

RESOLUTION 01-06-2013

DIGEST

Insurance: Offering Uninsured/Underinsured Motorist Coverage Equal to Liability Limits
Amends Insurance Code section 11580.2, requiring liability insurers to offer uninsured motorist/underinsured motorist coverage in amounts up to the limits of the liability coverage.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Insurance Code section 11580.2, requiring liability insurers to offer uninsured motorist/underinsured motorist coverage in amounts up to the limits of the liability coverage. This resolution should be disapproved because insurers should be able to control their risks, liability exposure, and pricing model in the competitive marketplace, especially since rates for automobile insurance are more affordable with higher limits readily available through most insurers.

Standards and requirements exist concerning basic coverage. But beyond the basics mandated by law, insurers do not have identical policies and do not all offer the same coverage or lines. This allows each insurer, large or small, to brand itself, while responsibly offering insurance products with competitive pricing structures, amid management of risk-loss exposure and reserve requirements. This variety among admitted carriers assures insurance availability at affordable prices, mindful that many people still can only afford the basic minimums of what is required. Until recently, rates were prohibitively expensive to many.

Most insurers already offer uninsured motorist/underinsured motorist (UM/UIM) coverage in amounts up to the limits of the liability coverage the insured purchased. Some even offer Umbrella Insurance, with \$1 million liability protection and a similar uninsured motorist coverage option. For every insurer that does not offer more than 30/60 uninsured motorist coverage, there are multiple, high rated companies that do. This type of coverage is widely available. Existing law requires the insured sign a waiver for UM/UIM limits below their liability coverage. As fiduciaries and professionals, agents and brokers must discuss exposure and coverage options with their insureds. This is not an issue of an insured not knowing about the limits of protection available.

The issue is ultimately about the cost of insurance, not a problem finding higher available limits. To promote choice, insurer viability, and reasonable insurance premiums most people can afford, it's unwise to force all insurers to offer higher than 30/60 uninsured motorist limits. Dollar for dollar, the cost of UM/UIM coverage is greater than the premium charged for competitively-rated liability limits for a fully-underwritten good-risk insured, since the insurer cannot control the risk posed by an accident with a liable third party who does not have, or could not afford to pay for, liability or adequate liability coverage.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Insurance Code section 11580.2 to read as follows:

1 § 11580.2

2 (a)(1) No policy of bodily injury liability insurance covering liability arising out of the
3 ownership, maintenance, or use of any motor vehicle, except for policies that provide insurance
4 in the Republic of Mexico issued or delivered in this state by nonadmitted Mexican insurers,
5 shall be issued or delivered in this state to the owner or operator of a motor vehicle, or shall be
6 issued or delivered by any insurer licensed in this state upon any motor vehicle then principally
7 used or principally garaged in this state, unless the policy contains, or has added to it by
8 endorsement, a provision with coverage limits at least equal to the limits specified in subdivision
9 (m) and in no case less than the financial responsibility requirements specified in Section 16056
10 of the Vehicle Code insuring the insured, the insured's heirs or legal representative for all sums
11 within the limits that he, she, or they, as the case may be, shall be legally entitled to recover as
12 damages for bodily injury or wrongful death from the owner or operator of an uninsured motor
13 vehicle. The insurer and any named insured, prior to or subsequent to the issuance or renewal of
14 a policy, may, by agreement in writing, in the form specified in paragraph (2) or paragraph (3),
15 (1) delete the provision covering damage caused by an uninsured motor vehicle completely, or
16 (2) delete the coverage when a motor vehicle is operated by a natural person or persons
17 designated by name, or (3) agree to provide the coverage in an amount less than that required by
18 subdivision (m) but not less than the financial responsibility requirements specified in Section
19 16056 of the Vehicle Code. Any of these agreements by any named insured or agreement for the
20 amount of coverage shall be binding upon every insured to whom the policy or endorsement
21 provisions apply while the policy is in force, and shall continue to be so binding with respect to
22 any continuation or renewal of the policy or with respect to any other policy that extends,
23 changes, supersedes, or replaces the policy issued to the named insured by the same insurer, or
24 with respect to reinstatement of the policy within 30 days of any lapse thereof. A policy shall be
25 excluded from the application of this section if the automobile liability coverage is provided only
26 on an excess or umbrella basis. Nothing in this section shall require that uninsured motorist
27 coverage be offered or provided in any homeowner policy, personal and residents' liability
28 policy, comprehensive personal liability policy, manufacturers' and contractors' policy, premises
29 liability policy, special multiperil policy, or any other policy or endorsement where automobile
30 liability coverage is offered as incidental to some other basic coverage, notwithstanding that the
31 policy may provide automobile or motor vehicle liability coverage on insured premises or the
32 ways immediately adjoining.

33 (2) The agreement specified in paragraph (1) to delete the provision covering damage
34 caused by an uninsured motor vehicle completely or delete the coverage when a motor vehicle is
35 operated by a natural person or persons designated by name shall be in the following form: "The
36 California Insurance Code requires an insurer to provide uninsured motorists coverage in each
37 bodily injury liability insurance policy it issues covering liability arising out of the ownership,
38 maintenance, or use of a motor vehicle. Those provisions also permit the insurer and the
39 applicant to delete the coverage completely or to delete the coverage when a motor vehicle is
40 operated by a natural person or persons designated by name. Uninsured motorists coverage
41 insures the insured, his or her heirs, or legal representatives for all sums within the limits

42 established by law, that the person or persons are legally entitled to recover as damages for
43 bodily injury, including any resulting sickness, disease, or death, to the insured from the owner
44 or operator of an uninsured motor vehicle not owned or operated by the insured or a resident of
45 the same household. An uninsured motor vehicle includes an underinsured motor vehicle as
46 defined in subdivision (p) of Section 11580.2 of the Insurance Code.”

47 The agreement may contain additional statements not in derogation of or in conflict with
48 the foregoing. The execution of the agreement shall relieve the insurer of liability under this
49 section while the agreement remains in effect.

50 (3) The agreement specified in paragraph (1) to provide coverage in an amount less than
51 that required by subdivision (m) shall be in the following form: “The California Insurance Code
52 requires an insurer to provide uninsured motorists coverage in each bodily injury liability
53 insurance policy it issues covering liability arising out of the ownership, maintenance, or use of a
54 motor vehicle. Those provisions also permit the insurer and the applicant to agree to provide the
55 coverage in an amount less than that required by subdivision (m) of Section 11580.2 of the
56 Insurance Code but not less than the financial responsibility requirements. Uninsured motorists
57 coverage insures the insured, his or her heirs, or legal representatives for all sums within the
58 limits established by law, that the person or persons are legally entitled to recover as damages for
59 bodily injury, including any resulting sickness, disease, or death, to the insured from the owner
60 or operator of an uninsured motor vehicle not owned or operated by the insured or a resident of
61 the same household. An uninsured motor vehicle includes an underinsured motor vehicle as
62 defined in subdivision (p) of Section 11580.2 of the Insurance Code.”

63 The agreement may contain additional statements not in derogation of or in conflict with
64 this paragraph. However, it shall be presumed that an application for a policy of bodily injury
65 liability insurance containing uninsured motorist coverage in an amount less than that required
66 by subdivision (m), signed by the named insured and approved by the insurer, with a policy
67 effective date after January 1, 1985, shall be a valid agreement as to the amount of uninsured
68 motorist coverage to be provided.

69 [Subdivisions (b) through (l) remain unchanged.]

70 (m) Coverage provided under an uninsured motorist endorsement or coverage shall be
71 offered with coverage limits equal to the limits of liability for bodily injury in the underlying
72 policy of insurance, ~~but shall not be required to be offered with limits in excess of the following~~
73 ~~amounts:~~

74 ~~(1) A limit of thirty thousand dollars (\$30,000) because of bodily injury to or death of~~
75 ~~one person in any one accident.~~

76 ~~(2) Subject to the limit for one person set forth in paragraph (1), a limit of sixty thousand~~
77 ~~dollars (\$60,000) because of bodily injury to or death of two or more persons in any one~~
78 ~~accident.~~

79 (n) Underinsured motorist coverage shall be offered with limits equal to the limits of
80 liability for the insured’s uninsured motorist limits in the underlying policy, and may be offered
81 with limits in excess of the uninsured motorist coverage. For the purposes of this section,
82 uninsured and underinsured motorist coverage shall be offered as a single coverage. However, an
83 insurer may offer coverage for damages for bodily injury or wrongful death from the owner or
84 operator of an underinsured motor vehicle at greater limits than an uninsured motor vehicle.

85 [Subdivisions (o) through (q) remain unchanged.]

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Responsible drivers who purchase insurance policies with limits that exceed \$30,000/\$60,000 oftentimes do not realize that the insurance policy does not protect them against drivers who have no insurance or less insurance. The purpose of the underinsured motorist statute is to provide a way for policyholders to protect themselves from the negligence of other parties who carry less insurance than they themselves have. (*Royal Ins. Co. v. Cole* (1993) 13 Cal.App.4th 880, review denied.)

The Solution: This resolution removes the artificial ceiling created by subdivision (m)(1) by requiring insurance companies to “offer” uninsured motorist coverage in an amount equal to the bodily injury limits of the underlying policy. Furthermore, it requires execution of a written waiver if a policy provides uninsured motorist coverage in an amount less than the bodily injury limits of the underlying policy. This resolution will only affect insurance policies that have bodily injury limits that exceed \$30,000/\$60,000

Uninsured (“UM”) and underinsured motorist (“UIM”) insurance is motor vehicle liability insurance – but instead of protecting the owner or driver against liability asserted by third parties, this coverage is designed to protect the owner, driver or passengers for injuries resulting from another driver’s negligence when that other driver has no coverage (uninsured motorist) or does not have sufficient coverage to completely indemnify for all the damages (underinsured motorist). Underinsured motorist coverage comes into play only if the tortfeasor is insured for an amount that is less than the uninsured motorist limits carried on the vehicle of the injured claimant. (Ins. Code, § 11580.2, subd. (p)(2).) Under certain circumstances, UM/UIM coverage can even provide benefits in a hit-and-run accident.

Under Insurance Code section 11580.2, any policy of motor vehicle bodily injury liability insurance issued in California must also include uninsured motorist bodily injury coverage in the policy, unless the named insured signs a written waiver of that coverage. The waiver must use the specific language set out in subdivision (a)(2) of section 11580.2.

Section 11580.2, subdivision (m) states that the uninsured motorist coverage must be “offered” with limits at least equal the liability coverage in the policy. Section 16056 of the Vehicle Code sets a floor. That section requires minimum coverage of “not less than fifteen thousand dollars (\$15,000) because of bodily injury to or death of one person in any one accident and, subject to that limit for one person” and “not less than thirty thousand dollars (\$30,000) because of bodily injury to or death of two or more persons in any one accident. . . .” Any uninsured motorist coverage limits lower than this minimum must be established by the execution of a written waiver as set out in subdivision (a)(3) of section 11580.2.

Subdivision(m)(1) provides that the uninsured motorist coverage need not be offered in an amount greater than \$30,000/\$60,000.

A policy providing **un**insured motorist coverage must also extend "**under**insured motorist coverage" in the same or greater amounts as the uninsured motorist coverage. (Ins. Code, § 11580.2, subd. (n).)

IMPACT STATEMENT

Insurance Code Section 11580.2 is referenced in several other sections of the Insurance Code. This resolution only affects those sections to the extent that they refer to the requirements contained within 11580.2. No other law, statute or rule contains requirements that conflict with the changes proposed by this resolution.

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