



# LAW NOTES

from the Law Offices of  
**Kay & Andersen, LLC**

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

### *ABOUT ESTOPPEL AS A DEFENSE TO THE STATUTE OF LIMITATIONS*

Insurance companies often engage in settlement negotiations with claimants, right up to the statute of limitations. In a recent Wisconsin Court of Appeals case, such negotiations extended past the expiration of the statute of limitations, leading the Court to examine whether the insurer should be estopped from relying on the statute of limitations. In *Elliott v. General Casualty Company of Wisconsin*, Appeal No. 2011AP167 (October 27, 2011), found at: <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=72909>, a storm damaged Elliott's residential property on March 19, 2006. He reported the claim to his insurance agent on May 8, 2006. General Casualty representatives allegedly assured him that he would receive benefits after the property repairs were completed and he had replaced his damaged personal property. The insurance investigator completed his final estimate on March 22, 2007, one year and three days after the property was damaged. General Casualty subsequently issued a check to Elliott in an amount for less than the actual amount of all repair-related bills. Elliott then filed suit in August, 2009, after which General Casualty was granted summary judgment by the circuit court on the basis that the suit was barred under Wis. Stat. §631.83(1)(a) (requiring action on a fire insurance policy to be commenced within 12 months after the loss) and a policy provision requiring suit be filed within a year of the loss. On appeal, the Court of Appeals concluded that the key inquiry was whether the defendant's conduct was so unfair and mis-

leading as to outweigh the public interest in the statute of limitation. *Id.*, ¶16. The Court of Appeals concluded that there were material factual disputes preventing summary judgment, in light of the General Casualty representatives' assurances that the claim would be paid when the repairs were complete, while simultaneously telling him not to begin repairs until the estimate was approved and there were problems in obtaining necessary information for the estimate. *Id.*, ¶52. The Court of Appeals also reversed the dismissal of Elliott's bad faith claim. It noted that an insured is not necessarily barred from pursuing a bad faith claim even when the basis for no liability under the policy is the statute of limitation. *Id.*, ¶54. This case serves as a reminder to insurers that the expiration of a statute of limitations will not necessarily preclude a claim if the insurer's representatives' conduct unfairly induced the insured to not file suit within the prescribed time, provided the insured reasonably relied on the representations. Such conduct could subject an insured to a bad faith claim if the claim is denied.

Law Offices of Kay & Andersen, LLC is recognized for securing favorable verdicts and settlements for insurance companies and their insureds 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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