

WASHINGTON CASE UPDATE

Does a Private Partial Settlement Constitute a Waiver of the Right to *Trial de Novo*?
It Depends...

From the desk of Kyle Riley: When parties subject to mandatory arbitration (court annexed arbitration) privately settle their claims, but leave the issue of attorney fees to be decided by an arbitrator, do the parties waive their right to a *trial de novo*? Read on to learn how the Washington Court of Appeals addressed this very issue.

Claims Pointer: Both the language of a settlement agreement and its context will be used to determine the intent of the parties. A right to a *trial de novo* depends on whether the parties intended to transfer the case from the Mandatory Arbitration Rules to the Uniform Arbitration Act.

case in point...

Dan's Trucking, Inc. v. Kerr Contractors, Inc., --- P.3d ---, 2014 WL 4087431 (Wash. App. Div. 2)

After being awarded a highway improvement contract, Kerr Contractors, Inc. (Kerr) subcontracted with Dan's Trucking, Inc. to haul materials for the project. Contractual relations between the parties soured, and Dan's Trucking filed suit against Kerr. The suit was transferred to mandatory arbitration and, before the hearing, the parties reached settlement on the claims, but not on the amount of attorney fees to be awarded. Kerr memorialized the settlement agreement in an email, stating that, in exchange for dismissal, Kerr would pay Dan's Trucking \$3,971.38, in addition to fees in an amount to be determined by the arbitrator. Kerr also emailed the arbitrator, noting that the parties had settled their dispute, but had agreed that the arbitrator would decide the amount of attorney fees awarded. The arbitrator awarded Dan's Trucking \$6,979.57 and, shortly thereafter, Kerr requested a *trial de novo*. Dan's Trucking filed a motion to strike Kerr's request on the grounds that Kerr was not entitled to a *trial de novo* because the dispute has been privately settled. Dan's Trucking also asserted that the arbitrator was acting as a private arbitrator under the Uniform Arbitration Act (UAA) and not as an arbitrator under the Mandatory Arbitration Rules (MARs) when he decided the awarded amount. The trial court granted Dan's Trucking's motion and Kerr appealed.

On appeal, the court noted that the dispositive issue was whether the arbitrator's award of attorney fees was governed by the UAA or by the MARs. The UAA governs private agreements to arbitrate disputes, whereas the MARs require arbitration of certain civil claims. Arbitration governed by the UAA does not contain a right to a *trial de novo*. In contrast, the MARs allow for *trial de novo*. While both parties agreed that they had entered into mandatory arbitration under the MARs, they disagreed as to whether or not the settlement provided that the issue

of attorney fees would remain within mandatory arbitration or be resolved by private arbitration.

When interpreting settlement agreements, just as when interpreting other contracts, the court is tasked with determining the intent of the parties. Intent is determined, not just by the language of the contract, but by the context of the contract's creation, the subsequent actions of the parties, and the reasonableness of the interpretations put forth. Settlement agreement ambiguities created by terms that have multiple meanings are construed against the drafter.

Here, the email from Kerr to the arbitrator stating that the arbitrator would decide the amount of attorney fees could, conceivably, be read as either keeping the arbitration under the MARs or as converting the arbitration to a private UAA arbitration. Neither the settlement nor the email, however, said anything about the UAA, the MARs, or *trial de novo*. In this context, it would be unreasonable to interpret the settlement as converting the arbitration from one set of rules to another, in addition to constituting a waiver of a *trial de novo*. Furthermore, under the local MAR rules, to effectuate a settlement of a claim subject to mandatory arbitration, the parties were required to promptly notify both the court and arbitrator of settlement. Nothing in the record suggested that the trial court was notified of the settlement before the arbitrator decided the issue of attorney fees. While ambiguities should be resolved against the drafter, Kerr, strained readings of the parties' intent is not required. The most reasonable interpretation was that the parties intended to continue arbitration under the MARs. As such, the appellate court reversed the lower trial court's grant of the motion to strike Kerr's request for *trial de novo*.



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