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Agreements and Special Relationships:

Insurance Agents' Duties and Liabilities to Insureds in Wisconsin

Given the Wisconsin Legislature's unmitigated fervor to repeal the pro-consumer automobile insurance law changes in 2009, Wisconsin automobile insurance consumers have to be more diligent both in securing coverage from their agents and understanding it. Facing the reality of reducing clauses, underinsured motorist definitions, and stacking prohibitions, insurance consumers must request specific coverage, get an agreement for the coverage, and affirm the special nature of their relationship with the agent. When consumers do these tasks, the insurance agents have a duty to fulfill the insureds' requests and secure the coverage. If the agents do not secure the requested and agreed upon coverage, they may be found negligent in the performance of their duties and subject to damages.

I. *Nelson v. Davidson:* "Special Circumstances" Dictate the Liability of an Insurance Agent

In Wisconsin, an insurance agent enjoys the benefit of Wisconsin court decisions holding that they cannot be negligent for selling and procuring insurance absent specific requests and express agreements, a statutory duty, or "special circumstances." The Wisconsin Supreme Court decision in *Nelson v. Davidson,*[1] was the impetus for a line of cases discussing insurance agents' liability to the insured for the advice they give and the products they sell and service. Therein, the concept of "special circumstances" was born.

Nelson involved the consolidated cases of two automobile accident victims (Nelson and Pritchard) where the negligent party had insufficient liability limits to cover their damages. Both plaintiffs had purchased insurance coverage from State Farm Mutual Automobile Insurance Company through different agents (Davidson and Baier). Neither policy had underinsured (UIM) motorist coverage.

The plaintiffs sued State Farm, Davidson, and Baier alleging negligence in failing to adequately inform them of the availability of UIM coverage.[2] The plaintiffs argued that a duty to advise a client regarding the availability of insurance may arise when a statutory obligation or a special relationship arises between agent and buyer.[3]

The defendants moved for summary judgments of dismissal, primarily on the ground that they had no duty to inform their insureds of the availability of UIM coverage, nor to recommend certain policy limits.[4] Alternatively, the defendants claimed they mailed all insureds the UIM notices.[5] The trial court granted the defendants' summary judgment motions and dismissed the actions concluding that an insurance agent has no affirmative duty under Wisconsin law to inform the insured about available coverages, or to review existing coverage to determine its adequacy.

On appeal, the issue before the Wisconsin Supreme Court was whether the insurance agent owed an affirmative duty to the plaintiffs to tell them of the availability or advisability of UIM coverage.[6] There was no Wisconsin decision directly on point. The *Nelson* court concluded, however, that the "vast majority of other jurisdictions" hold that the general duty of care which an insurance agent owes a client does not include the obligation to advise of available coverages.[7]

The Wisconsin Supreme Court found that jurisdictions following this rule considered strong policy considerations against imposing agent liability, such as removing any burden from the insured to take care of his own financial needs and expectations choosing from competitive products available, transforming insurance companies from a competitive industry into financial counselors and guardians of the insured, and making the insured take responsibility to advise the agent what he wants, including the limits to be issued.[8] Further, negative consequences to the insurance industry of agent liability included subjecting insurers to liability for failing to advise their own clients of every available possible insurance option and allowing an insured the opportunity to insure after a loss by asserting they would have purchased additional coverage had it been offered.[9]

In 1990, when *Nelson* was decided, there was no Wisconsin statute requiring UIM insurance. The *Nelson* Court then analyzed the requirements of a "special relationship" between the insured and the agent. Relying on a Michigan case, the Court stated that something more than the standard insured-insurer relationship is required in order to create a special relationship obligating the insurer to advise the policyholder concerning his or her insurance coverage.[10]

Further, some courts required an express agreement, or a long established relationship of entrustment from which it clearly appears that the agent appreciated the duty of giving advice, and compensation for consultation and advice was received apart from the premiums paid by the insured.[11]

Finally, other courts held that a special relationship may be shown by an insurance agent who holds himself or herself out as being a highly-skilled insurance expert, coupled with the insured's reliance on the expertise of the agent to the insured's detriment.[12]

The *Nelson* Court affirmed the trial court's dismissal and held that "an insurance agent has no affirmative duty under existing Wisconsin law, absent special circumstances, to inform an insured concerning the availability or advisability of UIM coverage."[13] The Court reasoned,

"[T]he record does not indicate that State Farm or its agents expressly contracted to assume the duties of an advisor or a consultant, nor is there any evidence that the agents held themselves out as specialists or highly skilled insurance experts. Moreover, neither agent received additional compensation for consultation or advice."[14]

II. Standard Insurer-Insured Relationship Does Not Create A Duty To Advise

A. Meyer v. Norgaard: No duty to recommend more than statutory minimums

Three Court of Appeals cases that followed *Nelson* focused on the "standard insurer-insured relationship." In *Meyer v. Norgaard*,[15] the plaintiff sued her insurance agent and insurance company claiming the negligent performance of their duty to inform her of the availability of uninsured (UM) motorist coverage greater than the $100,000 sold to her. She instructed the agent to "get the best coverage we could."[16] The agent sold her a policy with $300,000 per person/per accident liability limits and $100,000 per person and $300,000 per accident uninsured and underinsured motorist limits.[17] Her wrongful death suit for the loss of her husband claimed that the agent breached his duty of reasonable care by failing to reasonably evaluate their needs and advise them of the need for greater uninsured motorist coverage.[18] Specifically, the plaintiff claimed that the agent was negligent in failing to recommend $300,000 of uninsured coverage.

The Court of Appeals affirmed summary judgment dismissal of the plaintiff's claims, stating "[W]hile insurance agents have a duty to act with reasonable care to their insureds, the nature of that duty does not impose upon the insurance agent the affirmative obligation, absent special circumstances, to inform about or recommend policy limits higher than those selected by the insured.[19] The Court reasoned, "[T]he amount of protection an insured wishes to obtain against any specific risk concerns the allocation of personal resources and is a matter that is uniquely within the province of the insured."[20]

The *Meyer* plaintiff alleged that because uninsured (UM) motorist coverage was mandatory by statute, the agent had a duty to act reasonably regarding such coverage.[21] The *Meyer* Court responded, "[W]hile (agent) may have had a duty of reasonable care, he had no duty to do more than advise (plaintiff) of the statutory requirements."[22]

The plaintiffs claimed a special relationship with their agents because the agent assumed the duty of advising them on their insurance needs and he recommended coverage based on his individual assessment or their needs and periodically reviewed those needs.[23] The *Meyer* Court responded, "[t]hese facts reflect a standard insurer-insured relationship, not a special relationship where the insured paid more than the premiums for special consultation and advice."[24]

The plaintiffs argued that their agent held himself out as a highly-skilled specialist and they relied on this expertise to their detriment. The Court responded, "Not every specialist is subject to this exception. Rather, the specialization must be such that the agent promotes himself as an insurance consultant and assumes an obligation to advise the insured beyond that of the standard insurance agent."[25]

The *Tackes* Court concluded that the plaintiffs' dealings with their agent were nothing more than the "standard insured-insurer relationship."

B. Tackes v. Milwaukee Carpenters District Council Health Fund: *No duty to advise regarding availability of UM/UIM*

Also in 1991, the Wisconsin Court of Appeals in *Tackes v. Milwaukee Carpenters District Council Health Fund,*[26] again followed *Nelson's* holding. In *Tackes,* the plaintiffs owned two automobiles insured by Wisconsin Farmers Mutual Insurance. They alleged that their agent negligently failed to advise them to purchase underinsured (UIM) motorist coverage. The trial court dismissed their claims against the agent.

On appeal, the *Tackes* Court, citing *Nelson*, reiterated that absent special circumstances an insurance agent does not owe an affirmative duty to advise his or her customers on either the availability or desirability of underinsured motorist coverage.[27] The Court recognized that, although nothing prevents an insurance agent from specifically undertaking a duty to advise clients on insurance matters, the hallmark of such an undertaking is the normal currency of commerce: consideration – either money or otherwise.[28] The Court continued, "[B]y the same token, even though the insurance agent does not receive extra monetary remuneration for advice, special expertise may be offered as a way of attracting business that might not otherwise patronize a mere purveyor of standard products."[29]

The Court held that the agent's status as an independent insurance agent did not constitute a "special circumstance" under *Nelson.*[30] Also, the agent's advertisements that he offered "insurance of all kinds" and that "after the sale it is the service that counts" did not represent that he was a "highly-skilled insurance expert."[31] The agent's affiliation with an insurance association organization whose code of ethics stated that its members "will thoroughly analyze the insurance needs of [their] clients and recommend the forms of indemnity best suited to those needs" were an "exhortatory expression of common ideals" and did not establish a standard of care for civil liability.[32]

Finally, rejecting the plaintiffs' contention that they relied on their agent's expertise, the Court stated, "The mere fact that an agent 'recommends coverage based on his individual assessment of his client's needs and periodically reviews those needs' is not a 'special circumstance' as used in *Nelson*.'"[33] The *Tackes* Court concluded that the plaintiffs' dealings with their agent were nothing more than the "standard insured-insurer relationship."[34]

C. Lenz Sales & Service, Inc. v. Wilson Mutual Insurance Co.: *No duty to advise regarding the adequacy of policy limits*

In *Lenz Sales & Service, Inc. v. Wilson Mutual Insurance Co.*[35] the plaintiff business owners sued their insurance company and agent claiming negligence in failing to obtain requested fire insurance and negligently advising them of the adequacy of the building's contents coverage. In 1985, Lenz purchased from his agent and Wilson Mutual Insurance Company full replacement cost insurance for his business

building. The policy renewed annually. Although the business grew, Lenz never requested a change in the policy limits of $18,500.

In 1991, the building burned causing $200,000 in damages. The trial court granted the defendant insurance agent's motion for summary judgment on the ground that the agent had no duty to advise the Lenzes of the adequacy of their coverage.[36] Lenz appealed. The Wisconsin Court of Appeals, citing *Nelson,* held that an agent has no duty to advise an insured regarding the adequacy of its policy limits.[37]

III. Elements of a "Special Relationship"

In 1994, the Wisconsin Supreme Court in *Lisa's Style Shop, Inc. v. Hagen Insurance Agency*[38] held that an insurance agent had no duty to advise an insured to increase the insureds' coverage limits in a situation where the store's inventory insurance policy limits were inadequate. Citing *Nelson*, the Court reiterated three special circumstances that might create a duty on the part of an insurance agent to advise an insured about coverage:

1. an express agreement between the agent and the insured;
2. a long established relationship of entrustment from which it clearly appears that the agent appreciated the duty of giving advice and the agent received compensation for this consultation and advice beyond the agent's standard commission; and
3. the agent held himself or herself out as being a highly skilled insurance expert, and the insured relied on the expertise of the agent to the insured's detriment. [39]

After analyzing these three factors, the Court held that "[n]o special circumstances existed in this case to create a duty on (agent's) part to advise Lisa's about the limits of its inventory insurance coverage. Absent a request from Lisa's to raise the limits, (agent's) only duty was to insure that Lisa's coverage remained in effect."[40]

IV. Failure to Exercise Reasonable Skill and Diligence in the Transaction, Act in Good Faith or Procure Specific Request for Coverage

A. *Appleton Chinese Food Service, Inc. v. Murken Insurance, Inc.*: *Failing to include requested coverage creates liability*

An insurance agent may be liable if they do not exercise reasonable skill and diligence in a transaction. This finding was the case in *Appleton Chinese Food Service, Inc. v. Murken Insurance, Inc.*[41] The Wisconsin Court of Appeals reviewed a case involving the insureds' specific request for replacement cost insurance coverage for their building and restaurant. The insureds met with and asked their agent to secure replacement cost and lost business income insurance coverage. The agent prepared seven applications to various insurers seeking quotes for the requested replacement cost coverage. Due to the agent's clerical error, the agent's requests did not include lost business income coverage. At the agent's recommendation, the insureds selected an insurer and the agent bound coverage including replacement costs insurance. Before the policy was issued, however, the insurance company told the agent it could not issue replacement cost coverage, and proposed writing the policy for actual cash value. The agent agreed to the revised coverage proposal and did not consult the insureds. Subsequently, the building and restaurant were destroyed by fire.

"[a]n insurance broker is bound to exercise reasonable skill and diligence in the transaction of the business entrusted to him and he will be responsible to his principal for any loss from his failure to do so."

After a bench trial awarding the plaintiffs' damages, the court found the agent breached her duty to the insureds to exercise reasonable skill, care and diligence in obtaining the requested coverage.[42] The court found the agent negligent in preparing the application for coverage by failing to adequately review the quote and the policy to determine that they included coverage for which the agent intended to apply.[43] The court also found the agent negligent for failing to notify the insureds that the policy included only actual cash value.

The agent appealed claiming the court's liability findings violated the *Nelson* holding. In affirming part of the court's damages award related to the agent's negligence in procuring the replacement cost coverage, the *Appleton Chinese Food Service, Inc.* Court recognized that, "[a]n insurance broker is bound to exercise reasonable skill and diligence in the transaction of the business entrusted to him and he will be responsible to his principal for any loss from his failure to do so."[44] The Court of Appeals stated that the agent's liability was premised upon its failure to procure the coverage that the insureds actually requested.[45]

B. *Poluk v. J.N. Manson Agency, Inc.*: *Duty to obtain the coverage requested*

Liability was also found in *Poluk v. J.N. Manson Agency, Inc.*[46] The insurance agent in this case had worked with a commercial building's owners for more than twenty years. For ten years prior to the building owner's death, the agent secured insurance through one company whose policy contained an exclusion for losses if the building was vacant for more than sixty days prior to the loss. After the owner's death, the building was placed for sale. The insured's representative told the agent that she was seeking specific coverage on a month-to-month basis because the building's commercial tenant was vacating while the building was on the market for sale. The agent told the owner's representative to simply pay the entire premium and upon the sale the owner's estate would receive a pro-rata refund. The agent assured the owner's representative that the building would be covered. Approximately three months after the tenancy ended and before the sale, a fire destroyed the building. The insurance company denied coverage for the fire damage because the building had been vacant for more than sixty days. The insured sued the agent claiming negligence and misrepresentation. At trial, the jury apportioned ninety percent of the negligence to the insurance agent. The agent appealed claiming it had no duty to the building owner insured.

The Wisconsin Court of Appeals agreed with the trial court that upon learning the building's tenant was vacating while the building was for sale, the agent

had a duty to inquire further to provide coverage until the building was sold.[47] The court held that, "[A]n insurance agent's duty is to obtain the insurance sought by the insured."[48] The court continued, "When (the insured) told (the agent) that the (building owner) wanted coverage until the building was sold and that the tenant was leaving, this should have raised a red flag because of the existence of the vacancy clause, and (the agent) should have inquired further."[49] The information given by the insured gave the agent the insureds' expectations for coverage and informed the agent about what exclusions the insured deemed important.[50] The court stated, "This information, along with the knowledge the policy had a vacancy clause, is what triggers the duty."[51] The court held, "[W]hile we do not expect insurance agents to be clairvoyant, when they are presented with information suggesting an exemption clause might be triggered in a policy, they have a duty to inquire further. To hold otherwise would be to absolve the agent of their duty to obtain the insurance requested by the insured."[52] An insurance agent has the duty to act in good faith and carry out the insured's instructions.[53] This duty does not, however, impose the affirmative obligation, absent special circumstances, to advise a client regarding the availability or adequacy of coverage.[54] The trial court's verdict was affirmed.

C. *Avery v. Diedrich*: *No duty to obtain additional coverage until the agent actually agrees to obtain that coverage*

In 2006, the Wisconsin Court of Appeals, in *Avery v. Diedrich,*[55] analyzed the issue of an insurance agent's duty when the insured makes a specific request for coverage. In *Avery*, the plaintiffs inherited land where the existing insurance policy provided $150,000 in replacement cost coverage. The plaintiffs sought to renew replacement cost coverage through the Diedrich Agency, Inc. for the same level of insurance. The agent confirmed the $150,000 value by conducting an inspection and using an evaluation formula and bound the coverage. Later, the plaintiffs-insureds met with the agent and requested an increase in coverage to $250,000. The plaintiffs and the agent did not reach an agreement on the increased coverage request, and the insureds agreed to get an independent valuation to support the increased insurance coverage request. The agent sent the plaintiffs a letter confirming the insureds' intent to obtain the evaluation. A verbal assessment was done, but neither the insureds nor the evaluator communicated the result to the agent. There was no further discussion and the agent did not procure the increased coverage. A fire destroyed the building and caused over $250,000 in damages. The plaintiffs sued the agent claiming negligence in failing to increase the coverage. The agent moved for summary judgment, which the trial court denied by concluding that the agent was required to procure any coverage the insured requested, not just the coverage it agreed to procure.[56] The agent appealed.

"Wisconsin law makes clear that when an insurance agent agrees to procure coverage that the client requests, the failure to acquire it exposes the agent to a suit claiming negligence."

On appeal, analyzing the *Appleton Chinese* holding, the Court of Appeals stated that a mere request for coverage does not give rise to a duty on the agent's part.[57] It continued, [w]here a customer has requested coverage and the parties have entered into an agreement concerning the coverage, the agent's duty to diligently seek to obtain the coverage arises."[58] The *Avery* court concluded that the agent undertook and performed the requested task of procuring $150,000 in coverage based upon the parties' agreement. Incurring the additional coverage was a new task which the agent did not agree to perform and, therefore, had no duty to perform it.[59]

The Court of Appeals reversed the trial court's denial of the agent's summary judgment motion. The court held, "[t]he agent must agree to procure particular coverage before the law will impose on the agent a duty to obtain that coverage."[60] It reasoned, "Wisconsin law makes clear that when an insurance agent agrees to procure coverage that the client requests, the failure to acquire it exposes the agent to a suit claiming negligence."[61] "Where a customer has requested coverage and the parties have entered into an agreement concerning that coverage, the agent's duty to diligently seek to obtain the coverage arises."[62] An insurance agent must agree to procure a coverage increase before he or she has a duty to do so.[63]

The Wisconsin Supreme Court reviewed the decision on appeal.[64] The issue on appeal was, "if an insured requests an increase in insurance coverage and the insurance agent has not agreed to procure it, does the agent have a duty to procure it?"[65] In affirming the Court of Appeals, the Supreme Court held that an insurance agent does not have a duty to procure requested insurance coverage until there is an agreement that the agent will do so.[66]

V. Civil Jury Instruction 1023.6: Negligence of Insurance Agent

These holdings formed the basis of *Wisconsin Civil Jury Instruction* 1023.6, entitled "Negligence of Insurance Agent," which contains the following language:

> An insurance agent, such as (defendant), must use the degree of care, skill, and judgment which is usually exercised under the same or similar circumstances by insurance agents licensed to sell insurance in Wisconsin.
>
> While there is no duty to advise the policy holder of coverages available, the agent must use reasonable skill and diligence to put into effect the insurance coverage requested by his or her policy holder, act in good faith towards that policy holder, and inform him or her of the minimum statutory requirements. A failure on the agent's part to use that skill or diligence constitutes negligence.
>
> **[If evidence as to a special relationship is shown, then add the following:**
> (Plaintiff) contends that a special relationship existed between (him)(her) and (defendant).
> If a special relationship did exist, then _____ had the duty to advise _____ about

the types of insurance coverages that would be available to (him)(her) and the amount of insurance coverage that would be appropriate for (him)(her). In determining whether a special relationship existed, you should consider the following factors:

1. Whether (defendant) held (himself)(herself) out to the public as a skilled insurance advisor or consultant;
2. Whether (defendant) took it upon (himself)(herself) to actually advise (plaintiff) on the coverages (plaintiff) should have beyond the usual relationship of agent and policy holder;
3. Whether the policy holder relied on the agent's expertise;
4. Whether an additional fee was paid to the agent for special consultation and advice; and
5. Whether there was a long established relationship of entrustment between the agent and the insured.

If you find that a special relationship existed between (plaintiff) and (defendant), then (defendant) had the duty to advise (plaintiff) about available insurance coverages and recommend the appropriate amount of insurance coverage necessary to protect the insured.]

[If contributory negligence is an issue, then give the following:

An insured, such as (plaintiff), has a duty to use ordinary care when purchasing an insurance policy. Ordinary care is that degree of care that a reasonably prudent person would use under the same or similar circumstances.

When purchasing a policy, an insured must advise his or her agent of the type of insurance wanted, including the limits of the policy to be issued. An insured must read the policy once it is delivered to determine whether it provides the insurance coverage requested. However, an insured is not bound to comprehend every term and condition in the policy. An insured is only required to act as a reasonably prudent person would act under the same or similar circumstances. A failure to exercise ordinary care by the insured constitutes negligence.][67]

VI. Looking Forward: Advice to Clients & Consumers

The holdings for these cases give Wisconsin consumers direction as to how they should purchase insurance and interact with their agent. Especially with the reality of reducing clauses, insurance company created UIM definitions, and anti-stacking clauses, consumers need to be armed with the ability to secure the coverage they need at the levels they want. The following guidelines may help:

1. Maintain a folder containing all interactions and transactions with the insurance agent, including advertisement and promotional materials, letters, offers, and insurance contracts.
2. Meet in person with the agent when discussing insurance needs.
   a. Take notes.
   b. Bring photos of all property to be insured, invoices, appraisals, or estimates for the property.
   c. Bring important financial documents to the meeting with the agent, including estimates of property to be insured, prior insurance contracts, and receipts or documents demonstrating value of the property.
   d. Take to the meeting your spouse or significant other, family member, or close friend.
   e. Follow up with a letter describing the details of the meeting.
3. Ask the agent to explain all available coverage for the insureds' needs. Explain all premiums and corresponding limits. Ask about and demand an explanation for all clauses reducing or excluding coverage.
4. Tell the agent you selected him or her based on his or her experience in counseling clients about insurance needs. Tell the expert that you are relying on his or her experience in selecting the appropriate coverage. Tell the agent you selected him or her over other agents because of his or her special knowledge and experience with insurance.
5. Make specific requests for coverage to the agent. Tell the agent your specific

needs for insurance coverage.

6. Do not allow the agent to sell less UIM & UM coverage than he or she sells you for liability coverage.
7. At or immediately after the meeting, get the agent's agreement to insure the property at the levels selected. This confirmation is best done in writing.
8. Review in person with your agent all changes in circumstances before each policy renewal.
9. Ask your agent for yearly updates regarding any law changes.

It is imperative that Wisconsin insurance consumers take a more involved role in selecting an agent and insurance coverage they need and deserve. If they follow the above guidelines, they are more likely to clearly request specific coverage as well as create the "special relationship" with their insurance agent that will impose liability on a negligent insurance agent.

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(Endnotes)

[1] 55 Wis. 2d 674, 456 N.W.2d 343 (1990).
[2] *Id.* at 678.
[3] *Id.* at 682.
[4] *Id.*
[5] *Id.*
[6] *Id.* at 676.
[7] *Id.* at 680-681.
[8] *Id.* at 681-682.
[9] *Id.*
[10] *Id.* at 683.
[11] *Id.* at 683-684.
[12] *Id.*
[13] *Id.* at 685.
[14] *Id.* at 684.
[15] 160 Wis. 2d 794, 467 N.W.2d 141 (Ct. App. 1991).
[16] *Id.* at 797.
[17] *Id.*
[18] *Id.*
[19] *Id.* at 798.
[20] *Id.* at 799.
[21] *Id.* at 800.
[22] *Id.*
[23] *Id.* at 801.
[24] *Id.*
[25] *Id.*
[26] 164 Wis. 2d 707, 476 N.W.2d 311 (Ct. App. 1991).
[27] *Id.* at 711.
[28] *Id.* at 712.
[29] *Id.*
[30] *Id.* at 714.
[31] *Id.* at 715.
[32] *Id.* at 715-716.
[33] *Id.* at 716-717.
[34] *Id.* at 717.
[35] 175 Wis. 2d 249, 499 N.W.2d 229 (Ct. App. 1993).
[36] *Id.* at 253-254.
[37] *Id.* at 255.
[38] 181 Wis.2d 565, 511 N.W.2d 849 (1994).
[39] *Id.* at 572.
[40] *Id.* at 577.
[41] 185 Wis. 2d 791, 519 N.W.2d 674 (Ct. App. 1994).
[42] *Id.* at 799.
[43] *Id.*
[44] *Id.* at 802.
[45] *Id.*
[46] 2002 WI App 286, 258 Wis. 2d 725, 653 N.W.2d 905.
[47] *Id.,* 2002 WI App 286 at ¶ 14.
[48] *Id.,* 2002 WI App 286 at ¶ 23.
[49] *Id.*
[50] *Id.,* 2002 WI App 286 at ¶ 16.
[51] *Id.,* 2002 WI App 286 at ¶ 21.
[52] *Id.*
[53] *Id.,* 2002 WI App 286 at ¶13.
[54] *Id.*
[55] 2006 WI App 144, 294 Wis. 2d 769, 720 N.W.2d 103.
[56] *Id.,* 2006 WI App 144 at ¶ 5.
[57] *Id.,* 2006 WI App 144 at ¶ 9.
[58] *Id.*
[59] *Id.,* 2006 WI App 144 at ¶ 15.
[60] *Id.,* 2006 WI App 144 at ¶ 17.
[61] *Id.,* 2006 WI App 144 at ¶ 1.
[62] *Id.,* 2006 WI App 144 at ¶ 9.
[63] *Id.,* 2006 WI App 144 at ¶ 12.
[64] 2007 WI 80, 301 Wis. 2d 693, 734 N.W.2d 159.
[65] *Id.,* 2007 WI 80 at ¶ 2.
[66] *Id.*
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