SMITH FREED & EBERHARD P.C.

OREGON LAW UPDATE

case in point ...

Agreement to Arbitrate UIM Claim Starts Arbitration Proceedings

From the Desk of Jeff Eberhard: In this case the Oregon Court of Appeals held that an insurance company's express agreement to arbitrate suffices to "formally institute" UIM arbitration proceedings, under ORS 742.504(12)(a)(b).

Claims Pointer: ORS 742.504(12)(a)(b) states that a plaintiff's uninsured motorist claim does not accrue unless at least one of several events occurs within two years of the accident. One of those events is that the insured or the insurer formally institutes arbitration proceedings. Insurers should be aware that a letter from the insurer to the insured consenting to arbitration will suffice for the insured's UIM claim to accrue, thereby waiving the statute of limitation.

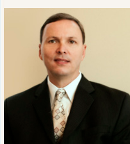
Paton v. American Family Mutual Ins. Co., in the Court of Appeals of the State of Oregon, A148220 (May 15, 2013).

Paton was injured in a car accident involving an underinsured motorist in 2007. At the time of the accident, Paton was insured by American Family Mutual Insurance Company ("American Family") and his policy included UIM coverage. In Oregon, a UIM claimant can collect attorney fees if, within six months of the date of proof of loss the insurer fails to send a letter to the insured in which the insurer (1) accepts coverage and (2) consents to binding arbitration. This so-called "safe harbor letter" is a key tool used by insurers to avoid attorney fees in UIM disputes.

Before the two-year anniversary of Paton's accident, American Family sent Paton a letter expressly consenting to submit the case to binding arbitration. Paton then filed a UIM claim against American Family, which moved for summary judgment on the ground that Paton's demand for arbitration had not been timely. The trial court found that American Family's letter to Paton was not a "formal initiation of arbitration" under ORS 742.504(12)(a)(b), but was only a "consent to arbitrate." Therefore, no event had occurred within the two years following the accident which would have caused Paton's claim to accrue. Paton appealed.

On appeal, both Paton and American Family relied on the Oregon Supreme Court's previous interpretation of ORS 742.504(12)(a)(b) in Bonds v. Farmers Ins. Co., 349 Or. 152 (2010). In that case, the Court held that "to 'formally institute' arbitration proceedings, an insured or an insurer must expressly communicate to the other party that the initiating party offers to arbitrate or otherwise commits to the arbitration process." 349 Or. at 162. The Court of Appeals held that Bonds stands for the proposition that a party's express "consent" to arbitration counts as formal institution of arbitration proceedings, where consent is not made contingent on a future event. In other words, if an insurer unconditionally consents to arbitration, the insured's UIM claim will have accrued, under ORS 742.504(12)(a)(b).

Applying that rule to Paton's case, the Court of Appeals found that American Family's consent was not contingent on a future event. American Family "took the first step" toward arbitration, and therefore "formally instituted" arbitration proceedings within the two-year period required by ORS 742.504(12)(a)(b). Accordingly, Paton's UIM claim was not time-barred by that statute.



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