



# LAW NOTES

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

July, 2006

## What Every Employer Should Know.....

### *ABOUT PROCURING INSURANCE COVERAGE*

**E**very employer should consult with its insurance agent to determine what types of insurance coverage and what limits of coverage are necessary to protect the business. Wisconsin courts have held insurance agents liable for losses sustained when a client requested insurance coverage and the agent agreed to procure the coverage, but then failed to acquire it. In a recent decision, Avery v. Diedrich, 2005AP1730 (Wis. Ct. App. June 7, 2006), the Court of Appeals took up the question of whether an insurance agent is exposed to liability when a client requests coverage but the agent has not agreed to procure it. In Avery, a landowner asked his agent to increase the fire insurance coverage limit on his property from \$150,000 to \$250,000. The agent believed the property was not worth that much and that a \$100,000 increase would look suspicious. A fire subsequently occurred on the property and the replacement cost of the property exceeded \$250,000. The landowner sued the agent, claiming that he negligently failed to increase the landowner's coverage. The Court of Appeals held that only the insurance agent, and not the customer, could decide whether the agent would assume a duty to procure coverage. In the Avery case, the agent did not agree to obtain the increased coverage and therefore no liability arose. In light of Avery, employers should determine that their insurance agents have obtained the coverage requested. Unilateral activity by the employer, such as leaving a voice mail message for an insurance agent requesting additional coverage, will not necessarily protect the business or guarantee that the requested coverage will be obtained. If your business has a dispute with an insurance company or an insurance agent, Kay & Andersen can help you.

**KAY & ANDERSEN, S.C.**

One Point Place, Suite 201

Madison, WI 53719

Phone: (608) 833-0077

Fax: (608) 833-3901

Web Site: [www.kayandandersen.com](http://www.kayandandersen.com)

E-mail: [law@kayandandersen.com](mailto:law@kayandandersen.com)

Robert J. Kay

Randall J. Andersen

Robert A. Mich, Jr.