

## RESOLUTION 6-12-2003

### DIGEST

#### Uninsured Motorist Insurance: Statute of Limitation for Suits Against Carrier

Amends Insurance Code section 11580.2 to extend the statute of limitation for suits against uninsured motorists from one year to two years.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

Related to resolution 6-13-03.

#### Reasons:

This resolution amends Insurance Code section 11580.2 to extend the statute of limitation for suits against uninsured motorists from one year to two years. This resolution should be approved in principle because it brings the uninsured motorist claim period into conformity with the bodily injury claim period and so protects consumers from a subtle statute of limitations trap.

Effective January 1, 2003, the Legislature added Code of Civil Procedure section 335.1 to increase the limitation period for filing ordinary negligence actions from one year to two. (Sen. Bill No. 688 (2002-2003 Reg. Sess).) That measure was enacted "in response to concerns that California's one-year statute was among the shortest in the nation" and to provide parties additional time to settle. (Sen. Judiciary Com. Report on Sen. Bill No. 333 (2002-2003 Reg. Sess.), p. 2.)

In contrast to the two-year statute of limitation for suits for bodily injury brought against insured drivers, if that same person was injured by an *uninsured* driver, he or she must file suit within one year. (Ins. Code, § 11580.2, subd. (i)(1).) This creates a trap for the unwary plaintiff. The purpose behind section 11580.2 is "to make sure that drivers injured by [uninsured] drivers are protected to the extent that they would have been protected had the driver at fault carried the statutory minimum of liability [insurance]." (*Furlough v. Transamerica Ins. Co.* (1988) 203 Cal.App.3d 40, 47.) That purpose is not well served if defendants and insurance companies can use section 11580.2 to deny recovery on otherwise valid claims.

Making a distinction between insured and uninsured motorists for purposes of statute of limitations is unfair in other ways. Because drivers are required by law to have insurance (Veh. Code, §§ 16020, 16430), uninsured motorists sometimes give false or incomplete information at the scene of the accident. Plaintiffs do not uncover the fact of "no insurance" until much later. As a result, a plaintiff may miss the filing period even when he or she is aware of the one-year limitation. Leaving section 11580.2 as is rewards drivers who fail to buy insurance and punishes drivers who buy insurance. That, in turn, creates a disincentive to purchase insurance.

The language of this resolution has, at the time this report was written, been embodied in Senate Bill No. 333, 2002-2003 Regular Session. That bill passed the Senate on April 28, 2003, and is pending in the Assembly.

### TEXT OF RESOLUTION

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

1 §11580.2

2 [Subdivisions (a) through (h) remain unchanged.]

3

4 (i)(1) No cause of action shall accrue to the insured under any policy or endorsement  
5 provision issued pursuant to this section unless one of the following actions have been taken within  
6 ~~one~~ two years from the date of the accident:

7 (A) Suit for bodily injury has been filed against the uninsured motorist, in a court of  
8 competent jurisdiction.

9 (B) Agreement as to the amount due under the policy has been concluded.

10 (C) The insured has formally instituted arbitration proceedings by notifying the insurer in  
11 writing sent by certified mail, return receipt requested. Notice shall be sent to the insurer or to the  
12 agent for process designated by the insurer filed with the department.

13 (2) Any arbitration instituted pursuant to this section shall be concluded either:

14 (A) Within five years from the institution of the arbitration proceeding.

15 (B) If the insured has a workers' compensation claim arising from the same accident, within  
16 three years of the date the claim is concluded, or within the five-year period set forth in subparagraph  
17 (A), whichever occurs later.

18 (3) The doctrines of estoppel, waiver, impossibility, impracticality, and futility apply to  
19 excuse a party's noncompliance with the statutory time frame, as determined by the court.

20 (4) Parties to the insurance contract may stipulate in writing to extending the time to  
21 conclude arbitration.

22 (j) Notwithstanding subdivisions (b) and (i), in the event the accident occurs in any other  
23 state or foreign jurisdiction to which coverage is extended under the policy and the insurer of the  
24 tortfeasor becomes insolvent, any action authorized pursuant to this section may be maintained  
25 within three months of the insolvency of the tortfeasor's insurer, but in no event later than the  
26 pertinent period of limitation of the jurisdiction in which the accident occurred.

27 (k) Notwithstanding subdivision (i), any insurer whose insured has made a claim under his or  
28 her uninsured motorist coverage, and the claim is pending, shall, at least 30 days before the  
29 expiration of the applicable statute of limitation, notify its insured in writing of the statute of  
30 limitation applicable to the injury or death. Failure of the insurer to provide the written notice shall  
31 operate to toll any applicable statute of limitation or other time limitation for a period of 30 days  
32 from the date the written notice is actually given. The notice shall not be required if the insurer has  
33 received notice that the insured is represented by an attorney.

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35 [Subdivisions (l) through (q) remain unchanged.]

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

PROPONENT: Santa Clara County Bar Association

#### STATEMENT OF REASONS

Existing Law: Provides that uninsured or underinsured motorists claims must be made within one year from the date of the injury-causing event. The period can be tolled under certain circumstances.

This Resolution: Requires uninsured or underinsured motorists claims be made within two years from the date of the injury-causing event. This period can be tolled under certain circumstances.

The Problem: On January 1, 2003, the statute of limitations for bodily injury claims changed from one to two years. The time for filing an uninsured or underinsured motorists claim, however, remains only one year. This creates a trap for the unwary injured person who, knowing he or she has two years to file his or her personal injury claim, may lose his or her right to pursue his or her uninsured or underinsured motorists claim by failing to bring it within one year of the date of the accident.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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