SMITH FREED & EBERHARD P.C.

OREGON LAW UPDATE

case in point...

Self-Insured? Be Sure to Cross Your T's and Dot Your I's and for UIM Endorsement

From the desk of Jeffrey D. Eberhard: Public bodies are often self-insured for auto accidents. Problems can arise when a self-insured's policies do not strictly comply with statutory requirements, especially involving uninsured motorist coverage. Read on to see how the Court of Appeals decided a case in which an Oregon county claimed that it did not have to comply with the formalities of the self-insurance statutes, which requires self-insurers to elect lower UIM limits, on the basis it was a public body.

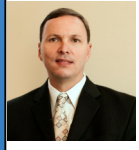
Claims Pointer: In Oregon, public bodies are allowed to self-insure. Self-insurers must provide uninsured/underinsured (UM/UIM) motorist coverage at the same level as liability coverage unless they elect to provide a lesser amount. In order to elect to have UM/UIM limits that are less than liability limits, self-insurers must comply with the formalities of ORS 745.502(2) by signing a written declaration electing lower limits. Failure to comply with the statute requires the self-insurer to provide UIM coverage at the same level as liability.

Ajir v. Buell, 270 Or App 575 (2015).

While on duty as a Clackamas County (the County) deputy sheriff, Ali Ajir was in a motor vehicle accident with another driver, Evan Buell. Buell was only insured for $25,000. The County was self-insured for $500,000 in liability coverage and claimed that its limit for uninsured motorist coverage was $25,000. Ajir sued Buell and they settled for the policy amount of $25,000. In an amended complaint, Ajir brought claims against the County and sought a declaration that the County had $500,000 in UM/UIM coverage. Ajir and the County each filed a motion for summary judgment.

The County opposed Ajir's claim on the basis that its risk manager had created a document entitled "UNINSURED MOTORIST COVERAGE," which listed as one of its terms of coverage that the UM limit was "$25,000 per claimant for bodily injury." The risk manager testified that he created the document to be the County's "uninsured motorist policy." Ajir argued that ORS 745.502 required the County to provide UM/UIM coverage at the same level as liability coverage absent a written, signed declaration of lower limits that conforms with statutory formalities. The trial court granted the County's motion and denied Ajir's motion. Ajir appealed.

On appeal, the Court of Appeals identified that the central dispute was whether the County's document is sufficient to limit its UM/UIM coverage to $25,000. Ajir argued that the County did not comply with the formal requirements of ORS 742.502(2), specifically, that the risk management documents were not signed. The Court agreed with Ajir, also pointing out that the County had failed to conform to other formalities in the statute. The County argued that strict application of the formalities of ORS 742.502(2) to public bodies would be absurd because the statute clearly refers to operations of private companies (i.e., the statute's use of terms such as "sign," "offer," and "price" that do not apply to public bodies). The Court rejected the County's argument because in its view, the statute unambiguously requires self-insurers who elect to provide UM/UIM coverage for any amount less than the amount covered for liability to follow the rules of ORS 742.502(2), regardless of its status as a private or public entity. The County clearly had not complied with the statutory requirements because the risk management's letter was never signed. The Court reversed the trial court's rulings and remanded.



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