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Underinsured-motorist [UIM] arbitration

When the defendant has insufficient insurance, here is your guide to handling the UIM claim

By Sanford Jossen

You have a good case until you discover the defendant has insufficient insurance to compensate your client(s). Now what? You need to look for underinsured-motorist coverage. (Unless otherwise stated, all code citations are to Insurance Code section 11580.2.)

The basic law of underinsurance-motorist insurance coverage

Underinsured-motorist (UIM) claims are creatures of contract and statute. They arise when a tortfeaser has less automobile insurance coverage than a claimant's UIM insurance coverage. Insurance Code section 11580.2, subdivision (p), sets forth the requirements for a UIM claim. It defines an underinsured motor vehicle as one "insured for an amount that is less than the uninsured motorist limits carried on the motor vehicle of the injured person." (Subd. (p)(2).) For a UIM claim, the claimant's coverage must be greater than the tortfeasor's insurance coverage. (*Grunfeld v. Pacific Auto. Ins. Co.* (1965) 232 Cal.App.2d 4.)

UIM claim: To make a UIM claim, get your client's insurance policy and declaration page. The policy will dictate *how and to whom* your client's UIM claim must be presented. Unless waived by an insured, UM and UIM coverage must be included in policy coverage. (Subd. (p)(7).) (*Daun v. USAA Casualty Ins. Co.* (2005) 125 Cal.App.4th 599.)

Review your client's insurance policy to determine the existence and amount of UIM coverage. UIM coverage should be offered at the same limits as UM coverage. (Subd. (n).) If the policy does not show UIM coverage, contact the carrier and request your client's "Declaration" page of insurance coverage. UIM coverage *must* be offered when an automobile policy is procured. If the declaration page shows no UIM, request proof that your client waived UIM coverage.

UIM waiver: A UIM insurance policy waiver must contain specific language. If there is no evidence of UIM coverage on the declaration page or an executed waiver of coverage, there may be coverage by operation of law. (Subd. (a)(2).) If there is a signed waiver of UIM coverage, the waiver may be *insufficient* to deny UIM coverage if it fails to contain precise statutory waiver language. If a written UIM waiver is in the statutorily prescribed form, it may be ineffective if the insured has not been given a sufficient explanation of UIM coverage. (*Grimes v. Elite Ins. Co.* (1978) 82 Cal.App.3d 130.)

Amount of UIM coverage: When UIM coverage is not stated in a policy, and the insurer fails to obtain a written waiver of coverage, the policy is construed to provide UIM coverage equal to the injury liability policy limits,

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but in no event is UIM coverage more than $30,000/$60,000 per accident. (*Enterprise Ins. Co. v. Mulleague* (1987) 196 Cal.App.3d 528). Greater UIM coverage can be obtained from the UIM carrier. (Subd. (n).)

Making a claim for UIM benefits

The demand for UIM: To start the claim, first, settle with the tortious underinsured party. You cannot claim UIM coverage if the claimant and UIM motorist have the same policy limit. UIM is *only available* where the insured's coverage *exceeds* the underinsured party's insurance coverage. The UIM carrier gets credit for the settlement with the underinsured party. (Subd. (h).) For example, suppose the underinsured party has minimum limits of $15,000/$30,000, and the insured has a $100k/300k policy. In that case, the UIM carrier will get credit for the $15,000 settlement, and $85,000 UIM coverage will be available for the UIM claim.

***No stacking of coverage*:** UIM benefits cannot be "stacked." Thus, if the underinsured party has $15,000 coverage and the insured has $100,000 UIM, the maximum available is $100,000, not $115,000. (Subd. (q).) (*Wagoner v. State Farm Mut. Auto. Ins. Co.* (1985) 40 Cal.3d 460, 468; also see § 11580.2, subds. (p)(4) and (q).)

Discovery rights

The parties: Insurance Code section 11580.2 (f) (1) – (7) governs discovery. The only parties to the arbitration proceeding are the parties to the arbitration agreement – the insured and the insurer. The underinsured motorist is not a party to the proceedings. Subpoenas should be used to compel attendance by a third party, witnesses, and police officers, if necessary, and to obtain medical records. Discovery by mental or physical examination is not provided in the code.

Judicial requirement: A judge and *not* an arbitrator has the power to order discovery and discovery sanctions. (*Miranda v. 21st Century Ins. Co.* (2004) 117 Cal.App.4th 913.) Monetary sanctions for discovery abuse are to be awarded by the court, not the arbitrator. (*Samsky v. State Farm Mutual Automobile Ins. Co*. (2019) 37 Cal.App.5th 517.)

Offsets

Workers' compensation benefits: UIM carriers are entitled to offsets for workers' compensation benefits (Subd. (h)(1)), but the policy must have a specific provision. Non-occupational disability benefits are not subject to offset. Insurers are not obligated to pay UIM benefits until any insured workers' compensation claim is resolved. (*Casey v. State Farm Mutual Automobile Insurance Company* (2018) 30 Cal.App.5th 397, 410 [no bad faith when carrier delayed arbitration and settlement of UIM claim until the insured's workers' compensation claim resolved].)

Rideshare: If your client claims against a rideshare provider, i.e., Lyft or Uber, under their UIM benefits, Lyft and Uber contracts provide offsets for workers' compensation payments. There is no offset for claimant's med-pay.

Statute of limitations

Time is controlled by settlement date: The statute of limitations for UIM claims is unique. The right to coverage under UIM provisions does not *accrue* until the tortfeasor's coverage limits are exhausted. This requirement is satisfied when the tort claim is settled against the underinsured party, and proof of payment is submitted to the UIM carrier. (*Quintana v. Mercury Cas. Co.* (1995) 11 Cal.4th 1049, 1056.)

There is no explicit statutory time limit for the insured *to pursue* a UIM claim once the tortfeasor's insurer has paid the insured). Nonetheless, delaying and giving the insurer an equitable remedy is not wise.

After payment is received from the underinsured carrier, a two-year time limit for making a UIM claim begins, and a demand for arbitration should be made. Keeping the UIM carrier aware of a claim against an underinsured tortfeasor is wise.

Five-year limit: UIM claims *must* be *concluded* within five years. (Subd. (i)(2)(A).) In *Prahl v. Allstate Northbrook Indemnity Co.* (2025) 110 Cal.App.5th 118, Claimant's Petition to Compel Arbitration of a UIM claim was denied because the *five-year deadline to complete arbitration* outlined in Insurance Code section 11580.2 (i) expired.

In other circumstances, a claimant's cause of action does not accrue under Insurance Code section 11580.2 subd. (i) unless within two years from the date of the accident, *one of the following* occurs:

- The insured files a lawsuit against the underinsured motorist (Subd. (i)(1)(A));
- An agreement on the amount due under the policy has been concluded (Subd. (i)(1)(B));
- The UIM insured has formally instituted arbitration proceedings by notifying the insurer in writing, certified mail, requesting a return receipt (Subd. (i)(1)(C)).

30-day requirement: An insurer against whom a UIM claim is pending must notify its insured in writing at least 30 days before the scheduled expiration of the applicable statute of limitations. Failure by the carrier to give notice tolls the statute for 30 days after written notice. (*Pugh v. State Farm Insurance Co.* (1991) 227 Cal.App.3d 816.) However, the tolling provision does not apply if the UIM insurer received written notice that insured is represented by counsel. (*Barrios v. 21st Century Insurance Company* (2003) 105 Cal.App.4th 371.)

Initiating UIM arbitration

Policy requirement: A typical policy provides: "Arbitration may be initiated by a written demand of arbitration made by either party." The only issues for the arbitrator are: (1) Whether the insured is legally entitled to recover damages [liability], and (2) the amount of damages [monetary].

The demand: Initiating arbitration is easy. The Demand for Arbitration is

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made by letter to the UIM carrier with a concurrent Demand for Arbitration to the provider in the policy. If one of the parties to the agreement refuses to arbitrate, the court can compel arbitration and/or appointment of an arbitrator upon petition.

The arbitrator: When an insurance policy does not specify the means for selecting an arbitrator, the procedures set out in the Code of Civil Procedure sections 1280 to 1294.4, specifically Code of Civil Procedure section 1281.6, apply. The insured cannot unilaterally select an arbitrator. (*American Home Assurance Co. v. Benowitz* (1991) 234 Cal.App.3d 192.)

Proof: A petitioner seeking to compel arbitration must prove the existence of a valid arbitration agreement. "[I]n deciding whether the parties have agreed to submit to arbitration, a court is not to rule on the potential merits of the underlying claims. (*Tornai v. CSAA Ins. Exchange* (2023) 98 Cal.App.5th 974.)

Arbitration and discovery codes: If the claimant is entitled to UIM, the California Arbitration Act (CAA) (Code Civ. Proc., §§ 1280-1294.4) controls UIM arbitrations unless the parties agree to arbitrate under the rules of a specific arbitration provider. The Civil Discovery Act (Code Civ. Proc., §§ 2016.010 – 2036.050) applies to UIM proceedings, subject to limitations provided in the insurance policy. (*Miranda v. 21st Century Insurance Company* (2004) 117 Cal.App.4th 913.)

The arbitration of a UIM claim

Proof requirements: Arbitration of UIM claims involves *only* two issues: (1) whether the insured is entitled to recover against the underinsured motorist, and (2) if so, the amount of the damages. (*Tornai v. CSAA Ins. Exchange*, *supra*.) The arbitration is conducted by a single neutral arbitrator (Subd. (f).)

The word "damages," as used in subdivision (f), means damages that the insured is entitled to recover from the uninsured motorist. (*Freeman v. State Farm Mut. Auto. Ins. Co*. (1975) 14 Cal.3d 473.) There is no need to litigate extraneous issues in a UIM arbitration.

The parties may voluntarily submit issues other than those compelled by subdivision (e) and the policy. No rule of law prevents the insurer and insured from submitting to arbitration *more* than the statute requires. (*Fisher v. State Farm Mut. Auto. Ins. Co.* (1966) 243 Cal.App.2d 749.)

The award: The arbitrator of a UIM claim decides all facts relative to whether the insured is legally entitled to recover damages under UIM. (Subd. (d).) (*Jordan v. Pacific Auto. Ins. Co*. (1965) 232 Cal.App.2d 127.) Once a non-statutory issue has voluntarily been submitted to arbitration, a party may not unilaterally withdraw that issue. (*Allstate Ins. Co. v. Shmitka*, (1070) 12 Cal.App.3d 59.)

As to what can be ultimately recovered at a UIM arbitration, the claimant is limited to the policy amount, minus set-offs. Arbitrators are bound to act within limits of the arbitration agreement.

Petitions to confirm or vacate arbitration awards

Court petitions: Once an award is made, "Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award...." (Code Civ. Proc., § 1285.)

Judicial review of private arbitration awards *is limited* to those grounds specified in Code of Civil Procedure section 1286.2 (vacation of award) and Code of Civil Procedure section 1286.6 (correction of award). (*Moncharsh v. Heily & Blase*, (1992) 3 Cal.4th 1.)

The merits are not subject to court review. (*Harris v. Havenar*, (1959) 169 Cal.App.2d 531.) Arbitrators' findings on questions of fact are final, conclusive, and not subject to judicial review except under circumstances where arbitrators so imperfectly execute their powers that a mutual, final, and definite award is not made. (*Olivera v. Modiano-Schneider, Inc*., (1962) 205 Cal.App.2d 9, 23; *Hohn* (1964), 229 Cal.App.2d 336.) Even when an arbitrator used unsound reasoning or reached an erroneous conclusion, the award will not be invalidated. (*Durand v. Wilshire Ins. Co.*, (1969) 270 Cal.App.2d 58.)

Suppose the arbitration award exceeds the policy limit (such as when policy limits are not disclosed to the arbitrator). In that case, the insurer can petition the court to correct or modify the award, but the insurance carrier has a limited time to present such a petition. Code of Civil Procedure section 1288 explicitly provides: "*... A petition to vacate an award or to correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner*."

Time limits: The requirement that a petitioner challenge an award within the 100-day limit places a burden upon those who attack the award to act promptly or acquiesce in its enforcement. (*Knass v. Blue Cross of California*, (1991) 228 Cal.App.3d 390.)

If the arbitrator exceeds the policy limits and the carrier goes to correct or modify the award, *timing is everything*. If the carrier fails to comply with Code of Civil Procedure section 1288.2, an excess award can be retained. In a proceeding to confirm an arbitration award, the court is barred as a matter of law from correcting the award where the response requesting correction was not duly served and filed as required by Code of Civil Procedure section 1286.8 within 100 days after service of the award as required by Code of Civil Procedure section1288.2. (*De Mello v. Souza*, (1973) 36 Cal.App.3d 79.)

In another case, the court lacked jurisdiction to challenge an arbitration award because the challenge was eight days late. (The Petition to Vacate the Award was filed 99 days after the award was served, but the petition *was not served* until 108 days after the award was served.) (*Santa Monica College Faculty Assn. v. Santa Monica Community College Dist*. (2015) 243 Cal.App.4th 538.)

In a case involving a UIM claim, an insurer was *unable* to challenge whether

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an arbitrator's award exceeded the arbitrator's authority because no motion to vacate or correct the award under section 11580.2 was filed within 100 days. The trial court confirmed the award. (*Weinberg v. Safeco Ins. Co. of America*, (2004) 114 Cal.App.4th 1075.)

Code of Civil Procedure section 1285 provides: "A party to an arbitration may seek to confirm an arbitration award filed under Code of Civil Procedure section 1285.2." (*Coordinated Constr., Inc. v. Canoga Big "A", Inc*., (1965) 238 Cal.App.2d 313.) Code of Civil Procedure section provides: "If a petition or response under this chapter is duly served and filed, the court *shall* confirm the award as made...." (Emphasis added.) Once an arbitration award is made, it cannot be severed. (*Stockwell v. Equitable Fire & Marine Ins. Co*. (1933) 134 Cal.App. 534.)

No specific language in Insurance Code section 11580.2 gives a court authority to reduce an arbitration award that exceeds an insured's policy limits. (A Petition to Vacate an Award of an Arbitrator, made pursuant to Insurance Code section 11580.2(e), where the parties had, by the terms of their contract, agreed to be bound by any award was denied.) (*Durand v. Wilshire Ins. Co.*, (1969) 270 Cal.App.2d 58.)

Award confirmation: An arbitration award must be confirmed when there is no jurisdiction to do otherwise. (*Precision Automotive v. Northern Ins. Co*., (1967) 252 Cal.App.2d 1036.)

If the claimant files a Petition to Confirm the Arbitration Award, the carrier must file a timely response under Code of Civil Procedure section 1290.6:

> A response shall be served and filed within 10 days after service of the petition except that if the petition is served in the manner provided in paragraph (2) of subdivision (b) of Section 1290.4, the response shall be served and filed within 30 days after service of the petition....

On Application for an Order confirming an arbitration award, it is *mandatory* for a judge to confirm the award, unless the judge vacates, modifies, or corrects it. (*Thriftimart, Inc. v. Superior Court of Los Angeles County,* (1962) 202 Cal.App.2d 421.)

Recovery of costs

Section 998 costs: Although an arbitration provision requires each party to bear their own costs and equally share arbitrator costs, Code of Civil Procedure section 998 may entitle a successful party to recover *post-offer* costs. (*Storm v. Standard Fire Ins. Co.* (2020) 52 Cal.App.5th 636, 645 – policy *was ambiguous* and did *not* limit insured's right to recover expert fees and expenses. (Code Civ. Proc., § 998).) (*Pilimai v. Farmers Insurance Exchange Company* (2006) 39 Cal.4th 133.) However, litigation costs allowed under Civil Code section 3291 have no application to UIM cases. (*Caro v. Smith* (1997) 59 Cal.App.4th 725, 735.)

Prejudgment interest: The arbitrator determines costs, if any, and prejudgment interest. (*Maaso v. Signer* (2012) 203 Cal.App.4th 362, 377, but see *Glassman v. Safeco Ins. Co. of America* (2023) 90 Cal.App.5th 1281 holding prejudgment interest under Civil Code section 3287, subd. (a), denied where damages are not certain.)

Conclusion

Most UIM code requirements are in subdivision (p) of Insurance Code section 11580.2, and this article provides only the basic requirements and case holdings. For another perspective, see Jeffrey E. French, *Navigating the maze of uninsured and underinsured motorist coverage*, (May 2015) Advocate.



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