

The lawyers' latest war on fun

By Abby W. Schachter

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Don't trial lawyers have children? I pondered this question when reading the recent Associated Press story about cities that have banned sledding, since it is the trial lawyers who are ruining everyone else's fun.

The problem is so great, it seems, that the AP couldn't actually get a full count of places that have decided to put an end to the simple winter fun of sliding down a hill. But as reported, the city council of Dubuque, Iowa, is the latest local government to prohibit sledding at all but two of its 50 parks. “We have all kinds of parks that have hills on them,” said Marie Ware, Dubuque's leisure services manager. “We can't manage the risk at all of those places.”

Has sledding suddenly become more dangerous? According to the Center for Injury Research and Policy at Nationwide Children's Hospital, 20,000 children per year were treated in hospital for sledding-related injuries between 1997 and 2007. Now, that might seem like a large number — except when you compare it to the number of pediatric injuries from riding in cars, which the Centers for Disease Control and Prevention reports at 180,000 per year. Another 800 kids die every year from car crashes. Suddenly sledding doesn't seem all that risky.

Ms. Ware isn't describing the fear of anyone getting hurt, though. She is talking about the threat of lawsuits from ambulance-chasing lawyers who claim the city is legally responsible for sledding accidents on public property. “We live in a lawsuit-happy society and cities are just being protective by banning sledding in areas that pose a risk for injury or death,” lamented Steve King, who runs the pro-sledding website sledriding.com.

There is precedent for these worries. The AP pointed out two lawsuits — “a \$2 million judgment against Omaha, Neb., after a 5-year-old girl was paralyzed when she hit a tree and a \$2.75 million payment when a man in Sioux City, Iowa, slid into a sign and injured his spinal cord” — as the rationale for why insurers refuse to cover the risk from tobogganing at a local park.

After the lawsuit, Omaha actually tried to enact a ban but citizens kept violating it.

Which brings me back to my original question: Don't the attorneys who bring these lawsuits have kids and don't any of them go sledding together? Walter Olson, senior fellow at the Cato Institute and author of the legal blog Overlawyered.com, gave me the answer:

“Trial lawyers may be parents themselves, but as professionals they act in their self-interest ... [which means] extracting maximum compensation for an accident — and where injury to a child is concerned, juries tend to be generous. It also means pushing for liberal changes in judicial doctrine — watering down, for example, the old common law defense of ‘assumption of the risk’ that used to block many suits.”

States could protect cities from such extortion by passing limited liability statutes but that would be hard. “In Iowa,” Olson explained, taking an example from the AP story, “the state legislature has repeatedly considered bills that would limit municipal liability for the open and obvious dangers of sledding, but trial lawyers have marshaled party-line opposition from Democrats and killed the reforms each time.”

The war on fun just claimed another victim.