

Uninsured Motorist Arbitrators Can Award Judgment Over and Above UM Policy Limits

By Albert Abkarian

There has been a lot of discussion about the power of an arbitrator to award a verdict in excess of the policy limits in an uninsured motorist or underinsured motorist (“UM/UMI”) claim. Insurance companies typically argue – improperly – that an arbitrator cannot render an award in excess of the insured’s policy limits in a UM/UMI arbitration. This argument, however, is inconsistent with existing case law and interpretation of the relevant statute (Ins. Code § 11580.2(f)) – at least where the policy limit is not offered prior to the arbitration. Notably, however, although the arbitrator can *determine* the total damages and is not limited by the policy limits, the arbitrator can only enforce payment of a judgment up to the limit of the UM/UMI policy and not more.

Cases which have analyzed and construed this Insurance Code section have pointed out that the word “damages” in this section means the damages which the insured is entitled to recover from the *uninsured motorist*, and that the statute, read literally, requires arbitration of two issues only: (1) whether the insured is entitled to recover against the *uninsured motorist*; and

(2) if so, the amount of those damages. (*Freeman v. State Farm Mut. Auto. Ins. Co.* (1975) 14 Cal.3d 473, 480-481, and cases cited therein.)

There is no controversy if the limits are offered prior to the arbitration. However, if there is a refusal to pay the limits, then the arbitrator has a right to determine (1) whether the insured is legally entitled to collect damages from the uninsured motorist, and (2) *the total amount of damages suffered by the insured*. In such a case, the arbitrator can award the amount of damages proven by the insured but can only enforce payment to the extent of the UM/UMI limits under the policy.

In fact, at no time does Insurance Code Section 11580.2 (f) state that the damages are limited to the limits of the UM policy. In *Freeman*, the Supreme Court specifically stated that an arbitrator must decide the amount of damages. *Freeman* does not require that the arbitrator be told of the policy limits or that the arbitrator’s award is limited to the coverage under the UM/UMI policy. Thus, it can be argued that any policy language requiring that the UM/UMI policy limits be divulged to the arbitrator prior to the arbitration is in violation of Insurance Code Section 11580.2 (f) and public policy. An insurance company cannot shield itself from any bad faith liability by improperly withholding funds that should have been paid to plaintiff months or years before. If an insurer were allowed to do so, on clear policy cases, insurance companies could withhold payment of the policy benefits and take its chance with the arbitration. The insurance company has no risk or major exposure by withholding monies that should have been paid to plaintiff.

California Code of Civil Procedure Section 1286.2, subdivision (d), provides that an arbitration award can be vacated where the arbitrators exceed their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted. It is within the powers of the arbitrator to resolve the entire merits of the controversy submitted by the parties. (§ 1286.2, subd. (d); § 1286.6, subd. (b), (c).) Obviously, the merits include all the contested issues of law and fact submitted to the arbitrator for decision. The arbitrator’s resolution of these issues is what the parties bargained for in the arbitration agreement. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1.) Because section 11580.2(f) expressly provides arbitrators with the power to decide the total damages incurred by UM/UMI policyholder, irrespective of the policy’s limits, an arbitrator does not exceed their powers and an award cannot be set aside under section 1286.2(d).

Defendants often cite *State Farm v. Superior Court of Los Angeles* (2004) 123 Cal.App.4th 1424 in support of an argument that it is proper to divulge the policy limits to the arbitrator. However, that argument *does not apply to cases where the insurance company is refusing to pay the limits and the case is arbitrated after the refusal to pay*. In *State Farm*, the insurance company offered to pay the policy limits to the insured and the insured still wanted to arbitrate to determine the value of the case. As the court confirmed, the issue in the case turned on the question of “whether the insurer of someone who is involved in an accident with the owner or driver of an uninsured motor vehicle is required to arbitrate, with its insured,



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the amount of damages the insured is legally entitled to collect from such owner or driver if the insurer has already paid to its insured the full amount of benefits possible under the terms of the uninsured motorist policy provisions.” (State Farm, at 1427; initial emphasis in original, latter emphasis added.) Again, the case does not stand for the proposition that arbitrator cannot award the full value of the damages, where the full policy benefits have not been tendered.

As the State Farm court confirmed, “[t]he provisions of both the parties’ contract of insurance, and section 11580.2, subdivision (f), provide for arbitration when the parties cannot agree on (that is, when there is a controversy over) (1) whether [the policyholder] is legally entitled to collect damages from the uninsured motorist, or (2) the amount of such damages. Neither of those two matters to be arbitrated can be at issue in this case now because State Farm has paid the uninsured motorist limits of its policy. By paying policy limits, State Farm essentially admitted (1) the liability of the uninsured driver and (2) the amount of the damages to which [the policyholder] would be entitled from the uninsured driver, at least up to the policy limits.” (Id., at 1431; emphasis added.)

Because, in that case State Farm had “already paid the limit of the subject policy’s uninsured motorist provisions,” arbitration was not warranted. As the court explained, “[w]hether [the policy benefits were] paid in an untimely manner, or [whether the insurer] engaged in other claims-handling misconduct, is not an issue for the arbitrator.” (Id., at 1434; emphasis added.)

Thus, under these basic principles, the statute permits the arbitrator to decide whether the policyholder is legally entitled to recover damages from the uninsured motorist and the amount of those damages. But that is not necessarily the limit of the arbitrator’s powers. This is because an insurance policy itself may expand the issues subject to arbitration beyond those required by statute. (See, for example, Rangel v. Interinsurance Exchange (1992) 4 Cal.4th 1, 11 [a policy provision requiring arbitration of disputes ‘as to the amount payable hereunder’ requires arbitration of coverage disputes, including the amount of a

worker compensation offset]; Pelger v. California Casualty Indemnity Co. (1980) 104 Cal.App.3d 861 [under an uninsured motorists insurance policy providing for arbitration if the parties cannot “agree as to the amount payable,” the arbitrator, not the court, determines the scope and amount of coverage]; Members Ins. Co. v. Felts (1974) 42 Cal.App.3d 617 [issues of insurable interest and waiver of uninsured

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motorist coverage are arbitrable]; Orpustan v. State Farm Mut. Auto. Ins. Co. (1972) 7 Cal.3d 988 [an arbitrator may determine whether “physical contact” occurred between the insured’s vehicle and the uninsured vehicle]; Felner v. Meritplan Ins. Co. (1970) 6 Cal.App.3d 540 [same]; Fisher v. State Farm Mut. Auto. Ins. Co. (1966) 243 Cal.App.2d 749, 750 [an arbitration clause that covers disputes “as to the amount payable hereunder” authorizes the arbitrator to resolve disputes under a policy’s medical payments coverage]; Jordan v. Pacific Auto. Ins. Co. (1965) 232 Cal.App.2d 127 [in an uninsured motorist coverage arbitration hearing, the arbitrator has authority to determine not just liability of the uninsured motorist and the insured, but whether the uninsured motorist was, in fact, uninsured]; Wallace v. Farmers Ins. Group (1986) 177 Cal.App.3d 735 [issues of stacking and waiver of right to greater coverage are beyond the scope of even a “broad” agreement to arbitrate disputes concerning “the amount of payment due” under an uninsured motorist provision]; Pagett v. Hawaiian Ins. Co. (1975) 45 Cal.App.3d 620 [preliminary question of whether an arbitration agreement exists should be determined by the court].)

There is no controversy if the limits are exhausted and offered. However, if there is a refusal to pay the limits prior to the arbitration, then the arbitrator has a right to decide: (1) whether the policyholder is

legally entitled to collect damages from the uninsured motorist, or (2) the amount of such damages. Thus, the arbitrator can award the full value of the case but could only enforce payment of the UM/UIM limits under the policy.

In most cases you should file a motion with the court or the arbitrator to prevent the policy limits from being mentioned to the arbitrator. I strongly suggest that you file the motion and send it to the arbitrator prior to the hearing and notify the defense counsel that until there is a ruling on the issue, you demand that no mention of the limits be made to the arbitrator. Such a motion will prevent the arbitrator from being affected – either consciously or subconsciously – by the policy limit. You can thereby assure that the arbitration award is based on the total damages incurred, unaffected by the policy limit. Once the award is rendered, you can then provide the policy limit information to the arbitrator for purposes of rendering a judgment for the recoverable policy benefits based on the arbitration award. ■

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