

## **Discovery tiers — Effect of discovery tier on limiting the judgment.**

---

**Question:** Can you argue for an award in excess of the tier limits? Why should you not be able to argue for damages in excess of the tier limits? For example, the tortfeasor may have only \$50,000 in coverage, and therefore you want to plead it is a tier 1 claim. However, you may have additional UIM coverage, and the amount the jury determines as the full amount of your damages will determine whether you can recover on the UIM policy. The judge can reduce your recovery against the tortfeasor to \$50,000, but you ought to be allowed to argue for your actual damages.

**Answer:** Attorneys may, to the extent consistent with the law, argue for any award amount. However, pleading into a tier constitutes a waiver by that party of any claim to damages above the tier limit. See Rule 8(a). Thus, the court must reduce any damages awarded in excess of the tier limit to the applicable tier limit, irrespective of the jury's determination.

**Question:** What if a jury awards an amount in excess of the tier limits? May a motion to amend to conform to the evidence be made at that point?

**Answer:** No. Under Rule 8(a), a party who pleads the case as a tier 1 or tier 2 case has waived any right to recover damages above the applicable tier limits. Thus, unless the party has appropriately amended its pleading pursuant to Rule 15, the tier limit restricts the amount of damages that can be awarded. An award in excess of the tier must be reduced by the court to the applicable tier limit. The choice of a lower tier confers the benefit of no significant discovery in return for the party's giving up the chance to obtain greater damages. It would be inequitable if a party were allowed to plead a case into tier 1, prevent the defense from conducting the discovery befitting a larger claim, and then recover an amount in excess of the tier limit.

**Question:** Is the jury told about the tier limits?

**Answer:** No. For evidentiary purposes, the court should treat tier limits the same way that statutory damage caps are treated. The tier limits restrict the amount of damages that can be recovered, see Rule 8(a), but do not constitute admissible evidence.