

Gutter v. Great Atlantic & Pacific Tea Co., 2007 WI App 216, 305 Wis. 2d 655, 739 N.W.2d 491

Decision Date: 8/21/07

Appeal from an order entered on jury verdict in Milwaukee County. Affirmed.

Attorney(s): Thomas J. Binder and Christine M. Rice

S&D tried this matter before the Honorable John Franke in May of 2006. The plaintiff claimed to have sustained permanent injury resulting from a bag of canned goods falling on her foot during checkout at Kohl's Food Store. The jury returned a defense verdict finding no negligence on the grocery store or its employee. The plaintiff appealed after the trial court denied her motion for new trial, which was based primarily on insufficiency of evidence and a perverse and prejudicial verdict. The appellate court found that there was sufficient evidence to support the jury's finding that the grocery bag fell without negligence of either party.

Rosario v. ACUITY, A Mut. Ins. Co., 2007 WI App 194, 304 Wis. 2d 713, 738 N.W.2d 608

Decision Date: 7/10/07

Appeal from judgment of the circuit court in Milwaukee County. Affirmed.

Attorney(s): Thomas J. Binder and Christine M. Rice

The plaintiff claimed negligence and safe place violations after she fell and broke her foot when negotiating a step while exiting the defendant's building. The trial court granted summary judgment to the defendants, finding plaintiff's claims barred by the statute of repose. On appeal, the plaintiff argued that the statute of repose did not apply because the plaintiff's injuries resulted from the owner's failure to warn of an unsafe condition associated with the structure, not as a result of a structural defect. S&D argued that the step was originally unsafe as constructed over forty years prior to the accident and Oliver had no notice of any issues concerning the step's safety. As there was no evidence presented that the owner improperly repaired or maintained the structure, the court held that the plaintiff's claims were based on a design defect in construction. The statute of repose was applicable to bar plaintiff's causes of action against the building owner.

Bruchert v. Tokio Marine & Nichido Fire Ins. Co., Ltd., 2007 WI App 156, 303 Wis. 2d 671, 736 N.W.2d 234

Decision Date: 5/22/07

Appeal from a final order of the circuit court for Milwaukee County. Reversed.

Attorney(s): Christine M. Rice

S&D's client cancelled the defendant's insurance policy prior to the subject motor vehicle accident

Bruchert v. Tokio Marine & Nichido Fire Ins. Co., Ltd. (continued)

due to non-payment of premiums. While the insurer provided the statutory notice of cancellation to the named insured, it did not give the vehicle lessor notice. The trial court denied S&D's motion for summary judgment holding that the insurer's failure to give notice of cancellation to the lessor of the vehicle negated cancellation of the policy. The appellate court held that the failure to give notice to the lessor of the pending policy cancellation did not negate the insurer's proper cancellation of the named insured's liability coverage: Failure to give notice as required under one policy part does not resurrect coverage under the entire policy.

ACUITY, A Mut. Ins. Co. v. Partners Mut. Ins. Co., 2007 WI App 1, 298 Wis. 2d 248, 726 N.W.2d 357

Decision Date: 11/22/06

Appeal from a judgment of the circuit court for Waukesha County. Reversed.

Attorney(s): Christine M. Rice

S&D initiated a subrogation action against Waukesha Iron Works, their employee, and their liability insurer, seeking damages arising out of an incident involving damage to a forklift. The Waukesha Iron Works' employee cut a link out of the chain securing the forklift at a job site. The forklift was damaged while the employee used the same for his job duties. The trial court granted Partners Mutual Insurance Company's motion for declaratory judgment holding that Partners had no duty to defend or indemnify the defendants based on an exclusion in the inland marine coverage part of Partners' policy barring coverage for dishonest acts. Outlining the standard for insurance policy interpretation, the appellate court agreed with S&D that coverage existed under Partners' commercial general liability portion of the policy. The court held that an exclusion applicable to one coverage part of the policy does not defeat insurance coverage in another policy part.