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**TRIAL NEWS**

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION

### **Demanding Policy Limits Information**

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It is standard practice to send a set of interrogatories to the defense, one of which will demand information about the defendants' insurance. It is typical to include a request for production requiring the insurance company to produce the insurance policy and declaration sheet for the period covering the incident. In response, the defense typically will produce the insurance policy and declaration sheet. What do you do then? Most plaintiff's counsel do nothing more. That may be a mistake.

I have had a number of occasions in my practice where the initial insurance information turns out to be wrong. The policy limits might be higher than was initially disclosed. Or there might be an undisclosed umbrella policy. Or there is an additional insured who has other coverage that applies to the claim.

Now, there may be reasons why inaccurate information was disclosed. It could be a mistake, it could be that the adjuster just didn't look hard enough to find that umbrella policy, or it could be an intentional failure to disclose. Whatever the reason, I have never had insurance coverage go down the more I dug for information. I have had it go up, sometimes substantially.

Of course, it is a judgment call how aggressive to be when seeking discovery of the defendant's policy limits information. On a case that is valued under \$25,000 I suppose all you need to know is whether there is insurance. The amount won't matter much if the outcome is going to be lower than the \$25,000 minimum limits policy that can be sold in Washington State. However, since our firm's cases regularly involve catastrophic injury and death, we now take the following steps regarding discovery of defendant's insurance limits information.

#### **DEMAND PRODUCTION OF THE INSURANCE POLICIES AND DECLARATION SHEETS**

In every litigated case we demand production of: 1) the insurance policy or policies, 2) all endorsements and amendments, and 3) the declaration sheet showing what insurance coverage was in force for the period when the injury occurred.

The authority for obtaining this information is CR (b)(2) (i) Insurance Agreements. A party may obtain discovery and production of: (i) the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to

satisfy the judgment...

We send an interrogatory and request for production to obtain this information.

**INTERROGATORY:** If any insurance policies exist of any type that may satisfy all or part of a judgment that may be entered in this action or that may indemnify or reimburse for payments made to satisfy such judgment (including but not limited to primary, excess, or umbrella policies), or that may extend medical payment or wage loss benefits to the plaintiff, please state as to each such insurance policy:

- (a) Name, address and telephone number of insurer or indemnitor;
- (b) Name, address and telephone number of each named insured or indemnitee;
- (c) Each type of coverage provided;
- (d) Limits of each type of coverage provided;
- (e) Amount of deductible on each coverage;
- (f) Policy period covered; and
- (g) Policy number.

**ANSWER:**

**REQUEST FOR PRODUCTION:** Please produce all insurance and indemnification agreements or policies (including primary, excess, or umbrella policies) identified in response to the preceding interrogatory, all applicable declaration pages, endorsements and amendments.

**RESPONSE:**

#### **DEMAND PRODUCTION OF ANY DOCUMENTS THAT MAY AFFECT COVERAGE**

You are also entitled to demand production of all documents "affecting coverage". The authority for this is CR 29 (b)(2) (ii), which provides in part "Insurance Agreements. A party may obtain discovery and production of: ... (ii) any documents affecting coverage (such as denying coverage, extending coverage, or reserving rights) from or on behalf of such person to the covered person or the covered person's representative. ..."

We send a request for production and interrogatory to obtain this information.

**REQUEST FOR PRODUCTION.** Please produce any other documents affecting insurance coverage (such as any documents denying coverage, extending coverage, or reserving rights), from or on behalf of any person carrying on an insurance business, to any defendant or covered

person, or such person's representative.

**RESPONSE:**

**INTERROGATORY:** Have any of the insurers or indemnitors identified in your response to the preceding interrogatories denied in whole or in part coverage or indemnification for any of plaintiff's claims, or accepted defense of this action upon a reservation of rights? If so, please state as to each:

(a) Name, address and telephone number of the insurer or indemnitor;

(b) Contract language upon which the insurer or indemnitor bases its denial of coverage, indemnification or reservation of rights; and

(c) Reasons for the insurer's or indemnitor's denial of coverage, indemnification or reservation of rights.

**ANSWER:**

**REQUEST FOR PRODUCTION:** Please produce for inspection and copying all documents identified in response to the preceding interrogatory.

**RESPONSE:**

**DEPOSE THE INSURANCE BROKER AND REVIEW THAT FILE**

Once you have the insurance policy and declaration sheet from the insurance company you need to decide if you are satisfied with that information. More and more often we are not. Because of the size of cases we handle, and the consequences to our clients if umbrella or other excess policies are not discovered, we are now doing depositions of the defendant's insurance brokers on an increasingly frequent basis. You simply serve a subpoena to produce the broker's file. Then you can decide whether to depose the broker on what insurance coverage exists as well as the policy limits for each coverage.

Sometimes this extra effort will result in more coverage that the insurer discovered "after a more through search in response to your request". In that case your client benefits. Sometimes you won't find more coverage. In that case your client may benefit also. In a recent wrongful death case the insurer disclosed a liability policy limit of \$1,000,000 but said that there was no umbrella coverage. Given the defendant we were suing it seemed to me that there might be umbrella coverage. I had the broker's file produced and took the deposition of the broker. A review of the file indicated that the broker had quoted and recommended an umbrella policy to the corporate defendant. The corporate defendant had declined the umbrella coverage in writing. In that case I was able to confidently advise the client that there was no coverage above the \$1,000,000 liability policy, and that we would have to proceed accordingly. That additional information was beneficial for the client to have, and was helpful for me in planning the case strategy.

## CONCLUSION

Make sure that you have taken steps to uncover all of the insurance that applies to a specific incident. Make sure you have all the relevant documents, and consider whether to review the file of the defendant's insurance broker, and maybe take his deposition.

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