

WASHINGTON CASE UPDATE

Arbitrating Underinsured Motor Vehicle Claims

From the desk of Ryan McLellan: In Washington, what cases are subject to mandatory arbitration? Does an arbitrator have the authority to determine an underinsured motor vehicle claimant's total collision damages, minus the setoff and offset?

Claims Pointer: Under RCWA chapter 7.06, civil actions where the sole relief sought is a money judgment and where no party asserts a claim in excess of \$50,000 (if approved by the court), the case is subject to mandatory non-binding arbitration. Further, an arbitrator in this instance is authorized to determine an underinsured motor vehicle claimant's total damages, and then deduct any setoff and offset, for a maximum net award not to exceed the statutory limit.

case in point...

Evans v. Mercado et al., --- P3d --- (Nov. 17, 2014)

In December 2006, Julia Evans sustained injuries in a rear-end collision with Charity Edwards. Evans settled with Edwards' liability insurer for the policy limits of \$25,000. Evans then sued her underinsured motor vehicle insurers ("Insurers"), alleging that her total damages exceeded \$25,000. The Insurers also paid personal injury protection ("PIP") benefits for Evans' medical treatment. Evans sought to resolve her case through mandatory arbitration under RCW chapter 7.06.

RCW 7.06.020(1) provides that, "[a]ll civil actions, except for appeals from municipal or district courts . . . where the sole relief sought is a money judgment, and where no party asserts a claim in excess of fifteen thousand dollars, or if approved by the superior court of a county by two-thirds or greater vote of the judges thereof, up to fifty thousand dollars, exclusive of interest and costs, are subject to mandatory non-binding arbitration." Arbitration under RCW 7.06, unlike most other forms of arbitration, is not necessarily final or consensual and operates under the authority of the court system. Arbitrators, under this rule, are authorized to: decide facts and the law; make an award, decide attorney fees and costs; decide procedural issues; invite trial briefs; examine any site or object; issue a subpoena; rule on admissibility of evidence; and grant continuances and other acts authorized under the mandatory arbitration rules.

Here, the parties disagreed on whether Evans' case qualified under the \$50,000 statutory damages cap for mandatory arbitration. The Insurers argued Evans' claim was not subject to mandatory non-binding arbitration and filed a motion to contest arbitration of Evans' UIM claims and to reset the case for trial. Evans, on the other hand, argued even though the award cannot exceed \$50,000 nothing prohibits the arbitrator from determining her total damages, reducing the amount by any offsets, and entering a net award not to exceed \$50,000. The trial court agreed with the Insurers and ruled the case was not subject to mandatory arbitration,

and transferred it back to the trial court. Evans appealed.

On appeal, the parties agreed that the mandatory arbitration award cannot exceed the \$50,000 statutory damages cap. However, they disagreed on how the arbitrator determines the amount of the award when offset and setoff amounts apply. The Insurers argued in part that the maximum award of \$50,000 would be subject to all applicable setoffs, including but not limited to the \$25,000 paid by the driver's liability insurer. Thus, under the UIM policies, the Insurers argued that Evans' maximum recovery in arbitration would be \$25,000 minus any PIP payment. Evans argued that at mandatory arbitration, she can present evidence of her total collision damages so long as the arbitrator's final award does not exceed the \$50,000 statutory cap.

The Court of Appeals analyzed a previous case that addressed a similar issue. In *Mercier v. GEICO Indem. Co.*, 139 Wn.App. 891, 165 P3d 375 (2007), the court concluded that nothing in RCW 7.06 or the rules prevents an arbitrator from reading the insurance contract, admitting evidence of insurance limits, giving the insurer the appropriate credit for its payments already received by the insured, and coming up with a new award upon which the court can enter judgment. For example, if a plaintiff claimed \$70,000 in damages but concedes that he or she is 50% negligent so that the final award would not exceed the \$50,000 arbitration limit, the case would be subject to arbitration because it involves only a money judgment and the plaintiff is not seeking an amount in excess of the arbitration limit. In sum, as long as the claimant chooses to limit the award to no more than the jurisdictional limit, the case is subject to arbitration.

Here, the court concluded that Evans' UIM case was subject to mandatory arbitration. The court also concluded that an arbitrator is authorized to determine a UIM claimant's total collision damages, minus the setoff and offset, for a maximum net award not to exceed the statutory limit, here \$50,000.



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