

WASHINGTON CASE UPDATE

What Amounts will the Court Consider When Comparing an Arbitration Award and a Trial Judgment?

From the desk of Kyle D. Riley: Is the court permitted to consider post-arbitration costs to determine whether a party requesting a trial de novo improved their position at trial? Read on to find out how the Washington Court of Appeals recently answered this question.

Claims Pointer: The Washington Court of Appeals held that the trial court was incorrect in awarding attorney fees when the trial judgment was more favorable to the party seeking a trial de novo, before including post-arbitration costs. This case provides an important overview of how the court will compare an arbitration award and a trial judgment for purposes of deciding whether a party is entitled to attorney fees.

Bearden v. McGill, No. 72926-8-1, Washington Court of Appeals, Div. I. (April 11, 2016).

James Bearden (Bearden) sued Dolphus McGill (McGill) for damages caused by an auto accident. An arbitrator awarded Bearden \$44,000 in compensatory damages and \$1,187 in statutory costs, for a total arbitration award of \$45,187. McGill requested a trial de novo. The jury awarded Bearden less in compensatory damages, (\$42,500) but the trial court awarded more in costs, (\$3,296.39) which included costs incurred after arbitration, for a total judgment of \$45,796.39. When a party appeals an arbitration award and requests a trial de novo, that party will be obligated to pay costs and reasonable attorney fees if the party fails to improve its position. After comparing the arbitration award and the trial judgment, the trial court held that McGill failed to improve his position and awarded Bearden \$71,800 in attorney fees.

The Washington Court of Appeals reversed this decision, holding that McGill did indeed improve his position at trial. In order to determine if a party improved its position at trial, the court should compare the aggregate success on claims actually litigated between the parties at both the arbitration and trial de novo. In this case, the trial court awarded Bearden fees and costs not requested from the arbitrator and then compared the two total awards.

The Court of Appeals found that when comparing only those costs and fees actually litigated before both the arbitrator and trial court, Bearden's combined damages, costs, and fees were less after trial than after arbitration. Because Bearden recovered \$421.51 less in costs and \$1,500 less in compensatory damages, McGill improved his position by \$1,921.51. Therefore, McGill improved his position at trial and Bearden was not entitled to attorney fees.

While Bearden correctly noted that the legislature intended mandatory arbitration to relieve court congestion and provide a speedy and inexpensive method for resolving claims of \$50,000 or less, an interpretation of the rule that would discourage meritorious appeals would frustrate the purpose of the mandatory arbitration system.

The Court of Appeals reversed the trial court's award of attorney fees, affirmed the award of additional costs and denied Bearden's request for fees.

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case in point...



Contact: Kyle Riley | www.smithfreed.com | email: kriley@smithfreed.com

Ph: 206.576.7575 | Fax: 206.576.7580 | 705 Second Avenue, 17th Floor | Seattle | WA | 98104

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