



LAW NOTES

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

January, 2008

What Every Insurer Should Know.....

ABOUT INVESTIGATING A PROPOSED INSURED'S DISCLOSURES

Insurance companies routinely rely on policy application disclosures from a prospective insured to accurately measure the potential risk and to determine an appropriate premium. But what happens when an insured answers truthfully but is not asked the right questions? In Certain Underwriters at Lloyd, London v. American Colloid Company, Wisconsin Appeal No. 2006AP2873 found at <http://www.wisbar.org/res/capp/2007/2006AP002873.htm>, an insurance agent prepared an application for insurance for a new business based on a discussion with the business owner's father, Paul Klein. Klein told the agent that the business repackaged a "sand-type" substance and metal insulators with industrial applications. Klein invited the agent to inspect the machinery and safety data sheets for the materials repackaged by the business. The agent did not visit the site or review the data sheets, and assumed based on the information received from Klein, that the materials were not flammable, dangerous, or explosive. The agent submitted the application to Acuity, which issued a CGL policy to the business. After the business's building was damaged by fire, Acuity sued the insurance agency, claiming it was misled by the inaccurate information in the application. The insurance agency subsequently sued Klein, alleging that he had misled it by not revealing the dangerous nature of the materials. The circuit court granted Klein's motion for summary judgment and the Court of Appeals affirmed. The Court of Appeals noted that Klein was a potential customer who called the insurance agency seeking general information about insurance coverage for the business and who truthfully answered all questions posed to him. Under the circumstances, "any duty in this situation lies with the potential insurer, or the insurer's agent, to conduct an appropriate investigation". Id., at ¶9. Although this decision is likely to be unpublished and therefore not binding precedent, it serves as a reminder to insurers doing business in Wisconsin that they and their agents should perform whatever investigation is needed to resolve ambiguities in policy applications.

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

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LAW NOTES is published quarterly. If you have a special legal issue you would like to see covered in a future LAW NOTES by Kay & Andersen, S.C., feel free to contact us.

