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Spousal Immunity Issues and Sexually Transmitted Disease within the Marriage

Sadly, many marriages end in divorce. Depending on the study, it is estimated that 40 to 50 percent of marriages will end in divorce. It is not uncommon that these marriages end poorly. There are often lingering hard feelings and emotional scars left by the marriage and the divorce itself. Those are bad. And then there are those that end with STD's.

There is typically spousal immunity for personal injury lawsuits by one spouse against another. This means that one spouse cannot generally sue the other spouse for personal injuries suffered as a result of wrongful conduct by the other spouse. This immunity is quite broad with historic policy considerations meant to protect the privacy and sanctity of marriage by keeping such disputes out of court. In fact, these policies are the basis for no-fault divorce that exists in most states, including New Mexico.

However, there is a growing willingness of courts around the country to recognize a cause of action by one spouse against the other for the transmission of sexually transmitted diseases. In fact, there have been some very large damages awards in personal injury lawsuits between spouses for the transmission of STD's.

New Mexico has not addressed the issue at the appellate level. There are a number of challenges to such a suit. Foremost among these challenges, as with all personal injury suits, are the insurance coverage issues which could be numerous.

Another issue that will likely arise is whether the STD was negligently or knowingly transmitted. Traditionally, New Mexico courts have drawn a distinction between intentional and negligent torts in determining spousal immunity. Spouses were protected from suit on negligence claims. Immunity was far more likely to be waived in case of intentional torts. Whether the act was negligent or intentional also has insurance implications since most insurance policies do not provide coverage for intentional acts.

It is estimated that up to 60 million or 1 in 5 Americans have some variety of sexually transmitted disease. Some of these can be physically devastating, others deadly. The privacy and sanctity of marriage have historically been highly

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guarded by the courts. This was said to justify spousal tort immunity. Unfortunately, there is no such immunity against STD's.

There appears to be a willingness of courts in other states to discard the pretexts of marital sanctity in these cases. It remains to be seen if New Mexico will follow suit at the appellate level.

The antiquated policies surrounding spousal immunity no doubt did not contemplate 60 million carriers of STD's or the risk of these being brought into the marriage. There is no reason to deny an innocent spouse recovery for injuries and damages resulting from STD's. After all, once an STD is introduced into the marital relationship, what is there left for the court to protect?

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