

**MANDATORY UM UIM  
SETTLEMENT  
OFFERS AND DEADLINES**

**FOR THE 50 STATES AND DISTRICT OF COLUMBIA**

**NOVEMBER 2013**



**Eagle**  
International Associates

**PREPARED BY:  
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## EAGLE INTERNATIONAL ASSOCIATES, INC.

November 2013

Dear Clients:

It is with great pleasure that Eagle International Associates, Inc. presents its ***Mandatory UM UIM Settlement Offers and Deadlines For the 50 States and District of Columbia*** booklet. Eagle members from all states contributed to this publication. It is an example of the collective efforts of Eagle providing both service and benefits to clients. We hope that you will find this booklet informative and useful in your respective practices and businesses. We invite you to contact any Eagle member with questions or comments.

With Best Wishes,

The Members of Eagle International Associates, Inc.

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State	Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?
Alabama	No
Alaska	No. Alaska law <i>Alaska Stat. Ann. § 28.20.445</i> (Chapter 20 of the Motor Vehicle Law) covers both Uninsured and Underinsured motorists. Some sections of Chapter 22 also cover UIM's. The statutes do not require that a carrier make an offer to settle the UIM claim as soon as they have enough information- No.
Arizona	Per the fair claims act, the carrier is required to gather information and adjuster the claim as the facts require. The carrier cannot wait on the underlying tort case to resolve. All the UIM carrier is entitle is the credit for the underlying policy limits. See, <i>Country Mutual v Fonk</i> 198 Ariz 167, 7 P3d 973 (App 2000).
Arkansas	Underinsured motorist carriers have no obligation to pay underinsured motorist benefits until the tortfeasor's liability coverage limits are "paid in full." E.g., <i>Hartford Ins. Co. v. Mullinax</i> , 336 Ark. 335, 984 S.W.2d 812 (1999); <i>State Farm Mut. Automobile Ins. Co. v. Thomas</i> , 316 Ark. 345, 871 S.W.2d 571 (1994). Thus, underinsured motorist carriers are not subject to penalties for refusing to pay underinsured benefits prior to the liability carrier's payment of policy limits.  Uninsured motorist claims, on the other hand, are to be paid within a reasonable time following the insured's notice of the claim regardless of the status of the underlying claim. <i>Farm Bureau Mut. Ins. Co. v. Mitchell</i> , 249 Ark. 127, 458 S.W.2d 395 (1970). Failure to do so may result in imposition of a 12% penalty and attorney's fees pursuant to Ark. Code Ann. § 23-79-208 should the insured prevail in an action to recover underinsured benefits. <i>Id.</i>

Is it a requirement that a settlement check be sent with any offer?	Contact for Information
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No. The carrier is not required to pay the amount offered (claimed undisputed amount) in a UM or UIM context. See, <i>Voland v Farmers Ins Co</i> 189 Ariz 448, 943 P2d 808 (App 1997). Some carriers nevertheless do pay what it believe the value and arbitrate the remained under a liberal reading of <i>Borland v Safeco</i> 147 Ariz 195, 709 P2d 552 (App 1985).	Jack Storer Swenson, Storer, Andrews & Frazelle 602-776-5690 jstorer@swensonlaw.com
A diligent search of Arkansas case law, statutory law, and insurance regulations reveals no authority requiring a settlement check be sent with any offer to settle an uninsured or underinsured motorist claim.	Jason Campbell Anderson, Murphy & Hopkins 501-372-1887 Campbell@amhfirm.net

State	Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?
California	<p><b>Yes for Uninsured Motorist Claim.</b> Under California law an insurer has a duty to effectuate settlement where liability is reasonable clear. They cannot wait for a demand or resolution of the underlying claim. <i>Du v. Allstate Ins. Co.</i> (9th Cir. 2012) 681 F.3d 1118.</p> <p><b>No for Underinsured Motorist Claim.</b> In California, UIM coverage does not apply to any bodily injury until the limits of the bodily injury liability policies applicable to all insured motor vehicles causing the injury have been exhausted by payment of judgments or settlements, and proof of the payment is submitted to the insurer providing the underinsured motorist coverage. Insurance Code 11580.2(p)</p> <p>If the underlying claim has not resolved, the insured driver cannot bring their underinsured motorist claim since “all applicable coverage” has not been “exhausted by payment of judgments or settlements.”</p>

Colorado	<p>Colorado’s UM/UIM statute, C.R.S. 10-4-609, has no stated requirement regarding when a settlement offer must be conveyed. However, a general principle of insurance law requires an insurer to act reasonably. The Colorado statute provides that UIM coverage is available on every claim where damages exceed the liability insurer(s) coverage. Therefore, unless there is a question as to the liability policy limits available, and absent policy language to the contrary, the UIM insurer can be expected to adjust the UIM regardless of the status of the underlying liability claim. However, the UIM insurer also has the right to intervene in the claimant’s underlying suit against the adverse driver, and will be bound by the verdict whether the insurer intervenes or not.</p>
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Is it a requirement that a settlement check be sent with any offer?	Contact for Information
<p>No. California requires that there be a settlement with the claimant first. As for partial payments the regulations state: “No insurer shall issue checks or drafts in partial settlement of a loss or claim that contain or are accompanied by language releasing the insurer, the insured, or the principal on a surety bond from total liability unless the policy or bond limit has been paid, or there has been a compromise settlement agreed to by the claimant and the insurer as to coverage and amount payable under the insurance policy or bond.” Section 2695.4(f) of California Code of Regulations</p> <p>There is no statutory or regulatory requirement that any settlement offer be paid in advance of the resolution of the claim. Claimant attorneys argue any settlement offer is an acknowledgement of the minimum value of the claim, and call the offer an “undisputed amount” which should be paid and the parties can litigate any additional amount claimed. The key is whether the insurer has calculated the claim to have a certain minimum value versus making an offer of compromise which takes into account the uncertainties of litigation and costs of defense.</p>	<p>Paul de Lorimier McKay, de Lorimier &amp; Acain 213-386-6900 pdelorimier@mdalaw.net</p> <p>Art Kutzer Senter Goldfarb &amp; Rice 303-320-0509 akutzer@sgrllc.com</p>

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**State**      **Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?**

**Colorado**  
*Continued*

**Connecticut**      No. In a UIM context, the underlying policy must be exhausted, but there is no requirement or statute which requires a UIM carrier to make an offer regardless of the status of the underlying claim.

**Delaware**      No. Delaware does not require that the UM/UIM carrier make an offer of settlement under the same bad faith analysis. The relevant Delaware Code is 18 Del. Code §3901.

**District of Columbia**      No

**Is it a requirement that a settlement check be sent with any offer?**      **Contact for Information**

Under C.R.S. § 10-3-1116, a separate cause of action exists for first party claimants and those seeking monies on behalf of a first party claimant (i.e., medical providers, UM, UIM, med pay, etc.) for statutory penalties for claims unreasonably delayed or denied. If payment of benefits is found to be unreasonably denied or delayed, the penalty is two times the amount of benefits denied or delayed, plus attorney fees and costs. This claim is in addition to damages available for breach of contract and bad faith.

No. C.G.S. Section 52-195c, however, requires the payment of the settlement funds within 30 days of the receipt of the settlement documents by the defendant, the defendant's attorney or agent or by the insurance carrier.

No settlement check is required to be sent with any offer.

No

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State	Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?
Florida	Under Florida law a UM/UIM carrier can be liable for bad faith for not settling before the tort case was settled. The Supreme Court said that the bad faith claim cannot be brought against the UM/UIM carrier until after settlement, but that the bad faith damages can include damages for actions taken before the tort case was settled. I am attaching hereto a copy of the Supreme Court's opinion on this issue, and I have marked certain paragraphs for your review.
Georgia	No. Georgia does not require that an Uninsured or Underinsured Motorist Carrier make an offer to settle an UIM claim, and thus does not require any settlement offer to be accompanied with a check.
Hawaii	No. Hawaii law <i>Haw. Rev. Stat. § 431:10C-301</i> (Article 10C of the Insurance Code) covers both Uninsured and Underinsured motorists.
Idaho	Yes, within 60 days or risk attorney's fees. Idaho law <i>Idaho Code Ann. § 41-1839</i> addresses awarding attorney's fees in UIM actions. The statute conveys to the insurance companies, in UIM actions, the obligation to pay within 60 days of proof of loss the amount that is justly due or they will risk attorney's fees in any subsequent action or arbitration.

Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Florida does not require that a settlement check be sent with any offer. Where there is a time limit demand, which the Defendant wishes to accept, they must do so by sending the check with the letter accepting the time limit demand. The acceptance of the time limit demand must be made and the money paid prior to the date the time limit demand expires.	Peter Miller Peter A. Miller & Associates 305-671-2980 pmiller@pmillerlaw.com
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No. <i>Martin v. State Farm Mut. Auto. Ins. Co.</i> , 138 Idaho 244, 247, 61 P.3d 601, 604 (2002) addresses this situation and explains: The purpose of the statute is to provide an incentive for insurers to settle just claims in order to reduce the amount of litigation and the high costs associated with litigation. This Court has held that the statutory attorney fee is not a penalty but is an additional sum rendered as compensation when the insured is entitled to recover under the insurance policy. . . Before a plaintiff may recover attorney fees under the statute, it must be shown that: (1) the insured has provided proof of loss as required by the insurance policy; and (2) the insurance company failed to pay an amount justly due under the policy within thirty days of such proof of loss.	John VanDenburgh Napierski, VanDenburgh, Napierski & O'Connor 518-862-9292 jwv@nvnolaw.com

**State**      **Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?**

**Illinois**      No. Illinois law 215 Ill. Comp. Stat. Ann. 5/143a addresses Uninsured Motorist Coverage and 143a-2 addresses Uninsured and Underinsured. Neither statute requires that a carrier make an offer to settle claims as soon as they have enough information and regardless of the status of the third party claim.

**Indiana**      No, and actually, the State of Indiana preserves the right of the insurer to withhold settlement pending a dispute over liability or coverage for the underlying claim. In Indiana, insurance companies have a duty to deal in good faith with the insured. *Erie Insurance Company v. Hickman*, 622 N.E.2d 515, 518 (Ind. 1993) (“Indiana law has long recognized that there is a legal duty implied in all insurance contracts that the insurer deal in good faith with its insured.”). However, insurance companies may, in good faith, dispute claims. *Id.* at 520. With respect to a UIM claim, an insurer may delay settlement of the claim pending a determination of underlying liability, as this will have a necessary effect with respect to coverage under the policy. *See Hopper v. Carey*, 810 N.E.2d 761, 766 (Ind. Ct. App. 2004) (holding that a court properly granted summary judgment on a bad faith claim when the insurer delayed payment on the claim pending a determination of liability against the alleged tortfeasor).

**Iowa**      In Iowa, an uninsured or underinsured motorist insurance company must act in good faith towards its insured, including making a settlement offer on the uninsured motorist claim as soon as it has sufficient information to adjust the claim. This is so whether or not the uninsured motorist’s liability has been adjudicated. Iowa Code §§ 516A.1 et. seq.; *Belleville v. Farm Bureau Mutual Insurance Company*, 702 N.W.2d 468 (2005).

**Is it a requirement that a settlement check be sent with any offer?**      **Contact for Information**

No. Illinois law 215 Ill. Comp. Stat. Ann. 5/155 prohibits “unreasonable delay” in settling a claim but contains no specific provision that a settlement check accompany an offer or that UM claims be settled as soon as the investigation is complete.

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No, the State of Indiana does not require the issuance of a settlement check with a settlement offer, either through statute or common law.

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In Iowa, there is no judicial or statutory requirement that a settlement check be sent with any settlement offer. Iowa Code § 507B.4(j), Unfair Claims Settlement Practices.

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State	Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?
Kansas	No
Kentucky	No
Louisiana	In Louisiana the failure to make a UM tender of undisputed amounts within thirty days of receipt of adequate proof of loss is bad faith “per se.” If it is owed, pay it within thirty days, even if negotiations or discussions appear to be ongoing as to a portion of the total amount. An enforceable lien may make a portion of the amount due “disputed” if there is active negotiations regarding the lien, but the balance is not. Once the amount of the lien is determined , it too becomes undisputed. A check for any undisputed portion should be tendered within thirty days without fail. A separate check for any portion known to be subject to an enforceable lien should be tendered, payable to both claimant and lien holder, unless there is a written agreement from plaintiff counsel for a different arrangement. See: McDill v. Utica Mutual Insurance Co., 475 So. 2d 1085 (La. 1985); LA: R.S. 22:1441
Maine	No. Beal v. Allstate Ins. Co., 989 A.2d 733 (Me. 2010); 24-A Maine Rev. Stat. §2902(1).
Maryland	No

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No	Shea Conley Reminger Co. 859-233-1311 Sconley@reminger.com
It should also be noted that In Demma v. Automobile Club Inter-Insurance Exchange, 15 So.3d 95 (La. 6/26/2009), the Louisiana Supreme Court held that when the Insurer made an unconditional tender to the Insured, the payment was “a tacit acknowledgment that interrupted prescription. The unconditional payment was tendered on November 8, 2006, after which date, prescription began to run anew.” Therefore, the two year prescriptive period, for a UM claim, began again after the payment to the Insured.	James Ryan James Ryan III & Associates 504-799-6330 jryan@ryan-law.us
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State	Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?
Massachusetts	No, but insurer may be required to arbitrate the UM/ UIM claim prior to resolution of the underlying claim. See Aetna Cas. and Sur. Co. v. Faris, 27 Mass. App. Ct. 194, 536 N.E. 2d 1097 (1989); Pritzky v. Safety Ins. Co., 64 Mass. App. Ct. 751, 835 N.E. 2d 621 (2005); Massachusetts Insurers Insolvency Fund v. Safety Ins. Co., 439 Mass. 309, 787 N.E. 2d 555 (2003); Mass. Gen. Laws, ch. 175, §§ 111D, 113L.
Michigan	No
Minnesota	Minnesota has no such requirement.
Mississippi	No
Missouri	Missouri does not per se require an insurer to settle UM or UIM claims when it has sufficient information. The unfair claims settlement provisions require that the insurer promptly investigate and resolve claims. 375.1007 R.S.Mo. (2000). The insurer is not permitted to fail to settle a claim on the basis that another may be responsible for the payment unless the policy provisions provide otherwise. Therefore, if the insurance policy provides that the underlying policy has to be exhausted first, then a carrier can wait to offer to settle the claim until the underlying claim has been resolved. The language in the insurance policy is critical to determining whether an insurer has a duty to resolve a claim prior to resolution of the underlying claim.

Is it a requirement that a settlement check be sent with any offer?	Contact for Information
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Minnesota has no such requirement.	Tim Waldeck Waldeck Law Firm 612-375-1550 twaldeck@waldeckpa.com
No	Jeremy D. Hawk Scott, Sullivan, Streetman & Fox 601-607-4830 jhawk@sssf-ms.com
Missouri does not require a check to be sent with the offer.	Stephen Fields Brinker & Doyen 314-863-6311 sfields@brinkerdoyen.com

**State**                      **Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?**

**Montana**                      No. Montana law *MT ST 33-23-201* covers both Uninsured and Underinsured motorists. The statutes do not require that a carrier make an offer to settle the UIM claim as soon as they have enough information

**Nebraska**                      No

**Nevada**                      Yes. Nevada statutory law requires an Uninsured or Underinsured Motorist carrier to make an offer to settle a UIM claim when “liability of the insurer has become reasonably clear.” See NRS 686A.310(1)(e). In fact, NRS 686A.310(1) contains the following provisions regarding what constitutes an unfair practice on the part of an insurer in the context of settling or resolving a claim, to wit: NRS 686A.310 Unfair practices in settling claims; liability of insurer for damages.

1. Engaging in any of the following activities is considered to be an unfair practice:

(e) Failing to effectuate prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear.

(f) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds, when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.

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**Is it a requirement that a settlement check be sent with any offer?**

No. *MT ST 33-18-201* includes a provision which provides that failure to promptly settle claims, if liability has become reasonably clear under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage will be regarded as an unfair settlement claim. This statute encompasses all insurance companies.

No

Yes. NAC 686A.675 requires an insurer to pay a claim within 30 days after it is accepted. NAC 686A.675 states: If the claim of the first-party claimant is accepted, the insurer shall pay the claim within 30 days after it is accepted. If the accepted claim is not paid within that period, the insurer shall pay interest on the claim at the rate of interest established pursuant to NRS 99.040. The interest must be calculated from the date on which the payment is due until the claim is paid.

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State	Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?	Is it a requirement that a settlement check be sent with any offer?	Contact for Information
<p><b>Nevada</b> <i>Continued</i></p>	<p>(l) Failing to settle claims promptly, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.</p> <p>The Supreme Court of Nevada has held that “an insured is not required to obtain a judgment against the tortfeasor before he or she is entitled to receive proceeds under a UM Policy.” <i>Permberton v. Farmers Insurance Exchange</i>, 109 Nev. 789, 797, 858 P.2d 380, 384 (1993). In addition, an insured may bring a claim for bad faith against an insurer without obtaining and underlying judgment if the insured can establish “legal entitlement” to such proceeds and if the insured also demonstrates unreasonable conduct by the insurer concerning its obligation to the insured. <i>Permberton</i>, 109 Nev. at 797, 858 P.2d at 384. In order to establish “legal entitlement”, the insured must demonstrate fault by the tortfeasor (i.e., the uninsured motorist) and the extent of damages. <i>Id.</i> at 797, 858 P.2d at 384.</p> <p>An insured who establishes “legal entitlement” may recover damages through any of the following means: settlement with insurance company; settlement with the uninsured motorist; an arbitration proceeding with the insurance company; or by suing the insurance company. <i>Id.</i> at 796, 858 P.2d at 384 (citing <i>Allstate insurance Co. v. Pietrosh</i>, 85 Nev. 310 313, 454 P.2d 106, 108 (1969)).</p> <p>Unfortunately, Nevada case law remains unclear as to how an insured may prove legal entitlement or settlement or arbitration. One would assume that as long as the insured meets the threshold of showing legal entitlement (i.e., demonstrating fault on the part of the uninsured motorist and the extent of damages), the insured should be entitled to proceeds under a UM or UIM policy provision.</p> <p><b><i>Continued on page 19...</i></b></p>		

**State** **Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?**

**Nevada**  
*Continued*

Therefore, upon the establishment of the insured's legal entitlement, the carrier would have enough information to make an offer to settle the UM or UIM claim regardless of whether the underlying action has been resolved through settlement, court judgment, or an arbitration proceeding.

The phrase "legally entitled" is contained within NRS 687B.145(2), which addresses uninsured and underinsured coverage in Nevada. The pertinent provision of NRS 687.145(2) states:

Uninsured and underinsured vehicle coverage must include a provision which enables the insured to recover up to the limits of the insured's own coverage any amount of damages for bodily injury from the insured's insurer which the insured is legally entitled to recover from the owner or operator of the other vehicle to the extent that those damages exceed the limits of the coverage for bodily injury carried by that owner or operator. (Emphasis added.)

In addition, UM and UIM carriers should also be prepared to propose a fair offer upon a showing by the insured that he or she is legally entitled to recover damages from the uninsured motorist. Assuming the carrier does not propose an offer of settlement after the demonstration of legal entitlement by the insured, the insured may bring a claim for bad faith action if the insured can also establish unreasonable conduct by the insurer concerning its obligations to the insured.

**New Hampshire** No. Estate of Ireland v. Worcester Ins. Co., 149 N.H. 656, 826 A.2d 577 (2003); N.H. Rev. Stat. 264:15.

**New Jersey** No. In New Jersey, a UM/UIM carrier need not, and generally will not, resolve an underinsured motorist claim (UIM) until the underlying claim against the tortfeasor is resolved

**Is it a requirement that a settlement check be sent with any offer?**

**Contact for Information**

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State	Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?
New Mexico	No. New Mexico law <i>N.M. Stat. Ann. § 66-5-301</i> (Article 5 of the Motor Vehicle Law) covers uninsured, unknown drivers and underinsured drivers. The statute does not require that a carrier make an offer to settle the UIM claim as soon as they have enough information.
New York	No
North Carolina	No. Uninsured and underinsured carriers are not required to settle claims prior to the resolution of the underlying liability claim. More specifically, N.C. Gen. Stat. § 20-279.21(b)(4) requires the exhaustion of underinsured's liability limits before UIM coverage will apply. The statute provides: Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid.
North Dakota	No. North Dakota laws <i>ND ST 26.1-40-15.2</i> and <i>ND ST 26.1-40-15.3</i> cover Uninsured and Underinsured motorists. The statutes do not require that a carrier make an offer to settle the UIM claim as soon as they have enough information, although if bad faith is found on the part of the insurance company attorney fees will be awarded.

Is it a requirement that a settlement check be sent with any offer?	Contact for Information
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No	John VanDenburgh Napierski, VanDenburgh, Napierski & O'Connor 518-862-9292 jvw@nvnolaw.com
No. North Carolina does not require settlement checks to accompany offers. N.C. Gen. Stat. § 20-279.21 governs Uninsured and Underinsured Motorist claims. This statute does not require settlement checks to be sent along with any offer to settle.	Alex Hagan Ellis & Winters 919-865-7000 Alex.hagan@elliswinters.com
No	John VanDenburgh Napierski, VanDenburgh, Napierski & O'Connor 518-862-9292 jvw@nvnolaw.com

State	Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?
Ohio	Ohio does not require that the UM/UIM carrier offer to settle before the underlying claim is resolved. Insurers are held to the good faith standard but can refuse to make a settlement offer while the underlying liability is contested. Furthermore, policy violations by the insured can release the insurer from the obligation to pay certain claims.

Oklahoma	<p>Yes. In Oklahoma, uninsured/underinsured motorist carriers are obligated to investigate, evaluate, and pay an insured's claim in a reasonable manner. <i>Buzzard v. Farmers Ins. Co.</i>, 824 P.2d 1105 (Okla. 1991) (the investigation and evaluation must be independent--the carrier may not rely on the investigation or evaluation of the tortfeasor's carrier); <i>Newport v. USAA</i>, 11 P.3d 190 (Okla. 2000) (lowball offers less than an insurer's own evaluation of the claim can constitute bad faith). Since uninsured motorist coverage is primary, first-party coverage, insurance companies cannot avoid or delay their obligation to pay by requiring the insured exhaust all available liability insurance prior to receiving uninsured motorist benefits. See <i>Everaard v. Hartford Accident &amp; Indem. Co.</i>, 842 F.2d 1186 (10th Cir. 1988) ("Oklahoma Statute tit 36 § 3636 does not require the adjudication of tort claims against the uninsured motorist as a prerequisite to recovery.").</p> <p>While an insurer may withhold or delay a payment to its first-party insured if based on a legitimate dispute or reasonable justification (legal or factual), "<b>a claim must be promptly paid unless the insurer has a reasonable belief that the claim is either legally or factually insufficient.</b>" <i>Barnes v. Oklahoma Farm Bureau Mut. Ins. Co.</i>, 2000 OK 55, 11 P.3d 162, 171. See also <i>Buzzard v. Farmers Ins. Co., Inc.</i>, 1991 OK 127, 824 P.2d 1105, 1108-09 citing <i>Christian v. American Home Assurance Co.</i>, 577 P.2d 899 (Okla.1977) ("The insurer's duty [of good faith] includes, but is not limited to, the duty not to unreasonably withhold payment of claims.").</p>
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Is it a requirement that a settlement check be sent with any offer?	Contact for Information
Ohio does not require UM/UIM carriers to send settlement checks with every settlement offer. Instead, settlement negotiations are allowed to play out over the phone and over long periods of time. These negotiations are treated in the same way other negotiations are treated.	Matthew Schrader Reminger Co. 614-228-1311 mschrader@reminger.com

No. Neither 36 O.S. § 3636, nor Oklahoma case law require uninsured/underinsured motorist carriers to tender settlement checks along with their settlement offers. <i>Gov't Employees Ins. Co. v. Quine</i> , 2011 OK 88, 264 P.3d 1245, the Court concluded that, "an insurer's refusal to unconditionally tender a partial payment of UIM benefits does not amount to a breach of the obligation to act in good faith and deal fairly when: (1) the insured's economic/special damages have been fully recovered through payment from the tortfeasor's liability insurance; (2) after receiving notice that the tortfeasor's liability coverage has been exhausted due to multiple claims, the UIM insurer promptly investigates and places a value on the claim; (3) there is a legitimate dispute regarding the amount of noneconomic/general damages suffered by the insured; and (4) the benefits due and payable have not been firmly established by either an agreement of the parties or entry of a judgment substantiating the insured's damages." <i>Id.</i> at 1251.	Mike Woodson Edmonds Cole Law Firm 405-850-0864 mwoodson@edmondscole.com
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State	Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?
<b>Oklahoma</b> <i>Continued</i>	Finally, an uninsured motorist carrier, once its evaluation of the likely worth of the claim exceeds the tortfeasor's liability limits, is liable for the entire amount of its insured's loss from the first dollar up to the policy limits without regard to the presence of other coverage. <i>Burch v. Allstate Ins. Co.</i> , 977 P.2d 1057 (Okla. 1998). Thus, regardless of the status of any pending liability claims, once the uninsured motorist carrier completes its investigation, and/or determines that the tortfeasor will be underinsured, it has a duty to promptly pay its insured. Under 36 O.S. § 3636(E), an uninsured motorist carrier may seek subrogation from the tortfeasor.
<b>Oregon</b>	Yes, or risk of attorney fees awarded after six months of receipt of claim.
<b>Pennsylvania</b>	No. Pennsylvania does not require that the UM/UIM carrier make an offer to settle the UIM claim at any point. The relevant statute is 75 Pa. C.S. §§1731-1738. However, the statute does not contemplate this directly. In Pennsylvania, an insurer's duty to settle a UM/UIM (or failure to) is an issue of bad faith where the insurer is required to make a good faith investigation into the facts of the case and make any settlement offer based on those facts. A recent case discussing this is <i>Johnson v. Progressive Ins. Co.</i> , 2009 PA Super 255 (December 28, 2009).
<b>Rhode Island</b>	In Rhode Island, an uninsured or underinsured motorist insurance company must act in good faith towards its insured, including making a settlement offer on the uninsured motorist claim as soon as it has sufficient information to adjust the claim. This is so whether or not the insured has brought an action against the uninsured or underinsured tortfeasor. R.I.G.L. § 27-7-2.1(h); <i>Skaling v. Aetna Insurance Company</i> , 799 A.2d 997 (R.I. 2002).

Is it a requirement that a settlement check be sent with any offer?	Contact for Information
No	Jeffrey V. Hill Hill & Lamb 971-373-8800 jhill@hill-lamb.com
No settlement check is required to be sent with any offer.	John D'Amelio Harvey Pennington, Ltd. 215-563-4470 jdamelio@harvpenn.com
In Rhode Island, there is no judicial or statutory requirement that a settlement check be sent with any settlement offer. See, e.g., R.I.G.L. §§ 27-9.1-1 et. seq., Unfair Claims Settlement Practices Act.	Gordon Cleary Vetter & White 401-421-3060 gcleary@vetterandwhite.com

State	Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?
South Carolina	There is no such statutory requirement in South Carolina. Likewise, the common law does not articulate such a requirement. However, the UM/UIM carrier is certainly free to begin negotiations prior to the settlement of the underlying claim.
South Dakota	No. South Dakota law <i>SD ST § 58-11-9</i> covers Uninsured and Underinsured interchangeably. The statute does not require that that a carrier make an offer to settle the UIM claim as soon as they have enough information
Tennessee	No
Texas	An under-insured/uninsured motorist insurer is obligated to pay damages which the insured is "legally entitled to recover" from the under-insured motorist. See <i>Brainard v. Trinity Universal Insurance Co.</i> , 216 S.W.3d 809, 818 (Tex. 2006). However, the under-insured/uninsured insurer has no duty to pay such damages until a trial court signs a judgment establishing the negligence and under-insured/uninsured status of the other motorist. Id. A judgment against a tortfeasor is not, however, a prerequisite to recovery on an under-insured claim, as the insured may settle with a tortfeasor and then litigate underinsuredmotorist coverage with the insurer.

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Is it a requirement that a settlement check be sent with any offer?	Contact for Information
No	John Cuttino Turner Padget, Graham & Laney 803-227-4271 jcuttino@turnerpadget.com
No. Bad faith on the part of the insurance company can be challenged by plaintiff with the relatively burdensome test laid out in <i>Isaac v. State Farm Mut. Auto. Ins. Co.</i> , 522 N.W.2d 752, 759 (S.D. 1994) which "requires a plaintiff to demonstrate 'an absence of a reasonable basis for denial of policy benefits and the knowledge or reckless disregard of a reasonable basis for a denial,' and which provides that an insurance company will be held liable only when it 'intentionally denies a claim without a reasonable basis.' "	John VanDenburgh Napierski, VanDenburgh, Napierski & O'Connor 518-862-9292 jvw@nvnolaw.com
No	Dan Ripper Luther-Anderson 423-756-5034 dan@lutheranderson.com
No	Marc Sheiness Sheiness Glover & Grossman 713-374-7005 msheiness@hou-law.com

State	Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?
Texas <i>Continued</i>	<p>See State Farm Mut. Auto Ins. Co. v. Matlock, 462 S.W.2d 277, 278 (Tex. 1970). But, neither a settlement with the tortfeasor, nor an admission of liability from the tortfeasor establishes under-insured motorist coverage, because a jury could find that the other motorist was not at fault or that the damages award does not exceed the tortfeasor's liability insurance. Henderson v. Souther Farm Bureau Casualty Ins. Co., 17 S.W.3d 652, 654 (Tex. 2000). An insured seeking the benefits of under-insured motorist coverage may:</p> <ol style="list-style-type: none"> <li>1) Sue the insurance company directly without suing the under-insured motorist;</li> <li>2) Sue the under-insured motorist with the written consent of the insurance company making the judgment binding on the insurance company; or</li> <li>3) Sue the under-insured motorist without the written consent of the insurance company and then re-litigate the issue of liability and damages. United States Fire Ins. Co. v. Millard, 847 S.W.2d 668, 671-72 (Tex. App.-Houston [1st Dist.] 1993).</li> </ol>
Utah	<p>No. Utah law <i>Utah Code Ann. § 31A-22-305</i> covers Uninsured Motorist Coverage and <i>§ 31A-22-305.3</i> covers Underinsured Motorist Coverage. Neither statute requires that that a carrier make an offer to settle the UIM claim as soon as they have enough information.</p>
Vermont	<p>No. See Bradley v. H.A. Manosh Corp., 157 Vt. 477, 601 A.2d 978 (1991); 23 Vt. Stat. Ann. § 941(a).</p>
Virginia	No

Is it a requirement that a settlement check be sent with any offer?	Contact for Information
No	<p>John VanDenburgh Napierski, VanDenburgh, Napierski &amp; O'Connor 518-862-9292 jwv@nvnolaw.com</p>
No	<p>John Egan Rubin &amp; Rudman 617-330-7181 jegan@rubinrudman.com</p>
No	<p>David Hudgins Hudgins Law Firm 703-739-3300 dhudgins@hudginslawfirm.com</p>

State	Must the carrier make an offer to settle the UIM claim as soon as it has enough information to adjust the claim regardless of the status of the underlying claim?
Washington	Yes
West Virginia	In West Virginia, an uninsured or underinsured motorist insurance company must act in good faith towards its insured, including making a settlement offer on the uninsured motorist claim, as soon as it has sufficient information to adjust the claim. This is so whether or not the insured has won a judgment against the uninsured motorist. W.Va. Code § 33-6-31; <i>Weese v. Nationwide Insurance Company</i> , 879 F.2d 115 (4 <sup>th</sup> Cir. 1989).
Wisconsin	Wisconsin has no such requirement.
Wyoming	No

Is it a requirement that a settlement check be sent with any offer?	Contact for Information
No, not directly but strict compliance with Washington Insurance Fair Claims Practices Act required. Risk of non-compliance severe and include potential for treble damages, penalties and attorney fees.	Jeffrey V. Hill Hill & Lamb 971-373-8800 jhill@hill-lamb.com
In West Virginia, there is no judicial or statutory requirement that a settlement check be sent with any settlement offer. See, e.g., W.Va. Code § 33-11-4(9), Unfair Claims Settlement Practices.	Gordon Cleary Vetter & White 401-421-3060 gcleary@vetterandwhite.com
Wisconsin has no such requirement.	Tim Waldeck Waldeck Law Firm 612-375-1550 twaldeck@waldeckpa.com
No	Julie Nye Tiedeken, McKellar, Tiedeken & Scoggin 307-637-5575 jtiedeken@mtslegal.net



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