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OVERVIEW: CALIFORNIA UNINSURED/UNDERINSURED MOTORIST LAW

By Michael D. Padilla

California Insurance Code §11580.2 requires every automobile insurer issuing a policy in the State of California to make uninsured/underinsured motorist coverage available. This coverage can be found on the Declarations page of your personal auto policy and is the most important coverage in your policy because it protects you and your family.

Here's how it works: Assume you have a motor vehicle accident and suffer a serious injury. Assume further that the at-fault driver has inadequate coverage to meet his/her responsibility. Your uninsured/underinsured motorist coverage will step in and pay you all the damages the at-fault driver would have had to pay you up to the limits of your coverage, minus whatever amount the at-fault driver's coverage actually paid to you.

The scope and utility of this coverage cannot be overstated, as it will cover you no matter where or how an accident occurs, as long as the harm occurs to you or a member of your household by a negligently-operated vehicle which is either uninsured or underinsured. Thus, it will cover a child riding a bicycle to school; a daughter who is a passenger in her boyfriend's car; a husband or wife who is crossing the street to get a sandwich at Subway; or you when you are riding in a taxi. The bottom line is that you do not have to be in the insured vehicle to benefit from uninsured/underinsured motorist coverage. You just need to be hurt by a vehicle which does not have sufficient coverage.

If you suffer a serious injury in a motor vehicle accident, the sad probability is that the at-fault driver will not have enough coverage to make you whole. Therefore, it becomes imperative that you shop around and buy the highest limits your budget will allow.

The most cost-effective way to do this is to place \$500,000 of liability and uninsured motorist coverage in your primary auto policy. With the same carrier, buy an um-

brella (*a.k.a.*, excess) policy endorsed for uninsured/underinsured motorist coverage in the amount of \$1,000,000 to \$5,000,000. You will be astounded how relatively inexpensive it is to move your coverage to these higher limits. The additional cost will simply be hundreds of dollars per year, not thousands.

Also, you are encouraged to obtain three competing quotes from different insurers each year. You can be assured that the same coverage will have a spread of several hundred dollars from the highest quote to the lowest quote.

Once your policy is in hand, be sure to check it to confirm particularly that your umbrella/excess policy has been *endorsed* for uninsured/underinsured motorist coverage. Keep in mind that *insurance carriers do not particularly like this aspect of their coverage because it is good for you and bad for them*. They sell it because the State requires them to do so. They are mandated to include it in the primary auto policy, but are not required to have it in the excess policy, which is why you are encouraged to double-check the umbrella when you receive your policy to verify that it has been *endorsed* for uninsured/underinsured motorist coverage.

From a procedural standpoint, once you have established that the at-fault driver has inadequate coverage and you have fully recovered the limits of that coverage, your uninsured/underinsured motorist coverage will be triggered. If a settlement cannot be negotiated between you and the insurer on the value of your claim, the issue will be resolved by binding arbitration before a retired judge, usually within a matter of months. Discovery proceedings in the arbitration process are handled as though the matter were to be tried by a Superior Court jury. The only difference is that the case is presented to a retired judge instead of a jury, and the judge issues a binding ruling reflecting what in his/her estimate would have been the jury's determination as to the value of your claim.

The elements of your claim include all past and future medical treatment required by the accident-related injury; all past and future wage loss, including loss of retirement should you be compelled to retire; and, lastly, all past and future non-eco-

nomical damages for such issues as physical impairment, pain, emotional distress, anxiety, grief, and compromise in the quality of life secondary to the injuries resulting from the vehicle accident. Therefore, uninsured/underinsured motorist claims typically have values comparable to the liability in cases tried by a jury — and they are not subject to the restrictions and caps placed on awards in Workers' Compensation claims.



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NOTICE

Making a false or fraudulent Workers' Compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

