

## Odd Exceptions to Normal Discovery in California UM/UIM Cases

The California Uninsured/Underinsured Motorist Law (UM/UIM), *Insurance Code* section 11580.2 was designed to provide a prompt and relatively inexpensive resolution of disputes between an insured and his or her insurer as an alternative to full-scale litigation and a trial. However, Los Angeles Uninsured Motorist Law expert notes that nuances in the law, the competing rules, and the customs that have developed among counsel and arbitrators, can make for a "strange" experience if counsel is not fully aware of the various possibilities.

As an example, *Insurance Code* section 11580.2(f) mandates that the normal discovery statutes, commencing with section 2016.010 of the *Code of Civil Procedure* shall apply to the proceedings, with certain unfamiliar exceptions.

### Odd Exception # 1

The first odd exception of which counsel should be aware is that depositions can be taken, without leave of court, relatively shortly ***after the subject accident***, within 20 days. (*Ins. Code* section 11580.2(f)(3).) That means witnesses and parties can be deposed well before an insurer has the case designated as a UM/UIM file and before the claim has been assigned to counsel. In addition, interrogatories and requests for admissions can be served 20 days ***after the subject accident***, as well. (*Ins. Code* section 11580.2(f)(6).)

### Odd Exception #2

The second odd exception is that *Code of Civil Procedure* section 2025.010, dealing with requiring a party to appear for a deposition by notice, is *not* applicable, pursuant to *Insurance Code* section 11580.2(f)(4). Accordingly, witnesses and parties ***must*** be subpoenaed to their depositions. Although insureds and insurers regularly ignore this rule and schedule depositions both

informally and by notice, a deponent cannot be compelled to attend his or her deposition without a properly served subpoena. This can create a serious problem if a party waits until the last minute to notice an important deposition.

### **Odd Exception #3**

The third odd exception is that there are peculiar rules concerning wage loss information, medical authorizations and defense medical examinations in preparation for UM/UIM arbitrations. (*Ins. Code* section 11580.2(o).) These rules are substantially different than the "normal" discovery rules contained in the Code of Civil Procedure. According to *Insurance Code* section 11580.2(o), an insured must provide wage loss information and medical authorizations within 15 days of such request by an insurer. If the insured fails to provide that information and it is not within 30 days prior to the arbitration, the insurer can again request that information. This time the insured has 10 days to provide the information. If the insured fails to provide the information upon this second request, the arbitration shall be stayed at least 30 days following compliance by the insured.

An insured must also submit to a medical examination within 20 days after the insurer's request. If the insured fails to submit to a medical examination and it is not within 30 days prior to the arbitration, the insurer can again request that the insured submit to a medical examination. This time, if the insured does not submit to a medical examination within 20 days, the arbitration shall be stayed at least 30 days following compliance by the insured. Again, an insured would be well advised to submit to the examination when scheduled. The "strange" circumstance presented is that an insurer often has difficulty obtaining an examination date with its chosen examiner within those 20 days.

For more details on the exceptions and nuances of *Insurance Code* section 11580.2, please see Mr. Goldberg's Full Article, ***The Strange Case of the UM/UIM Arbitration.***