Sup. Case ¶ 30.}

The trial court concluded, among several other issues, that Merlin Switlick and Stephani Switlick had provided traditional first aid to Lina Mueller, the Plaintiff, and were thus immune from liability under the Good Samaritan statute.

**THE COURT OF APPEALS**

The court of appeals reversed the judgment of the trial court which had ordered summary judgment to the defendants Merlin and Stephani Switlick, and dismissed plaintiff Lina Mueller’s claims for damages against the Switlicks for their alleged negligence in caring for her.

The court cited a Minnesota case where that jurisdiction decided that transporting an injured child fell within the scope of the Good Samaritan Law even though the
driver did not go directly from the scene of the accident to the hospital, but took a quarter-mile detour.\textsuperscript{13}

Similarly, the North Dakota Supreme Court concluded that a passerby who stopped at the scene of an accident to see if victims needed assistance was "rendering" emergency care because the person was attempting to make aid available.\textsuperscript{14}

However, the court clearly asserted that nothing in the statute suggests any intention that an ordinary person should make care-giving decisions any longer than the emergency situation necessitates.\textsuperscript{15}

In reversing the circuit court’s judgment, the court of appeals concluded:

[W]hen the [S]amaritan is a layperson, the intervention protected will ordinarily be of short duration and of an interim sort. Nothing in the statute suggests any intention that an ordinary person should make care-giving decisions any longer than the emergency situation necessitates. . . . That nothing was done to make medical help available to Mueller for over six hours only underscores the fact that Stephani was not responding as if to an emergency. Based on the undisputed facts in this case, the Switlicks thus did not provide any care that would entitle them to immunity from liability under Wis. Stat. § 895.48.\textsuperscript{16}

BRIEF HISTORY OF THE GOOD SAMARITAN STATUTE

Historically, the Wisconsin Supreme Court noted that the original Good Samaritan statute, enacted in 1963,\textsuperscript{17} provided immunity only to medical professionals [doctors and nurses] who rendered emergency care.\textsuperscript{18} In 1977 a Good Samaritan statute was adopted to extend Good Samaritan protection to laypersons. In all respects relevant to the issue recently decided by the court, the statute has remained unchanged since 1977.

The court noted that a consistent purpose of the Wisconsin Good Samaritan statute has been to encourage prompt care in an emergency until professional medical care can be obtained. It further noted that the Legislative Council analysis of the now current law stated that the result of reluctance to get involved is that "emergency treatment is often delayed or denied to many persons...


\textsuperscript{15} App. Case ¶ 29.

\textsuperscript{16} Sup. Case ¶ 18, citing App. Case 287 Wis. 2d 154, ¶ 29, 35.


\textsuperscript{18} Sup. Case ¶ 39, [fn19] referencing historical Wis. Stat. § 147.17(7) (1965) (immunity to doctors) and Wis. Stat. § 149.06(5) (immunity to nurses).
involved in accidents or who have suffered serious injury," and concluded that the new law "would encourage the public to come to the aid of persons involved in accidents who need prompt emergency care."

The court also noted that many states in the United States have enacted Good Samaritan statutes to remove the fear of civil liability for prompt and immediate emergency medical care. 20

A law review commentator cited by the court suggested that the purpose of the Good Samaritan statute is to encourage lay persons and professionals to respond to another's need for help by granting limited immunity for negligent acts which might occur while rendering emergency assistance. 21

The court added that, in reaching this conclusion, the law review commentator quoted from a letter to her from Representative J.F. Rooney (whom the commentator refers to as the principal author of Assembly Bill 96). Representative Rooney described the purpose of the statute as follows:

In answer to your first question as to why we expanded the scope of the original [G]ood [S]amaritan statutes; it was felt that our society has become "sue happy" and therefore many citizens who might otherwise go to the aid of a fellow human being do not because of the fear of being sued for trying to help. By elimination of the threat of lawsuit, more people would be apt to aid a victim. 22

WISCONSIN SUPREME COURT

In affirming the decision of the court of appeals, the Wisconsin Supreme Court stated that the dispositive issue was whether the actions taken by the Switlicks between the time they initially evaluated and immediately assisted and treated Lina Mueller and intervened on her behalf and the time they called 911 six to seven hours thereafter constitute emergency care at the scene of any emergency or accident in good faith for the purpose of the Good Samaritan immunity statute. 23

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19 Sup. Case ¶ 41. Legislative Council analysis of Assembly Bill 96.
23 Sup. Case ¶ 2.
Part One: Emergency care must be rendered at the scene of the emergency.

The court found that the Good Samaritan statute, historically, prior to 1977, protected only licensed medical workers, and contained the following definition of "scene of an emergency:" 

"[T]he scene of an emergency" means areas not within the confines of a hospital or other institution which has hospital facilities or the office of a person licensed or certified under this chapter.24

This definition was not included when the legislature adopted the present Good Samaritan statute.

The Wisconsin Supreme Court agreed with the circuit court that the phrase "scene of any emergency" should ordinarily be interpreted to cover emergency care at a location where such care is needed, and the phrase was sufficiently broad to include the Switlicks' home where the injured, bleeding plaintiff arrived after the ATV incident, and concluded that the initial evaluation and immediate assistance, treatment, and intervention rendered by the Switlicks at their home occurred at the "scene of any emergency."25

Part Two: The care rendered must be emergency care.

Because the Good Samaritan statute does not define "emergency care," the Wisconsin Supreme Court undertook to define it, but because of the complexity of usage, desired “to provide a flexible, broad working definition of emergency care that is suitable for the present case and may be suitable for a multitude of other cases.”26

In Oklahoma, the court noted, emergency care, by law, consists only of "artificial respiration, restoration of breathing, or preventing or retarding the loss of blood, or aiding or restoring heart action or circulation of blood to the victim or victims of an accident or emergency. . . ."27

An Oregon statute defines emergency care as follows:

(a) Medical or dental care not provided in a place where emergency medical or dental care is regularly available, including but not limited to a hospital, industrial first-aid station or a physician's or dentist's office, given voluntarily and without the expectation of compensation to an injured person who is in need of immediate medical or dental care and under emergency circumstances that suggest that the giving of assistance is the only alternative to death or serious physical after effects; or

26 Sup. Case ¶ 36.
(b) Medical care provided voluntarily in good faith and without expectation of compensation by a physician licensed by the Board of Medical Examiners for the State of Oregon in the physician's professional capacity as a team physician at a public or private school or college athletic event or as a volunteer physician at other athletic events.²⁸

The Wisconsin Supreme Court defined²⁹ four terms:

"Emergency" which means a sudden, unexpected happening or unforeseen occurrence or condition.

"Emergency medicine" which means the evaluation and initial, rapid treatment of medical conditions caused by trauma or sudden illness.

"Emergency care" in Wis. Stat. § 895.48(1) (as it applies to a layperson) therefore would be care rendered by a layperson in a sudden, unexpected happening, occurrence or situation that demands immediate action until professional medical attention is available.

"Care" includes the evaluation, intervention, assistance, and treatment of, or intervention on behalf of the injured person, or response to medical conditions caused by an accident, trauma, or sudden illness.

The court concluded that the providing immunity when initial and immediate medical care is required reflects the legislative purpose of the Good Samaritan Statute. It's purpose is to encourage the type of emergency medical services required to stabilize an injured individual's health before care can be transferred to professional medical personnel.³⁰

Therefore,

"emergency care" under the statute refers only to the initial evaluation and immediate assistance, treatment, and intervention at the scene of an emergency during the period before care can be transferred to professional medical personnel.³¹

Comment on Part Three: Any emergency care must be rendered in good faith.

The Wisconsin Supreme Court did not examine the third element, good faith in its decision.

However, the Wisconsin Appellate Court did, when it stated that “the term ‘good faith’ only complicates the matter.”³² It added:

‘Good faith’ can mean a "belief in one's legal title or right." But it

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²⁹ Sup. Case ¶ 37.
³⁰ Sup. Case ¶ 45.
³¹ Sup. Case ¶ 46.
can also mean "absence of fraud, deceit, collusion, or gross negligence." In other words, good faith can be measured subjectively or objectively.33

COURT’S ANALYSIS OF THE MUELLER CASE AND THE SWITLICK’S CARE

When the plaintiff returned to the shack bloodied and vomiting, the Wisconsin Supreme Court noted, both Mr. and Ms. Switlick may have been involved in the initial assessment of her injuries, the immediate assistance, treatment, and intervention, and the decision not to seek immediate professional medical assistance. Ms. Switlick continued to monitor the plaintiff during the night.34

In evaluating the plaintiff's condition and rendering to the plaintiff immediate assistance, treatment, and intervention, the Switlicks may have been rendering emergency care. It is undisputed, however, that professional assistance could have been summoned immediately after the plaintiff arrived at the house, or at least immediately after the initial evaluation of the plaintiff. Instead of summoning professional medical assistance, the Switlicks determined that the circumstances did not require trained medical professionals, and they decided to, and did, provide ongoing care for the plaintiff throughout the night. Therefore, after the initial evaluation and immediate assistance, treatment, and intervention that constituted emergency care, the Switlicks' assistance, treatment, and intervention changed from "emergency care" to "non-emergency care."

CONCLUSION

In this definitive case, the Wisconsin Supreme Court held that just doing nothing, i.e., “plain non-emergency care,”35 does not provide immunity under the Good Samaritan statute -- and if there is no immunity, then the person may be sued in negligence.

However, the court did not open the door to absolute liability. It added that even though a caregiver who is not immunized by the Good Samaritan statute for non-emergency care is subject to the common-law rules governing the conduct, “... it does not necessarily follow that the caregiver will be liable for damages.”36

The Court is well aware of the balance that the Wisconsin legislature has tried to accomplish: on one side, encouraging individuals to help those in need, and, on the other side, encouraging caregivers “to seek professional medical assistance."37 In this case, the Wisconsin Court did not modify long standing law, but clarified its definitions, and therefore its application.

34 Sup. Case ¶ 49.
35 Sup. Court ¶ 53 and ¶ 54.
36 Sup. Case ¶ 7
37 Sup. Court ¶ 53 and ¶ 54.
Under Wisconsin's "Good Samaritan" law, the phrase "scene of any emergency", according to the Wisconsin Supreme Court, is a broad phrase which includes the place to which an injured person arrives when a ‘Good Samaritan' takes action.

And, the phrase, "emergency care", refers to the initial evaluation and immediate assistance, treatment, and intervention rendered to an injured person during the period before care could be transferred to professional medical personnel.38

When no emergency care is provided, a caregiver cannot received the immunity provided under the Good Samaritan statute. A Good Samaritan can make the initial evaluation, and offer immediate assistance, treatment, and intervention to an injured person. But then, after that emergency care is provided, the injured person is to be transferred to professional medical personnel. If no medical transfer is made, the "Good Samaritan" immunity law exemption no longer applies.

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APPENDIX A

The Wisconsin legislature has carved out many other civil liability exemptions.

Certain medical providers, including massage therapist and certified bodyworkers, who render voluntary health care to a participant in an athletic event or contest sponsored by a nonprofit corporation, or a school is immune from civil liability for his or her acts or omissions if certain conditions exist.39

A relatively new subsection of the Good Samaritan statute states that legislative immunity exists for certain persons from civil liability for the acts or omissions of a person in rendering in good faith emergency care by use of an automated external defibrillator to an individual who appears to be in cardiac arrest.40

38 Sup. Case ¶ 6.
39 Sec. 895.48 (1m) Wis. Stats.
40 Sec. 895.48 (4) Wis. Stats.
Other civil liability exemptions enacted by the Wisconsin legislature include the handling, involvement, report, donation of, or somehow relate to the:

- Administration of drugs to pupils and emergency care.  Sec. 118.29 Wis. Stats.
- Suicide intervention.  Sec. 118.295 Wis. Stats.
- Hazardous materials.  Sec. 895.4802 Wis. Stats.
- Information concerning paternity.  Sec. 895.4803 Wis. Stats.
- Equine activities.  Sec. 895.481 Wis. Stats.
- Ski patrol members.  Sec. 895.482 Wis. Stats.
- Regional and local emergency response teams and their sponsoring agencies.  Sec. 895.483 Wis. Stats.
- Agencies, foster parents, treatment foster parents and family-operated group home parents.  Sec. 895.485 Wis. Stats.
- Reports of insurance fraud.  Sec. 895.486 Wis. Stats.
- Employment references.  Sec. 895.487 Wis. Stats.
- Furnishing safety services relating to child safety restraint systems.  Sec. 895.497 Wis. Stats.
- Weight gain and obesity claims.  Sec. 895.506 Wis. Stats.
- Food donation, sale or distribution.  Sec. 895.51 Wis. Stats.
- Equipment or technology donation.  Sec. 895.515 Wis. Stats.
- Solid waste donation or sale.  Sec. 895.517 Wis. Stats.
- Recreational activities; limitation of property owners' liability.  Sec. 895.52 Wis. Stats.
- Participation in recreational activities; restrictions on civil liability, assumption of risk.  Sec. 895.525 Wis. Stats.
- Sport shooting range activities; limitations on liability and restrictions on operation.  Sec. 895.527 Wis. Stats.
- Tests for intoxication.  Sec. 895.53 Wis. Stats.  [which includes both civil and criminal liability exemption].
- Notification of release.  Sec. 895.54 Wis. Stats.
- Oil discharge control.  Sec. 895.55 Wis. Stats.
- Anhydrous ammonia.  Sec. 895.555 Wis. Stats.
- Handling of petroleum-contaminated soil under contract with the department of transportation.  Sec. 895.56 Wis. Stats.
- Unauthorized release of animals.  Sec. 895.57 Wis. Stats.  [which addresses both damages and immunity].
- Use of special waste under public works contracts.  Sec. 895.58 Wis. Stats.
- Disclosure of rule violations [of an agency, board or commission].  Sec. 895.59 Wis. Stats.
- Civil liability exemption: furnishing alcohol beverages.  Secs. 125.035 and 125.037 Wis. Stats.  [which includes both certain individuals and municipalities].
- Retaining proofs of age.  Sec. 125.039 Wis. Stats.
• And, in a court case, the Wisconsin Supreme Court stated that Section 940.34 is a "Good Samaritan" law which imposes criminal liability on "any person who knows that a crime is being committed and that a victim is exposed to bodily harm" but fails to summon help or provide assistance to the victim.


Mueller v. McMillan Warner Insurance Co., 2006 WI 54, 290 Wis.2d 571, 714 N.W.2d 183

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41 State v. Willquette, 129 Wis.2d 239, 385 N.W.2d 145 (1986) at page 261.