

# California Insurance Coverage Law Alert

## Underinsured Motorist Insurer May Not Rely On Unlisted Statutory Exclusion

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California's uninsured and underinsured motorist ("UIM") coverage statute, Insurance Code §11580.2, contains a number of statutory exclusions to UIM coverage. One of them is in subdivision (c)(2) which states that "the insurance coverage provided for in this section does not apply either as primary or as excess coverage: [¶]...[¶] (2) To bodily injury of the insured while in or upon or while entering into or alighting from a motor vehicle other than the described motor vehicle if the owner thereof has insurance similar to that provided in this section."

Benjamin White was injured in a traffic collision while riding as a passenger in a vehicle being operated by Scott Tortora. Progressive Choice Insurance Company provided UIM coverage which described the vehicle in which White was riding as an insured vehicle. By contrast, the UIM coverage issued by the Californian State Automobile Association did not describe that vehicle as an insured automobile.

After settling with an underinsured motorist, White presented his UIM claim to both Progressive and CSAA, since that settlement did not compensate him in full for his injury. After CSAA denied coverage, Progressive settled the UIM claim in full and sought contribution from CSAA.

CSAA denied coverage on the basis of subdivision (c)(2) because Progressive was the insurer of the vehicle in which White was riding and because Progressive had UIM insurance for the accident. However, while CSAA listed a number of the statutory UIM exclusions to coverage in its policy, it did not expressly include (c)(2) among those exclusions.

In Progressive Choice Ins. Co. v. California State Automobile Association Inter-Insurance Bureau (2013) \_\_ Cal.App. 4th \_\_\_, No. D242429, the Court of Appeal held that CSAA could not enforce the statutory exclusion since it was not among those listed in the policy. While CSAA may enforce unlisted statutory exclusions when the required minimum "default" coverage is provided (i.e., \$15,000 per person/\$30,000 per accident), it may not enforce unlisted statutory exclusions when it provides coverage with limits in amounts in excess of the minimum default coverage limits required by the statute. CSAA elected to incorporate certain of the statutory exclusions, but not (c)(2). "Having chosen not to include such exclusionary language, it cannot now invoke the statutory exclusion."



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