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NO. 70162-2
IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION I

JANICE LIND,

Petitioner,

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Respondent.

RESPONDENT'S BRIEF

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TABLE OF CONTENTS

I. ASSIGNMENTS OF ERROR 1

II. STATEMENT OF THE CASE..... 1

III. ARGUMENT 1

 A. Standard of Review 1

 B. Summary of Argument 1

 1. There Is No Support for Lind’s Assertion that the
Jurisdictional Limit Does Not Apply to Cases Where the Parties
Stipulate to Mandatory Arbitration..... 2

 2. Lind Expressly Waived Any Claims In Excess of the
Jurisdictional Limits..... 6

 3. Lind’s Claim Is Limited to \$50,000, Gross..... 8

IV. CONCLUSION..... 9

TABLE OF AUTHORITIES

STATE CASES

Brunbridge v. Fluor Federal Service, Inc., 164 Wn.2d 432, 525, 526,
191 P.3d 879 (2008).....1

Malted Mousse, Inc. v. Steinmetz, 150 Wn.2d 518, 79 P.3d 1154
(2003).....1, 2

Mercier v. GEICO, 139 Wn. App. 891, 165 P.3d 375 (2007),
reversed on other grounds, 147 Wn. App. 883, 198 P.3d 525
(2008).....7

Neff v. Allstate Co., 70 Wn. App. 796, 798, 855 P.2d 1223 (1993).....3, 4

Rhodes v. Gould, 19 Wn. App. 437, 576 P.2d 914 (1978)5

Twitchell v. Kerrigan, 175 Wn. App. 454, 463, ___ P.3d ___ (2013).....3

Wiley v. Rehak, 143 Wn.2d 339, 20 P.3d 404 (2001).....1

RULES

MAR 1.12, 3

MAR 8.13

RCW 7.041, 2

RCW 7.061

I. ASSIGNMENTS OF ERROR

Respondent State Farm Mutual Automobile Insurance Company (“State Farm”) assigns no errors to the superior court’s orders dated February 19, 2013, and March 6, 2013. (CP at 49-50; 55-56)

II. STATEMENT OF THE CASE

State Farm does not take issue with the facts of the accident as set forth by Petitioner Janice Lind (“Lind”), save for the description that Lind suffered “severe and permanent injuries.”

III. ARGUMENT

A. Standard of Review

State Farm agrees that the standard of review is de novo. *See Brundridge v. Fluor Federal Service, Inc.*, 164 Wn.2d 432, 441, 191 P.3d 879 (2008); *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 525, 79 P.3d 1154 (2003); *Wiley v. Rehak*, 143 Wn.2d 339, 343, 20 P.3d 404 (2001).

B. Summary of Argument

Lind, of her own accord, initiated the transfer of this case from the superior court, pursuant to the rules of mandatory arbitration, not the rules of private arbitration. *Compare* RCW 7.06 *with* RCW 7.04. The hallmark of mandatory arbitration is the jurisdictional limit of \$50,000. Lind then took the additional step of formally filing a Statement of Arbitrability,

expressly and unequivocally waiving any amounts in excess of the jurisdictional limit of \$50,000. There is no support for the proposition that in a case where the gross amount of a claim exceeds the jurisdictional limit, the arbitrator has the authority to award a sum greater than this amount, and then apply offsets so that the net award does not exceed the jurisdictional limit.

1. There Is No Support for Lind’s Assertion that the Jurisdictional Limit Does Not Apply to Cases Where the Parties Stipulate to Mandatory Arbitration.

Lind argues that even though she requested, after the deadline for submitting a case to mandatory arbitration, to transfer the case into mandatory arbitration, the jurisdictional limits of the mandatory arbitration rules do not apply. There is nothing in the stipulation that indicates that the jurisdictional limits of MAR do not apply. On the contrary, the stipulation itself is entitled “Stipulation and Order Transferring Case to *Mandatory Arbitration.*” (CP at 10 (emphasis added)). The stipulation also references the mandatory arbitration rules.

If the parties had opted to privately arbitrate the matter, they would have entered into a stipulation pursuant to RCW 7.04. Mandatory arbitration differs in significant respects from private arbitration. *Malted Mousse*, 150 Wn.2d at 525. The rules of mandatory arbitration—that contain a limitation on the jurisdictional amount—are inapplicable to

private arbitration unless the parties stipulate otherwise. *Id.* at 526. *See also* MAR 1.1. Here, however, the parties clearly intended to arbitrate under the rules of mandatory arbitration. Lind’s counsel himself acknowledged the applicability of these jurisdictional limits, by arguing that the *net* award was limited to \$50,000 or less. If the stipulation did not contemplate the \$50,000 cap, there would be no need for counsel to so concede.

Under MAR 1.1, the mandatory arbitration rules “do not apply to arbitration by private agreement or to arbitration under other statutes, except by stipulation under rule 8.1.” The parties here did stipulate that under MAR 8.1 that this case would be transferred to mandatory arbitration. (CP at 10)

Recently, Division I considered the import of the meaning of a “claim” in the context of mandatory arbitration. *See Twitchell v. Kerrigan*, 175 Wn. App. 454, 462, ___ P.3d ___ (2013). In *Twitchell*, one of the issues was whether the plaintiffs, each of whom had a claim, could independently recover up to \$50,000. The defendant opposed the transfer into mandatory arbitration, arguing that the plaintiffs were limited to \$50,000 for the entire action, not each claim. This Division agreed with plaintiffs that each party was entitled to limit the amount claimed up to the maximum arbitrable amount of \$50,000. *Id.* at 463.

This analysis applies here. Plaintiff's claim is limited to \$50,000, not any greater amount. There is nothing in the stipulation that states otherwise and any question about the jurisdictional limit was answered when Lind subsequently filed the Statement of Arbitrability.

Lind's citation to *Neff v. Allstate Ins. Co.*, 70 Wn. App. 796, 855 P.2d 1223 (1993), does not advance her position. In *Neff*, the parties agreed that the jurisdictional limit could be raised from what was then the limit, \$35,000, to a higher limit of \$50,000 (perhaps because that was defendant's liability limit under its insurance coverage). *Id.* Nothing in *Neff* suggests that parties agreeing to mandatory arbitration do not thereby agree to the jurisdictional limit. The parties can agree to a higher limit, but Lind and State Farm did not do so here. And notably, in *Neff*, the plaintiffs attempted to show in excess of \$100,000 in damages, "but requested only \$50,000 in view of the stipulated cap on the arbitrators' jurisdiction." *Id.* at 798, n.1.

Lind also argues that it was incumbent on State Farm to file a statement of arbitrability. (Lind's Brief, at 13.) Typically, defendants do not do so because the plaintiff challenges such an attempt simply by

asserting that her damages exceed the jurisdictional limits.¹ Here, the stipulation was necessary because the deadline for transferring the case into mandatory arbitration had passed.² (See CP at 13 (“The STATEMENT OF ARBITRABILITY shall be filed on a form prescribed by the court by the date indicated on the CASE SCHEDULE or extended by an ORDER issued at a COMPLIANCE HEARING. After the deadline has passed, the STATEMENT OF ARBITRABILITY may be filed only by leave of court.”)) Ironically, Lind argues that if State Farm had filed a Statement of Arbitrability, the statutory threshold would have applied. But the reality is that Lind herself filed the Statement of Arbitrability. Indeed, the Statement of Arbitrability is a pleading signed only by the requesting party—Lind. It is disingenuous for Lind, not State Farm, to argue that the statutory limits do not apply, when Lind stipulated to place the case into mandatory arbitration and then filed a Statement of Arbitrability.

¹ Indeed, plaintiff asserts in her Statement of Arbitrability that her claim does exceed \$50,000, though she was willing to waive any claim in excess of \$50,000. (CP at 12)

² See Supp. Designation of Clerk’s Papers (Order Setting Civil Case Schedule), CP 2 at pages 63-65.

2. Lind Expressly Waived Any Claims In Excess of the Jurisdictional Limits.

State Farm's waiver argument is not "paper-thin"; it is rock solid. Lind's counsel prepared the Statement of Arbitrability (CP at 12-13), according to the requisite format for cases subject to mandatory arbitration, and specifically and expressly waived any claim in excess of \$50,000:

The undersigned contends that its claim exceeds \$50,000, exclusive of attorney fees, interest and cost, but for the purposes of arbitration only, waives any claim in excess of \$50,000.

CP at 12.

Lind presumably could have opted not to file this Statement, but she did so and in doing so, waived her rights for any amounts in excess of \$50,000. As Lind herself notes, "[a] waiver is the intentional and voluntary relinquishment of a known right. . . . It may result from an express agreement." *Rhodes v. Gould*, 19 Wn. App. 437, 441, 576 P.2d 914 (1978). The Statement of Arbitrability is such an intentional and express agreement.

If Lind is correct that the stipulation to transfer the case into mandatory arbitration did not carry with it the jurisdictional limit, a position with which State Farm disagrees, then the Statement (that Lind

argues was otherwise superfluous) intentionally and expressly states that this limit does apply.

Lind cannot have it both ways. First, she states that even though the stipulation references mandatory arbitration, it does not mean to indicate an agreement that the jurisdictional limit applies. Query, then, what does it mean? Putting aside the internal inconsistency of this position, Lind then states that the Statement of Arbitrability that clearly states that the jurisdictional limit applies simply should be ignored because it is “superfluous.”

The Court should rule in the only manner that renders plaintiff’s positions internally consistent and consistent with the rules. Plaintiff agreed with State Farm to transfer this case into mandatory arbitration, with its jurisdictional limits, and then followed up by filing the Statement of Arbitrability, as required by the court rules. Plaintiff successfully transferred this case onto the mandatory arbitration track and this case should now be handled under the parameters of those rules.

3. Lind's Claim Is Limited to \$50,000, Gross.

Lind contends that because she seeks a net award of \$50,000, she has complied with the jurisdictional limits of \$50,000.³ However, nothing in the rules or the case law so states. In *Mercier v. GEICO*, 139 Wn. App. 891, 165 P.3d 375 (2007), *rev'd on other grounds*, 147 Wn. App. 883, 198 P.3d 525 (2008), although the Court did provide that an arbitrator has the authority to consider and apply offsets, this holding is *dicta* as to the issues presented here. In *Mercier*, the gross amount, even before deductions, was not in excess of \$50,000. The same is not true here. Lind necessarily is taking the position that her claim exceeds \$50,000 (in direct contravention to her written waiver) and argues that so long as the arbitrator does not award more than \$50,000 as a net award, the spirit of the mandatory rules has been met.

That is not the case. While one of the intended consequences of MAR was to alleviate congestion of the courts, a companion consideration was that the court system should not be congested with claims having a value of \$50,000 or less. By Lind's own admission, her claim falls outside these parameters. If so, then it was entirely within her control not to

³ This position, of course, begs the question of why Lind references the \$50,000 limit when she claims it does not apply in the first instance.

transfer the case into mandatory arbitration. There is nothing unfair about requiring Lind to abide by her decision to transfer this case into mandatory arbitration.

IV. CONCLUSION

The bottom line is that Lind is trying to manipulate the system so that she can have the best of both worlds: A more cost-effective way to try her case (without the need of calling medical witnesses to testify, for example), but with no jurisdictional limits. That is not the intent of the rules of mandatory arbitration.

It would be a different situation if State Farm had agreed to a private arbitration, but it did not do so. At the request of Lind's counsel, State Farm agreed to transfer the case to mandatory arbitration, with the understanding that the jurisdictional limits applied. And, if there was any misunderstanding about the parameters, such confusion was removed when Lind's counsel unilaterally filed the Statement of Arbitrability.

The superior court correctly denied Lind's request to allow an arbitrator to award damages in excess of the jurisdictional limit and then apply offsets to reduce the total award to \$50,000 or less. The premise of a case in mandatory arbitration is that the claim has a value of \$50,000 or

less or that amounts in excess of \$50,000 have been waived. This Court should affirm the lower court's rulings.

DATED this 24th day of December, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gayle Neligan, declare:

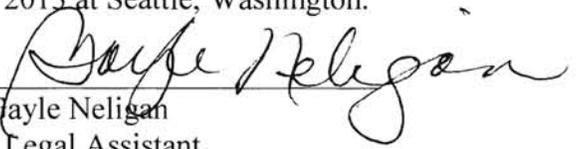
1. I am now and at all times herein mentioned have been a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

2. On December 26, 2013, I caused a true and correct copy of the attached Respondent's Brief to be served via facsimile and hand-delivery by ABC Legal Messengers upon:

Julian L. Hurst
Law Office of Julian Hurst, PLLC
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Bellevue, WA 98004

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 26th day of December, 2013 at Seattle, Washington.

By 
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