

**S&D's seasoned attorneys have a strong record of success in insurance defense and subrogation. Our effective trial skills and willingness to aggressively litigate cases to verdict often enable us to reach better outcomes for our clients without entering the courtroom.**

**Contact us to schedule a consultation. We will share with prospective clients specific results in cases we have handled while maintaining client confidentiality. The following is a list of some recent cases of interest:**

***ACUITY, A Mut. Ins. Co. v. Bagadia, 2007 WI App 133, 734 N.W.2d 464***

Decision Date: 6/18/08

Supreme Court review of Court of Appeals decision affirming the decision of the Circuit Court for Waukesha County, the Honorable Mark Gempeler presiding. Affirmed.

Attorney(s): Arthur P. Simpson and Michelle D. Johnson

The Wisconsin Supreme Court ruled that trademark infringement constitutes an enumerated offense within the phrase "infringement of title." The court had previously ruled that the phrase "infringement of trademark" broadened the definition of advertising injury to include trademark infringement. In the instant case, the court held that trademark infringement was included within the phrase of infringement of title, the predecessor to the infringement of trademark language in the definition of advertising injury.

The Court further found that the act of taking a call from an interested customer, placing a computer disk in a white sleeve and sending it to the customer constitutes advertising activity. Finally, the court held that this action was a significant factor in causing damages. This decision expands the advertising injury coverage rules set forth in *Firemen's Fund Co. of Wis. v. Bradley Corp.*, 2003 WI 33, 261 Wis. 2d 4, 660 N.W.2d 666. It raises the issue of whether carriers want to extend coverage on the facts presented in this case or whether further exclusionary language is necessary.

***Stone v. ACUITY, A Mut. Ins. Co., 2008 WI 30, 308 Wis. 2d 558, 747 N.W.2d 149***

Decision Date: 04/11/08

Supreme Court review of published decision of the Court of Appeals affirming orders of the circuit court for Milwaukee County that denied ACUITY's motions for summary judgment and reconsideration. Affirmed.

Attorney(s): Arthur P. Simpson and Michelle D. Johnson

***Stone v. ACUITY, A Mut. Ins. Co.*** (continued)

Dr. Stone was injured when his bicycle was struck by a motorist pulling out from a stop sign. The motorist had insurance with liability limits of \$500,000. Dr. Stone settled with the motorist and her insurer for \$510,000. Dr. Stone then sought additional underinsured motorists (UIM) coverage from ACUITY. He was not entitled to UIM coverage under his homeowners policy because the tortfeasor had liability limits that were higher than his \$300,000 UIM limits under the homeowners policy. Dr. Stone sought additional coverage under his umbrella policy. The plain language of the umbrella did not provide UIM coverage. Dr. Stone initially argued the policy was “contextually ambiguous” in the circuit court. The circuit court found the policy was contextually ambiguous and S&D appealed the circuit court’s decision.

The Court of Appeals decided not to venture into the “contextual ambiguity” thicket. Rather, the Court of Appeals found that ACUITY had violated Wis. Stat. § 632.32(4m) because ACUITY failed to provide a notice of the availability of umbrella UIM coverage in 1999 when ACUITY first began offering such coverage. S&D petitioned the Supreme Court for review and the Court accepted the case.

The Supreme Court concluded ACUITY violated the notice provision of § 632.32(4m) because ACUITY did not provide notice of the availability of additional umbrella UIM coverage to existing personal umbrella policyholders (such as the Stones) after it became available in 1999. The Court made this finding despite the fact that the specific language of the statute only requires notice be provided one time and in conjunction with the first renewal of the insurance policy after October 1, 1995. The statute does not include any requirement that an additional notice be provided after an insurance company begins offering UIM coverage for the first time. The Court seems to have invented a requirement that is not in the statute.

The Court further determined that where an insurer fails to provide notice of the availability of UIM coverage as part of an insurance policy, the appropriate remedy is to read in the level of coverage necessary for the policy to conform to § 632.32(4m)(d) – \$50,000 per person and \$100,000 per accident. The court additionally concluded the Stones’ recovery was set by a Stipulation between the parties. The *Wisconsin Law Journal* reported on the decision and interviewed Art Simpson regarding stipulations in a 4/21/08 article, “Take care when entering stipulations.”