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Hiding any insurance coverage should be grounds for sanctions

A plaintiff should be instantly skeptical and wary when a defendant is too willing to offer "policy limits" or schedule a mediation soon after a complaint is filed. An instant query is what additional insurance coverage does this insured maintain and/or what inflammatory liability facts are unknown that the defendant is hoping remain undiscovered.

Too often, an insurer has striven to conceal additional coverage or excess policies that would provide, for example, a permanently disabled plaintiff the compensation for a lifetime of needed future care.

As is widely known, the Illinois Supreme Court has approved insurance interrogatories that require a defendant to identify all insurance policies, including "umbrella and excess liability coverage." This interrogatory requires a defendant to disclose all policies, the policy numbers, the names of the insurance companies writing the policies, and the maximum liability limits for each person and each occurrence.

Just about every civil judge has ordered a defendant to supplement an insurance interrogatory where a defendant elects to answer as follows: "Defendant maintained liability insurance coverage sufficient to cover the damages at issue." This answer is not only improper but leads to unnecessary court intervention and a reasonable belief that a defendant could be striving to conceal their true coverage limits.

Insurance interrogatories require a defendant to disclose all coverage regardless of defense counsel's valuation of the case. Nothing can cause a "nuclear war" in a case more than a plaintiff learning of additional coverage at or near trial. Further, a plaintiff's decision to proceed to trial is often based on what additional coverage has not been offered.

Concealing coverage amounts to outright fraud and should render immediate sanctions. Illinois appellate courts have not rendered an opinion directly related to whether sanctions should be imposed if a defendant or insurer fails to identify all coverage, but Illinois trial courts can turn to other jurisdictions for guidance.

In *Phillips v. Winsett*, 717 So. 2d 818 (Ala. Civ. App. 1998), the Court of Civil Appeals of Alabama affirmed a trial court's order imposing sanctions on a defendant for failing to answer insurance interrogatories. In 2014, in *Ford Motor Co. v. Conley*, 757 S.E. 2d 20, 24 (Ga. 2014), the Supreme Court of Georgia held that if a plaintiff seeks information during discovery regarding a defendant's liability coverage, a defendant cannot refuse to provide such information that could amount to sanctionable conduct.

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In *Ford*, the plaintiff filed a product liability suit against Ford Motor Co. arising out of a single-vehicle rollover accident. The plaintiff served Ford with an insurance interrogatory seeking for Ford to identify all liability coverage. Ford's interrogatory response declared: "Ford states it has sufficient resources to cover any judgment which could be reasonably rendered in this case, if any." The Supreme Court of Georgia opined that this response could reasonably lead the plaintiff to believe Ford was self-insured and did not have insurers that could be liable for a judgment.

Further discovery revealed that Ford maintained coverage with six different insurers. The Supreme Court of Georgia held, "Due diligence does not require the requesting party to disbelieve the substantive answers an opposing party has provided in discovery, nor must the requesting party file a motion to compel and then show non-compliance with an order to compel before the trial court can sanction the responding party for its discovery abuse, as must be done if the responding party refuses to answer the request at all."

Defense counsel also can be misled by insurers on coverage. It certainly is in the financial interests of an insurer for a plaintiff to settle a case within the primary layer of coverage without ever learning that other coverage layers exist. This conduct amounts to outright fraud and intended deception.

This conduct oftentimes is not the fault of defense counsel, but an insurer even misleading counsel. In these situations, courts should consider immediate sanctions against an insurer. Too often, a skeptical plaintiff's counsel will depose an insurance broker and learn of millions of dollars of additional coverage that just somehow did not find its way into an insurance interrogatory response. Leave no stone unturned.