Mandatory Policy Limit Disclosure: How Pre-suit Negotiations in NJ Are Set to Change

OP-ED: A recent piece of little-discussed legislation will likely have a big impact on pre-suit negotiations in New Jersey auto liability cases.

New Jersey Law Journal
September 3, 2021
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Under the new law, insurers are now required to disclose the amount of available automobile coverage upon requests from an injured third party's attorney.

Previously it was common for such information to be unavailable for liability claimants during pre-suit negotiations. Following an accident, injured parties or their representtatives would petition the opposing driver's insurance carrier for coverage information. Insurance companies, hesitant to expose their own insured's private information, would routinely deny such requests. With no other outlet, an accident victim's only recourse was to file a complaint and request the tortfeasor's policy limits through discovery.

Senate bill S-1558, signed by Governor Murphy on July 22, 2021, removes that barrier.

Now insurers are obligated to provide the limits of all private passenger automobile insurance policies and any applicable umbrella or excess liability coverage upon written requests from a New Jersey admitted attorney.

The legislation settles an area of constant debate between those seeking quick recoveries of accident-related claims and cautious insurance carriers who are reluctant to provide their insured's sensitive policy information to outside parties.

In addition to protecting personal information, opponents of the the rule change question whether such information is relevant to negotiations. Why should an at-fault individual's policy limits influence the valuation of a plaintiff's injury? A case can be made that instead of aiding the settlement process, knowledge of the limits only serves to drive up the plaintiff's demands.

This dim view of the situation is reflected in the rules of evidence. Once a liability case reaches trial, the mere presence of insurance coverage, much less the extent of the policy limits, is inadmissible. A similar prohibition exists in the new law, which specifies that these disclosures are barred from ever being admitted into evidence. It begs the question, if policy limit information is too prejudicial for a juror's consideration, why should it be relevant during pre-suit negotiations?

Plaintiff attorneys, meanwhile, argue that more transparency in the pre-suit process will lead to quicker settlements and less costly lawsuits. The idea here is that policy limit disclosure places both sides on an even plane, allowing a more substantive early discussion of the issues and increased odds of a prompt resolution.

Settlement at the beginning stages of a case is, of course, good for everyone. Prolonged disputes are an economic drain for insurers through higher administrative costs, defense fees, and claims handling expenses. Similarly, the judiciary benefits from less time-consuming lawsuits which are destined for settlement and only serve to clog the already backlogged docket. Early settlements are also a win for the actual individuals who were involved in the accident—plaintiffs and insureds. The parties are able to close the book on these often emotional disputes and avoid anxiety-inducing events such as depositions and trials.

Left unsaid in this rosy outlook is that policy limit disclosure provides plaintiff attorneys an edge in seeking larger, not just speedier, settlements. The axiom "knowledge is power" applies in this case. That is, knowledge of insurance coverage inevitably leads to settlement demands that are more reflective of the extent of available limits rather than the extent of a plaintiff's injuries.

A silver lining for the insurance industry is that the new rules remove an inherent conflict of interest within this space. A carrier's economic interest naturally diverges from its insureds during pre-suit negotiations. While it is in the insurer's interest to shield third-party claimants from the extent of available coverage, insureds would often prefer to have such claims settled before ever being exposed to a lawsuit. Coupled with these factors is the insurer's always present duty to protect their customer's private information. The new mandate effectively eliminates both of these concerns.

Given the changing landscape, there are some practical responses insurance providers can take to manage this transition. They should anticipate increased administrative costs as their disclosure responses must be in writing and must be provided within 30 days of the requests. Claims representatives should be trained and prepared for an increased volume of early settlement negotiations as plaintiffs' attorneys seek to avoid the costs of filing complaints. Consideration should likewise be given to seeking defense counsel's assistance during these preliminary stages in an effort to avoid potentially un-necessary litigation and higher costs down the road.

As with any substantive rule change, however, unforeseen consequences are inevitable. Carriers would be wise to keep a close watch on this issue as new challenges arise.

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