



# LAW NOTES

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

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## What Every Insurer Should Know.....

### *ABOUT DISCOVERY OF BAD FAITH CLAIMS*

Wisconsin courts have recognized an independent tort claim against insurance carriers for bad faith in failing to pay valid claims. A recent Wisconsin Court of Appeals decision expanded on the extent to which bad faith claimants may pursue discovery. In *Farmers Automobile Insurance Association v. Union Pacific Railway Company*, Appeal No. 2007AP1992 (June 3, 2008) found at <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=32859>, Joseph Donaubaauer lost a house to fire triggered by a passing train. Although his insurer paid \$530,000 in fire loss claims to Donaubaauer, he made an additional claim to cover what he asserted was his home's replacement cost. When Farmers refused to pay what Donaubaauer demanded, he commenced an action for breach of contract and bad faith. Donaubaauer sought to review Farmers' files to determine whether Farmers improperly rejected Donaubaauer's submissions as to what he asserted was his home's replacement value. The Court of Appeals noted that a prerequisite to discovery in a bad faith case is some evidence that the insurance company's actions were objectively unreasonable. *Id.*, ¶26. The Court did not allow Donaubaauer's discovery effort, stating, "Absent an objectively unreasonable response to an insured's offer of settlement, we are left with the mere legitimate disagreement, which, as we have seen, is not enough to state a cause of action on the objective aspect of a bad faith claim." *Id.*, ¶28. The Court of Appeals held that summary judgment was properly granted "without permitting Donaubaauer to rummage through Farmers' files because irrespective of what Donaubaauer would have found, Farmers' response to Donaubaauer's replacement value position was objectively reasonable." *Id.*

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 Directory of Recommended Insurance Attorneys and Adjusters*. Feel free to contact us with any of your insurance defense needs.

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