

#WDCSC2026



Wisconsin Defense Counsel
*Defending Individuals and
Businesses in Civil Litigation*

2026 Spring Conference

April 23-24, 2026

The American Club
419 Highland Dr.
Kohler, WI 53044

Program Chair:
Nicole Radler
Simpson and Deardorff, S.C.

*Program Agenda &
More Information
inside!*

**Approved for
6.0 CLE Credits.**



WE'VE REBRANDED

A FRESH LOOK

We are excited to announce an update to our branding and logo, aimed at enhancing our overall appeal, consistency, and engagement with customers. This refresh aligns with our vision for the future. As valued partners, we want to share with you the reasons behind this update and how it will benefit both agents and our policyholders.



<p>UNIFORMITY</p> <p>By updating our logo and branding, we aim to achieve uniformity across all our communication channels and materials. This will create a more cohesive and consistent brand presence, making it easier for agents and policyholders to recognize and engage with our brand.</p>	<p>IMPROVED APPEAL</p> <p>We understand the importance of staying connected with our policyholders. The refreshed branding is designed to enhance our appeal to existing policyholders while also attracting new customers who are looking for a trusted and forward-thinking insurance provider.</p>	<p>MODERN STYLE</p> <p>Our new branding features a modernized look, text, and color palette that reflects our commitment to improved innovation and staying current with industry trends. These changes will help us stand out in a competitive market and appeal to a broader audience.</p>
--	--	---

RELIABILITY

It's important to emphasize that while our branding is evolving, our core values and commitment to providing excellent service remain unchanged. The new look symbolizes our evolution and readiness to embrace the future while continuing to deliver the same high-quality products and support you have come to expect from us.



Table of Contents

Program Agenda..... 4

Speaker Biographies..... 6

Sponsors..... 10

Thursday, April 23, 2026

Defending the Defenses: Protecting Privileged Communications in Insurance and Bad Faith Litigation
Jonathan Schwartz, Freeman Mathis & Gary, LLP..... 12

Untangling the Coverage Knot: Presenting Complex (and Simple) Coverage Arguments to Trial and Appellate Courts
Alexander C. Lemke & David McCormack, Meissner Tierney Fisher & Nichols S.C..... 18

What Actually Won the Case: Inside a Defense Verdict in a Recent Civil Trial
*Joseph Mirabella, Simpson & Deardorff, S.C., &
Judge Zachary A. Wittchow, Waukesha County Circuit Court..... 32*

Friday, April 24, 2026

Beyond the Diagnosis: Understanding Concussions and Headaches in Personal Injury Litigation
Dr. Sepehr B. Sani, Sponsored by WDC Corporate Sponsor, Woodlake Medical Management

The Latest in Appraisal
Erik M. Gustafson, von Briesen & Roper, s.c. 42

11:00 AM - 11:50 AM
Playing Defense at 30(b)(6) Depositions
Frederick Strampe, Borgelt, Powell, Peterson & Frauen, S.C. 50

Schedule of Events

Thursday, April 23, 2026

12:30PM
Registration

12:55 - 1:00 PM
Opening Remarks

1:00 - 1:50 PM
Defending the Defenses: Protecting Privileged Communications in Insurance and Bad Faith Litigation

Jonathan Schwartz, Freeman Mathis & Gary, LLP

1:50 - 2:00 PM

Break

*Sponsored by
Rural Mutual Insurance Co.*



2:00 - 2:50 PM

Untangling the Coverage Knot: Presenting Complex (and Simple) Coverage Arguments to Trial and Appellate Courts

*Alexander C. Lemke & David McCormack,
Meissner Tierney Fisher & Nichols S.C.*

2:50 - 3:00 PM

Break and Award Presentation

*Sponsored by
Simpson & Deardorff, S.C.*



3:00 - 3:50 PM

What Actually Won the Case: Inside a Defense Verdict in a Recent Civil Trial

*Joseph Mirabella, Simpson & Deardorff, S.C., &
Judge Zachary A. Wittchow, Waukesha County
Circuit Court*

4:00 PM - 5:30 PM
Cocktail Reception

*Sponsored by
Crivello, Nichols and Hall, S.C.*



Friday, April 24, 2026

7:00 - 8:00 AM

Gentle Yoga and Meditation

Sponsored by the WDC Wellness Committee

8:15 - 9:00 AM

Registration & Continental Breakfast

Sponsored by the Weiss Law Office, S.C.



9:00 - 9:50 AM

Beyond the Diagnosis: Understanding Concussions and Headaches in Personal Injury Litigation

*Dr. Sepehr B. Sani, Sponsored by WDC
Corporate Sponsor, Woodlake Medical Management*

9:50 - 10:00 AM

Break and

Award Presentation

*Sponsored by
Cream City Reporting and
Bell, Moore & Richter, S.C.*



10:00 - 10:50 AM

The Latest in Appraisal

Erik M. Gustafson, von Briesen & Roper, s.c.

10:50 - 11:00 AM

Break

*Sponsored by
Baker Sterchi Cowden & Rice LLC*



11:00 AM - 11:50 AM

Playing Defense at 30(b)(6) Depositions

*Frederick Strampe, Borgelt, Powell,
Peterson & Frauen, S.C.*

11:50 AM

Adjourn

BMR

BELL MOORE & RICHTER SC



William D. Bolte



Ann C. Emmerich



Emma L. Ferguson



David E. McFarlane



Edward J. Minser



Melita M. Mullen



Patricia J. Putney



David G. Ress



Kelly J. Stohr



Sheila M. Sullivan

Bell, Moore & Richter, S.C. has been involved in insurance defense litigation for most of its existence. Due to the firm's extensive experience with all aspects of insurance litigation, we are often called on to defend insurance companies and their insureds in the courtroom and in appeals, both in state and federal court. Our attorneys pride themselves on keeping up to date on the latest changes in insurance law and can help clients untangle the constant legislative and case law changes in insurance. For decades, our attorneys have also successfully defended medical professionals practicing in a broad range of specialties and a wide variety of claims. We know how to build a strong defense to workers' compensation claims and disputes and help employers on all issues which may arise. Our experience has led to successful results in defending claims both in State and Federal courts as well as before the State Medical Examining Board and Medical Mediation Panel. In the defense of business litigation, we bring the experience and judgment of seasoned practitioners from both business and transactional attorneys, on the one hand, and proven civil litigation practitioners on the other. We also have considerable experience helping to defend insurance agents as well as real estate agents and brokers in litigation. Let us help you.

BMR PRACTICE AREAS:

Alternative Dispute Resolution
Appellate Practice
Business/Corporate Planning/Litigation
Civil Rights/Municipal Litigation
Commercial/Contract Disputes
Commercial Collection
Construction Law/Litigation Contracts
Employment Law
Environmental Law/Litigation
Estate Planning/Elder Law/Probate

Finance/Financial Institutions
General Liability Defense
Guardian Ad Litem - Family Law
Health Care
Insurance Agent Litigation
Insurance Coverage/Bad Faith Litigation
Insurance Defense
Intellectual Property
Landlord-Tenant
Legal/Accounting Liability Defense
Medical Malpractice Defense

Municipal Law
Personal Injury
Products Liability
Public Utilities/
Telecommunications Real Estate
Real Estate Agent/Broker Litigation
Regulation/Licensing
Securities Law
Subrogation Claims
Tax Advice/Planning/Litigation
Workers' Compensation Defense

FOR YOUR LEGAL NEEDS CONTACT US AT:
345 W. Washington Ave. | Suite 302 | Madison, WI | 53703-3007
(608) 257-3764 | www.bmrlawyers.com

Bell, Moore & Richter, S.C., is a majority women-owned law firm. Providing legal services since 1851.
2026 - Celebrating 175 Years in Business

Speaker Biographies

Erik M. Gustafson is an Income Shareholder at von Briesen & Roper, s.c.'s Milwaukee office. His practice focuses on first- and third-party insurance coverage and appellate practice. Before joining von Briesen, he spent six years at a Milwaukee-area law firm, and clerked with the Wisconsin Supreme Court. He received his B.A. (*summa cum laude*) from Creighton University and his J.D. (*magna cum laude*) from Marquette University Law School. Mr. Gustafson is a member of Wisconsin Defense Counsel, the Federalist Society, and the State Bar of Wisconsin. Outside of work, Erik is an avid Creighton and Marquette sports fan, and high school football official.



Alexander C. Lemke is an attorney in Meissner Tierney's litigation practice group. He focuses on assisting clients in complex commercial, intellectual property, regulatory, insurance, and employment litigation. Before joining Meissner Tierney Fisher & Nichols S.C., Alex handled complex intellectual property matters at a nationally ranked law firm. He also served as a Judicial Law Clerk for Wisconsin Supreme Court Justice Daniel Kelly. While attending law school at the Tulsa College of Law, he received highest honors, graduating in the top 10% of his law class, and worked as the managing editor for the Tulsa Law Review.



David W. McCormack is an attorney in Meissner Tierney's litigation practice group. He represents individuals, businesses and insurers in a variety of matters ranging from personal injury defense and basic contract disputes to arbitrations, complex insurance coverage litigation, and appeals. Since graduating from Marquette University Law School, David has gained extensive experience



throughout the litigation process ranging from pre-suit investigation through appeals. He previously served as a judicial intern in the chambers of Justice Brian Hagedorn at the Wisconsin Supreme Court.

Joe Mirabella is a shareholder with Simpson & Deardorff. He joined in the firm in 2018 after several years with another boutique civil litigation firm in Milwaukee, and before that Joe worked for a plaintiff's personal injury firm during law school and for a few years thereafter.



Joe is a graduate of UW-Milwaukee and Marquette University Law School, where he served on the Marquette Law Review Editorial Board and interned at the Wisconsin Supreme Court and Federal District Court for the Eastern District of Wisconsin.

Joe's primary areas of practice include personal injury, wrongful death, commercial trucking, premises liability, construction litigation, insurance coverage, insurance bad faith and subrogation. He represents clients throughout state and federal courts of Wisconsin and has litigated extensively in the appellate courts.

Dr. Sepehr Sani currently practices at Rush University Medical Center in Chicago, IL. He is the Director of Functional Neurosurgery and the Associate Program Director of Residency Training. Dr. Sani received his medical degree from the Medical College of Ohio. He completed his residency in neurological surgery at Rush University in Chicago. Dr. Sani also completed two fellowships in stereotactic, functional and epilepsy neurosurgery, one at Rush University and the other at University of California in San Francisco. His clinical interests include deep brain stimulation, vagal nerve stimulation, microvascular decompression, epilepsy surgery, temporal lobectomy, corpus callosotomy, hemispherectomy, Parkinson's disease, essential tremor, dystonia, Tourette syndrome, obsessive



EFI Global is a full-service specialty consulting firm. We provide fire investigation, forensic engineering, environmental consulting, building consulting and forensic accounting services to all types of industries in both the public and private sectors.

Our combination of global solutions and local expertise has earned our firm a reputation for delivering timely responses that consistently meet our clients' expectations.

**We are here,
around the globe,
anytime, anywhere.**

Practical solutions for complex issues.



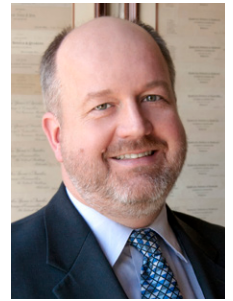
Speaker Biographies continued

compulsive disorder, depression, headaches, epilepsy, trigeminal neuralgia, hemifacial spasm and obesity.

Jonathan L. Schwartz is a Partner with Freeman Mathis & Gary, LLP. He resides in the Chicago office and is admitted to practice in Illinois, Wisconsin, Michigan, and Massachusetts, as well as in myriad federal courts. Jonathan concentrates his practice on insurance coverage and litigation and counseling, arising from matters involving primary and excess commercial general liability, commercial and residential property, specialty lines, and commercial auto and trucking liability insurance policies. A mainstay of Jonathan's practice is extracontractual actions against insurers. In addition to his insurance coverage work, Jonathan's extensive experience includes defending media liability, data privacy, and intellectual property litigation, as well as E&O claims against insurance agents and brokers.



Prior to accepting an appointment as a Circuit Court Judge for Waukesha County, **Frederick Strampe** was a Shareholder and President of Borgelt, Powell, Peterson & Frauen, S.C. in Milwaukee. As a circuit court judge he conducted evidentiary hearings, motion hearings and presided over civil, misdemeanor and felony trials. He has now returned to Borgelt, Powell, Peterson & Frauen and resumed litigating. He handles cases throughout Wisconsin in state and federal court. He concentrates on high value complex litigation with a focus on defending assisted living facilities and brain injury cases. He also mediates civil cases.

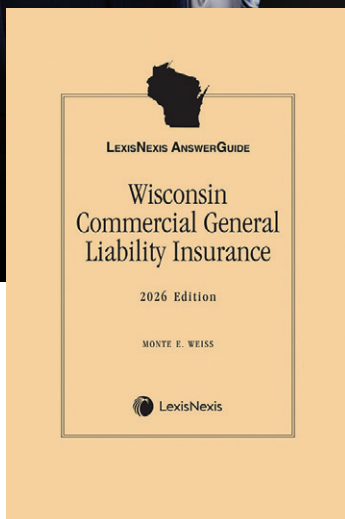
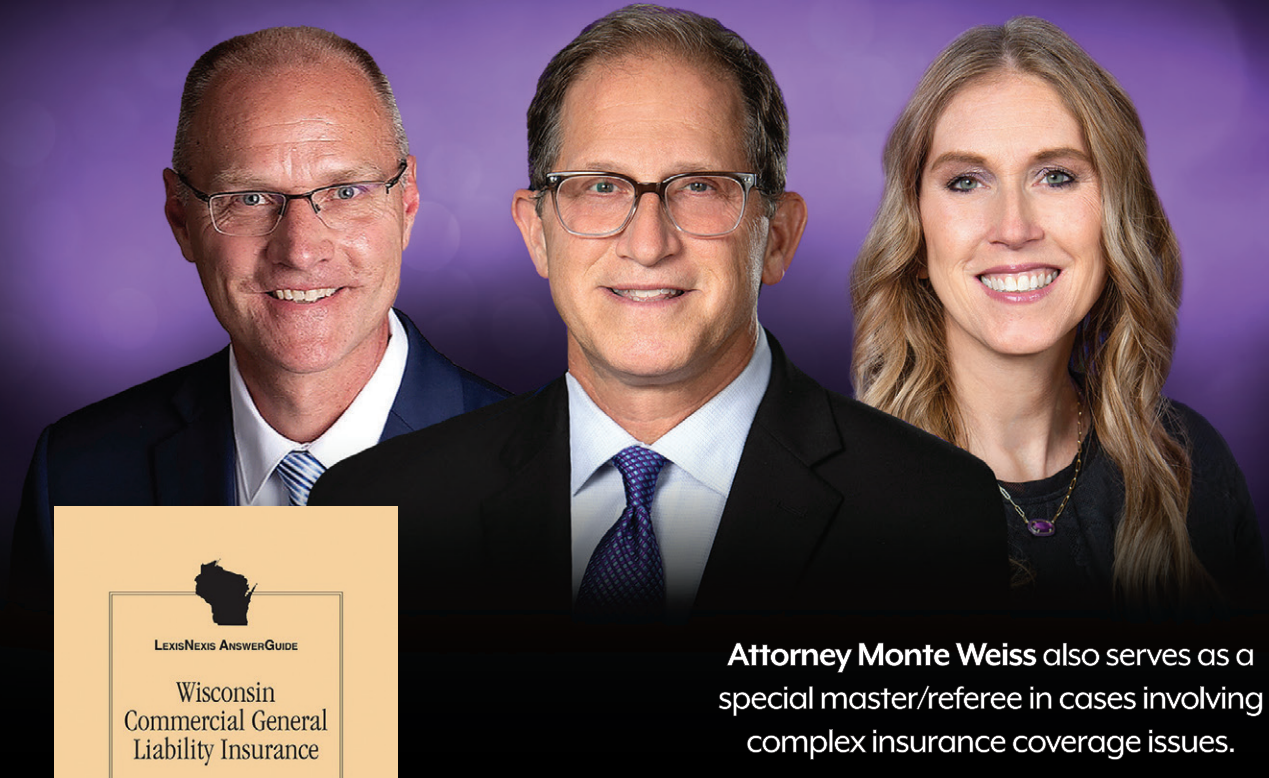


Judge **Zach Wittchow** is the Circuit Court Judge assigned to Branch 6 of the Waukesha County Circuit Court. Prior to taking the bench in 2025, Judge Wittchow worked as a prosecutor in Waukesha and Milwaukee Counties.





If Insurance Coverage Questions Have You Perplexed, WE'VE GOT YOU COVERED



Attorney Monte Weiss also serves as a special master/referee in cases involving complex insurance coverage issues.

Wisconsin Commercial General Liability Insurance

by Monte E. Weiss

Attorney Monte E. Weiss has earned a reputation as one of the most trusted sources in Wisconsin for analyzing and litigating insurance coverage issues. In addition to drafting personal lines auto as well as property and casualty insurance policies, Monte recently authored and published an insurance coverage treatise for practitioners titled "Wisconsin Commercial General Liability Insurance."



WEISS LAW OFFICE

INJURY & INSURANCE ATTORNEYS

weissinjurylaw.com

(262) 240-9663

1025 W. GLEN OAKS LANE | SUITE 212
MEQUON, WI 53092

Thank You to Our 2026 WDC Sponsors!



EXPERT WITNESSES



5972 Executive Drive, Suite 200
Madison, WI 53719

Areas of Expertise

- **Motor Vehicle Accident Reconstruction**
- **Truck Accidents Reconstruction**
- **Heavy Truck ECM Imaging**
- **Vehicle Airbag Sensing Systems**
- **CDR - Crash Data Retrieval**
- **Vehicle Defect Analysis**
- **Mechanical Defect Analysis**
- **Low Speed Impact Analysis**
- **Seat Belt Restraint Analysis**
- **Product Liability**
- **Slip/Trip and Fall Analysis**
- **Farm and Industry Accidents**
- **Computer Simulations**
- **Environmental Analysis**
- **Electrical Systems**
- **Structural Failure Analysis**
- **Construction Analysis**
- **Highway/Street Design Analysis**
- **Drone Mapping**
- **FARO 3D Scanning**

608-442-7321 – Telephone
office@skogenengineering.com

Over 100 Years of Combined Experience

Dennis D. Skogen, MSME, PE
Jeffery J. Peterson, MSME, PE
Robert J. Wozniak, MSME, PE
Paul T. Erdtmann, MSME, BSEE, PE
Zachary R. Bingen, MSME, PE
Stephen L. Hanko, BSME, EIT
Andrew C. Knutson, PE, SE, MS
Mary E. Stoflet, AS - James W. Torpy, BS

FMG LAW
Freeman
Mathis & Gary LLP
When It Counts

WDC 2026 Spring Conference

Defending the Defenses: Protecting Privileged Communications in Insurance and Bad Faith Litigation

Jonathan L. Schwartz

1

THE FRONT LINE ADJUSTER AND PROTECTING THE CLAIM FILE

2

PROTECTING THE CLAIM FILE FROM DISCOVERY: ATTORNEY-CLIENT PRIVILEGE

- Attorney/client privilege: Applies to communications only about legal advice
- Continuous duration
- State law controls/Wis. Stat. 905.03

"A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client: between the client or the client's representative and the client's lawyer or the lawyer's representative; or between the client's lawyer and the lawyer's representative; or by the client or the client's lawyer to a lawyer representing another in a matter of common interest; or between representatives of the client or between the client and a representative of the client; or between lawyers representing the client."

3

PROTECTING THE CLAIM FILE: WORK PRODUCT DOCTRINE

Rule 26(b)(3)(A) Federal Rules of Civil Procedure.
"Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative"

Wis. Stat. § 804.01(2)(c)1.
"A party may obtain discovery of documents and tangible things otherwise discoverable under par. (a) and prepared in anticipation of litigation ... only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party seeking discovery is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation."

KEY ISSUES:
In anticipation of litigation
Opinion work product

4

POTENTIAL ROLES OF OUTSIDE COUNSEL

Counsel is retained or consulted to:

- Assist in the investigation
- Advise as to investigation
- Monitor investigation
- Supervise the investigation
- Perform adjusting functions
- Analyze liability, damages or coverage
- Communicate with insured or claimant

5

ASSAULTS ON EVIDENTIARY PRIVILEGES APPLICABLE TO INSURERS IN COVERAGE AND BAD FAITH LITIGATION

- At Issue Doctrine and Implied Waiver of the Attorney-Client Privilege
- Three Approaches
 - Waiver if insurer affirmatively relies on advice of counsel or reasonableness defense (*Bertelsen, 100 Renaissance*)
 - Waiver if insured makes the privileged material relevant (*Boone, Cedell*)
 - Waiver if relevant plus nondisclosure would deprive insured of information vital to its position (*Myrtle Beach, Tackett, Lee*)

6



A Step Above.

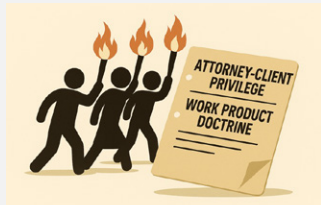
We take pride in being a Wisconsin-based law firm. With more than 200 professionals, von Briesen provides unparalleled service and recognized expertise with practical legal advice at a competitive value. Our lawyers are recognized by Best Lawyers® and Super Lawyers® and our firm is recognized as a Top Workplace and a Best Place to Work – making us a law firm that is **A Step AboveSM**.

To learn more about us, please visit vonbriesen.com or contact Susan E. Lovern, President & CEO, at susan.lovern@vonbriesen.com.

ASSAULTS ON EVIDENTIARY PRIVILEGES APPLICABLE TO INSURERS IN COVERAGE AND BAD FAITH LITIGATION

Arguments against Work Product

- Presumption that documents created before a final coverage determination are "prepared in the ordinary and routine course of the insured's business"
 - No anticipation of litigation
- Insurer must overcome presumption "by specific evidentiary proof of objective facts"



7

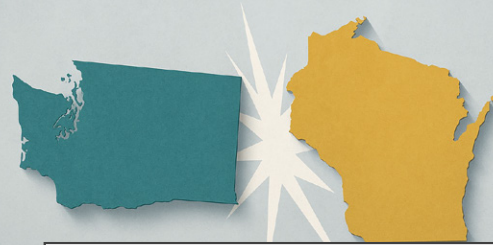
A BREACH IN THE WALLS OF THE FORT?

8

CEDELL V. FARMERS INS. CO. OF WASHINGTON, 295 P.3D 239 (WASH. 2013)

- First party bad faith action vs. insured's HO insurer
- PI alleged bad faith for insurer's unreasonable delay in providing its coverage position
- Recognized presumption that the attorney-client privilege does not apply to claim files in first party bad faith actions.
 - Burden on the insurer to show the communications were privileged
- Work product and attorney-client privileges do not apply to insurer counsel involved in investigating or processing a claim.
- Privilege applies only to counsel's advice to potential liability such as whether claim is covered under the law.

9



DOES CEDELL FIT IN WISCONSIN?

10

RX FOR APPLICATION OF WORK PRODUCT AND ATTORNEY-CLIENT PRIVILEGES TO OUTSIDE COUNSEL

- Steps to take:
 - Better engagement letter
 - Purpose of retention is in anticipation of litigation
 - Counsel performs legal services in addition to investigation, such as legal research, analyzing liability/exposure, serving as liaison between insurer and insured
 - Communications labeled as "Attorney/Client Privileged"
- Relevance!

11

INSIDE THE FORT: PRIVILEGES APPLICABLE TO IN-HOUSE COUNSEL

12



TAKING THE STRESS OUT OF THE IME PROCESS SINCE 1994

- + PERSONALIZED, EFFICIENT SERVICE**
- + HIGH QUALITY, OBJECTIVE REPORTS**
- + FRIENDLY STAFF AND HAPPY CLIENTS**
- + FAMILY OWNED AND OPERATED**

LIST OF SERVICES:

**INDEPENDENT MEDICAL EXAMINATIONS
INDEPENDENT MEDICAL RECORD REVIEWS
VIDEO/NON-VIDEO DEPOSITIONS
TELECONFERENCE WITH PHYSICIAN
IMPAIRMENT RATINGS**

OPTIONAL SERVICES:

**COMPLIMENTARY COVER LETTER WRITING
DIAGNOSTIC IMAGING RETRIEVAL
NOTIFICATIONS/REMINDERS
TRANSPORTATION/INTERPRETER**



Contact your Account Manager
today to schedule a service:

Jennifer Imig

jen.imig@woodlakemedical.com

952-253-6605

E-DISCOVERY EXPECTATIONS OF
INSURERS IN A GOOGLE WORLD

13

WHAT ARE YOUR OPPONENTS'
DISCOVERY EXPECTATIONS IN
COVERAGE LITIGATION?

14

DOES YOUR COMPANY OR CLIENT
HAVE INTERNAL PROCESSES FOR
DEALING WITH E-DISCOVERY
REQUESTS?

15

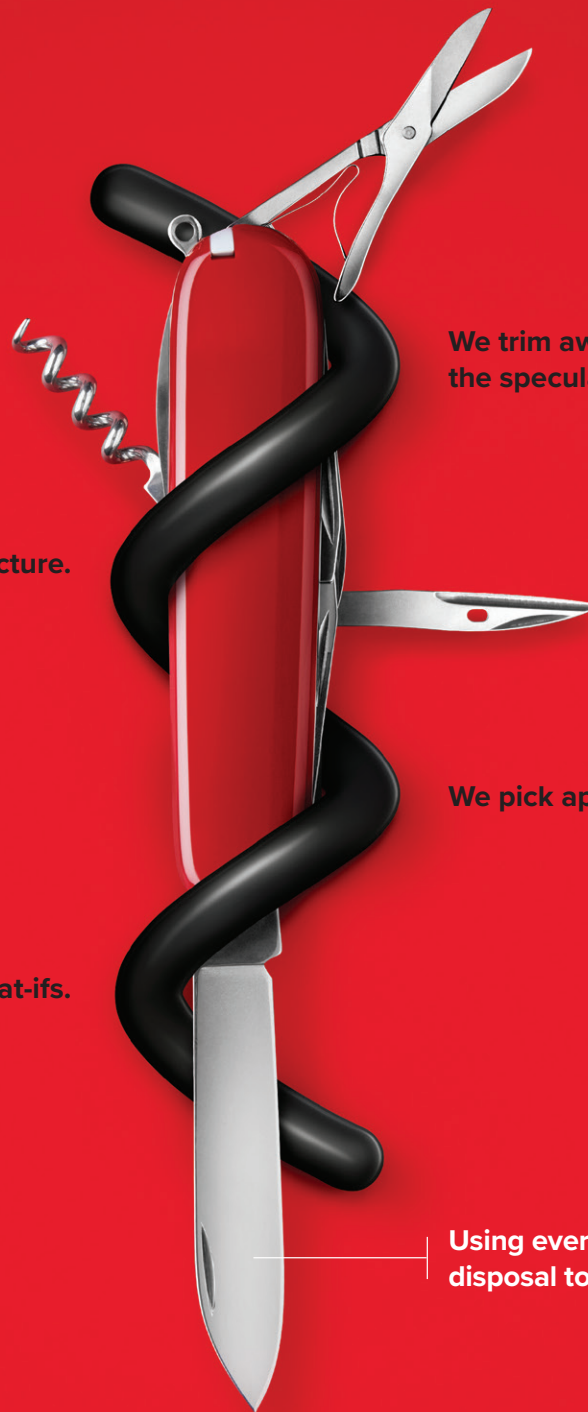


Jonathan L. Schwartz
Partner | Chicago

773.389.6440

Jonathan.Schwartz@fmglaw.com

16



We drill past the conjecture.

We trim away the speculation.

We cut away the what-ifs.

We pick apart the maybes.

Using every tool at our disposal to reveal the facts.



Know.

Precisely revealing the facts. Then explaining them in the simplest of terms. Doing both at the highest level is what sets us apart. From our superior forensics talent, technology and experience to the visualization expertise of our Imaging Sciences team, we dig past the speculation to find and convey the truth about what happened like no one else.

Forensic Engineering, Investigation and Analysis

(847) 354-4720 | SEAlimited.com | Since 1970



© 2026

Untangling the Coverage Knot: Presenting Complex (and Simple) Coverage Arguments to Trial and Appellate Courts

Alexander C. Lemke and David W. McCormack

April 23, 2026

I. Motion to Dismiss

Basic Arguments

Documents incorporated by reference do not convert to Summary Judgment

Badgerland Restoration & Remodeling, Inc. v. Federated Mutual Insurance Company, 2024 WI App 36, ¶ 13.

Some documents count, some do not.

Strategic Pro's

Economical

Opportunity to frame argument

Simplify claims

Strategic Con's

May lead to amended complaint

Courts may be hesitant to grant.

Judge may not appreciate

II. Summary Judgment

Main chance to make your arguments.

“Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Dostal v. Strand*, 2023 WI 6, ¶ 17.

“The insured bears the burden of showing an initial grant of coverage, and if that burden is met the burden shifts to the insurer to show that an exclusion nevertheless precludes coverage.” *Day v. Allstate Indem. Co.*, 2011 WI 24 ¶ 26.



The willingness and ability to try a case is paramount to a successful defense strategy. One Law Group, S.C.'s team of defense attorneys and paralegals are not afraid to try cases. We successfully defend insurers and insureds in a wide variety of claims ranging from auto, property and casualty, professional malpractice, bad faith, product liability and insurance coverage matters. Our defense team works with a wide variety of insurers and understands the importance of timely reporting and communication with both the file handler and insured. No claim is too large or too small, whether in litigation, appeal, arbitration, mediation or still in the claims phase. Our defense team has decades of experience in all matters for all sizes of insurers, from national carriers to small town mutuals.

THE POWER OF ONE



Tim Hawley

Insurance Law
Mediation
Arbitration
Litigation & Trials



Erik J Pless

Insurance Defense

- Auto & Premises
- Legal Malpractice
- Bad Faith Defense
- Coverage Litigation

866.525.5200

www.onelawgroupsc.com

920.336.5766

“A policy’s terms are interpreted as they would be understood from the perspective of a reasonable person in the position of the insured.” *Id.*, ¶ 20.

“A reasonable insured would understand the policy to mean what it says. . . .” *Distinguished Multiplying Buildings (D.M.B.) LLC v. Germantown Mutual Insurance Company*, 2025 WI App 34 ¶ 37 (unpub. op.)

Briefing

Explain Policy

Don’t assume technical knowledge

Remember, this may be the first time the judge has seen these facts

An insurance policy is still a contract

Oral Argument

Keep it simple

Visuals

Answer questions

III. Motion for Reconsideration

Tough standard: “To prevail on a motion for reconsideration, the movant must present either newly discovered evidence or establish a manifest error of law or fact. A ‘manifest error’ is not demonstrated by the disappointment of the losing party. It is the ‘wholesale disregard, misapplication, or failure to recognize controlling precedent.’” *Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons, Ltd.*, 2004 WI App 129 ¶ 44

“A party may not use a motion for reconsideration to introduce new evidence that could have been introduced at the original summary judgment phase.” *Id.*, ¶ 46

Likely requires unique circumstances

Lickety Split Drive-In, Inc. v. American States Ins. Co., 2003 WI App 111 (unpub. op.) - successful

IV. Interlocutory Appeal



Statewide Legal Representation
For Business & Insurance

320 East Buffalo Street, Suite 300

Milwaukee, WI 53202

414-273-8550

www.simpsondeardorff.com

PROUD SPONSOR OF WISCONSIN DEFENSE COUNSEL

Procedure

Petition for interlocutory appeal

Wis Stat § 808.03(2):

“Materially advance the termination of the litigation or clarify further proceedings in the litigation;

Protect the petitioner from substantial or irreparable injury; or

Clarify an issue of general importance in the administration of justice.”

Likelihood of Success on the Merits

Need to stay lower court case?

Unlikely to Succeed

160 filed, 21 granted in 2025.

Never say never. *Kender v. Auto-Owners-Ins. Co.*, 2010 WI App 121

Not necessary to preserve summary judgment for appeal by right.

Mani v. Selective, 2026 WI App 6, ¶ 18, n. 9 “To clarify a point of potential confusion, we expressly note that, under Wis. Stat. § 809.10(4), a party is not required to seek interlocutory review of a nonfinal judgment or order, including nonfinal judgments or orders on dispositive motions, to preserve its right to appeal from those nonfinal judgments or orders after a subsequent final judgment or order is entered.”



YOUR BUSINESS OUR MISSION

Your trusted counsel in Insurance Defense,
Insurance Coverage, Employment Law, and
Municipal Law.



Attorney Brendan P. Dailey

Attorney Nicole Marklein

Attorney Claudia R. Drace

Veterans Disability Benefits • Insurance Defense • Insurance Coverage • Employment Law • Municipal Law
Criminal Defense • Civil Litigation • Appellate Litigation • Business Law • Estate Planning • Personal Injury

Waunakee | Manitowoc | Baraboo | Lodi
www.westdunn.com
608-535-6420

When should one appeal?

I. Non-legal strategic concerns

Non-case specific strategic concerns

Can binding precedent make things worse?

Industry or institutional concerns?

Case-specific legal concerns

Is the right case to appeal – some practical considerations.

Are we looking at questions of fact or questions of law?

Bad facts make bad law (what would a non-insurance expert think of the dispute)

Are there collateral issues that will confuse the appeals court?

Is the forum favorable?

Waiver and forfeiture

“It is well-established law in Wisconsin that those issues not presented to the trial court will not be considered for the first time at the appellate level.” *Shadley v. Lloyds of London*, 2009 WI App 165, ¶ 25, 322 Wis. 2d 189, 776 N.W.2d 838.

Issues must be raised with specificity. *Terpstra v. Soiltest, Inc.*, 63 Wis. 2d 585, 594, 218 N.W.2d 129 (1974).

Multi-Insurer Cases

Are there risks of inter-insurer disputes?

Splitting up the issues? Single Brief or Multiple Briefs?

Differences in policy language

The one vs. many

Differences in how appellate and trial courts view issues.

Mandatory vs. Discretionary Review

THE Everson Law Firm



EVERSON | WHITNEY | EVERSON | BREHM S.C.

CIVIL LITIGATION DEFENSE

At The Everson Law Firm, we treat insurance litigation like a profession, not a business. Our attorneys provide continual legal analysis and strategic recommendations to our clients regarding liability and damages issues and take multiple insurance defense litigation cases to trial each year. We have the experience and tenacity to give your case the personalized attention it deserves, whether litigation ends with a victorious dispositive motion, through negotiation/mediation or in the courtroom.

Visit eversonlaw.com to connect with an experienced lawyer. We're open and ready to serve clients in Greater Green Bay, Northeast Wisconsin and beyond.



Peter J. Hickey | Gabriel G. Siehr | Heather L. Nelson | Todd C. Dickey | Brian D. Anderson

Decision maker vs. decision reviewer

II. Legal Concerns (*i.e.* standards of review)

Not all errors are the same and lawyers who understand this will have a better understanding of how appellate courts make decisions.

Reviewing Questions of Law

Legal questions are the province of the appellate court system. *Bd. of Regents of Univ. of Wisconsin Sys. v. Wisconsin Pers. Comm'n*, 103 Wis. 2d 545, 551, 309 N.W.2d 366 (Ct. App. 1981).

Examples include: construction of a statute, situations with undisputed or stipulated facts, statute of limitations, application of constitutional principles, mootness, standing, constitutionality of a statute, claim-preclusion issues, whether a party met a required burden of proof, the determination of a summary judgment motion.

Reviewing Questions of Fact

Trial court findings will be affirmed unless they are clearly erroneous. Wis. Stat. § 805.17(2).

The “great weight and clear preponderance” test. *Noll v. Dimiceli's, Inc.*, 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983).

When there is more than one way to make a reasonable inference from a fact, the tie goes to the trier of fact.

Jury findings will not be upset “if there is any credible evidence to support it.” *Porter v. Ford Motor Co.*, 2015 WI App 39, ¶ 14, 362 Wis. 2d 505, 865 N.W.2d 207.

Appellate court’s role switches from reviewing the evidence to finding “any evidence” to sustain the verdict.

Reviewing Discretionary Acts

A circuit court properly exercises its discretion when it examines the (1) relevant facts, (2) applies a proper standard of law, and (3) using a demonstrated rational process reaches a conclusion that a reasonable judge could reach. *In re Isaiah H.*, 2013 WI 28, ¶ 39, 346 Wis. 2d 396, 828 N.W.2d 198.

Getting the law wrong is a misuse of discretion. *McCleary v. State*, 49 Wis. 2d 263, 278, 182 N.W.2d 512 (1971).



MEDICAL SYSTEMS, INC.

At MSI, we pride ourselves on being one of the few locally owned and operated regional vendors in the Midwest, serving clients for their IME and Record Review needs.

Contact us today to experience the exceptional service that sets us apart!

**MedicalSystemsUSA.com
Scheduler@MedicalSystemsUSA.com
(800)261-3278**

Rapid solutions - Proactive Communication - Industry Expertise



A Team You Can Trust

Examples include: orders reviving an action, venue, extensions, stays, injunctions, discovery, admission of evidence, division of property, argument of counsel.

Harmless Error

Utilizes the principle that minor errors (even if they are actual errors) do not warrant a reversal/remand. Wis. Stat. § 805.18(2).

Appellees should emphasize this standard when they can.

For an error to affect the substantial rights of a party, there must be a reasonable possibility that the error contributed to the outcome of the action or proceeding at issue. *In re Termination of Parental Rts. to Jayton S.*, 2001 WI 110, ¶ 28, 246 Wis. 2d 1, 629 N.W.2d 768.

You have decided to appeal.

III. Explaining coverage on appeal.

Appellate Court vs. Trial Court

Controlling how the record is *constructed* vs. *understood*.

The trial court judge vs. the appellate panel

Frame issues as pure legal questions or mixed questions with controlled facts

Eliminate factual noise and force the court into a clean interpretive ruling

Narrow it to the dispositive issues (make it easy for the judges to have an impact on the case)

Test the issues you want to raise next to the standards of review.

Does your panel have an insurance background?

Simplifying the Complex

Simplify the insurance jargon or don't use it

Educate but don't talk down to the court

Remember the insurance contract is just that: a contract

Excellence | Consistency | Integrity



CRIVELLO
NICHOLS & HALL, S.C.
ATTORNEYS

We anticipate challenges, navigate complexities,
and craft solutions that safeguard your future.
Your peace of mind is non-negotiable.

**Empowering Businesses with
Innovative Legal Strategies**

Connect with us.

(414) 271-7722 | www.crivellolaw.com

710 N Plankinton Avenue, Suite 500, Milwaukee, Wisconsin 53203

Clarity and simplicity are your friends

Simplifying the Policy

Framing the issue

Purpose of the policy

Purpose of the provision at issue

Visual Aids

Coverage charts, exhaustion illustrations

IV. Other Appellate Considerations.

Precedential vs. Persuasive Authority

Published court of appeals cases are binding on the court of appeals and cannot be overturned.

Court of appeals lacks authority to overrule published decisions and is consequently bound to apply them. *Cook v. Cook*, 208 Wis.2d 166, 189–90, 560 N.W.2d 246 (1997).

Dicta: the court of appeals may not dismiss a statement from an opinion by this court by concluding that it is dictum. *Zarder v. Humana Ins. Co.*, 2010 WI 35, ¶ 58, 324 Wis. 2d 325, 782 N.W.2d 682.

Policy's choice of law provisions

Frame the case within the totality of the law

Dealing with *Amici Curiae*

Interlocutory Appeals

Summary Judgment may need to be appealed: a party who proceeds to trial waives the right to appeal an order denying his or her earlier motion for summary judgment. *Wittke v. State ex rel. Smith*, 80 Wis. 2d 332, 345, 259 N.W.2d 515 (1977).

2025
Members



THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS WISCONSIN CHAPTER

www.WisconsinMediators.org

The following attorneys are recognized for
Excellence in the field of Alternative Dispute Resolution



Emile Banks
Milwaukee



Danielle Carne
Madison



John Claypool
Appleton



Hon. Jeffrey Conen
Milwaukee



Michael Crooks
Madison



Hon. Mark Frankel
Madison



Timothy Hawley
Green Bay



Michael Jassak
Oak Creek



Hon. David Jones
Milwaukee



Hon. James Kieffer
Brookfield



Terry Lyons
Janesville



Robert McCracken
Manitowoc



Hon. Richard Sankovitz
Milwaukee



Jim Smith
Brookfield



Jill Sopha
Pewaukee

APRIL 2026						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2 AM	3	4	5 PM	6
7	8 PM	9	10	11	12	13
14	15	16	17 AM	18 AM	19 AM	20
21	22	23 AM	24 AM	25	26	27
28	29	30				

**Check preferred available dates or
schedule your appointments online
directly with Academy Members!**

WisconsinMediators.org is free, funded by our members

Visit our national roster of 1000+ top neutrals at www.NADN.org

NADN is administrator for the DRI Neutrals Database

www.DRI.org/neutrals



* The National Academy of Distinguished Neutrals is an invitation-only professional association of over 1000 litigator-rated mediators & arbitrators throughout the US and a proud partner to both the DRI and AAJ. For more info, please visit www.NADN.org/about

WHAT REALLY WON THE CASE: INSIDE A RECENT DEFENSE VERDICT

Joseph M. Mirabella, Simpson & Deardorff, SC
Hon. Zachary Wittchow, Waukesha County Circuit Court

- I. Facts of Case
 - a. Anthony Marsden v. William Canfield et al. (Waukesha County No. 23CV1958)
 - b. Plaintiff Theory of Case: Negligent Lookout
 - c. Defense Theory of Case: Failure to Yield Right of Way
 - d. Plaintiff Alleged Injuries and Damages
 - i. L1 fracture
 - ii. R knee tibial plateau fracture
 - iii. R leg fibular head and neck fracture
 - iv. \$198,571.93 past meds
- II. Pretrial Rulings and Proceedings
 - a. Negligence as a Matter of Law – Wis. Stat. § 346.25
 - b. Motions in Limine
- III. Courtroom Technology & Logistics
 - a. Monitors
 - b. White Noise
 - c. ADA Compliance
- IV. Voir Dire & Opening Statements
 - a. Counsel Philosophy and Strategy
 - b. Judicial Philosophy
- V. Witness Testimony and Evidentiary Issues
 - a. Fact Witnesses
 - b. Plaintiff
 - c. Defendant
 - d. Plaintiff’s Expert Engineer
 - e. Defendants’ Expert Engineer
- VI. Jury Instruction and Special Verdict Conference
 - a. Requirements – Wis. Stat. § 805.13
 - b. Modified JI 1009
- VII. Closing
 - a. Plaintiff Strategy and Argument
 - b. Defense Strategy and Argument
- VIII. Jury Deliberations & Verdict
 - a. ADA Compliance
 - b. Verdict – 0% Negligent, \$0 Damages
 - c. Verdict Issue?




What Really Won the Case: Inside a Recent Defense Verdict

Joe Mirabella, Simpson & Deardorff SC
Hon. Zachary A. Wittchow, Waukesha County Circuit Court

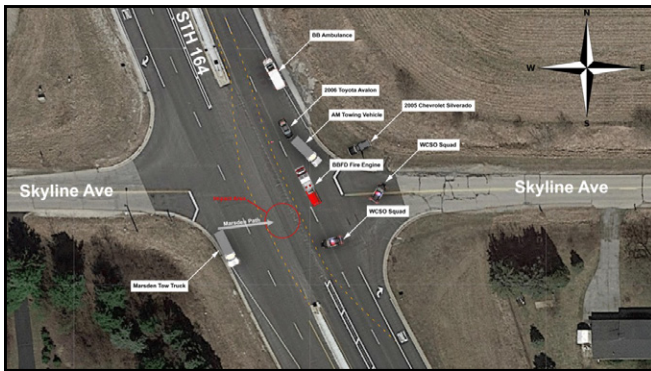
1

Anthony Marsden v. William Canfield

- Motor Vehicle vs. Pedestrian Accident
- Hwy 164 and Skyline Ave, Big Bend
- Active accident scene from earlier MVA that same night
- Northbound lanes blocked and merged into single temporary lane
- Plaintiff: Anthony Marsden
 - Tow truck driver called to scene by private party, not police
 - Arrived via southbound Hwy 164 and parked across the street
 - Wearing high-visibility jacket
 - Injuries: Right/forearm fractures
 - External fixation and ORIF surgeries
 - \$198,671.93 past medical expenses
- Defendant: William Canfield
 - Traveling on northbound Hwy 164
 - Heading home with dog in the car



2



3

Theory of the Case

Plaintiff (Anthony Marsden):

- Defendant was negligent as to lookout
- Defendant distracted by active accident scene
- Defendant should have seen Marsden in high-visibility jacket

Defense (Bill Canfield):

- Marsden failed to yield right-of-way as pedestrian with no crosswalk
- Marsden had superior opportunity to perceive and avoid accident
- Marsden not conspicuous due to position and complexities of scene

4

Key Pretrial Rulings and Proceedings

- Plaintiff Causally Negligent as a Matter of Law
 - Wis. Stat. § 346.25: "Every pedestrian . . . crossing a roadway at any point other than within a marked or unmarked crosswalk shall yield the right-of-way to all vehicles upon the roadway."
 - "The duty of the pedestrian under this statute is **absolute** regardless of any negligence on the part of a driver and that **failure to yield the right of way constitutes causal negligence as a matter of law.**" *Field v. Vinograd*, 10 Wis. 2d 500, 505, 103 N.W.2d 671 (1960).
- Plaintiff denied request to admit failure to yield was causal negligence
- Unopposed motion for partial summary judgment
- Special verdict questions as to plaintiff's causal negligence answered "Yes"

5

Motions in Limine

- Defense Motion: Exclude claim for future medical expenses because they were not itemized **and** because the plaintiff's expert report does not support them.
- Dr. Mellon Report:
 - Marsden "**may** benefit from additional treatment in the future" to treat his symptoms, and that treatment "**could**" include hardware removal, injections, physical therapy, and/or total knee replacement.
 - "It is my professional medical opinion that there is a less than 50% chance that he would need any individual intervention noted above. However, I would estimate that the **chance of him needing at least one of these is greater than 50%.**"
 - "It is **more likely than not** he will need OTC pain medication at current consumption level."
- Plaintiff Response: Agreed no claim for future medical expenses but doctor's opinions are admissible as to future pain and suffering.

6



YOUR BUSINESS ADVANTAGE, IN AND OUT OF THE COURTROOM

Nearly 100 trial attorneys representing clients across the Midwest and Pacific Northwest.

Green Bay

615 S. Monroe Avenue
Green Bay, WI 54301
920.884.2312

Madison

3113 W. Beltline Hwy
Suite 100
Madison, WI 53713
608.662.1180

The choice of a lawyer is an important decision and should not be based solely on advertisements.

- Health Care
- General Liability
- Insurance
- Long Term Care
- Professional Liability Defense
- Commercial/Business
- Employment
- Appellate
- Legal Malpractice

 **Baker Sterchi**
COWDEN & RICE

Wis JI-Civil 1767 – Future Pain & Suffering

- Pain, suffering, and disability includes:
 - Physical pain, worry, distress, embarrassment, humiliation
- In answering this damage question, you should consider the following factors:
 - The extent plaintiff's injuries have impaired and will impair his ability to enjoy the normal activities, pleasures, and benefits of life;
 - The nature of plaintiff's injuries;
 - The effect the injuries are reasonably certain to produce in the future bearing in mind plaintiff's age, prior mental and physical condition, and the probable duration of his life.

7

Courtroom Technology & Accommodations

Monitors for judge, counsel, witness & courtroom

- Controls for judge and court staff

White Noise

- Juror experience? Nonverbal cues?

Hearing-impaired juror

- Second court reporter to provide real-time transcription

8

Voir Dire

Counsel Philosophy

- Introduce key theme and identify bias related to those themes
- "The evidence will show that the pedestrian was crossing the street outside of a sidewalk, and the court has applied the law to the undisputed facts and has **already determined that the pedestrian negligently failed to yield the right of way**. Is anyone uncomfortable with that decision having already been made?"

Judicial Philosophy

- Time constraints?
- Objections?

9



Hi-Vis Coatrack

- Jacket on display during voir dire and opening statements
- Objectionable during voir dire?
- Objectionable during opening statement?

10

Testimony of Sheriff's Deputies

- Deputies Hollingsworth and Bachtell
- Already on Scene at time of Our Accident
- First Witnesses in Plaintiff's Case-in-Chief
- Plaintiff Strategy:
 - Emphasize lighting at scene
 - Attack alleged inconsistency of Canfield statements
- Defense Strategy:
 - Align ourselves with law enforcement by eliciting agreement on key facts/issues
 - Pedestrian had duty to yield outside of crosswalk
 - "Nobody should try to cross right there."
—Hollingsworth

11

Testimony of Bill Canfield

- Adverse Examination: Focused on Lookout and Distraction
 - High-visibility jacket
 - Inconsistencies regarding when Canfield first saw Marsden
 - Distracted by accident scene . . . and food?
- Courtroom Demonstration?
 - Laser pointer and flashlight
 - Judge Wittchow ruling and reasoning

12

B

BORGELT POWELL

PETERSON & FRAUEN S.C.

ATTORNEYS & COUNSELORS
ESTABLISHED 1881

Our mission is to provide the very best legal services to insurance companies, businesses, and individuals by providing innovative, effective and efficient advice, consultation, and representation during the investigation, evaluation, and litigation of civil and administrative claims.

Our expertise has resulted in Borgelt Powell's selection as Panel Counsel by some of the largest companies and insurance companies in the country.

Licensed in Wisconsin and Illinois

1243 N. 10th Street, Milwaukee, WI 53205

(414) 276-3600

Virtual Offices, Madison, WI

(608) 258-1711



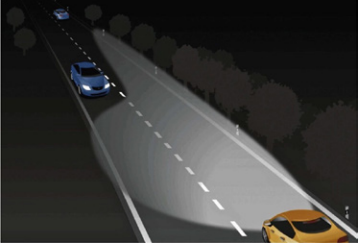
Testimony of David Noyce, P.E.

- Executive Associate Dean at UW Engineering Dept.
 - Executive Director of the Traffic Operations and Safety (TOPS) Laboratory and the Wisconsin Driving Simulator Laboratory
 - Associate Director of Safety Research Using Simulation (SaferSIM) Center
- Key Opinions
 - Existing crash scene created dynamic and complex conditions that naturally and reasonably draw some of driver's attention
 - Marsden was not conspicuous to Canfield because he came from an area where headlights are designed not to shine directly to avoid blinding opposing drivers

13

David Noyce Opinions

- Low Beam Vehicle Headlamps Asymmetrical by Industry Standard Design
- Marsden Entered from Canfield's Left
- Headlamps Did Not Reflect Directly off Hi-Vis Jacket
- Marsden's Walking Path Placed Him in Low Light with Minimal Contrast



Standard low beam vehicle headlamp pattern, <https://www.futstr.com/en/lookout-beam-patterns-of-headlights>.

14

Noyce Cross-Examination

- 2nd Attempt at Courtroom Demonstration
- Court's Provisional Ruling
- Court's Final Ruling



15

Plaintiff's Expert Engineer: John DeRosia

- Report Opinions**
 - "Canfield owed a duty of care to Marsden but breached that duty by failing to maintain a proper lookout and by being inattentive."
 - "Striking a walking pedestrian with a 500lb vehicle would not be an exercise of ordinary care."
- Foundational Issues**
 - Did not inspect scene or vehicles
 - Conducted no measurements and performed no engineering calculations
- Daubert challenge?**

16

Defense Strategy: John DeRosia, P.E.

- Aggressive Cross-Examination > Exclusion of Witness
- DeRosia held himself out as expert in accident reconstruction and human factors
- Concessions during discovery deposition
 - Marsden failed to yield the right-of-way to Canfield
 - Canfield vehicle was visible to and observed by Marsden well before Marsden stepped into its path
 - Canfield reasonably had to devote some of his attention to the dynamic accident scene
 - The complexities of the accident scene lengthened perception-reaction time

17

Testimony of Anthony Marsden

Three Contradictory Statements

1. Written Statement to Police
 - "I got out of my truck and started walking across the street, the car kept coming and hit me head on. I don't think he slowed down at all.
 - "He wasn't going that fast, maybe 25-30mph," but he "didn't even brake."
2. Deposition Testimony
 - Canfield was about "6 car-lengths away" when Marsden first saw him
 - "He was probably going 5-10mph" when Marsden first saw Canfield but then Canfield "stepped on it" and accelerated to... "probably 15 maybe"
3. Trial Testimony
 - Canfield was 400ft away when Marsden first saw him
 - Canfield accelerated at the last second, leaving Marsden no place to go

18

Celebrating 25 years
Digital Intelligence[®]
mastering the science of digital forensics

Digital Forensics & eDiscovery Services

Preservation
Hosted Review
Expert Testimony
Professional Training

Visit us:
1841 N Prospect Ave
Milwaukee, WI

Call us:
(414)404-8800

Write us:
info@di4n6.com

Jury Instruction & Special Verdict Conference


- Wis. Stat. § 805.13(3): "At the close of the evidence and before arguments to the jury, the court shall conduct a conference with counsel outside the presence of the jury . . . Counsel may object to the proposed instructions or verdict . . . stating the grounds for objection with particularity on the record. Failure to object at the conference constitutes a waiver of any error in the proposed instructions or verdict."
- "Section 805.13(3) provides no exceptions to the requirement that any objection be made at the jury instruction conference." *State v. Trammell*, 2019 WI 59, ¶118, 387 Wis. 2d 156, 928 N.W.2d 564.

19

Modified JI 1009 – Violation of Safety Statute

- Plaintiff proposed instruction for Canfield alleged violation of "Move Over Law," Wis. Stat. § 346.071
 - Marsden tow truck was "emergency roadside vehicle" per statute
 - Canfield obligated to "Slow the motor vehicle, maintaining a safe speed for traffic conditions, and operate the motor vehicle at a reduced speed until completely past the emergency or roadside service vehicle."
- Defense Counter: Include Wis. Stat. § 346.25 as well
 - The court has already determined that Marsden violated Wis. Stat. § 346.25, which is a safety statute that provides in relevant part as follows:
 - "Every pedestrian . . . crossing a roadway at any point other than within a marked or unmarked crosswalk shall yield the right-of-way to all vehicles upon the roadway."

20



Plaintiff's Closing Argument

- Accused Bill of being distracted
- Food Wrapper prominently featured
- Blamed the dog?
- Courthouse crosswalk analogy
- Damages ask:
 - Past Meds: \$198,571.93
 - Past Pain and Suffering: \$500,000
 - Future Pain and Suffering: \$500,000

21

Closing Argument - Defense

- Theme: "Marsden broke the law, Canfield did not."
 - Emphasized inconsistent and contradictory Marsden testimony
 - Under any version of events, undisputed that:
 - All Marsden had to do to avoid this accident was follow the law by stopping and waiting for Canfield to pass
 - He could have done that at any "literally any step of the way" before he moved into the path of Canfield's vehicle.
 - Modified 1009
 - Reinforced theme
 - Undisputed that Canfield reduced speed to 10-15mph

22

Closing Argument – Defense

- No concession but no argument against past medical expenses
 - "The law says that there's a presumption that the amount on the bills is reasonable, so if you agree that the treatment was related to the accident then you include the amount in your answer to the question about past medical expenses."
- Past Pain and Suffering: Suggested \$50,000
- Future Pain and Suffering: Argued \$0
 - Good Recovery & Failure to Mitigate
 - Hadn't treated in nearly 4 years – only visits were 2 consults
 - Indefinitely deferring hardware removal surgery

23

Jury Deliberations & Verdict

- Accommodations for Hearing Impaired Juror
 - Court reporter in jury room for real-time deliberations?
- Verdict
 - Canfield 0% Negligent
 - Damages:
 - Past Medical Expenses: \$0
 - Past and Future Pain and Suffering: \$0

24

WE KNOW WISCONSIN LAWYERS, BECAUSE WE ARE WISCONSIN LAWYERS

PROTECTING WISCONSIN LAWYERS SINCE 1986

WISCONSIN LAWYERS

WILMIC

CELEBRATING 40 YEARS

MUTUAL INSURANCE COMPANY

A Member Benefit of



STATE BAR
OF WISCONSIN



The Latest in Appraisal

Erik Gustafson

WDC Spring Conference, April 2026

I. What is Appraisal?

- A.** Appraisal is an alternative dispute resolution mechanism contained in most first-party property insurance policies. *See* Wis. Stat. § 631.85. This includes homeowners, commercial property, businessowners, and the physical damage coverages in auto policies.
- B.** Appraisal can apply to business income claims as well.
- C.** Appraisal resolves only factual questions that go to the value of the claim. *Farmers Auto. Ins. Ass'n v. Union Pac. Ry. Co.*, 2009 WI 73, ¶ 43, 319 Wis. 2d 52, 768 N.W.2d 596.
- D.** Appraisal is intended to be a time- and cost-efficient means of resolving disputes about the value of a claim.

II. When is Appraisal Appropriate?

A. “Amount of Loss”

- 1.** Most appraisal provisions concern disputes about the “amount of loss.” A sample:

2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make a written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire.... The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision by any two will be binding. Each party will:

- a.** Pay its chosen umpire; and
- b.** Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.



The Wisconsin Insurance Alliance is the state's leading property and casualty insurance trade association. Members play a crucial role in safeguarding Wisconsinites.

- ✓ **VITAL INSURANCE COVERAGE ENSURING FINANCIAL PROTECTION FOR INDIVIDUALS BUSINESSES AND COMMUNITIES ACROSS THE STATE IN TIMES OF NEED.**
- ✓ **FINANCING AND RESOURCES TO HELP RESIDENTS RECOVER FROM UNFORESEEN EVENTS.**
- ✓ **CONTRIBUTING TO THE RESILIENCE AND WELL-BEING OF WISCONSIN FAMILIES AND BUSINESSES BY OFFERING ESSENTIAL PROTECTION AND SUPPORT.**

WIA
Wisconsin Insurance Alliance



Website:
www.wisinsalliance.com

St. Croix Trading Co./Direct Logistics, LLC. v. Regent Ins. Co., 2016 WI App 49, ¶ 2, 370 Wis. 2d 248, 882 N.W.2d 487.

2. This policy language allows appraisers to resolve issues of causation. *St. Croix Trading*, 2016 WI App 49, ¶ 13.
 - a. This most often comes up in hail claims, as it did in *St. Croix Trading*, where insureds claim hail damage and insurers claim wear and tear.
 - b. Can occasionally arise in other claims, such as repair vs. replacement disputes. *Windsor v. State Farm Fire & Cas. Co.*, No. 22-CV-734-SCD, 2023 WL 4197462, at *7 (E.D. Wis. June 27, 2023) (compelling appraisal where insurer and insured disputed whether basement wall could be repaired after blast damage).

B. Some insurers seek to narrow the scope of appraisal.

1. “Any Other Disputes of Fact”
 - a. One method in the case law is a restriction on appraisers deciding “any other questions of fact.” *Windsor*, 2023 WL 4197462 at *5; *Novak v. State Farm Fire & Cas. Co.*, 687 F. Supp. 3d 820, 825 (E.D. Wis. 2023).
 - b. Courts are split on this language: in *Novak*, Judge Griesbach held that this language prohibited an appraisal panel from determining whether and to what extent a roof was damaged by hail; conversely, in *Windsor*, Magistrate Dries held that a dispute about whether a basement wall could be repaired is subject to appraisal.
2. “The Actual Cash Value or Cost to Repair or Replace...”
 - a. Another insurer defines the scope of appraisal as applying if the insurer and insured “fail to agree on the actual cash value or cost to repair replace damage to covered property caused by a peril insured against.”
 - b. Courts are split on this as well: Judge Stadtmueller held that a dispute about the existence and extent of hail damage was subject to appraisal, while Judge Melvin held that such a dispute was not subject to appraisal.



THE POWER TO SEE THE WHOLE PICTURE

Ringler Consultants have the sophistication and the experience to fit all the pieces together using structured settlement solutions and much more.

**Creative solutions.
Everybody can win.**

**Contact Don Engels
Structure Consultant since 1996**

DON ENGELS, CSSC, AIC, CLU
DEngels@RinglerAssociates.com
312-953-1611

RINGLER 
www.ringlerassociates.com [®]

C. Coverage

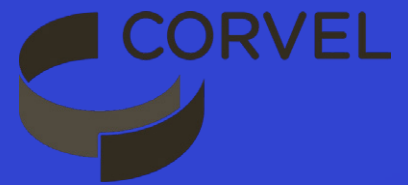
1. No matter the policy language, everyone agrees that appraisers cannot determine coverage. *St. Croix Trading*, 2016 WI App 49, ¶ 17.
2. The dividing line between coverage and factual questions is not always clear, and courts sometimes reach seemingly contradictory conclusions. For example, *Beer v. Travelers Home & Marine Ins. Co.*, No. 19-CV-306-WMC, 2020 WL 5095470, at *9 (W.D. Wis. Aug. 28, 2020), holds that the existence and date of hail damage are not subject to appraisal, in a case seemingly identical to *St. Croix Trading* both factually and by policy language.

III. When is Appraisal Ripe?

- A. An insurer loses the right to appraisal when it fails to invoke appraisal pre-suit despite having “ample opportunity” to do so. *Lynch v. Am. Fam. Mut. Ins. Co.*, 163 Wis. 2d 1003, 1013, 473 N.W.2d 515 (Ct. App. 1991).
- B. However, if the insured never provides an estimate to the insurer, then the insurer did not have “ample opportunity” to invoke appraisal pre-suit. *Park Meadows Homes Ass'n, Inc. v. Am. Fam. Mut. Ins. Co.*, No. 2018AP1484, ¶ 28, 2019 WL 3139842 (Wis. Ct. App. July 16, 2019).

IV. When Can An Appraisal Award be Set Aside?

- A. “An appraisal may be set aside only upon the showing of fraud, bad faith, a material mistake, or a lack of understanding or completion of the contractually assigned task.” *Farmers Auto. Ins. Ass'n v. Union Pac. Ry. Co.*, 2009 WI 73, ¶ 44, 319 Wis. 2d 52, 768 N.W.2d 596.
- B. The award from an appraisal panel that improperly decides coverage is properly set aside for failing to complete the contractually assigned task. *St. Croix Trading*, 2016 WI App 49, ¶ 17.
- C. An award that calculates the amount of loss using an improper method is properly set aside for failing to complete the contractually assigned task. *Coppins v. Allstate Indem. Co.*, 2014 WI App 125, ¶ 32, 359 Wis. 2d 179, 857 N.W.2d 896.
 1. Note: while the *Coppins* analysis of appraisal award law has not been questioned (i.e., that an award using the wrong method of calculation should be set aside), some courts have questioned its analysis of the underlying question of whether the panel correctly



Defensible IMEs for High-Stakes Claims

**Experience You Can Rely On.
Results You Can Defend.**

Trusted by carriers, TPAs, and defense firms nationwide for IMEs that are clear, timely, and built to hold up under review.

With **Midwest accountability and national reach**, CorVel delivers defensible medical opinions supported by experienced physicians and workflows tailored to litigation and claim strategy.

We understand what's at stake—and what your case demands.



Lisa Haugen



Jennifer Jopek



Jenni Prena



Gretchen Myers



Caroline Ward-Kniaz

More than an IME—part of a defensible claim strategy.

Seamlessly supported by CorVel's Virtual Vocational Services and Alternative Light Duty solutions.

**midwest_IME@corvel.com
608.662.8220**

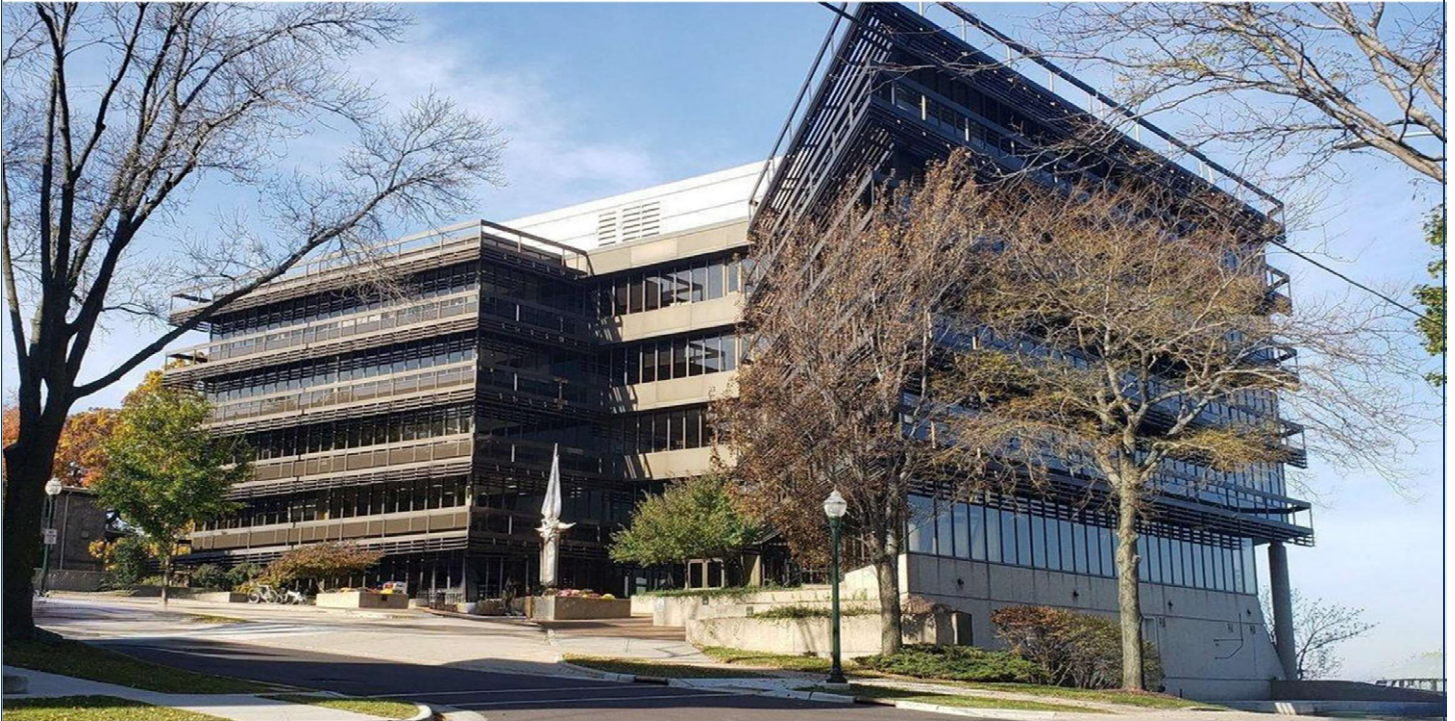
calculated the amount of loss. *Meier v. Wadena Ins. Co.*, 95 F.4th 514, 517–18 (7th Cir. 2024)

V. **Appointing an Umpire**

- A. Appraisal provisions contemplate that the appraisers may not be able to agree on an umpire.
- B. A circuit court judge may appoint the umpire. Wis. Stat. § 631.85.

COYNE, SCHULTZ, BECKER & BAUER, S.C.

ATTORNEYS AT LAW | MADISON, WISCONSIN



Choosing an attorney to represent you is an important decision. Our attorneys deliver cost-effective, high quality litigation services while promoting personal working relationships and individual accountability.

150 E. Gilman St. #1000
Madison, WI 53703
Tel.: 608-255-1388
Fax: 608-255-8592


www.cnsbb.com

HIGHLY SKILLED AND EXPERIENCED CIVIL TRIAL ATTORNEYS

AMY F. SCHOLL | VINCENT J. SCIPIOR | STEPHEN O. MURRAY | BRUCE A. SCHULTZ
KAREN M. GALLAGHER | MYRANDA STENCIL | ANDREW J. LAWTON | SRISHTI PONNALA


Defending 30(b)(6) Depositions

Frederick J. Strampe



1

F.R.C.P. 30(b)(6)



2

Corporate Representative Depositions



Are Increasing

3

Why Increasing?

- Lock in organization
- Find Inconsistencies
- Attack Organization
 - Better Liability Case
 - Punitive Damages


4

What Required?

The persons so designated shall testify as to matters known or reasonably available to the organization

5

The Response Process



What does organization know?

Who will testify?

6



Protecting you at every turn.

INDIVIDUALS ♦ BUSINESSES ♦ INSURANCE COMPANIES

(262) 347-0167

WWW.HILLSLEGAL.COM


SQUIRES III, SUITE 333, N19W24075 RIVERWOOD DRIVE, WAUKESHA, WI 53188

What Does Organization Know?

- Fact: Hard to change
- Conclusions: Anything you want

7

Golden Opportunity



8



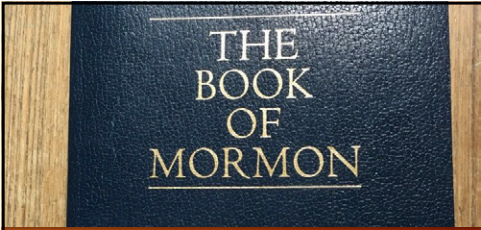
Who Will Testify?
It is a relationship

9



Who Will Testify?
It is a long-term relationship

10



Who Will Testify?
Does not have to be an exclusive relationship

11



Who Will Testify?
Preparation is the key

12

Skilled litigators, exceptional results.

Our litigation attorneys balance unparalleled skill and winning strategies to achieve exceptional results in the courtroom. We have successfully tried hundreds of cases on behalf of individuals, businesses, and insurance companies in federal and state courts throughout Wisconsin and nationwide. Together, we can chart the best path forward.

Learn more about our team at boardmanclark.com/litigation.



BoardmanClark

The best path forward

BOARDMAN & CLARK LLP

1 S. PINCKNEY ST., ST 410

MADISON, WI 53701

(608) 257-9521

BOARDMANCLARK.COM


Who Will Testify?

- Decide the Answers in Advance
- Written Responses
- Limit the Topics

13

Defense Strategies

- Provide Written Answer
- Provide Document
- Identify Topics Not Answering




14

Have Responses & Documents at Deposition

Tell Witness to Read

15

Limit Testimony to Identified Topics




16

Plaintiff Trends

17

Plaintiff Goal

Motion in Limine preventing any argument or position different from Corporate Rep. Testimony



18



Dedicated to Your Defense

Grady, Hayes & Neary, LLC provides high quality, outcome-focused and cost-effective legal services to insurance companies, businesses, and individual clients. Our successful litigators represent clients throughout the state of Wisconsin in the practice areas of insurance defense, construction defects, premises liability, automobile liability, products liability, insurance coverage, business disputes, municipal and governmental law, and real estate. They also represent clients in arbitration, mediation and appeals.

Conclusion

Embrace this Opportunity

Golden Opportunity to say what you want jury to hear

19

Any Questions?

20



Strategic. Fearless. Unrivaled.



John Franke



Josh Greenberg



Tamar Kelber



Daniel Manna



Linda Meagher



Richard Orton



Rachel Potter



Isaiah Simons



Stephen Trigg



David Turek

When it comes to your complex litigation, we partner with you to formulate a creative course of action. We walk the tightrope of risk together, providing direction and forward momentum. Energized by the prospect of trial, we deliver success.



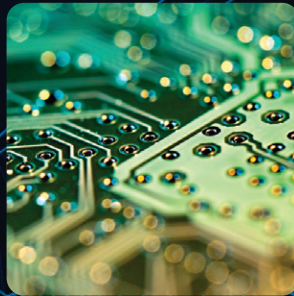
241 N Broadway, Suite 300 | Milwaukee, WI 53202 | (414) 223-3300

www.gassturek.com

FROM COMPLEXITY TO CLARITY.

Technical expertise you can trust.

At ESi, we combine advanced technology with deep expertise to plan, predict, test, and solve your toughest challenges. Learn how our experts are innovating across essential industries.



Connect with our experts to get started:
newmatters@engsys.com | (866) 596-3994 | www.engsys.com



Litigation Support



We are a global forensic accounting firm that regularly provides litigation support services and expert witness testimony in courts and arbitrations. We also frequently provide assistance during the discovery process, mediations and during settlement discussions.

Time and again, our assessments have stood up to the scrutiny of cross-examination, making us the choice of both plaintiff and defense counsel around the world.

Our professionals' expertise spans 500 industries and the below practice areas:

Damages Quantification

- > Anti-trust
- > Business & Shareholder Disputes
- > Class Action – both Certification & Defense
- > Construction Defect/Delay
- > Environmental Damages/ Toxic Tort
- > Intellectual Property/Patent Infringement
- > Lost Profits/Loss of Hire
- > Personal Injury/Wrongful Death
- > Product Liability & Recall
- > Employment Litigation
- > Subrogation

Valuation Matters

- > Acquisition/Disposition of Business
- > Business Disputes
- > Divorce Matters
- > Shareholder Disputes
- > Succession Planning

Construction Litigation

- > Surety Bonds
- > Funds Control
- > Delay in Start-Up
- > Insolvency

Fraud Investigations

- > Asset Tracing, Kickbacks, and Misappropriation
- > Financial Condition Analysis
- > Financial Institutional Bonds
- > Piercing the Corporate Veil & Alter Ego
- > Ponzi Schemes
- > Whistleblower Investigations
- > Bankruptcy
- > Fidelity & Embezzlements

Corruption

- > Regulatory Investigations including Foreign Corrupt Practices and UK Bribery Acts
- > Anti-Corruption Program Review
- > Internal Investigations/Risk Assessment

We have a global workforce of accountants ready to assist, many of whom are Certified Public Accountants (US), Chartered Professional Accountants (Canada), Chartered Business Valuators and Certified Fraud Examiners.

With more than 40 offices on 5 continents, and extensive language capabilities, our exceptional dedication and uniquely qualified professionals are the hallmarks of our firm. For litigation support or expert witness testimony, hire MDD.



Protect what you value most

For over 90 years, Rural Mutual Insurance has been protecting Wisconsin families, farms, and businesses. As the state's #1 farm insurer and a leading commercial insurance provider, we understand local needs because we live and work here too. Backed by an A+ rating from A.M. Best and named a Top 50 U.S. insurance company for 17 years, we're proud to earn your trust—year after year.

See why more Wisconsinites are choosing local protection—get your quote today.



Learn more



Home | Auto | Farm | Business | Life

RuralMutual.com    

MATHIE MEDIATION SERVICES LLC

Take Advantage of Everything that Mediation Has to Offer.



Call: (414) 429-2400
Email: jmathie@mathiemediation.com



Jim Mathie has been mediating full-time for almost 10 years. He has been retained by hundreds of attorneys to mediate their disputes. In addition to mediation via Zoom videoconference, Jim travels statewide – at no travel expense – to mediate in-person.

Before mediating full-time Jim litigated cases for 30 years, primarily defending clients in personal injury, property damage, product liability, environmental, construction and transportation lawsuits. His varied background also includes stints as a plaintiff personal injury attorney and in-house counsel for a major insurer in addition to nearly three decades in private practice. Jim is a past president of WDC.

MATHIE MEDIATION SERVICES LLC
242 North Hartwell Avenue
Waukesha, WI 53186





YOUR LAWYERS ON THE LAKESHORE

SPECIALIZING IN: TRIAL • CIVIL LITIGATION • INSURANCE DEFENSE & COVERAGE • LIABILITY



William R. Wick
PARTNER



Christopher R. Bandt
PARTNER



Jeremy T. Gill
PARTNER



Christopher L. Lambrecht
SR. ASSOCIATE



Arthur J. Krafft
ASSOCIATE



Super Lawyers



LexisNexis® Martindale-Hubbell®
PeerReview Rated
FOR ETHICAL STANDARDS AND LEGAL ABILITY™

CONTACT US TODAY!

With our main office in Manitowoc, WI and satellite offices throughout, our coverage area can assist clients in all legal matters.



OTJEN LAW FIRM, S.C.

Attorneys at Law • Founded 1881

20935 Swenson Drive, Suite 310
Waukesha, WI 53186

Contact

Phone: (262) 777-2200

<https://otjen.com/>