

INSURANCE UPDATE

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California Law – Automobile Insurance – Uninsured Motorists Coverage

**Cost-Shifting Provisions Of CCP §998 Apply To Uninsured Motorist Arbitrations And May Result In Recovery In Excess Of Policy Limits**

By David P. Borovsky and Howard M. Garfield

*Pilimai v. Farmers Insurance Exchange Company* – 06 CDOS 6237, Supreme Court of California, July 13, 2006.

After being injured in an automobile accident with an uninsured driver, the insured filed a petition to compel arbitration under the uninsured motorist coverage provisions of his automobile insurance policy, issued by Farmers. During arbitration, the insured made a demand for settlement of \$85,000 to Farmers, under California Code of Civil Procedure §998. The underinsured motorist limit in the Farmers policy was \$235,000. At the conclusion of the arbitration, the insured was awarded damages of \$556,972.

Both parties filed petitions to confirm the arbitration award. The insured argued that he was entitled to the policy limit (\$235,000) plus: (1) the costs he was entitled to under the cost-shifting provisions of CCP §998; and (2) prejudgment interest. Farmers argued that it was only obligated to pay its policy limit of \$235,000, and nothing more. In support of this argument, Farmers cited Insurance Code section 11580.2(p)(2), which provides that an uninsured motorist insurer's maximum liability after an arbitration award "shall

not exceed the insured's underinsured motorist coverage limits".

The California Supreme Court disagreed with both Farmers and the insured. First, the Court held that the insured was not entitled to recover prejudgment interest. Per California Civil Code §3291, prejudgment interest is recoverable only in actions brought to recover damages for "personal injury sustained by any person resulting from or occasioned by the tort of any other person", and an arbitration proceeding brought by an insured against his insurer was not such an action.

Second, the Court held that, where an insurer declines a CCP §998 offer and the insured obtains a more favorable arbitration award, the insured may recover the costs authorized by that Code section, even if the insurer ultimately pays more than its "maximum liability" under Insurance Code §11580.2.

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