

Insurance – Coverage – Title Insurance – Piper v. Nitschke’s Northern Resort Condominium Owners Association, LLC (Court of Appeals, 2009 AP 550, November 3, 2009)

The plaintiffs, several condominium owners, sued the defendant real estate developer alleging that amendments made to the condominium declaration were not properly adopted. The defendant tendered defense of the claim to its title insurance company, which then joined the suit and moved for summary judgment, arguing that there was no coverage because the policy excluded claims arising out of amendments to the condominium declaration. The defendant opposed the motion, asserting that the exclusion only excluded claims arising out of covenants, conditions and restrictions contained in the declaration, bylaws, budget and amendments, but did not exclude claims arising directly out of the amendments to the declaration. The circuit court agreed with the title insurance company and granted summary judgment. The defendant appealed.

The court of appeals reversed, holding that the title insurance policy did not exclude claims arising directly out of amendments to a condominium declaration, as opposed to claims arising out of covenants, conditions and restrictions contained in amendments. The court explained that the exclusion as written first excepted from coverage certain items - covenants, conditions and restrictions - and then listed the various documents in which the excluded items might appear, one of these documents being the amendments. The court concluded that if a claim arose out of something other than a covenant, condition or restriction in an amendment, then the claim was not excluded by the policy.

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Economic Loss Doctrine – Misrepresentation – Fraud in the Inducement – Van Gordon v. Pinewood Realty, Inc. (Court of Appeals, 2008 AP 2428, November 3, 2009) (unpublished opinion)

The plaintiff sued the defendant realtor, alleging misrepresentation with regard to the sale of property he had purchased. He claimed that the misrepresentation was extraneous to the contract and that the fraud in the inducement exception to the economic loss doctrine applied, allowing the misrepresentation tort claim. The defendant moved for summary judgment, arguing that the alleged misrepresentation involved the character of the property and that the economic loss doctrine applied. The circuit court agreed with the defendant and granted summary judgment, and the plaintiff appealed. **The court of appeals affirmed, holding that the alleged misrepresentation concerned the quality of the land, and that the economic loss doctrine barred the misrepresentation claim.** The fraud in the inducement exception to the economic loss doctrine applies only when the plaintiff has proven that misrepresentation occurred, the misrepresentation occurred prior to the formation of the contract, and the fraud was extraneous to, rather than interwoven with, the contract. Note: this case involves a real estate sale completed before the enactment of 2009 Wisconsin Act 4, which allows for intentional misrepresentation or fraud claims against a home seller in relation to a home sale completed after April 23, 2009.



Insurance – Coverage – Your Work Exclusion – Camelot Development Group, LLC v. Jim Karrels Trucking Sand & Gravel, Inc. (Court of Appeals, 2009 AP 592, November 11, 2009) (unpublished opinion)

The plaintiffs sued the defendant contractor and its insurer for damage caused to the plaintiff's property after the defendant ruptured a drain tile on the property while performing work, causing flooding. The defendant's insurer moved for summary judgment, arguing that it had no duty to defend or indemnify its insured, arguing that the commercial general liability policy did not cover property damage arising out of operations performed by contractors on the property on behalf of the property owner, or damages arising out of the insured's incorrectly-performed work on the property. The circuit court agreed and granted summary judgment in favor of the insurer, and the defendant appealed. **The court of appeals affirmed, holding that the damage to the property arose directly out of the defendant insured's operations on the property and was the result of the defendant insured's poor workmanship.**



Civil Procedure – Timeliness – Motion After Verdict – Link Snacks, Inc. v. Link (Court of Appeals, 2008 AP 2897, November 17, 2009) (unpublished opinion)

The plaintiff company and some of its owners sued the defendant co-owners, and the claim proceeded to trial. A jury awarded one of the plaintiffs \$736,000 in compensatory damages and \$5,000,000 in punitive damages against one of the defendants. The defendant against whom the damages were awarded then filed a motion after verdict, seeking reduction of the punitive damage award, but the motion filing was one day late. The circuit court nevertheless considered the motion and reduced the punitive damages award. The plaintiffs appealed. **The court of appeals reversed, holding that a motion after verdict that is filed beyond the 20-day deadline set forth in Wis. Stat. § 805.16 may not be considered by the circuit court.** The defendant had served the motion by putting it in the US Mail on the 20th day after the verdict, but it was not received and filed by the circuit court until the next day.



Worker's Compensation – Employee-Employer Relationship – Volunteers – Hall v. School District of St. Croix Falls (Court of Appeals, 2008 AP 2856, November 24, 2009) (unpublished opinion)

The plaintiff signed a contract with the defendant school district wherein he agreed to be a volunteer basketball coach with no remuneration. He was injured while practicing with the school basketball team, and the defendant denied him worker's compensation benefits on the basis that he was a volunteer and not an employee. He then brought a worker's compensation claim with the Department of Workforce Development, which found that he was actually an employee of the defendant and awarded him worker's compensation benefits. The defendant appealed to the Labor and Industry Review Commission, which overturned the DWD determination. The plaintiff then appealed to the circuit court, which affirmed the LIRC. The plaintiff appealed to the court of appeals. **The court of appeals affirmed, holding that the plaintiff was a volunteer and not an employee, and was thus not entitled to worker's compensation benefits.** Wages are necessary for an employee-employer relationship to exist, but the wages need not be monetary. The court affirmed a LIRC determination that the free transportation to sporting events, access to weight room, a season pass to sporting events, and a gift of \$600 at the end of the coaching season by the other coaches, were not sufficient to constitute "wages."

NOTE: Unpublished court of appeals decisions issued after July 1, 2009, may now be cited as persuasive, but not precedential, authority pursuant to Wis. Stat. § 809.23(3)(b), as amended by Supreme Court Order 08-02, effective July 1, 2009. The Recent Case Update will therefore include instructive or informative unpublished opinions going forward.

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All unpublished decisions are marked as unpublished in this Update. The full text of these and other Wisconsin cases can be found on the State Bar's Web site at www.wisbar.org. Further information can be provided by any member of the firm by phone or email (enter first letter of first name, followed by last name, @pjmlaw.com). Questions can be directed to Recent Case Update editor Luke Kingree by phone or at lkingree@pjmlaw.com, or one of the associate editors: Grace Kulkoski gkulkoski@pjmlaw.com, Tiffany Jones tjones@pjmlaw.com, and Jessica Butler jbutler@pjmlaw.com.

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