



# LAW NOTES

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

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

*ABOUT THE SCOPE OF AN INSURER'S DUTY TO DEFEND IN WISCONSIN*

Wisconsin courts have developed a procedure (motion to stay on merits/request bifurcated trial on coverage/merits) through which insurers have the ability to seek a declaration of coverage without being accused of bad faith. The Wisconsin Supreme Court recently decided a case which serves to remind insurers of the importance of following those procedures. In *Liebovich v. Minnesota Insurance Company*, 2008 WI 75 (July 1, 2008), found at <http://www.wicourts.gov/sc/opinion/DisplayDocument.html?content=html&seqNo=33263> a homeowner (Liebovich) sued his insurers, Minnesota Insurance Company and AIG, after they refused to defend him in a lawsuit filed against Liebovich by his neighbors for violating a setback restriction. In evaluating whether coverage existed for the claims asserted in the complaint filed by Liebovich's neighbors, the Supreme Court noted that Wisconsin is a notice pleading state and therefore the exact form of injury need not be spelled out in a complaint. The neighbors' allegations that Liebovich interfered with their property interests and that they were aggrieved by his actions were sufficient to allege injury for the purpose of triggering a duty to defend. The complaint alleged injuries, indicated that the plaintiffs suffered actual damage or loss, and requested a damages award to compensate them for their injuries and loss. The intentional act exclusion in AIG's

policy also did not apply because the intent to build a house in a manner that violates a covenant is not the same as intent to harm. In closing, the Supreme Court stated, "We emphasize the preferred process for insureds to resolve duty-to-defend disputes. As we have explained, it is well established that an insurer may request a bifurcated trial on the issue of coverage while moving to stay proceedings on the merits of the liability action until the issue of coverage is resolved." *Id.*, ¶ 55. In addition to that procedure, insurers may raise the coverage issue in other ways, such as seeking a declaratory ruling or agreeing to provide a defense under a reservation of rights. The Supreme Court noted, "While these procedures are not absolute requirements, we strongly encourage insurers wishing to contest liability coverage to avail themselves of one of these procedures rather than unilaterally refuse to defend." *Id.*

Kay & Andersen, S.C. has substantial experience in representing insurers and insureds in coverage disputes as well as defense on the merits, 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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