

1-1961

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Recommended Citation

Robert S. Chadwick and Marcel B. Poche, *California's Uninsured Motorist Statute: Scope and Problems*, 13 HASTINGS L.J. 194 (1961).
Available at: https://repository.uchastings.edu/hastings_law_journal/vol13/iss2/4

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California's Uninsured Motorist Statute: Scope and Problems

By ROBERT S. CHADWICK[°] and MARCEL B. POCHE[†]

SECTION 11580.2 of the California Insurance Code as amended in 1961 requires that all automobile bodily injury liability insurance policies issued or delivered in this state shall include provisions for "uninsured motorist" coverage, insuring for sums which the insured is legally entitled to recover as damages for bodily injury from the owner or operator of an uninsured motor vehicle.

The purpose of this article is to examine the provisions of this statute and to discuss some of the problems it poses.¹

Purpose

California's Financial Responsibility Law,² not being a compulsory insurance program, allows every motorist one accident before he must prove his ability to pay the damages he may cause. To take the risk out of the first accident situation insofar as the innocent victim is concerned and to protect him in other cases against uninsured or financially irresponsible motorists, California first enacted in 1959 the Uninsured Motorists Law as a "temporary solution."³

Policies Covered

All automobile bodily injury liability insurance policies issued or delivered in California to the owner or operator of a motor vehicle and all policies issued or delivered by any insurer licensed in this state upon

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¹ See generally, Ward, *New York's Motor Vehicle Accident Indemnification Corporation: Past, Present and Future*, 8 BUFFALO L. REV. 215 (1959); Ward, *The Uninsured Motorist: National and International Protection Presently Available and Comparative Problems in Substantial Similarity*, 9 BUFFALO L. REV. 283 (1960); Murphy & Netherton, *Public Responsibility and the Uninsured Motorist*, 47 GEO. L.J. 700 (1959); Morgenbesser, *Some Legal Aspects of the New York Uninsured Motorist Coverage*, 399 INS. L.J. 241 (1956); Cheek, *Recovery Procedure Under the Uninsured Motorist Coverage of the Family Liability Policy*, 454 INS. L.J. 723 (1960); Annot., 79 A.L.R.2d 1252 (1961).

² CAL. VEH. CODE §§ 16000-503.

³ Assembly Interim Committee Reports, Vol. 20, No. 6, April 1959.

any motor vehicle principally used or garaged here are subject to the requirements of the uninsured motorist law. If a policy is issued without such a provision the insurer will nevertheless be held to the coverage prescribed⁴ unless an appropriate waiver agreement has been executed.

Despite the broad scope of the language "issued or delivered in this state," it is apparent that many motorists living and driving in California are not included, *e.g.*, residents who have recently moved to this state whose presently effective policies were issued to them while they were domiciled elsewhere. The statute applies to policies issued or delivered after September 15, 1961,⁵ so that an accident occurring after that date, may or may not come within the protection of the section depending upon the issuance date of the policy. If a policy was issued before September 15, 1961, the provisions of the 1959 uninsured motorist law may apply.⁶

Classes of Individuals Protected

The insured fall into three groups.

First: "[T]he named insured and the spouse of the named insured and relatives of either *while* residents of the same household while occupants of a motor vehicle *or otherwise*."⁷ [Emphasis added.]

It has been pointed out elsewhere⁸ that under the "*while* residents" clause, coverage could be established for a relative who at the time of the accident was spending the summer in the home of the named insured, whereas coverage might be denied to a son away at school; consequently, a change in language from "while" to "if permanent" is appropriate.

"Or otherwise" emphasizes that members of this group are protected in any capacity including that of pedestrians.

Because of the inexplicit phraseology of the statute some question may arise as to whether the spouse of the named insured must reside in the same household as the named insured in order to receive the broad "motor vehicle or otherwise" protection. The better interpretation appears to be that the spouse, too, must be a resident of the house-

⁴ *Wildman v. Government Employees Ins. Co.*, 48 Cal. 2d 31, 307 P.2d 359 (1957).

⁵ CAL. CONST. art. IV, § 1, provides that non-urgency acts passed by the legislature shall go into effect ninety days after the final adjournment of the session of the legislature that passed the act. The 1961 regular session adjourned on June 16, 1961.

⁶ See generally, the excellent discussion of the 1959 California Uninsured Motorist Law in 48 CALF. L. REV. 516 (1960).

⁷ CAL. INS. CODE § 11580.2(2)(b).

⁸ *Morgenbesser, Some Legal Aspects of the New York Uninsured Motorists Coverage*, 399 INS. L.J. 241, 243 (1956).

hold of the named insured because otherwise it is difficult to explain: (a) why in defining "insured motor vehicle"⁹ the statute requires the spouse to be a resident of the household, or (b) the use of the phrase "same household" when talking of the relatives of "either," or (c) the second "while" phrase which must apply both to the spouse and to "residents" in order to give meaning to the clause.

Second, any other person while in or upon or entering into or alighting from an "insured motor vehicle" is protected.¹⁰ An insured motor vehicle is defined as a motor vehicle used by the named insured or with his permission or consent which is either the motor vehicle described in the insurance policy or a temporary substitute or a newly acquired automobile for which liability coverage is provided in the policy. Also included in the definition are any other automobiles not owned by the named insured or any resident of his household but which are being operated by the named insured or his spouse if she is a resident of the same household. Public and livery vehicles are specifically excluded.¹¹

The third class of insured, added by the 1961 amendment, includes any person with respect to damages he is entitled to recover because of bodily injury to which the policy provisions or endorsement apply.¹² This addition provides protection to a parent for the loss of services of his child, and to a husband for loss of services of his wife¹³ and as such constitutes a considerable broadening of the statutory definition of bodily injury.

Protection Afforded

The insured motorist coverage while not guaranteeing recovery in all accidents is in the nature of a suretyship. The insured is protected to the extent that he "shall be *legally entitled* to recover as damages for bodily injury from the owner or operator of an uninsured motor vehicle," *i.e.*, to the extent that the insured could have recovered in a court of law had the tortfeasor not been uninsured.¹⁴ Hence, in order to invoke the protection of the section the insured must show that there is a tortfeasor legally liable to him and that said tortfeasor was the owner or operator of an uninsured motor vehicle. An uninsured motor vehicle is defined by inclusion and exclusion.

⁹ CAL. INS. CODE § 11580.2(2)(b).

¹⁰ CAL. INS. CODE § 11580.2(2)(b).

¹¹ CAL. INS. CODE § 11580.2(2)(b).

¹² CAL. INS. CODE § 11580.2(2)(b).

¹³ *But see* West v. City of San Diego, 54 Cal. 2d 469, 353 P.2d 929 (1960), (no right to recover for loss of consortium).

¹⁴ CAL. INS. CODE § 11580.2(2)(a). Nothing in the statute restricts liability to that resulting from negligence.

What Is an Uninsured Motor Vehicle

"[A] motor vehicle with respect to the ownership, maintenance or use of which there is *no* bodily injury liability insurance or bond applicable at the time of the accident or there is such applicable insurance but the company writing the same denies coverage,"¹⁵ is an uninsured motor vehicle.

The latter phrase when read in conjunction with the payment provisions of the statute¹⁶ makes evident the legislative intent that the insured should not be forced to sue the tortfeasor in order to recover damages: if the tortfeasor's carrier denies coverage, the injured insured may invoke the uninsured motorist provisions of his own policy. It is submitted however that the definition of uninsured motor vehicle as one with respect to which there is "no" insurance applicable at the time of the accident may cause undue hardship not in keeping with the purpose of the statute. If the tortfeasor, a resident of another state, carries only 5,000 dollars bodily injury liability insurance then the injured insured whose hospital bills exceed 10,000 dollars is afforded no protection under his uninsured motorist endorsement.

An uninsured motor vehicle includes also stolen vehicles: "[A] motor vehicle used without the permission of the owner if there is no insurance applicable at the time of the accident with respect to the owner or operator thereof."¹⁷

Vehicles involved in "hit and run" accidents where the owner or operator is unknown qualify as uninsured motor vehicles only if three requirements are satisfied:

1) the bodily injury must arise out of *physical contact* of the automobile with the insured or with an automobile which the insured is occupying,

2) the insured must report the accident within twenty-four hours to the police,

3) the insured must file a statement under oath with the insurer that the insured has a cause of action arising out of such accident against a person or persons whose identity is unascertainable.¹⁸

While the second and third prerequisites effectively lessen the possibilities of spurious claims, the impact requirement goes beyond the precaution necessary. This emphasis on the "hit" in "hit and run" situations prevents recovery in a common type accident where there is likely to be an uninsured motorist and a substantial amount of injury:

¹⁵ CAL. INS. CODE § 11580.2(2)(b).

¹⁶ CAL. INS. CODE § 11580.2(2)(g).

¹⁷ CAL. INS. CODE § 11580.2(2)(b).

¹⁸ CAL. INS. CODE § 11580.2(2)(b).

the non-impact accident caused by one who flees the scene. For example: A, an uninsured motorist driving a stolen car while intoxicated careens over the center line of a highway and B, travelling in the opposite direction, swerves to avoid a head-on collision. As a result B's car rolls off the road and B and his passengers are severely injured. Thirty visiting bishops observe the entire event but none of them remembers the license number of A's automobile. Because there was no contact with the hit-run vehicle neither B nor his passengers may invoke the protection of the uninsured motorist clause. To prevent this absurd result without opening the door to false claims, the statute should provide for alternatives to impact, e.g., sworn statements by disinterested witnesses.

It should be emphasized that not only must there be physical contact but that such contact must be with the uninsured motor vehicle. The recent New York decision of *Application of Bellavia*¹⁹ exemplifies judicial interpretation of a similar statute; it was held that a pedestrian who had been struck by a Chevrolet which had been parked at the curb until it had been pushed into him by a stolen Ford driven by a hit and run driver was not entitled to protection because there was no contact with the uninsured motor vehicle.

What Is Not an Uninsured Motor Vehicle

In addition to specifying what is an uninsured motor vehicle, the statute also spells out what is not. Accidents caused by the following prevent an insured from invoking uninsured motorist coverage:

1) Autos owned by the named insured or any resident of the same household.²⁰ As a result of this exclusion, not only is a husband prevented from recovering under his policy if run over by his wife's car but he is similarly precluded if the car which caused the accident is owned by any resident of his household, not merely resident relatives. Consider the situation of a non-relative living in the household (e.g., an exchange student who owns a car and carries uninsured motorist protection). If he is injured by an uninsured car driven by any member of the household he cannot invoke the protection of his own policy because for the purposes of the statute he was not hit by an uninsured motor vehicle.

2) An auto owned by self-insured within the meaning of the safety responsibility law of the state in which the auto is registered.²¹

¹⁹ 211 N.Y.S.2d 356 (1961).

²⁰ CAL. INS. CODE § 11580.2(2)(b).

²¹ CAL. INS. CODE § 11580.2(2)(b).

3) An auto owned by the U.S., Canada, a state or political subdivision of any such government or any agency of the foregoing.²²

4) A land motor vehicle or trailer operated on rails or crawler treads.²³

5) A land motor vehicle or trailer while located and used as a residence.²⁴

6) Farm tractors or equipment designed for use principally off public roads except when on public roads.²⁵

Extent of Protection

Coverage for property damage is specifically excluded.²⁶ Bodily injury is defined as including sickness or disease including death resulting therefrom.²⁷

Coverage must be at least equal to the financial responsibility requirements of section 16059 of the California Vehicle Code: *i.e.*, not less than 10,000 dollars for bodily injury or death of one person and not less than 20,000 dollars for bodily injury or death of two or more persons in any one accident.

Any loss payable under the terms of the coverage to or for any person may be reduced:

- 1) By the amount paid and the present value of all amounts payable to him under any workmen's compensation law exclusive of nonoccupational disability benefits;
- 2) By the amounts paid or due to be paid under any valid and collectable automobile medical payment insurance available to the insured,
- 3) By the amount the insured is entitled to recover from any other person insured under the underlying liability insurance policy of which the uninsured motorist endorsement or coverage is a part.²⁸

Under the third clause some question may arise as to the time of determination that the insured is "entitled" to recover from another insured under the same policy. The answer appears earlier in subsection 2(g) which provides that payment shall not be delayed or made contingent upon the "decisions as to liability or distribution of loss costs under other bodily injury liability insurance or any bond applicable to the accident." So, if A is a passenger in B's car in an accident in which B is intoxicated and C, the driver of the other car is not only intoxicated but is also uninsured, A may recover under B's uninsured

²² CAL. INS. CODE § 11580.2(2)(b).

²³ CAL. INS. CODE § 11580.2(2)(b).

²⁴ CAL. INS. CODE § 11580.2(2)(b).

²⁵ CAL. INS. CODE § 11580.2(2)(b).

²⁶ CAL. INS. CODE § 11580.2(2)(c).

²⁷ CAL. INS. CODE § 11580.2(2)(b).

²⁸ CAL. INS. CODE § 11580.2(2)(g).

motorist coverage. If A later sues B and recovers judgment for bodily injury, B's carrier is entitled to subtract from the amount due under the judgment, the amount previously paid to A under the uninsured motorist clause.

Subrogation and Multi-party Accidents

"The insurer paying a claim under an uninsured motorist endorsement or coverage shall be entitled to be subrogated to the rights of the insured to whom such claim was paid against *any person* causing such injury or death to the extent that payment was made."²⁹ [Emphasis added.]

This provision in no way extends the applicable statute of limitations for personal injuries. Insurers must see to it that actions are filed within one year from the date of the accident.

By implication, the subrogation against "*any person*" makes clear that in multi-car accidents in which there is at least one uninsured motor vehicle³⁰ the insured may elect to collect under his own policy rather than under the liability policy of one of the insured tortfeasors. In other words, if there is an uninsured motor vehicle involved in an accident an insured can make a claim under the uninsured motorist coverage even though there may also be an insured or financially responsible other party. Subsection 2(g) makes this more certain by providing that "payment to an insured shall not be delayed or made contingent upon the decisions as to liability under other bodily injury liability insurance applicable to the accident."³¹

Arbitration

The policy or an endorsement added thereto shall provide that the determination as to whether the insured shall be *legally entitled to recover damages*, and if so entitled the amount thereof shall be made by agreement between the insured and the insurer or, in the event of disagreement, by arbitration.³² [Emphasis added.]

The phrase "legally entitled to recover damages" is precisely the same language used in subsection 2(a) which provides that the policy insures the insured for all sums which he shall "be legally entitled to recover as damages for bodily injury from the owner or operator of an uninsured motor vehicle." Accordingly, the phrase as used in 2(e)

²⁹ CAL. INS. CODE § 11580.2(2)(f).

³⁰ Of course, the owner or operator must be "legally liable" to the insured.

³¹ CAL. INS. CODE § 11580.2(2)(g).

³² CAL. INS. CODE § 11580.2(2)(e). See generally, Aksen, *Uninsured Motorist Coverage: A Guide to MVAIC and Arbitration*, 15 ARB. J. (n.s.) 166 (1960).

may be limited to the issues concerning the uninsured tortfeasor's legal liability to the insured. Questions concerning the interpretation or applicability of the uninsured motorist endorsement itself, such as whether the tortfeasor was uninsured may not fall within the compulsory arbitration clause. Unfortunately there is no authoritative answer; the courts of the only state to have considered the problem have reached differing results in construing policy provisions identical with those required by this state. Specifically, the determination of whether there is an uninsured motor vehicle has been held to be a condition precedent to arbitration³³ and a proper matter for arbitration.³⁴

Waiver

Coverage is not compulsory. The insurer and any named insured may by agreement in writing delete the uninsured motorist provision and such agreement is binding on every insured to whom the policy applies.³⁵

Under the 1959 version of this act, waiver could be accomplished only by "supplemental" agreement.³⁶ Deletion of the word "supplemental" may validate waiver clauses in the policy itself but the safer practice for insurers would be to continue to require a prior written waiver signed by the named insured.

Limitation of Actions

The 1961 amendment removes whatever doubt there was as to the applicable statute of limitations.³⁷ Within one year from the date of the accident the insured must take one of three courses in order to perfect his cause of action under the policy:

- 1) File suit for bodily injury against the uninsured motorist;
 - 2) conclude an agreement as to the amount due under the policy;
- and
- 3) formally institute arbitration proceedings.³⁸

This subsection merely sets the outside limits for action by the insured and does not prevent the insurer from requiring reasonable notice

³³ *Mitkewicz v. Travelers Ins. Co.*, 22 Misc. 2d 637, 198 N.Y.S.2d 101 (1960).

³⁴ *Application of Travelers Indem. Co.*, 26 Misc. 2d 513, 205 N.Y.S.2d 741 (1960), *reversed on other grounds* 13 App. Div. 2d 507, 212 N.Y.S.2d 427 (1961).

³⁵ CAL. INS. CODE § 11580.2(2)(a).

³⁶ CAL. INS. CODE § 11580.2(a).

³⁷ Comment, 48 CALIF. L. REV. 516, 531, 532 (1960); *Panel Discussion of Association of Defense Counsel* (mimeographed) *Fall Meeting, 1960: Uninsured Motorist Coverage Problems*, Chase, 56.

³⁸ CAL. INS. CODE § 11580.2(2)(h). The determination of what constitutes formal institution of arbitration will depend upon the type of arbitration called for in the policy provisions.

within the one year period. An opposite conclusion would have the effect of allowing the insured to institute arbitration proceedings on the last day of the one year period of limitations and thus cut off all subrogation rights of the insurer against the uninsured tortfeasor if the insured had not filed suit.

Estoppel

Despite the literal conclusiveness of the one year period specified, recent decisions indicate that insurers may find themselves estopped to plead the statute if instead of promptly rejecting a claim they lull the insured into a sense of security that his claim will be determined by appraisers.³⁹

Other Insurance

No coverage is provided under the policy of an insured when he is injured in a motor vehicle other than the one described in his policy if the owner of the vehicle also has "similar" insurance; that is, the owner's carrier is liable.

The ambiguity of the word "similar" may provide difficulties, e.g., if the owner of the automobile has an uninsured motorist policy issued in another state that provides for a maximum bodily injury liability of 5,000 dollars per person and does not provide for arbitration is the protection "similar"?⁴⁰

In other situations where the insured has insurance available to him under more than one uninsured motorist provision the amended statute now allows the insurers to provide in the policy for proration.

Suits by Insured

If the insured makes any settlement with or prosecutes to judgment any action against any person who may be legally liable for bodily injury of the insured without the written consent of the insurer, the uninsured motorist coverage does not apply.

A similar policy provision has been dealt with harshly by a 1961 decision of the Supreme Court of South Carolina, *Childs v. Allstate Ins. Co.*⁴¹ There Allstate after investigation of a collision in which its insured, Childs, had been involved, determined that Childs had been at fault and settled with the other party who was uninsured. After

³⁹ *Gallagher v. Government Employees Ins. Co.*, 12 App. Div. 2d 981, 212 N.Y.S.2d 575 (1961); *Royal Indem. Co. v. McMahon*, 23 Misc. 2d 715, 200 N.Y.S.2d 951 (1960); *Merchants Mut. Cas. Co. v. Wildman*, 21 Misc. 2d 1073, 197 N.Y.S.2d 925 (1960).

⁴⁰ See generally Ward, *The Uninsured Motorist: National and International Protection Presently Available and Comparative Problems in Substantial Similarity*, 9 *BUFFALO L. REV.* 283 (1960).

⁴¹ 237 S.C. 455, 117 S.E.2d 867 (1961).

Child's claim under the uninsured motorist provision of his policy was refused he notified Allstate that he was instituting suit against the uninsured motorist. Childs obtained default judgment for 1500 dollars without the permission of Allstate and then he recovered judgment against Allstate. On appeal Allstate claimed it had no liability since it had not given permission to Childs to recover judgment against the other party.

The court stated emphatically that Allstate was simply in no position to invoke this provision of the policy; because when an insurance company denies all liability, an action at law is maintainable to recover the amount of damages which the insured would be entitled to recover if the company had performed its part of the contract.

Statutory Language

A mere cursory reading of the complete statute as set forth in Appendix A illustrates a disturbing use of statutory language: the repeated use of "motor vehicle" and "automobile" as equivalents. The general provisions cover insurance on "any motor vehicle"⁴² yet many of the definitions speak only in terms of "automobiles." For example, subsection 2(b) defines an uninsured motor vehicle as not including "an automobile" owned by the named insured. Other examples of this have been highlighted in the appendix by use of italicized print.

Conclusion

It is evident from the foregoing that the 1961 version of the California Uninsured Motorist Law is both an effective attempt to solve the problem of financially irresponsible motorists and a considerable improvement in the earlier law. The problems that remain in interpretation and extension of coverage are minuscule in comparison with the problems that faced the innocent victims of uninsured motorists before the enactment of this legislation.

APPENDIX A

INSURANCE—UNINSURED MOTORIST COVERAGE

CHAPTER 1189

An act to repeal Section 11580.2 of, and to add Section 11580.2 to, the Insurance Code, relating to uninsured motorist coverage.

The people of the State of California do enact as follows:

Section 1. Section 11580.2 of the Insurance Code is repealed.

Sec. 2. A new Section 11580.2 is added to said code, to read:

11580.2.

(a) Required policy provisions or endorsement. No policy of bodily injury lia-

⁴² CAL. INS. CODE § 11580.2(2)(a).

bility insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be issued or delivered in this State to the owner or operator of a motor vehicle, or shall be issued or delivered by any insurer licensed in this State upon any motor vehicle then principally used or principally garaged in this State, unless the policy contains or has added to it by endorsement, a provision with coverage limits at least equal to the financial responsibility requirements specified in Section 16059 of the Vehicle Code insuring the insured or his legal representative for all sums within such limits which he shall be legally entitled to recover as damages for bodily injury from the owner or operator of an uninsured motor vehicle. The insurer and any named insured may by agreement in writing delete the provision covering damage caused by an uninsured motor vehicle. Such deletion by any named insured shall be binding upon every insured to whom such policy or endorsement provisions apply. A policy shall be excluded from the application of this section if the only coverage with respect to the use of any motor vehicle is limited to the contingent liability arising out of the use of nonowned motor vehicles.

(b) Definitions. As used in (a) above "bodily injury" includes sickness or disease, including death, resulting therefrom; the term "named insured" means only the individual or organization named in the declarations of the policy of motor vehicle bodily injury liability insurance referred to in (a) above; as used in (a) above the term "insured" means the named insured and the spouse of the named insured and relatives of either while residents of the same household while occupants of a motor vehicle or otherwise and any other person while in or upon or entering into or alighting from an insured motor vehicle and any person with respect to damages he is entitled to recover for care or loss of services because of bodily injury to which the policy provisions or endorsement apply; the term "insured motor vehicle" means the motor vehicle described in the underlying insurance policy of which the uninsured motorist endorsement or coverage is a part, a temporary substitute or a newly acquired *automobile* for which liability coverage is provided in the policy if the motor vehicle is used by the named insured or with his permission or consent, express or implied, and any other *automobile* not owned by the named insured or any resident of the same household while being operated by the named insured or his spouse if a resident of the same household, but the term "insured motor vehicle" shall not include any *automobile* while used as a public or livery conveyance. The term "uninsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance or use of which there is no bodily injury liability insurance or bond applicable at the time of the accident, or there is such applicable insurance or bond but the company writing the same denies coverage thereunder, or a motor vehicle used without the permission of the owner thereof if there is no bodily injury liability insurance or bond applicable at the time of the accident with respect to the owner or operator thereof, or the owner or operator thereof be unknown, provided that, with respect to an "uninsured motor vehicle" whose owner or operator is unknown:

(1) The bodily injury has arisen out of physical contact of such *automobile* with the insured or with an *automobile* which the insured is occupying,

(2) The insured or someone on his behalf shall have reported the accident within 24 hours to the police department of the city where the accident occurred or, if the accident occurred in unincorporated territory then either to the sheriff of the county where the accident occurred or the local headquarters of the California Highway Patrol, and have filed with the insurer within 30 days thereafter a statement under oath that the insured or his legal representative has a cause of action arising out of such accident for damages against a person or persons whose identity is unascertainable and set forth facts in support thereof. The term "uninsured motor vehicle" shall not include an *automobile* owned by the named insured or any resident of the same household or self-insured within the meaning of the safety responsibility law of the state in which the motor vehicle is registered or which is owned by the United States of America, Canada, a state or political subdivision of any such government or an agency of any of the foregoing,

or a land motor vehicle or trailer operated on rails or crawler-treads or while located for use as a residence on premises and not as a vehicle, or a farm type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

(c) Exemptions. The insurance coverage provided for in this section does not apply:

(1) To property damage sustained by the insured

(2) To bodily injury of the insured while in or upon or while entering into or alighting from an *automobile* other than the described *automobile* if the owner thereof has insurance similar to that provided in this section.

(3) To bodily injury of the insured with respect to which the insured or his representative shall, without the written consent of the insurer, make any settlement with or prosecute to judgment any action against any person who may be legally liable therefor.

(4) In any instance where it would inure directly or indirectly to the benefit of any workmen's compensation carrier or to any person qualified as a self-insurer under any workmen's compensation law.

(5) To establish an exemption as provided in subdivisions (a), (b), and (c) of Section 16057 of the Vehicle Code.

(d) Multiple coverages. Subject to paragraph (c) (2), the policy or endorsement may provide that if the insured has insurance available to him under more than one uninsured motorist coverage provision, any damages shall not be deemed to exceed the higher of the applicable limits of the respective coverages, and such damages shall be prorated between the applicable coverages as the limits of each coverage bears to the total of such limits.

(e) Agreement as to recovery; arbitration. The policy or an endorsement added thereto shall provide that the determination as to whether the insured shall be legally entitled to recover damages, and if so entitled, the amount thereof, shall be made by agreement between the insured and the insurer, or in the event of disagreement, by arbitration.

(f) Subrogation. The insurer paying a claim under an uninsured motorist endorsement or coverage shall be entitled to be subrogated to the rights of the insured to whom such claim was paid against any person causing such injury or death to the extent that payment was made.

(g) Reimbursement of Insured. An insured entitled to recovery under the uninsured motorist endorsement or coverage shall be reimbursed within the conditions stated herein without being required to sign any release or waiver or rights to which he may be entitled under any other insurance coverage applicable; nor shall payment under this section to such insured be delayed or made contingent upon the decisions as to liability or distribution of loss costs under other bodily injury liability insurance or any bond applicable to the accident. Any loss payable under the terms of the uninsured motorist endorsement or coverage to or for any person may be reduced:

(1) By the amount paid and the present value of all amounts payable to him under any workmen's compensation law exclusive of nonoccupational disability benefits.

(2) By the amounts paid or due to be paid under any valid and collectable *automobile* medical payment insurance available to the insured.

(3) By the amount the insured is entitled to recover from any other person insured under the underlying liability insurance policy of which the uninsured motorist endorsement or coverage is a part.

(h) Limitation of actions. No cause of action shall accrue to the insured under any policy or endorsement provision issued pursuant to this section unless within one year from the date of the accident:

(1) Suit for bodily injury has been filed against the uninsured motorist, in a court of competent jurisdiction, or

(2) Agreement as to the amount due under the policy has been concluded, or

(3) The insured has formally instituted arbitration proceedings.