



LAW NOTES

from the Law Firm of
Kay & Andersen, S.C.

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What Every Insurer Should Know.....

ABOUT THE SCOPE OF SETTLEMENT AGREEMENTS

Insurance companies routinely enter into settlement agreements, and a poorly drafted settlement agreement may harm the interests of the insurer and its insureds. See for example, Smith v. Rural Mutual Insurance Company, 20 Wis. 2d 592, 123 N.W.2d 496 (1963) (release entered into by insurer precluded claim for contribution from joint tortfeasor). A recent Wisconsin Court of Appeals decision reiterated the significance of careful draftsmanship in settlement agreements. In Dyer v. Law, Appeal No. 2007 AP 2444 (October 1, 2008), found at <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=34152>, the parties entered into an agreement to exchange real estate. When subsequent disputes arose, the parties entered into a settlement agreement which stated that the parties agreed to “substitute their performance required under the Exchange Documents for those provided herein,” and the parties “hereby release each other from any claim or cause of action relating to the Exchange Documents.” When Dyer subsequently learned that he could not develop the property he received in the exchange because a portion of the property was subject to control by the Department of Natural Resources, and because of defects relating to a right of way for access, he sued Law alleging breach of warranty of title and asserted that the settlement agreement did not preclude these claims. Law moved for summary judgment on the basis that the settlement agreement barred Dyer’s claims, and the circuit court agreed and dismissed the claims. On review, the Court of Appeals noted that construction of settlement agreements will be guided by contract law. Because the settlement agreement used sweeping words such as “any” the

settlement was global in its coverage. The settlement language was broad and not qualified or ambiguous. Dyer argued that the warranty deed was not an “Exchange Document” and therefore the settlement agreement did not waive claims relating to the deed and warranties thereunder. However, the settlement agreement recited the parties’ agreement to exchange the properties and therefore any warranties under the deeds were incorporated into the settlement agreement and the warranties were not excluded from the terms of the release. The Court of Appeals noted that the parties’ intent was determined from the plain and unambiguous language of the settlement agreement pursuant to which the parties agreed to settle their dispute and to restructure their business dealings on the terms and conditions set forth in the settlement agreement. Because the settlement agreement contained no qualifying or limiting language and did not reserve or expressly exclude any claims, the Court of Appeals upheld the circuit court’s order dismissing Dyer’s claims. This case serves as a reminder to insurance companies to anticipate potential future problems and to carefully evaluate the appropriate scope of any settlement agreement entered into at the final resolution of a claim.

Kay & Andersen, S.C. has substantial experience in assisting insurance companies and securing favorable verdicts and settlements and has received an AV rating from Martindale-Hubbell. We are also proud to be listed in *Best’s Directory of Recommended Insurance Attorneys and Adjusters*. Feel free to contact us with any of your insurance defense needs.

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