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OREGON LAW UPDATE

case in point...

"Formal Institution" of Arbitration Proceedings Requires Explicit Offer or Demand to Arbitrate

From the desk of Josh Hayward: Oregon law allows an insurer to place conditions limiting when an insured has a cause of action against the insurer for uninsured/underinsured motorist ("UM/UIM") benefits, including mandating that the insured or the insurer "formally institute" arbitration proceedings within a specific time period. What is required to "formally institute" arbitration proceedings? Read on to learn more.

Claims Pointer: In this case, the Court of Appeals held that "formal institution" of arbitration requires that a party explicitly offer to arbitrate or demand arbitration. Absent such an explicit offer or demand, no "formal" institution of arbitration has occurred. The case explains prior Oregon case law and provides clarification about how a party can "formally institute" arbitration proceedings.

State Farm Mutual Automobile Ins. Co. v. Sieger, 285 Or App 727 (May 3, 2017)

Eunice Sieger ("Sieger") was involved in a car accident on September 29, 2011. Because the other driver was uninsured, Sieger filed a claim with her insurer, State Farm, for UM/UIM benefits. In response, State Farm sent her a letter advising that if the parties were not able to reach an agreement as to the amount of benefits due under the policy, State Farm consented to submit the claim to binding arbitration. State Farm later filed a declaratory action regarding its obligations to provide UM/UIM benefits to Sieger, arguing that neither party formally instituted arbitration proceedings within two years. The trial court agreed, ruling that Sieger had no cause of action against State Farm. Sieger appealed

An Oregon statute, ORS 742.504, establishes required provisions for uninsured motorist coverage. As relevant here, the statutory language includes the requirement that the parties to the coverage agree that no cause of action accrues to the insured unless within two years of the date of the accident: (1) the parties agree as to the amount due; (2) the insured or the insurer formally institute arbitration proceedings; (3) the insured files an action against the insurer; or (4) suit for bodily injury is filed against the uninsured motorist, and, within two years from the date of settlement or final judgment against the uninsured motorist, the insured either formally institutes arbitration proceedings or files an action against the insurer. The policy at issue in the case echoed the statutory language.

In this case, the undisputed facts showed that the parties did not reach an agreement as to the amount due, the insured did not file an action against the insurer, the insured did not file an action against the at-fault uninsured motorist within two years of the accident, and the insured did not formally institute arbitration. Thus, under the statute and the policy, Sieger had a cause of action against State Farm for UM/UIM benefits only if State Farm "formally instituted" arbitration within two years after the accident.

The Court of Appeals noted that although the parties had not reached an agreement during the two-year time period, State Farm did not expressly communicate to Sieger that a disagreement existed, or that in its view, the obligation to arbitrate the case had been triggered, or that State Farm otherwise thought the case had reached the point where the parties would submit it to arbitration. Sieger argued that because State Farm notified her in the letter that it consented to arbitration in the event that the parties did not reach an agreement, and because the parties did not reach agreement within the two-year period, State Farm had in effect "formally instituted" arbitration for purposes of the statute.

Contact: Josh Hayward | www.smithfreed.com | email: jhayward@smithfreed.com
Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

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The Court of Appeals disagreed, noting that such an argument was precluded by a prior Oregon Supreme Court decision, Bonds v. Farmers Ins. Co., 349 Or 152 (2010). In that case, the Supreme Court considered whether the insurer "formally instituted" arbitration by sending a nearly identical letter in which it conditionally consented to arbitration in the event that the parties disagreed. The insurer in Bonds never "definitively" stated to the insured that a disagreement existed or otherwise raise the topic of arbitration. The Bonds Court held that under those circumstances, the insurer had not "formally instituted" arbitration, because where a party conditionally consents to arbitration and that party does not expressly advise or acknowledge to the other party that the relevant condition had come to pass, no "formal institution" of arbitration had occurred. The Bonds Court explained that a party wishing to meet the statutory time limits by formally instituting arbitration must explicitly offer to arbitrate or demand arbitration to expressly begin the process.

The Court of Appeals determined that this case was indistinguishable from Bonds, and therefore Bonds controlled. State Farm's letter was conditional just as the insurer's letter in Bonds was, and State Farm's consent to arbitrate was conditioned on the parties' potential future disagreement. State Farm never expressly communicated to Sieger that a disagreement existed, nor did State Farm take any other steps or make any other communications to suggest that it was formally instituting arbitration. Thus, under Bonds, there was no explicit offer or demand to arbitrate, and State Farm did not "formally institute" arbitration proceedings under ORS 742.504 or the policy. The decision of the trial court was affirmed.

View full opinion at: http://www.publications.ojd.state.or.us/docs/A162385.pdf

Case updates are intended to inform our clients and others about legal matters of current interest. They are not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.

Contact: Josh Hayward | www.smithfreed.com | email: jhayward@smithfreed.com
Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

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