Trial Law TIPS

Roy D. Wasson's
TIP #53

Roy D. Wasson is board certified in Appellate Practice with extensive courtroom experience in more than 750 appeals and thousands of trial court cases, civil, criminal, family and commercial. AV-rated.

Disclosure of Liability Insurance Information —Remedies for Insurer's Violation

Introduction

Most trial lawyers know about the Florida statute which requires liability insurers to produce copies of insurance policies, and to provide information about other insurance and coverage defenses even before suit is filed. However, some of us are unaware that there may be some teeth in the statutory provision which can assist us in litigating cases involving policy defenses where the insurer fails to provide the required disclosures.

All of us should remember to use the statute to obtain information regarding available insurance prior to filing suit. We also should look back on the sufficiency of the insurance company's response to such request as we approach the time for

trial in a difficult case involving policy defenses. The insurer's noncompliance may make your case in court a little easier.

Insurers' Statutory Duties of Disclosure

Section 627.4137, Fla. Stat. unambiguously requires insurance companies to provide a copy of all policies which may provide coverage, along with a sworn statement of the insurer's representative concerning applicable limits, policy defenses, and other matters. The statute is succinct, and it is quoted verbatim below:

> § 627.4137. Disclosure of certain information required.
>
> (1) Each insurer which does or may provide liability insurance coverage to pay all or a portion of any claim which might be made shall provide, within 30 days of the written request of the claimant, a statement, under oath, of a corporate officer or the insurer's claims manger or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:
>
> (a) The name of the insurer.
>
> (b) The name of each insured.
>
> (c) The limits of the liability coverage.
>
> (d) A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.
>
> (e) A copy of the policy.
>
> In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required

> by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request.
>
> (2) The statement required by subsection (1) shall be amended immediately upon discovery of facts calling for an amendment to such statement.

Some believe that the statute is too succinct; it has no self-effectuating remedies for non-disclosure by the insurance company. Defendants for years took the position that they could ignore their duties under the statute without any recourse by the plaintiff. However, the courts have more recently forged some enforcement provisions through the common law.

Invalidating Settlements Based on Insurer's Noncompliance

Two cases have held that a settlement may be set aside when the insurance company has failed in its statutory duty to provide acquired information under the statute. In *Cheveire v. Geisser*, 783 So. 2d 1115 (Fla. 4th DCA 2001), the court held that a settlement agreement with a tortfeasor's insurance company was not binding on a wrongful death claimant because of the insurer's failure to provide confirmation of policy limits as requested by the claimant and required under section 627.4137. The Fourth DCA rejected the insurance company's argument that the statutory requirement was immaterial to the settlement because it was a mere procedural matter and held that it was a substantive obligation which permitted setting aside the settlement.

Similarly, in *Schlosser v. Perez*, 832 So. 2d 179 (Fla. 2d DCA 2002), the court held that the failure to provide insurance disclosure information under the statute, with respect to other policies or other coverages, constituted a lack of compliance with an essential term of a settlement agreement in a negligence action arising from a motor vehicle collision, such that it was error to enforce the settlement.

These cases should be a lesson to all of us to include language in your settlement demands and letters accepting settlement offers to the effect that the settlement is conditioned upon the insurer's complete and accurate response to requested disclosure information, especially as it relates to other potentially-available policies of insurance. That way there can be no question but that noncompliance would be a material term of the settlement, should you later find more coverage and need to overturn the earlier agreement.

Invalidation of Policy Defenses Due to Noncompliance

Perhaps the most significant of the cases which have put some "teeth" into section 627.4137 are decisions in which courts have invalidated policy defenses raised by insurers, as a sanction for nondisclosure of information. One such case from the Fourth DCA which denied the insurance company an available policy defense during trial, based upon the insurer's failure to comply with the disclosure statute, is *United Auto. Ins. Co. v. Rousseau*, 682 So. 2d 1229 (Fla. 4th DCA 1996).

In that case the plaintiff—who had been a passenger in a motor vehicle involved in a collision—requested statutory disclosure information from United Automobile Insurance Company. United Auto failed to comply with the statute, and the case proceeded to trial. At trial, United Auto moved for a directed verdict based upon the plaintiff's failure to prove compliance with the alleged policy condition of providing a signed medical authorization. The trial court denied the motion for directed verdict and held that the policy defense was unavailable to United Auto because it had failed to comply with the disclosure statute.

The Fourth DCA affirmed the denial of the directed verdict, holding that the failure to provide the requested insurance information warranted the denial of the policy defense. Unless the insurance company provided a certified copy of the policy, there would be no way to establish that the medical authorization was required under the policy. The appellate decision notes that the omnibus insured did not have her own copy of the insurance policy,

so it would be wise to make record of that fact in a case you may have involving this issue.

Another case on the subject is *Figueroa v. U.S. Security Ins. Co.*, 664 So. 2d 1130 (Fla. 3d DCA 1995). That was a case in which the trial court had granted a summary judgment for the insurance company based upon the insured's failure to provide a timely sworn statement, as allegedly required under the policy. The insured had agreed to give a sworn statement "after receiving a copy of the policy which set forth the obligation to give a sworn statement" but U.S. Security never provided the requested policy. The Third DCA reversed the summary judgment in favor of the insurance company, while citing cases which indicated that noncompliance with the policy condition would otherwise have warranted summary judgment in favor of the insurer.

Conclusion

Noncompliance with the disclosure statute will not necessarily permit a plaintiff to win a case of no absolutely coverage under the policy, but denial of policy defenses can be an effective remedy nonetheless. Make sure that you request the information under the statute in every case and ask the court to deny coverage defenses which otherwise would be available to insurance companies, where they fail to live up to their statutory obligation under section 627.4137. It's tough enough to win cases against well-financed insurance companies, even when your adversary complies with its duty of full disclosure. The courts should continue to fashion remedies to make things a little easier where the insurer breaches that duty.

As tough as things get out there, keep the faith and, above all:

Keep Tryin!

Roy

WASSON & ASSOCIATES, CHARTERED
28 West Flagler Street, Suite 600 Miami, FL 33130
(305) 372-5220 roy@wassonandassociates.com