

Highbridge Condominium Assoc. v. New Land Development

Decision Date: 6/26/08

Case No. 05 CV 7221

State of Wisconsin/Circuit Court/Milwaukee County

Settlement reached in complex construction defect case

Attorney(s): Stuart R. Deardorff

This was a condominium construction defect case involving water infiltration issues in a luxury high rise condominium project. S&D successfully represented the rough carpentry subcontractor in this case in which damages were alleged to be in excess of six million dollars. This complex litigation involved 20 parties and was actively litigated for almost two years. During this time, nearly 100 depositions were conducted along with the production of hundreds of thousands of pages of discovery materials. Multiple motion hearings and multi-day mediations were necessary before the matter was finally resolved. Despite the client's scope of work being involved in numerous areas of alleged water intrusion and, therefore, becoming a primary target in the litigation, S&D was able to successfully defend the case and achieve a settlement, paying less than 10% of the confidential, multi-million dollar settlement.

Mclandsborough v. Your-Way Homes, LLC

Decision Date: 4/24/08

Case No. 07 CV 78

State of Wisconsin/Circuit Court/Ozaukee County

Summary Judgment finding no duty to defend or indemnify

Attorney(s): Thomas J. Binder and Michelle D. Johnson

The insured was a contractor who installed septic systems for new homes. The plaintiff alleged that the insured negligently staked out the septic system, causing the grading contractor to level the area. As a result, the plaintiff had to install an expensive alternative system, would incur costs for periodic maintenance, and suffered a diminished market value of the property. S&D argued that the plaintiff did not allege "property damage" as that term was used and defined in the CGL policy. Instead, the crux of the plaintiff's complaint was for monetary damages. The trial court agreed, granting summary judgment finding no duty to defend or indemnify the insured for the plaintiff's claims.

Bruno v. Miller

Decision Date: 4/22/08

Case No. 06 CV 9475

State of Wisconsin/Circuit Court/Milwaukee County

Jury Trial: low verdict for defense

Attorney(s): Thomas J. Binder

The plaintiff slipped and fell on ice outside the entrance to the insured's building. The plaintiff alleged that the insured failed to properly salt, resulting in an ice buildup in front of the entrance. The plaintiff

Bruno v. Miller (continued)

sustained a displaced fracture of the patella, requiring surgery. He incurred \$20,000 in medical bills. His settlement demand going into trial was \$100,000. On closing argument, his attorney asked for more than \$200,000.

S&D argued to the jury that although no salting had been done, the plaintiff owed a duty to use due care for his own safety on a horrible Wisconsin winter day. S&D also argued that the plaintiff's wife bore some responsibility for not warning him of the condition because she had previously used the same entrance. Finally, S&D argued that the plaintiff was overvaluing his claim. The jury returned a verdict finding the insured 45% negligent, the plaintiff 45% negligent, and plaintiff's wife 10% negligent. They awarded a total of \$55,000 in damages, making the net award \$24,750 (more than \$75,000 less than the plaintiff's lowest settlement demand).

Vilmin v. Society Ins., A Mut. Co.

Decision Date: 1/22/08

Case No. 07 CV 315

State of Wisconsin/Circuit Court/Dodge County

Summary Judgment finding no coverage under a business auto policy

Attorney (s): Arthur P. Simpson and Jennifer M. Burns

Plaintiff presented an uninsured motorist claim under her business auto policy after her daughter was a passenger in a vehicle not covered under the policy. Plaintiff had the same first and last name as her daughter, but a different middle initial. The policy listed additional insureds by first and last name and plaintiff argued the language provided coverage to both herself and her daughter. S&D moved for summary judgment arguing the underlying policy materials clearly identified only the plaintiff as an additional insured by middle initial and social security number, the omnibus statute did not require a commercial policy to provide coverage for the family members of additional insureds, and coverage would have been denied based the daughter's driving record had coverage been requested. The trial court found the policy provided coverage for only one individual and the plaintiff had never sought coverage for her daughter. The court also found that had plaintiff sought coverage for her daughter, it would have been denied.

ACUITY, A Mut. Ins. Co. v. Founders Ins. Co.

Decision Date: 11/28/07

Case No. 06 CV 11260

State of Wisconsin/Circuit Court/Milwaukee County

Jury Trial - Plaintiff 25%/Defendant 75% liability apportionment

Attorney(s): Christine M. Rice

S&D successfully litigated a subrogation action against the adverse driver's insurance company. ACUITY's insured suffered property damage when her vehicle was struck by a driver who lost control of his automobile on black ice on the interstate during adverse weather conditions. The defense

ACUITY, A Mut. Ins. Co. v. Founders Ins. Co. (continued)

claimed that liability rested equally on ACUITY's insured and argued that she could have done more to try to avoid the accident. The jury apportioned the majority of liability on Founders' insured for his failure to properly manage and control his vehicle immediately prior to the accident.

Finnessy v. ACUITY, A Mut. Ins. Co.

Decision Date: 11/16/07

Case No. 07 CV 5826

State of Wisconsin/Circuit Court/Milwaukee County

Dismissal of bad faith and interest claims following Motion for Partial Summary Judgment

Attorney(s): Stuart R. Deardorff and Christine M. Rice

S&D filed a motion for partial summary judgment in a suit alleging umbrella underinsured motorists (UIM) coverage for significant personal injuries following a 2005 motor vehicle accident. Plaintiffs alleged ACUITY made a bad faith denial of umbrella UIM coverage and therefore, they were entitled to statutory interest pursuant to Wis. Stat. § 628.46. Plaintiffs believed they purchased excess UIM coverage at the time they were purchasing their personal umbrella policy. The plaintiffs' policy did not contain umbrella UIM coverage. Plaintiffs tried to argue that because ACUITY failed to give notice of UIM availability prior to their accident, they were entitled to statutory and/or legal reformation based on Wisconsin law. They also argued that the ACUITY policy was contextually ambiguous and therefore, they should be entitled to excess coverage. The court found that ACUITY was in the process of a good faith appeal to the Wisconsin Supreme Court on similar issues and that it was fairly debatable whether the plaintiffs would be entitled to policy reformation when they admit notice of UIM availability. The court held that there was no material issue of fact that ACUITY acted in bad faith in denying umbrella UIM coverage. The court also held that the plaintiffs were not entitled to statutory interest because ACUITY's liability was not entirely clear and the value of the plaintiffs' umbrella UIM claim was in dispute.

Jude v. City of Milwaukee

Decision Date: 11/1/07

Case Nos. 06 C 1101, 06 C 1103, 06 C 1104, 07 C 61

United States District Court/Eastern District of Wisconsin

Summary Judgment finding no insurance coverage under homeowners policy

Attorney(s): Michelle D. Johnson

Four consolidated cases arose out of one incident in which off duty police officers allegedly assaulted and unlawfully restrained the plaintiffs. S&D represented an insurance company that issued a homeowners policy to one of the defendant off duty officers. S&D argued the policy did not provide coverage for the plaintiffs' claims because the plaintiffs did not allege an "occurrence" as required by the policy and both the intentional acts exclusion and the business pursuits exclusion barred coverage. The court agreed with S&D that no occurrence was alleged. In addition, the court held that since it

Jude v. Jude v. City of Milwaukee (continued)

was alleged the defendants were acting within the scope of their employment as police officers throughout the incidents alleged, any liability would clearly fall within the policy's exclusion for liability for injuries arising out of the insured's business pursuits. Therefore, the court granted S&D's Motion for Summary Judgment and dismissed S&D's client from all four cases.

Fuller v. Everest National Ins. Co.

Decision Date: 9/20/07

Case No. 06 CV 9603

State of Wisconsin/Circuit Court/Milwaukee County

Dismissal following filing of Motion for Summary Judgment

Attorney(s): Stuart R. Deardorff

S&D filed a motion for summary judgment in a suit alleging significant personal injuries occurring at a construction site. S&D's client, a contractor on the project, denied that it was responsible for the alleged defective condition and denied that it had any notice of the condition. After S&D's filing of a summary judgment motion, plaintiff and all other defendants agreed to a dismissal on the merits, rather than face ruling on the motion and assessment of costs.

Mundt v. B&N Lisbon, LLC

Decision Date: 9/6/07

Case No. 07 CV 544

State of Wisconsin/Circuit Court/Waukesha County

Summary Judgment finding no duty to defend or indemnify

Attorney(s): Thomas J. Binder

In this insurance coverage dispute, the insured was a real estate developer who sold one of his lots to the plaintiff. The plaintiff claimed that the lot did not comport with the plat of the subdivision, rendering it unbuildable for the home they wanted to erect. They alleged breach of contract and misrepresentation in the sale of the lot. The insured tendered the defense, and S&D was retained on coverage. S&D moved the court for summary judgment, contending that the claims in the case did not allege an "occurrence," "property damage," or "causation nexus" as defined in the policy. The trial court granted the motion for summary judgment, finding that S&D's client had no duty to defend or indemnify the insured.

Beltran-Xolot v. Dlugi

Decision Date: 9/5/07

Case No. 06 CV 7887

State of Wisconsin/Circuit Court/Milwaukee County

Jury Trial - Plaintiff dismissed claims after jury selection

Attorney(s): Michelle D. Johnson

Beltran-Xolot v. Dlugi (continued)

S&D successfully defended a driver alleged to have run a red light and struck a pedestrian. The plaintiff claimed he suffered a laceration to his forehead, various abrasions, and pain to his knees, elbows and neck as a result of the accident. S&D asserted a Counterclaim for the damage to the defendant's vehicle. Due to concern that he might lose the case and be required to pay for the damage to the defendant's vehicle, the plaintiff decided to dismiss his claims after the jury selection process was completed.

Shorewest Realtors v. Busch

Decision Date: 8/29/07

Case No. 07 CV 0130

State of Wisconsin/Circuit Court/Ozaukee County

Declaratory Judgment Motion on Coverage

Attorney(s): Stuart R. Deardorff and Jennifer M. Burns

S&D successfully stayed underlying litigation while pursuing and obtaining a declaratory ruling of no insurance coverage in a case involving an alleged fraudulent real estate sale. The circuit court granted S&D's motion holding that the complaint failed to allege an "occurrence" or "property damage" as required by the insurance policy and, therefore, the insurer had no duty to defend or indemnify the insured defendants.

Hebbe v. Bobrowitz

Decision Date: 5/30/07

Case No. 06 CV 1622

State of Wisconsin/Circuit Court/Waukesha County

Summary Judgment granted finding no duty to defend or provide coverage

Attorney(s): Thomas J. Binder

In this insurance coverage dispute, the plaintiffs alleged that the insureds sold them a residential lot on which to build a home without disclosing that the lot was subject to periodic flooding. The plaintiffs sued the insureds for misrepresentation. The insureds tendered the defense, claiming coverage under business, homeowners, and umbrella policies. S&D argued that periodic flooding does not constitute "property damage" as that term was defined in each of the policies at issue. The court granted the motion, finding no duty to defend or provide coverage.

Yannaras v. Thomas

Decision Date: 5/1/07

Case No. 05 CV 834

State of Wisconsin/Circuit Court/Milwaukee County

Jury Trial - Defense verdict: \$0.00 awarded to plaintiff

Attorney(s): Thomas J. Binder

S&D obtained a defense verdict in this auto accident case. The plaintiff claimed to have sustained spinal injuries as a result of being rear-ended by the insured on I-94. The plaintiff incurred more than \$110,000 for treatment and surgery to the lumbar spine, and claimed \$75,000 for future cervical surgery. Plaintiff's demand was \$250,000. S&D contended that there was insufficient evidence of negligence and causation on the insured because this was a chain reaction accident. S&D further contended that the plaintiff's alleged spinal injuries were pre-existing and the plaintiff sustained nothing more than strains in the accident. The jury returned a verdict finding no negligence on the insured, awarding \$1,000 for medical expense and \$1,000 for pain and suffering (which did not have to be paid because of the liability finding). The case was dismissed with costs awarded to S&D's client. The Yannaras verdict was listed in the top 10 zero-dollar defense verdicts in 2007 as reported by the Wisconsin Law Journal's Verdict & Settlement Reporter.

Doro v. Trimble

Decision Date: 3/16/07

Case No. 06 CV 7166

State of Wisconsin/Circuit Court/Milwaukee County

Summary Judgment granted finding no duty to defend or provide coverage

Attorney(s): Thomas J. Binder

In this insurance coverage dispute, the plaintiff alleged that the insureds sold her a residential property without disclosing mold in the basement, a plumbing leak, a leaky roof, and other defects. S&D moved for summary judgment asserting that the alleged misrepresentations made by the insureds did not constitute an "occurrence" as defined by the policy, nor was there a "causation nexus" between the alleged property damage and the alleged occurrence. The trial court agreed, granting summary judgment and relieving the insurance company of the duty to further defend or provide indemnity for the claims of the plaintiff.

ACUITY, A Mut. Ins. Co. v. The Fire Place, Ltd.

Decision Date: 10/18/06

Case No. 04 CV 8483

State of Wisconsin/Circuit Court/Milwaukee County

Jury Trial - Jury returned verdict in favor of Plaintiffs

Attorney(s): Michelle D. Johnson

In this subrogation action, S&D successfully obtained a jury verdict in favor of ACUITY and ACUITY's insureds. The case involved a gas fireplace that was installed at the insureds' home. An

ACUITY, A Mut. Ins. Co. v. The Fire Place, Ltd. (continued)

employee of The Fire Place, Ltd. positioned the logs improperly within the fireplace, choking off the air supply to the gas and causing the fireplace to emit a sooty substance that covered the interior of the insureds' home. The soot damaged many items inside the home. S&D filed suit to recover the amounts ACUITY paid to its insureds for damaged items in the home and to obtain additional compensation for the insureds. The case resulted in a three day trial with the jury rendering a verdict in favor of the plaintiffs for the total amount requested.

Stiff v. Kwiecinski

Decision Date: 9/15/06

Case No. 05 CV 8450

State of Wisconsin/Circuit Court/Milwaukee County

Summary Judgment dismissing lawsuit based upon statute of repose

Attorney(s): Thomas J. Binder

The plaintiff was injured while visiting the residence of the insured. She walked up the cement stoop at the side entrance to the insured's house. The cement stoop did not have a railing around it. Plaintiff stepped back off the stoop, which caused her to fall down several feet. She sustained a serious injury to her leg, which required 11 surgeries and more than \$225,000 in medical bills. S&D contended that the cement stoop existed as originally constructed more than 10 years prior to the accident, and the statute of repose barred claims against the insured. The trial court agreed, granting summary judgment and dismissing the lawsuit.

Klinger v. Ward

Decision Date: 5/31/06

Case No. 04 CV 2819

State of Wisconsin/Circuit Court/Waukesha County

Jury Trial - Court dismissed plaintiff's claims at close of plaintiff's case

Attorney(s): Michelle D. Johnson

S&D successfully defended a driver alleged to have struck a pedestrian on a rural highway. The plaintiff claimed he suffered pain in his left knee, upper back, and the back of his head as a result of the accident. He sustained numerous abrasions and two fractures in the area of his left knee. The case was tried to a jury on May 30, 2006. After the plaintiff rested, the defense made a motion to dismiss. The court granted the motion on May 31, 2006 finding the plaintiff had not presented any evidence of negligence on the part of the defendant.