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Kevin Wayne McDonald

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TULLER v. SHALLCROSS: PRETRIAL DISCOVERY OF AUTOMOBILE LIABILITY INSURANCE COVERAGE IN OKLAHOMA

I. INTRODUCTION

Pretrial discovery of the existence and contents of insurance agreements has been statutorily allowed in federal courts for the past twenty-five years.¹ Many states have adopted the same or a similar rule, either by statute² or judicially. Some states, however, do not permit such discovery.³

Prior to 1994, Oklahoma was among the states denying pretrial discovery of the existence and limits of automobile insurance coverage.⁴ Oklahoma's discovery code limited discovery to relevant matters that would be either admissible in evidence or reasonably calculated to lead to the discovery of admissible evidence.⁵ Recently, however, the Oklahoma Supreme Court in *Tuller v. Shallcross*⁶ held that discovery of the existence and limits of automobile liability insurance is now allowable in some instances.⁷ In reaching its decision, the court relied on the text of Oklahoma's mandatory automobile insurance law as well as policy considerations.⁸

The court's decision was expressly limited to automobile policies mandated by the Compulsory Liability Insurance Law,⁹ thus allowing discovery in far fewer situations than the federal rule.¹⁰ Further, the impact of the *Tuller* decision is somewhat unclear until it is determined whether the holding will be interpreted narrowly or broadly; whether discovery is to be extended to all

1. See FED. R. CIV. P. 26(a)(1)(D). Such discovery includes the insurance policy itself and is to be provided "without awaiting a discovery request" from the opposing party. See *id.*

2. See, e.g., ARK. R. CIV. P. 26(b)(2); CAL. CIV. PROC. CODE § 2017(b) (West Supp. 1995); MO. R. CIV. P. 56.01(b)(2); N.Y. C.P.L.R. § 3101(f) (McKinney 1991); PA. R. CIV. P. 4003.2; TEX. R. CIV. P. ANN. 166b(2)(f).

3. See, e.g., *Muck v. Claffin*, 419 P.2d 1017, 1022-23 (Kan. 1966); *Fort v. Neal*, 444 P.2d 990, 994 (N.M. 1968).

4. See *Hall v. Paul*, 549 P.2d 343, 345 (Okla. 1976), *overruled by Tuller v. Shallcross*, 886 P.2d 481, 485 (Okla. 1994); *Carman v. Fishel*, 418 P.2d 963, 975 (Okla. 1966), *overruled by Tuller v. Shallcross*, 886 P.2d 481, 485 (Okla. 1994).

5. See OKLA. STAT. tit. 12, § 548 (Supp. 1965) (repealed 1982). The court in *Carman* held that liability coverage did not fall within these limitations. *Carman*, 418 P.2d at 973-74.

6. 886 P.2d 481 (Okla. 1994).

7. See *id.* at 485.

8. See *id.* at 483-84.

9. OKLA. STAT. tit. 47, §§ 7-600 to 7-609 (1991 & Supp. 1995).

10. The federal rule allows for discovery of any insurance agreement that could make any person in the insurance business liable for part or all of a judgment in the action. FED. R. CIV. P. 26(a)(1)(D).

liability insurance policies, or merely those relating to automobiles. However, *Tuller* represents a step in the right direction for Oklahoma discovery law.

II. *TULLER V. SHALLCROSS*

A. *The Facts*

Larry Allen Tuller and David Ray Jehlicka were involved in an automobile accident in which Tuller was injured.¹¹ Tuller sued Jehlicka to recover damages for personal injury.¹² Tuller's uninsured motorist (UM) carrier intervened on the basis that it would be liable to satisfy any judgment in excess of Jehlicka's policy coverage.¹³ Tuller sought discovery of the limits of Jehlicka's liability insurance coverage; Jehlicka refused to produce the information.¹⁴ Tuller filed a motion with the district court to compel discovery.¹⁵ Oklahoma District Court Judge Deborah Shallcross denied the motion to compel.¹⁶ Tuller then brought an original action in the Supreme Court of Oklahoma seeking a writ of mandamus directing Judge Shallcross to order Jehlicka to produce the information.¹⁷

B. *The Issue*

The Oklahoma Supreme Court framed the issue as "whether automobile liability insurance policy information is discoverable under the Oklahoma Discovery Code."¹⁸ In making its decision, the court examined its prior holdings on the subject¹⁹ in the light of subsequent legislation²⁰ and policy considerations.²¹

III. LAW PRIOR TO *TULLER*

A. *Federal Courts*

Prior to the 1970 amendment to Federal Rule of Civil Procedure 26, federal courts were split on the issue of whether to allow pretrial discovery of insurance coverage.²² Commentators, however, tended to prefer disclosure,²³ and

11. See *Tuller*, 886 P.2d at 482.

12. See *id.*

13. See *id.*

14. See *id.*

15. See *id.*

16. See *id.*

17. See *id.* This is how the discovery of liability insurance coverage issue most frequently reaches the courts.

18. See *id.*

19. See *Carmen v. Fishel*, 418 P.2d 963, 975 (Okla. 1966); *Hall v. Paul*, 549 P.2d 343, 345 (Okla. 1976).

20. See *Tuller*, 886 P.2d at 485.

21. See *id.* at 483-84.

22. See *Proposed Amendment to the Federal Rules of Civil Procedure Relating to Discovery*, 48 F.R.D.

both major federal procedure treatises favored disclosure.²⁴ The 1970 amendment to Rule 26 resolved the issue in favor of discovery:

A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.²⁵

Such information was not to be made admissible simply because it was discoverable, however.²⁶ This rule is now found in Rule 26(a)(1)(D) with the same principles being applied, except that now parties are required to disclose such information without awaiting a discovery request.²⁷

The federal rule explicitly provides that courts may disregard the provisions of Rule 26.²⁸ In Oklahoma, the Eastern District has opted out with respect to some of the provisions,²⁹ but not with respect to insurance policy disclosure.³⁰ The Northern District has specifically adopted Federal Rule 26(a)(1)(D)³¹ and provides that “full and complete copies of such insurance agreements shall be served on all other parties along with the disclosing party’s answer, reply, or motion filed pursuant to Rule 12(b) of the Federal Rules of Civil Procedure.”³² The Western District has provided a local rule³³ that is quite similar to Rule 26(a)(1)(D) of the Federal Rules:

487, 498 (1970) [hereinafter *1970 Proposed Amendments*] (recognizing the split of authority and citing cases and commentators in support of both sides of the issue). See, e.g., *Cook v. Welty*, 253 F. Supp. 875, 878 (D.D.C. 1966); *Johanek v. Aberle*, 27 F.R.D. 272, 280 (D. Mont. 1961) (requiring disclosure); but see, e.g., *Bisserier v. Manning*, 207 F. Supp. 476, 480 (D.N.J. 1962); *Cooper v. Stender*, 30 F.R.D. 389, 393-94 (E.D. Tenn. 1962) (denying disclosure request).

23. See Peter A. Davis, *Pretrial Discovery of Insurance Coverage*, 16 WAYNE L. REV. 1047, 1049 (1970). But see Joseph N. Fournier, *Pretrial Discovery of Insurance Coverage and Limits*, 28 FORDHAM L. REV. 215, 231 (1959) (arguing that a defendant’s liability insurance coverage should not be subject to discovery when it is not independently admissible and does not have a significant bearing on any other issue in the case).

24. See 2A WILLIAM W. BARRON AND HON. ALEXANDER HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE § 647.1, at 78-82 (Charles Alan Wright ed., rev. ed. 1961); 4 JAMES WM. MOORE ET. AL., MOORE’S FEDERAL PRACTICE § 26.04[5] (Matthew Bender ed., 2d ed. 1996).

25. *Preliminary Draft of Proposed Amendments to Rules of Civil Procedure for the United States District Courts Relating to Deposition and Discovery*, 43 F.R.D. 211, 225 (1967).

26. See *id.* The Federal Rules of Evidence provide that:

[e]vidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

FED. R. EVID. 411.

27. See FED. R. CIV. P. 26(a)(1)(D).

28. See FED. R. CIV. P. 26(a)(1). The rule provides that the disclosures in Rule 26(a)(1) shall be made without awaiting a discovery request “[e]xcept to the extent otherwise stipulated or directed by . . . local rule.” *Id.*

29. See E.D. Okla. Order Relating to Rule 26 of the Federal Rules of Civil Procedure (West Supp. 1996).

30. See *id.*

31. See N.D. OKLA. Local Rule 26.3(B) (West Supp. 1996).

32. N.D. OKLA. Local Rule 26.2 (West Supp. 1996).

33. See W.D. OKLA. Local Rule 1.5 (West Supp. 1996). This rule provides that “[l]ocal Rule 17(C) governing voluntary disclosure shall be applied in lieu of FED. R. CIV. P. 26(a)(1).” *Id.*

Prior to the first status and scheduling conference, each party shall, without awaiting a discovery request, disclose to all other parties:

(c) the existence and content of any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.³⁴

The Advisory Committee for the Federal Rules of Civil Procedure discussed certain policy reasons for allowing disclosure.³⁵ First, "disclosure enables counsel for both sides to make the same realistic appraisal of the case, so that settlement and litigation strategy are based on knowledge and not speculation."³⁶ Second, in some cases settlement will be aided, thus avoiding unnecessary and lengthy litigation.³⁷

B. States Other Than Oklahoma

Several states allow discovery of liability insurance by statute.³⁸ Many of these statutes duplicate the federal rule exactly.³⁹ These states allow broad discovery of liability insurance, regardless of the object or property insured.⁴⁰

In states without specific statutory authorization of discovery, the issue is determined by the courts.⁴¹ The issue is most often raised as in *Tuller*.⁴² Typically, the plaintiff, wishing to avoid a costly lawsuit against a potentially judgment proof defendant, serves interrogatories on the defendant.⁴³ The interrogatories usually require information concerning the existence and limits of any coverage applicable to the injuries alleged.⁴⁴ The courts normally hear the is-

34. W.D. OKLA. Local Rule 17(C)(1)(c) (West Supp. 1996).

35. See 1970 Proposed Amendments, *supra* note 22, at 498-99.

36. See *id.* at 499.

37. See *id.* The Advisory Committee also distinguished liability insurance policies from other assets or information concerning the financial status of defendants:

The amendment is limited to insurance coverage, which should be distinguished from any other facts concerning defendant's financial status (1) because insurance is an asset created specifically to satisfy the claim; (2) because the insurance company ordinarily controls the litigation; (3) because information about coverage is available only from defendant or his insurer; and (4) because disclosure does not involve a significant invasion of privacy.

Id.

38. See *supra* note 2.

39. See, e.g., N.Y. C.P.L.R. § 3101(f) (McKinney 1991).

40. See FED. R. CIV. P. 26(a)(1)(D).

41. See Davis, *supra* note 23, at 1050-55.

42. See *id.* at 1052-53.

43. See *id.* at 1052. Interrogatories are necessary when the insurance policy is not "voluntarily exhibited by the defendant" and an informal request to defendant's attorney to produce the information fails, which will usually be the case. *Id.*

44. See *id.* Other subjects occasionally inquired into by the interrogatories include "whether the insurance company is defending the action, and, if so, the name and address of the insurance company," whether the insurer is claiming the policy does not cover the incident, whether any other insurers may possibly be involved, and if so, the name and address of any other such insurance carrier. See *id.* See also Marks v. Thompson, 192 S.E.2d 311, 312 (N.C. 1972); Cuellar v. Hamer, 45 F.R.D. 245, 246 (W.D. Mich. 1968); Tighe v. Shandel, 46 F.R.D. 622, 623-24 (W.D. Pa. 1968); Slomberg v. Pennabaker, 42 F.R.D. 8, 9-10 (M.D. Pa. 1967); Hurley v. Schmid, 37 F.R.D. 1 (D. Ore. 1965) (typical questions posed in interrogatories); Maddox v. Grauman, 265 S.W.2d 939, 940 (Ky. 1954) (typical questions posed to a defendant during a deposition).

sue upon plaintiff's motion to compel discovery or defendant's objection to the discovery request.⁴⁵

State courts are split on the issue of whether to grant or deny discovery in the absence of explicit statutory authority. To justify its decision, a court normally looks first to the language of the discovery statutes,⁴⁶ then uses policy considerations to bolster its opinion.⁴⁷

C. Oklahoma

Prior to *Tuller*, discovery of liability insurance information was not allowed in Oklahoma. In *Carman v. Fishel*,⁴⁸ the Oklahoma Supreme Court held that interrogatories concerning liability insurance were not within the scope of permissible inquiry.⁴⁹ The court held that the discovery statutes never intended such discovery.⁵⁰ The court specifically rejected the theory that since settlement might be aided, disclosure should be permitted, arguing that under this view, "almost any information could be forced out of either side to a lawsuit if it would somehow contribute to the clearing of the court's calendar."⁵¹

In *Hall v. Paul*,⁵² the Oklahoma Supreme Court considered whether certain provisions of the discovery statutes⁵³ modified *Carman*'s prohibition against liability insurance discovery.⁵⁴ In holding that they did not, the court reaffirmed that discovery was limited to relevant matters admissible at trial or reasonably calculated to disclose admissible evidence.⁵⁵ The court found that liability insurance did not come within the scope of permissible discovery and thus could not be required to be disclosed.⁵⁶

In 1992, the Oklahoma legislature adopted the new Oklahoma Discovery Code.⁵⁷ This current version of the Oklahoma Discovery Code provides that information "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action" is discoverable.⁵⁸ Further "[i]t is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."⁵⁹ As originally introduced in the State Senate, the Oklahoma Discovery Code specifically authorized discovery of liability

45. See Davis, *supra* note 23, at 1053.

46. For example, the court in *Tuller* looked first to the language of the Oklahoma Discovery Code, and only then utilized policy considerations. See *Tuller v. Shallcross*, 886 P.2d 481, 482-84 (Okla. 1994).

47. See Davis, *supra* note 23, at 1053-55.

48. 418 P.2d 963, 975 (Okla. 1966), *overruled by* *Tuller v. Shallcross*, 886 P.2d 481, 485 (Okla. 1994).

49. See *Carman*, 418 P.2d at 975.

50. See *id.* at 974-75.

51. See *id.* at 974.

52. 549 P.2d 343, 344 (Okla. 1976), *overruled by* *Tuller v. Shallcross*, 886 P.2d 481, 485 (Okla. 1994).

53. See OKLA. STAT. tit. 12, §§ 548, 549 (1971) (repealed 1982).

54. See *Hall*, 549 P.2d at 344.

55. See *id.*

56. See *id.*

57. OKLA. STAT. tit. 12, §§ 3224 to 3237 (1991 & Supp. 1995).

58. *Id.* § 3226.

59. *Id.* This language is typical of many discovery statutes.

insurance by a rule identical to the federal rule.⁶⁰ The House of Representatives deleted the provision, however, and enacted the current version which contains no such provision for discovery.⁶¹ Subsequent legislative efforts to restore the deleted provision to the Discovery Code failed.⁶²

IV. THE TULLER DECISION

A. Holding

The *Tuller* decision “overrule[d] *Carman* and *Hall* to the extent that they may be construed to hold that automobile liability insurance information is not discoverable.”⁶³ The court in *Tuller*, however, limited the scope of discoverable insurance policies by interpreting the Oklahoma Discovery Code to allow discovery only when the policy is issued under the Compulsory Liability Insurance Law.⁶⁴ The holding of the court was that discovery is permitted of:

the existence and contents of any liability insurance agreement issued in accordance with the Compulsory Liability Insurance Law, regardless of policy limits, in any action against an insured under such a policy in which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement, however, shall not by reason of disclosure be admissible in evidence at trial.⁶⁵

The court went on to “direct the trial court to allow discovery of [the defendant’s] automobile liability insurance agreement in accordance with this opinion.”⁶⁶

Although construing the state’s discovery code, the court’s holding closely follows the federal rule, with the exception of its express limitation to the source of the policy. While the federal rule permits discovery of any liability insurance agreement, the court in *Tuller* specifically limited its holding to automobile insurance policies mandated by the Compulsory Liability Insurance Law.⁶⁷ The court passed on “any decision as to the discoverability of other liability policies.”⁶⁸

60. See Charles W. Adams, *Recent Developments in Oklahoma Law — Civil Procedure*, 30 TULSA L.J. 485, 492 (1995); Michael Minnis, *House Bill 1912: The New Oklahoma Discovery Code: A Legislative History and Analysis*, 53 OKLA. B.J. 1291, 1292 (1982).

61. See Adams, *supra* note 60, at 492.

62. See *id.* at 492-93.

63. *Tuller v. Shallcross*, 886 P.2d 481, 485 (Okla. 1994).

64. See *id.* at 484. This law mandates automobile liability insurance coverage of at least \$10,000. See OKLA. STAT. tit. 47, § 7-204(a) (1991). Uninsured motorist (UM) coverage is also statutorily required in Oklahoma. See OKLA. STAT. tit. 36, § 3636 (Supp. 1995).

65. *Tuller*, 886 P.2d at 485 (citation omitted).

66. *Id.*

67. See *id.*

68. *Id.* at 484.

B. Reasoning

The court based its holding in *Tuller* on the existence of the state Compulsory Liability Insurance Law and policy reasons.⁶⁹ First, the court observed that many courts denying discovery of insurance information have done so on the basis that to do so “was tantamount to compelling [the defendant] to furnish the plaintiff with ‘full information as to his financial resources.’”⁷⁰ This concern is moot in Oklahoma because of the Compulsory Liability Insurance Law, which mandates automobile liability insurance.⁷¹ Thus, the court held, the insured’s right to privacy can not be said to be violated by disclosure.⁷²

The court further stated that since a liability insurance policy exists only to protect other assets, disclosure of the coverage “does not disclose the private financial status of the insured, but merely reveals the extent of the insured’s protection, in the very suit in which discovery is sought.”⁷³ This argument for disclosure is not based upon the Compulsory Liability Insurance Law; therefore it would be equally applicable to cases involving liability insurance policies unrelated to automobiles. The court further observed that in virtually all cases, the insurance company, not the defendant, is the party objecting to the discovery of the policy information.⁷⁴

The court’s discussion of policy considerations indicates its preference for disclosure. First, the court discussed and dismissed the argument that disclosure would violate the privacy rights of the insured.⁷⁵ Second, the court noted that policy information is “information necessary to produce results fair to both sides.”⁷⁶ Under this view, denying discovery allows unwarranted tactical maneuvers; it introduces “an undesirable element of hide and seek into the process.”⁷⁷

Minimizing bad faith litigation against uninsured motorist (UM) carriers was another concern of the *Tuller* court. Citing the case of *Buzzard v. Farmers Insurance Co.*⁷⁸ as an example, the court observed that in nearly every lawsuit arising from a serious automobile accident, the possibility of such bad faith litigation arises.⁷⁹ Allowing discovery of automobile liability policies would only help to prevent this problem. Additionally, the court considered whether the legislature had implicitly opposed discovery of liability insurance, finding that it had not.⁸⁰ Finally, the court noted that other courts have allowed disclo-

69. *See id.* at 483-84.

70. *Id.* at 483 (quoting *McClure v. Boeger*, 105 F. Supp. 612, 613 (E.D. Pa. 1952)).

71. *See* OKLA. STAT. tit. 47, §§ 7-600 to 7-609 (Supp. 1995).

72. *See Tuller*, 886 P.2d at 484.

73. *Id.*

74. *See id.* This is because, in most automobile accident cases, the insurance company is the real party in interest. *See id.* The “real party in interest” is “the one who is actually and substantially interested” in the subject matter of the lawsuit and thus controls the litigation. BLACK’S LAW DICTIONARY 1264 (6th ed. 1990).

75. *See Tuller*, 886 P.2d at 483-84.

76. *Id.* at 484.

77. *Id.*

78. 824 P.2d 1105, 1108-09 (Okla. 1991).

79. *See Tuller*, 886 P.2d at 484.

80. *See id.*

sure of insurance policy information in the absence of an explicit statutory authorization.⁸¹

V. ANALYSIS

A. Policy

The policy arguments most frequently relied upon by courts in granting or denying discovery of liability insurance coverage are "relevance, settlement incentive, and the so-called 'asset theory' for denying disclosure."⁸² Those given for granting discovery include: the just and efficient determination of actions;⁸³ open and frank disclosure;⁸⁴ the state's requirement of automobile liability insurance;⁸⁵ and other reasons not as persuasive.⁸⁶ Other grounds commonly given for denying discovery include the lack of any such requirement under state discovery rules;⁸⁷ the fact that such information is not admissible at trial, nor will it lead to the discovery of admissible evidence,⁸⁸ and a variety of other less persuasive reasons.⁸⁹

Discovery is only permitted when the information at issue is relevant to the subject matter of the lawsuit.⁹⁰ Some courts have confused the subject matter with the issues in the lawsuit, leading those courts to conclude that policy information should not be discoverable unless the insurance coverage itself is at issue in the lawsuit.⁹¹ However, this is not the appropriate inquiry. The subject matter of a case is a much broader concept than the issues to be tried. Courts should liberally construe the relevance requirement to allow discovery in the case of liability insurance. It is unrealistic to claim that a defendant's liability insurance coverage is irrelevant to the subject matter of a lawsuit.⁹²

81. *See id.*

82. *See Davis, supra* note 23, at 1055.

83. *See Slomberg v. Pennabaker*, 42 F.R.D. 8, 12 (M.D. Pa. 1967).

84. *See Woldum v. Roverud Constr. Co.*, 43 F.R.D. 420, 420 (N.D. Iowa 1968).

85. *See also Tuller*, 886 P.2d at 483; *Ash v. Farwell*, 37 F.R.D. 553, 554 (D. Kan. 1965); *Johanek v. Aberle*, 27 F.R.D. 272, 274 (D. Mont. 1961); *People ex rel. Terry v. Fisher*, 145 N.E.2d 588, 592-93 (Ill. 1957).

86. These include "[u]niformity of decision will discourage forum shopping; the plaintiff has a third-party beneficiary interest in the policy giving him a 'discoverable interest'; or because the provisions of the insurance policy may themselves be relevant to proof of liability." *Davis, supra* note 23, at 1054 (citations omitted).

87. *See also Wood v. Todd Shipyards*, 45 F.R.D. 363, 364 (S.D. Tex. 1968); *Clauss v. Danker*, 264 F. Supp. 246, 248-49 (S.D.N.Y. 1967).

88. *See also Carman*, 418 P.2d at 974; *Cooper v. Stender*, 30 F.R.D. 389, 393 (E.D. Tenn. 1962); *Flynn v. Williams*, 30 F.R.D. 66, 66-67 (D. Conn. 1958); *Gallimore v. Dye*, 21 F.R.D. 283, 287 (E.D. Ill. 1958).

89. *See Davis, supra* note 23, at 1054-55.

90. *See FLEMING JAMES, JR. AND GEOFFREY C. HAZARD, JR., CIVIL PROCEDURE* § 5.8 (3rd ed. 1985). "It is not an objection that the matter [sought to be discovered] is irrelevant to the issues under the pleadings as they stand so long as it is relevant to the 'subject matter involved in the pending action.'" *Id.*

91. *See Cox v. Livingston*, 41 F.R.D. 344, 346 (S.D.N.Y. 1967); *accord Cooper*, 30 F.R.D. at 392; *Langlois v. Allen*, 30 F.R.D. 67, 68 (D. Conn. 1962).

92. *See Davis, supra* note 23, at 1056.

[Anything aiding] the early and easy determination of the dispute between the parties with justice to both sides[,] . . . whether disclosure of policy limits or the disgorging of evidence, is relevant to the subject matter. A paper judgment is meaningless; each side is concerned with money, and damages

Our rules of civil procedure are structured to enhance the possibility of settlement. One of the main goals behind the pretrial conference is to facilitate settlement.⁹³ This is quite obvious as declining a settlement offer and receiving a lower award at trial results in monetary penalties.⁹⁴ In addition, the ABA Code of Professional Responsibility states that the primary purpose of the “civil adjudicative process [is the] settlement of disputes between parties.”⁹⁵

Whether and to what extent a defendant is covered by liability insurance is a relevant factor to both sides in settlement negotiations. If policy limits are low, the plaintiff will be more likely to settle for a lower amount, rather than proceeding to trial to obtain a judgment which can never be collected. It has been argued that the reverse is possible; if limits are high, settlement may actually be deterred.⁹⁶ However, this seems to be an unlikely possibility in light of provisions such as those discussed above which sanction parties who obtain a judgment less than was offered in settlement negotiations.

Another settlement-based argument for denying discovery is that disclosure gives the plaintiff an unfair advantage.⁹⁷ “Uncertainty in one’s opponent” is advantageous in settlement negotiations, but hardly presents a case for judicial protection by denial of discovery of liability insurance.⁹⁸ “Just as the defendant knows the amount of plaintiff’s claim and can compel the plaintiff to itemize his damages, the plaintiff should know whether, if he proves his case, the defendant will be collectable.”⁹⁹ The true effect of discovery of liability coverage is to level the playing field between the parties during settlement negotiations.¹⁰⁰ The desirable result is “that settlements will be based more upon a

cannot be separated from liability, even in the pretrial stages.

Id. (citation omitted). See also *Ellis v. Gilbert*, 429 P.2d 39, 42-43 (Utah 1967) (Henriod, J., dissenting) (distinguishing subject matter from issues by reference to the ultimate objective of lawsuits).

93. See FED. R. Civ. P. 16(a)(5).

94. See FED. R. Civ. P. 68. The rule provides that an offer of judgment may be made by a defendant at any time more than ten days before the start of trial. The rule states: “[i]f the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.” *Id.* When applicable, Rule 68 does not merely bar the plaintiff from recovering costs incurred after the offer, but allows the defendant to recover such post-offer costs. See *Crossman v. Marcoccio*, 806 F.2d 329, 333 (1st Cir. 1986). Further, although attorneys’ fees are normally not taxable as costs under the “American Rule,” a number of federal statutes permit attorneys’ fees as costs in certain types of actions. In such cases, the defendant may recover attorneys’ fees under Rule 68. See *Marek v. Chesny*, 473 U.S. 1, 9 (1985). Thus, the plaintiff may be liable for a large amount of money if a reasonable settlement offer is refused.

95. MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 7-21 (1983).

96. See *Pruitt v. M/V Patignies*, 42 F.R.D. 647, 651 (E.D. Mich. 1967); *Berry v. Haynes*, 41 F.R.D. 243, 244 (S.D. Fla. 1966); *Hillman v. Penny*, 29 F.R.D. 159, 161 (E.D. Tenn. 1962).

97. See *Davis*, *supra* note 23, at 1058.

98. See *id.* at 1057.

99. *Id.*

100. See *Landkammer v. O’Laughlin*, 45 F.R.D. 240, 241 (S.D. Iowa 1968).

The liberal rule thus does not upset the natural bargaining positions of the parties. Instead, the effect of discovery of insurance coverage is to equalize the knowledge of both parties. Courts cannot forever hold themselves, as if unknowing, above that stage of litigation wherein negotiation and settlement occur. It would contravene the liberal policy of the federal rules to encourage the knowledgeable resolution of disputes at one point and discourage it at another.

Id.

fair evaluation of plaintiff's claim and less upon ignorant conjecture concerning the depth of defendant's pocket."¹⁰¹

Another related argument is the theory that allowing discovery of policy limits promotes greed among plaintiffs' attorneys.¹⁰² According to this view, requiring disclosure will assist plaintiffs' attorneys in "the predatory concept of law practice."¹⁰³ This argument, however, is only valid if one assumes that lawyers will necessarily neglect their duty to the court. Attorneys have a general duty to serve the public, not simply their client.¹⁰⁴ Further, attorneys have a duty to the court not to abuse the justice system.¹⁰⁵ Attorneys also have responsibilities specifically applicable to this case; to limit the amount sought in the complaint to a reasonably supportable amount,¹⁰⁶ and a qualified duty to the defendant on the part of the insurance company's attorney to settle within the policy limits.¹⁰⁷ Although some attorneys may neglect their responsibilities to the administration of justice and to the public, this neglect cannot be assumed of all or a large number of plaintiffs' attorneys. Thus, all plaintiffs should not be punished by unreasonably restricting the scope of discovery. The mere fact that some attorneys may abuse the system does not outweigh the compelling arguments for free disclosure of information.

Yet another premise for denying disclosure of liability insurance coverage is the "[a]sset [t]heory."¹⁰⁸ The underpinning of this theory is that "[t]he assets of a defendant are generally not discoverable during the pretrial stage."¹⁰⁹ The reason behind this exclusion is an appreciation for the sanctity of an individual's privacy interests.¹¹⁰ Since it is reasonable to classify liability insurance policies as assets, courts often rely upon the asset theory and the defendant's privacy interests to deny discovery.¹¹¹

101. *Id.*

102. *See* *Pruitt v. M/V Patignies*, 42 F.R.D. 647, 652 (E.D. Mich. 1967) (stating that disclosure would lend assistance to such conduct).

103. *Id.*

104. *See* *Ellis v. Gilbert*, 429 P.2d 39, 41 (Utah 1967).

105. *See id.* The court stated in *Ellis* that an attorney has "over-arching responsibilities . . . to the court as one of its officers, and to the profession itself, in its duty to serve the public according to the ideal which is the purpose of all procedure: to seek the truth and to do justice." *Id.* The court went on to say that it was unreasonable to "treat such an essential aspect of the case as the existence of insurance as though it would corrupt the whole procedure if the lawyers and the court knew about it." *Id.*

106. *See* MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canon 7 (1983). This is due to the inflammatory effect on the jury of a highly excessive prayer for damages. *See id.*

107. *See* Robert E. Keeton, *Liability Insurance and Responsibility for Settlement*, 67 HARV. L. REV. 1136, 1137-38 (1954). Bad faith on the part of the insurance company is normally presumed when the company refuses to disclose the limits of the policy if such refusal "effectively forecloses the possibility of receiving [a settlement] offer of less than the policy limits." John Alan Appleman, *Circumstances Creating Excess Liability*, 1960 A.B.A. SEC. INS. NEGL. COMPENSATION L. 308, 315.

108. *See* *Davis*, *supra* note 23, at 1061.

109. *Id.*

110. *See id.*

111. *See* *Jeppesen v. Swanson*, 68 N.W.2d 649, 653 (Minn. 1955); *see also* *Gallimore v. Dye*, 21 F.R.D. 283, 286 (E.D. Ill. 1958).

Liability insurance policies, however, are distinguishable from other assets in that their sole value is to protect existing or future assets.¹¹² The court in *Tuller* recognized this fact when it stated:

A liability insurance policy is unlike an insured's other assets. The policy serves only to protect the insured's other assets from the claims of those whom the insured might injure. The worth of the coverage is limited by the plaintiff's recovery. Thus, requiring disclosure of liability insurance policies does not disclose the private financial status of the insured, but merely reveals the extent of the insured's protection, in the very suit in which discovery is sought.¹¹³

Other courts have expressed the same or similar opinions.¹¹⁴ One court held that there are "valid reasons . . . to inquire into insurance coverage" which distinguish liability insurance from defendant's other assets.¹¹⁵ The court also noted that concerning defendant's other assets, "plaintiff may have other means of knowing something about defendant's financial responsibility."¹¹⁶

Discovery of liability insurance coverage should not be denied based on the asset theory. A liability insurance policy is, after all, only a "contingent asset purchased to satisfy a contingent liability,"¹¹⁷ and thus disclosure of the policy is quite different than disclosure of all of the defendant's other assets.¹¹⁸

Another reason for disclosure of liability insurance policies is simply that the purpose of discovery is to promote fairness in the administration of lawsuits.¹¹⁹ Under this view, disclosure of liability policy information is desirable because, first, insurance coverage is often the "most important or even sole asset available to satisfy a judgment."¹²⁰ Aside from declaratory judgments, judgments are worthless if they are uncollectible, and thus knowledge of the insurance coverage of a defendant is "vitally important in determining the expected value of the judgment."¹²¹ It is critical for the plaintiff to have an estimate of the expected value of the judgment in order to make crucial decisions re-

112. See *Davis*, *supra* note 23, at 1062.

113. *Tuller v. Shallcross*, 886 P.2d 481, 484 (Okla. 1994). The court further noted that realistically, the insurer is the real party in interest in most automobile accidents, and as such is the one making objections to the discovery of the policy information. See *id.* Thus, the argument that the defendant's privacy is being invaded is somewhat less persuasive.

114. See, e.g., *Szarmack v. Welch*, 318 A.2d 707, 710-11 (Pa. 1974); *Ellis v. Gilbert*, 429 P.2d 39, 41 (Utah 1967); *People ex rel. Terry v. Fisher*, 145 N.E.2d 588, 593 Ill. 1957).

115. *Ellis*, 429 P.2d at 41.

116. *Id.*

117. *Davis*, *supra* note 23 at 1062.

118. See *Tuller*, 886 P.2d at 484; *Ellis*, 429 P.2d at 41. Mr. Justice Henriod's dissent in *Ellis*: "If the main opinion stands, there is absolutely no reason why a plaintiff, who might have a phony claim, could not require . . . anyone . . . to open up his safety deposit box and divulge how green it is." *Ellis*, 429 P.2d at 43 (Henriod, J., dissenting).

119. See, e.g., FED. R. CIV. P. 1. The Federal Rules of Civil Procedure are to be "liberally construed and administered to secure the just, speedy, and inexpensive determination" of actions. *Id.* This provision supports disclosure of policy information.

120. Edward H. Cooper, *Discovery Cost Allocation: Comment on Cooter and Rubinfeld*, 23 J. LEGAL STUD. 465, 476 (1994).

121. *Id.*

garding whether to pursue the case, how much time, money, and effort to expend, and whether to settle and for what amount.¹²² Thus, allowing discovery of liability insurance coverage promotes fairness without unduly intruding on privacy rights.

B. Effect of Compulsory Liability Insurance Law

The Oklahoma Compulsory Liability Insurance Law,¹²³ which took effect on January 1, 1983,¹²⁴ requires automobile owners to prove that they have liability insurance in order to register their vehicles.¹²⁵ Coverage of at least \$10,000 is required.¹²⁶

Several state courts have allowed discovery on the basis of the state's requirement to maintain automobile insurance.¹²⁷ Most states either require automobile liability insurance¹²⁸ or have financial responsibility laws to accomplish the same purpose.¹²⁹ Most courts consider mandatory insurance laws and financial responsibility laws to be equivalent since their effect is the same.¹³⁰

The effect of compulsory automobile liability insurance laws is to make the policy information a public record.¹³¹ Since policy information is obtainable from state agencies, disclosure of the information should not be denied based on the asset theory of denying discovery. This, in effect, was one of the bases of the court's opinion in *Tuller*.¹³² However, the court should not have to rely on compulsory liability insurance laws to allow disclosure of policy information, but should hold that, as a matter of law, the information is discoverable.

122. See *id.* It is fundamental to every lawsuit that expected costs be weighed against expected benefits. If the expected costs outweigh the expected benefits, obviously the case should not be pursued. The cost-benefit relationship drives not only whether to pursue the case, but the settlement negotiations as well, simply because clients are not willing to spend large sums of money in order to obtain less than was spent on the winning case. It follows logically that there is a need to have a reasonably correct estimate of the possible value of the case.

123. OKLA. STAT. tit. 47, §§ 7-600 to 7-610 (1991).

124. See *Tuller v. Shallcross*, 886 P.2d 481, 483 (Okla. 1994).

125. See OKLA. STAT. tit. 47, § 7-602 (1991).

126. See OKLA. STAT. tit. 47, § 7-204(a) (1991).

127. See *Davis*, *supra* note 23, at 1053; *Ash v. Farwell*, 37 F.R.D. 553, 554 (D. Kan. 1965); *Johanek v. Aberle*, 27 F.R.D. 272, 274-76 (D. Mont. 1961); *People ex rel. Terry v. Fisher*, 145 N.E.2d 588, 592-93 (Ill. 1957); *Brackett v. Woodall Food Prods.*, 12 F.R.D. 4, 5 (E.D. Tenn. 1951).

128. See *Davis*, *supra* note 23, at 1050.

129. See *id.*

130. See *id.*

131. See *Tuller v. Shallcross*, 886 P.2d 481, 483 (Okla. 1994) (stating that proof of policy limits must be carried in the car with the owner).

132. *Id.* at 484.

VI. IMPLICATIONS

A. *Current Effect on Lawsuits*

The effect of the holding in *Tuller* depends in large measure on subsequent interpretation of the holding. The most narrow reading of the *Tuller* decision would be that disclosure is limited to (1) whether the defendant has insurance coverage that may be liable to satisfy part or all of any judgment,¹³³ and (2) the amount of coverage only to the extent of the statutory minimum.¹³⁴ For example, under this interpretation, whether the defendant had coverage of \$10,000 or \$100,000 would not matter. All that would be required to be disclosed would be that the coverage was at least equal to the statutory minimum.

The argument for this very narrow interpretation is that the *Tuller* decision was founded upon the Oklahoma Compulsory Liability Insurance Law, and the idea that the threat of invasion of privacy is therefore reduced.¹³⁵ Since the minimum coverage amount under the Compulsory Liability Insurance Law is \$10,000, that is all that should be required to be disclosed.

However, the argument for narrowly interpreting *Tuller* overlooks the policy considerations behind that court's decision.¹³⁶ Further, the court did not expressly limit its holding to allow only discovery of policy limits up to the mandatory coverage amount; rather, the court stated that "the existence and contents of any liability insurance agreement issued in accordance with the Compulsory Liability Insurance Law" will now be discoverable.¹³⁷ The court's use of the word "contents" without limitation seems to indicate that the full contents of the liability insurance policy should be discoverable.

Tuller's holding could also be interpreted very broadly by finding that all liability insurance policies are discoverable, similar to the federal rule. The policy considerations discussed by the court,¹³⁸ with the exception of the discussion of the Compulsory Liability Insurance Law,¹³⁹ certainly seem to apply equally well to any liability insurance policy.¹⁴⁰ Further, the federal system and many states apply this approach; hence there is ample authority for its use.

However, although a broad reading of *Tuller's* holding could be justified by policy considerations, it can not be intrinsically justified by the holding in *Tuller* itself. The court explicitly limited its holding in the case to liability in-

133. This information is clearly required to be disclosed. *See id.* at 485.

134. *See id.*

135. *See id.* at 483-84.

136. *See id.*

137. *Id.* at 485.

138. *See id.* at 483-84.

139. *See id.*

140. Facilitating settlement, giving plaintiffs information necessary for achieving fair results, and the other policy considerations discussed above will be aided by discovery of information concerning any liability policy, not just automobile policies.

urance policies issued under the Oklahoma Compulsory Liability Insurance Law.¹⁴¹

The most appropriate reading of the *Tuller* decision probably lies somewhere in the middle of these two extremes. With regard to any policy under which "any person carrying on an insurance business may be liable to satisfy part or all of a judgment"¹⁴² in the action, discovery should be allowed of (1) the existence of any such policy,¹⁴³ and (2) the limits of coverage of any such policy.¹⁴⁴ Discovery of this information is clearly authorized by the opinion in *Tuller*, and is also supported by numerous policy considerations.

B. Possible Extension to Other Liability Policies

Will, or should, the Oklahoma Supreme Court extend discovery of liability insurance policy information to any policy that may be called on to satisfy a judgment?¹⁴⁵ Courts in other states, such as Nebraska, Illinois, and Pennsylvania,¹⁴⁶ have allowed discovery without explicit statutory authorization, and without relying on compulsory liability insurance laws.¹⁴⁷ Examination of these cases is useful in considering whether the Oklahoma Supreme Court is justified in allowing such discovery.

*Walls v. Horbach*¹⁴⁸ is a striking example of a case in which discovery was extended to liability insurance policies other than those covering automobiles without explicit statutory authorization. In that case, the Nebraska Supreme Court considered facts quite similar to *Tuller*, except the liability policy involved was not an automobile policy.¹⁴⁹ The plaintiffs served interrogatories on defendants Livestock Press Company and Larry Horbach;¹⁵⁰ the interrogatories requested information concerning any insurance policies "against the respectively alleged liabilities."¹⁵¹ The defendants refused to answer the interrogatories relating to insurance coverage,¹⁵² and defendants were then held in contempt of court.¹⁵³ Defendants contended on appeal that the trial court had "usurped the legislative function by materially changing [the] rules of discovery."¹⁵⁴

141. See *Tuller*, 886 P.2d at 485.

142. *Id.*

143. See *Davis*, *supra* note 23, at 1077.

144. See *id.*

145. This is the approach of the federal courts. See FED. R. CIV. P. 26(a)(1)(D). The *Tuller* court expressly reserved any opinion on this issue. See *Tuller*, 886 P.2d at 484.

146. See *Szarmack v. Welch*, 318 A.2d 707, 711 (Pa. 1974). *Szarmack* was an automobile accident case, but the court did not expressly limit its holding to automobile liability insurance policies. See *id.*

147. See, e.g., *Walls v. Horbach*, 203 N.W.2d 490, 491-92 (Neb. 1973); *People ex rel. Terry v. Fisher*, 145 N.E.2d at 588, 593 (Ill. 1957); *Szarmack*, 318 A.2d at 711; *Ellis v. Gilbert*, 429 P.2d 39, 42 (Utah 1967).

148. 203 N.W.2d 490, 491-92 (Neb. 1973).

149. See *id.* at 491.

150. See *id.*

151. *Id.*

152. See *id.*

153. See *id.*

154. *Id.* The substance of the argument apparently was that since the Nebraska Supreme Court previously held that the discovery statutes, as created by the Nebraska Legislature, did not allow discovery of such policy

The Nebraska Supreme Court had previously held in *Mecke v. Bahr*¹⁵⁵ that its discovery rules did not permit disclosure of liability policy information. The court in *Walls* briefly discussed decisions of other courts concerning disclosure,¹⁵⁶ relevance,¹⁵⁷ and policy considerations.¹⁵⁸ The court then proceeded to overrule its prior holding in *Mecke*, interpreting the Nebraska discovery statutes to allow discovery of liability insurance policy information.¹⁵⁹

The court in *Walls* expressly dealt with the issue of whether its ruling “usurp[ed] the legislative function,”¹⁶⁰ finding the notion “troublesome.”¹⁶¹ The court found that although stare decisis is an important consideration, it is a “principle of policy and not a mechanical formula.”¹⁶² The court balanced the arguments and held that policy considerations favored allowing disclosure strongly enough to warrant the reversal of its earlier decision.¹⁶³

The Illinois Supreme Court has also held that discovery of insurance policy information is allowable, even in the absence of statutory authorization.¹⁶⁴ The court’s reasoning was similar but not completely equivalent to that of the Nebraska Supreme Court in the *Walls* decision.¹⁶⁵ The opinion noted that such information was relevant in that it “appris[e] injured plaintiffs of rights arising out of the accident, otherwise unknown.”¹⁶⁶

In the case of *Szarmack v. Welch*,¹⁶⁷ the Supreme Court of Pennsylvania held that automobile liability insurance policy information was discoverable

information, the trial court was exceeding the bounds of its discretion in allowing disclosure. *See id.* at 491-92.

155. 129 N.W.2d 573, 577 (Neb. 1964), *overruled by Walls v. Horbach*, 203 N.W.2d 490, 491-92 (Neb. 1973).

156. *See Walls*, 203 N.W.2d at 491.

157. *See id.* The court interpreted the relevance requirement broadly to allow disclosure. *See id.*

158. *See id.* at 492.

159. *See id.* at 491-92. The court did so by judicially adopting the language of the federal rule in full. *See id.*

160. *Id.* at 492. The argument by the dissent was that by the legislature’s silence after the *Mecke* ruling, the legislature had tacitly approved of that decision, and that its intent must therefore have been to deny discovery in situations such as *Walls*. *See id.* at 492 (Newton, J., dissenting).

161. *Id.* at 492.

162. *Id.* at 492 (quoting *Helvering v. Hallock*, 309 U.S. 106, 119 (1940)).

163. *See id.*

164. *See People ex rel. Terry v. Fisher*, 145 N.E.2d 588, 592-94 (Ill. 1957). The case arose from a personal injury lawsuit in which the plaintiff posed interrogatories concerning the “existence and amount” of defendant’s insurance coverage. *See id.* at 589. Plaintiff sought and obtained orders to compel defendant to respond to the interrogatories. *See id.* Defendant appealed, arguing that the orders were not allowable under the scope of the discovery rules. *See id.* at 589-90. The discovery rules were typical:

[discovery was allowed of] any matter, not privileged, relating to the merits of the matter in litigation, whether it relates to the claim or defense of the examining party or of any other party, including the existence, description, nature, custody, condition and location of any documents or tangible things and the identity and location of persons having knowledge of relevant facts.

Id. at 590 (citing ILL. SUP. CT. R. 101.19-4). The language of this statute seems to be more broad in scope than other statutes, and thus disclosure might be easier to allow under these rules.

165. *See Walls*, 203 N.W.2d at 491-92.

166. *Terry*, 145 N.E.2d at 593. This argument seems to imply that if a defendant is, for practical purposes, uncollectible, there is in reality no cause of action (or “rights”) arising out of the accident. Practically speaking, this is in fact the case, since there can be no recovery from an insolvent defendant, regardless of the defendant’s fault or the extent of plaintiff’s injuries.

167. 318 A.2d 707, 711 (Pa. 1974).

under the state's discovery rules.¹⁶⁸ In so holding, the court considered issues of fairness,¹⁶⁹ efficiency,¹⁷⁰ and, perhaps most importantly, the "general purpose of all procedural rules: [t]he rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable."¹⁷¹ The court found that these goals will be furthered by discovery of policy information.¹⁷²

The court in *Szarmack* considered and rejected the arguments that settlement may be frustrated in cases where policy limits are high,¹⁷³ and that the extent of defendant's insurance coverage is privileged because it is private financial information.¹⁷⁴ Pennsylvania, like Oklahoma, had financial responsibility laws which invalidated the argument for privileged and nondiscoverable insurance information.¹⁷⁵ However, unlike the Oklahoma Supreme Court in *Tuller*, the Pennsylvania Supreme Court did not expressly base its decision on the state financial responsibility laws.¹⁷⁶ Nor did the court limit its holding to any specific type of liability insurance policy;¹⁷⁷ thus, it would appear that the holding extended to all liability insurance policies, whether an automobile policy or otherwise.¹⁷⁸

Like the courts in *Hall* and *Szarmack*, the Oklahoma Supreme Court could, and should, find that the proper approach is to allow discovery of the existence and contents of any liability insurance policy which may be used to satisfy any judgment entered in the case. This approach would parallel the federal rule concerning discovery of insurance agreements, thus promoting consistency in the dual court system, as well as gain consistency with many other state jurisdictions. Stare decisis should not restrain the Court from reaching the result that is the most just, efficient, and logical.

VII. CONCLUSION

It is time that Oklahoma joined the ranks of the federal court system and most other states in allowing full discovery of information relating to any liabil-

168. *See id.*

169. *See id.* at 710.

170. *See id.*

171. *Id.* (citing PA. R. Civ. P. 126). This rule parallels Rule 1 of the Federal Rules. *See* FED. R. CIV. P. 1.

172. *See Szarmack*, 318 A.2d at 710.

173. *See id.* The court framed the issue as whether "settlement is a game whereby the defendant is entitled to crucial information not possessed by the plaintiff." Quoting from *Landkammer v. O'Laughlin*, 45 F.R.D. 240, 241 (S.D. Iowa 1968), the court found that such a situation does not foster the procedural goals of obtaining a just, speedy, and inexpensive determination. *See Szarmack*, 318 A.2d at 710.

174. *See Szarmack*, 318 A.2d at 710-11. This argument is based on the asset theory.

175. *See id.* at 711. Financial responsibility laws, while not exactly the same as compulsory liability insurance laws, are substantially similar in their purpose and effects.

176. *See id.* The court stated that "[f]or all of the reasons noted, we agree with the courts below that the information which plaintiff sought is discoverable." *Id.* (emphasis added).

177. *See id.*

178. Pennsylvania has since adopted Rule of Civil Procedure 4003.2, which parallels the federal rule. PA. R. CIV. P. 4003.2. Thus, the *Szarmack* decision has been effectively codified by the Pennsylvania legislature. Although discovery of liability policy information in Pennsylvania is now accomplished by statute, rather than judicially as in *Szarmack*, the decision still stands as an example of judicial treatment of the discovery issue.

ity insurance policy, not just those issued under the Compulsory Liability Insurance Law. The arguments for denying disclosure are insubstantial when weighed against the sound considerations favoring disclosure. With the advent of mandatory disclosure, the days of trial by ambush are over; it is appropriate for the court to give more weight to considerations of fairness, justice, and efficiency of the judicial process. Liberal discovery rules promote these important considerations. When other, more crucial rights, such as privilege, are not being violated, the procedural system should allow liberal discovery of information to facilitate the fair and efficient administration of justice. Insurance policy information is no exception.

Although the decision in *Tuller* was a pensive step in the right direction for Oklahoma discovery law, the court should take its next opportunity to properly and assertively extend *Tuller*'s holding to parallel the federal rule. In doing so, the court may be assured that its decision is firmly rooted in sound principles of fairness, efficiency, and justice—the very considerations upon which our system of civil procedure is, and should be, structured.

Kevin Wayne McDonald

