



Disclosure of policy limits to a UM/UIM arbitrator

Pros, cons and a solution that can protect both sides

BY RICHARD PHELPS

Does this dialogue sound familiar? Defense counsel to claimant's counsel: "I have to disclose the policy limits to the arbitrator since he/she can't award more than the policy limits. UM/UIM is essentially a contract claim and all a claimant can receive is the policy limits. My client doesn't want to

have to go to court after the arbitration and move to have the Award amended to the policy limit."

Claimant's counsel replies: "The insurance code says that the arbitrator is to decide what the insured would have received as damages for his/her claim had the negligent party been insured. I don't want the arbitrator to be influenced by the policy limit. The arbitrator

should only hear the evidence on liability and damages before he/she determines what damages the claimant would have been entitled to from the third-party tortfeasor, had he/she been insured."

The problem

Oftentimes, this argument continues ad infinitum with the tone and



temperature rising, with no apparent solution. It can create a more antagonistic relationship than necessary for the rest of the arbitration process. Both sides have valid points. Who should prevail? Is this one of those irreconcilable differences? I believe that there is a solution that protects both sides.

The primary concern of the claimant is to have an analysis of the damages done without the policy limits influencing the arbitrator. The primary concern of the insurer is to avoid getting stuck with an award above the policy limits followed by a court action to get it amended or to defeat a claimant's demand for payment of the award which is higher than the amount of insurance the insured purchased. The insurer will win this fight and who needs unnecessary litigation?

The solution

Have the insurer send a copy of the Declarations Page in effect on the date of loss to the arbitrator with a copy to the claimant's counsel. It should be marked on the envelope: "Policy Limits."

The arbitrator hears the evidence on liability and damages and determines the damages the claimant would have been entitled to from the third-party tortfeasor had he/she been insured. The arbitrator then opens the "Policy Limits" envelope and if the damages exceed the policy limits, the arbitrator concludes his/her Statement of Decision as follows: The claimant's damages against the third-party tortfeasor are \$55,542. Based on a UM/UIM policy limit of \$50,000, the claimant is awarded \$50,000.

Both sides get what they needed and what they deserve and all the potential escalating debate on how to handle the conflict is resolved before it ever gets started. I have used this method successfully in several arbitrations wherein the parties believe that the damages may approach or exceed the policy limit. Often it comes up shortly after I have been selected as the arbitrator, sometimes with a motion in limine from claimant's counsel or a conference call regarding the issue. When I have made this suggested resolution, it is accepted after both sides ponder it for

a moment or two; after they realize that their client will suffer no harm and it resolves the dispute.

Avoid the conflict

Suggest this resolution before the debate begins and the temperature rises. There are enough issues to fight over and this is not one of them.



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