

BEWARE OF RECENT LANGUAGE IN AUTO POLICIES PERTAINING TO UNINSURED AND UNDERINSURED CLAIMS

It is absolutely mandatory to obtain your client's automobile insurance policy immediately after being retained to represent him in a 3rd or 1st party cause of action. It is not safe to assume the policy contains provisions and benefits that were once standard.

For example, arbitration is no longer typical for resolving uninsured claims. Most insurance companies now require both the insurance company and the insured to agree to arbitration. In the event one party does not agree, the insured must file a cause of action with the court. Insurance companies most often will force you to file a lawsuit even after lengthy negotiations. Not knowing this ahead of time will result in needless negotiations and prolong settlement.

Attorneys must also be aware of the statute of limitations or limitations in the policy to file a claim for uninsured and underinsured benefits. Most contract actions have a six-year statute of limitations. That may not be the case when making a claim for uninsured or underinsured benefits. The Michigan Court of Appeals recently held in an unpublished opinion that plaintiff-insured was barred from bringing an underinsured motorist claim because the one year limitations provision in the insurance policy had run. *Hellebuyck v Farm Bureau General Insurance Co. of Michigan*, Unpublished Opinion of the Court of Appeals, Docket no. 243940 (decided February 10, 2004)

Further, beware of language in a policy (i.e., Citizens and Frankenmuth) requiring your client to file suit in an uninsured claim for any damages that exceed the state's statutory coverage minimum of \$20,000.00. In other words, if your client has an uninsured policy with \$100,000.00 limits, the insurance company could vacate an arbitration award in excess of \$20,000.00 and force your client to file a lawsuit for the additional \$80,000.00 available under the policy. Once again, knowing this at the onset of a claim will save you the cost and additional work of arbitrating if you ultimately have to file a lawsuit anyway.

There are several things you must do in order to protect your client and preserve potential claims. Advise your client to bring a copy of his entire PIP policy, effective on the date of the accident, to your first meeting. If your client does not have a copy of the policy which was in effect on the date of the accident, you must immediately send a letter to the PIP carrier requesting a certified copy of the declaration sheet as well as the entire policy. Be mindful that any changes or newly added provisions adopted by the insurance company will be binding on your client when the policy is changed or renewed. Typically when your client receives a new declaration sheet, he will also receive a copy of an "Amendatory Endorsement" (which could be several pages long) reflecting changes in the policy since the last time he renewed. The entire policy, with amendments, effective on the date of collision is what controls.

You should also send a standard form letter, with an authorization, to your client's PIP carrier as soon as possible inquiring if your client has a coordinated or uncoordinated policy, and demanding uninsured or underinsured arbitration in the event either is applicable.

Remember that you may not be working with the same insurance adjuster throughout the

claims process, and verbal agreements are not binding. Therefore, it is wise to get an agreement to arbitrate in writing. If possible, incorporate language in an arbitration agreement that the insurance company will waive its rights to force your client to file a lawsuit if the policy does have language precluding payment of uninsured damages exceeding \$20,000.00.

Insurance companies are only required to incorporate or offer benefits which are mandated by the No-Fault Act. However, the manner in which PIP claims are administered is left largely to the discretion of the insurance companies. Michigan courts are consistently holding that provisions in insurance contracts clearly favoring the provider are binding on the insured and do not contravene the No-Fault Act. Therefore, protect your client, read the PIP policy and beware of language which limits his ability to file uninsured and underinsured claims.