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No. 70162-2

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

Janice Lind, Petitioner,
v.
State Farm Mutual Automobile Insurance Company, Respondent

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COURT OF APPEALS
DIVISION I
STATE OF WASHINGTON

PETITIONER'S REPLY BRIEF

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A. Argument

1. State Farm's Arguments are Frivolous

Throughout its response brief, State Farm mischaracterizes Lind's arguments, ignores the relevant statute and court rules, and relies on rhetorical arguments and facts not in the record. State Farm makes two fundamental errors even though it has no legal authority for either of them. The first error is assuming that all cases arbitrated under the rules of mandatory arbitration are subject to a jurisdictional limit of \$50,000. Although the jurisdictional threshold amount (\$50,000 in King County) may be a "hallmark" of cases subject to mandatory arbitration under RCW 7.06, the jurisdictional threshold is irrelevant in stipulated cases. LMAR 2.1(d).

State Farm's second error is assuming that Lind's "claim" in this UIM contract action is identical to her tort damages arising from the underlying accident (both parties have, somewhat confusingly, referred to these as Lind's "gross damages").¹ State Farm's own UIM contract dictates that the two numbers must be different. Lind's "claim" is the amount Lind seeks from State Farm—not the value of Lind's damages from the underlying accident.

¹ State Farm uses the terms "claim," "amount," and "gross amount of a claim" interchangeably and without any attempt to define any of them. Respondent's Br. at 2.

There is ample authority in the MARs and in this court's precedent that the arbitrator may consider underlying accident damages and deduct contractual offsets to calculate a UIM award. Lind's subsequent waiver of any claim over \$50,000 applies to her award against State Farm, not the damages Lind suffered from her underlying accident.

2. This Case Is Not Subject to a "Jurisdictional Limit"

a. State Farm Agreed to No-Limits Arbitration

Two roads diverged in a wood, and I—
I took the one less traveled by,
And that has made all the difference.

Frost, R., *The Road Not Taken* (1920). As discussed in Lind's opening brief, there are two roads to arbitration under the mandatory rules. Which road is taken makes all the difference as to whether the arbitrator's award is limited. State Farm assumes that stipulations to mandatory arbitration impliedly limit the arbitrator's authority to the jurisdictional threshold amount. This argument is unsupported by any authority. Assuming, *arguendo*, that the vast majority of cases are transferred to mandatory arbitration under MAR 1.2(a) or (b), that does not mean that all cases in mandatory arbitration are subject to the jurisdictional threshold.

State Farm repeatedly asserts that Lind initiated the transfer of this case to mandatory arbitration. This directly conflicts with the record. In fact, both parties jointly initiated the transfer of this case to mandatory

arbitration by stipulation. CP at 10-11; Petitioner’s Brief at 6.² The stipulation contained no restrictions on the amount of the claim or the arbitrator’s authority to calculate a final award.

b. “Jurisdictional Limits” Are a Fiction

State Farm implies that because this case was transferred to mandatory arbitration, “jurisdictional limits” apply. State Farm cites no authority that imposes a “jurisdictional limit” in any mandatory arbitration, much less a stipulated case. Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none. *Buck Mt. Owners’ Ass’n v. Prestwich*, 174 Wn. App. 702, 728, ___ P.3d ___ (2013). Arbitration awards in actions subject to mandatory arbitration under RCW 7.06 are “limited” to the jurisdictional threshold because the parties’ claims do not exceed that threshold in the first place (or have been waived above that threshold).

c. No “Jurisdictional Limits” Apply to This Case

This is not an action that was subject to mandatory arbitration. This is a “civil matter that would not otherwise be subject to arbitration” and is only subject to the rules of mandatory arbitration, not RCW 7.06.

² State Farm could have added to or taken issue with Petitioner’s Statement of the Case, but did not. Respondent’s Brief at 1.

MAR 8.1(b). Those rules do not impose jurisdictional limits and do not cap the amount an arbitrator may award.

State Farm next argues that Lind’s decision not to seek private arbitration and Lind’s acknowledgement of a \$50,000 cap on any award are proof that “jurisdictional limits” apply to this case. Resp. Br. at 2-3. The rules clearly evidence an intent by the Washington Supreme Court to provide parties an alternative to private arbitration by allowing matters that would not otherwise be subject to mandatory arbitration to be arbitrated under the mandatory rules, regardless of the amount in controversy. MARs 2.1 and 8.1; LMAR 2.1(d). The rules do not impose a jurisdictional limit on such cases.

State Farm repeatedly conflates the separate legal issues of whether a jurisdictional limit applies to all arbitrations under the mandatory rules, and whether there was a waiver. *See, e.g.*, Respondent’s Br. at 4 (“any question about the jurisdictional limit was answered when Lind subsequently filed the Statement of Arbitrability”) and 5 (“It is disingenuous for Lind . . . to argue that the statutory limits do not apply, when Lind . . . filed a Statement of Arbitrability”) and 6-7 (if “the stipulation . . . did not carry with it the jurisdictional limit, . . . the Statement . . . expressly states that this limit does apply”). But proof of one is not proof of the other. Lind’s Statement of Arbitrability makes no

reference to jurisdictional limits, the mandatory arbitration statute, or the arbitrator's authority absent a waiver. The \$50,000 limit Lind acknowledged in her opening brief (what the parties have called a "net award") arises from Lind's waiver, not because some fictional jurisdictional limits apply to all arbitrations under the mandatory rules.

d. Twitchell Is Inapposite.

Twitchell does not apply here and is not helpful. That case involved the aggregation of claims by parties seeking to invoke the statutory threshold of RCW 7.06, the parties did not stipulate to mandatory arbitration, and the court does not define "claim." *Twitchell v. Kerrigan*, 175 Wn. App. 454, 457 *et seq.*, 306 P.3d 1025 (2013). Because the parties here stipulated to arbitration, the only meaning of "claim" at issue in this appeal is what Lind intended when she waived any "claims" above \$50,000 in her Statement of Arbitrability. Moreover, *Twitchell* did not involve a UIM contract action; the plaintiff's action was directly against the tort defendant and therefore their "claims" were identical to their tort injuries.

e. Neff Does Not Help State Farm

Lind cited *Neff* for two propositions: that claims exceeding the statutory threshold can be arbitrated under the mandatory rules by stipulation, and that the concept of a "jurisdictional limit" in mandatory

arbitration has been rare and unexamined. Petitioner’s Br. at 11-12. Both of those propositions are accurate. The fact that the parties in *Neff* used the term “jurisdictional limit” in their stipulation does not amount to legal authority and is not binding on this case. Whether a “jurisdictional limit” applies to stipulated cases was not at issue in *Neff*, therefore *Neff* is not persuasive here. *Neff v. Allstate Ins. Co.*, 70 Wn. App. 796, 855 P.2d 1223 (1993).

f. State Farm’s Motives Are Irrelevant

State Farm implies that it signed the stipulation because the deadline for transferring the case into mandatory arbitration had passed. The parties’ motives for stipulating to arbitration are not in the record and do not change the fact that this particular stipulation did not limit either the amount of Lind’s claim or the arbitrator’s potential award.

3. State Farm Misunderstands Lind’s “Claim”

State Farm recites the waiver in Lind’s Statement of Arbitrability without any analysis of what a “claim” is in the context of UIM litigation. State Farm’s other arguments in Section 2 are rhetorical, are not relevant to a waiver analysis and are unsupported by authority. State Farm twice invokes “the rules” of mandatory arbitration without any citation or discussion of those rules.

Elsewhere the court has cited with approval a definition of "claim" that includes "all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." *Sound Built Homes, Inc. v. Windermere Real Estate/South, Inc.*, 118 Wn. App. 617, 628-29, 72 P.3d 788 (2003) (citing Restatement (Second) of Judgments § 24(1) (1982)). Applying that definition here, the defendant is State Farm. The transaction out of which this action arose is the UIM contract between Lind and State Farm. Lind's rights to a remedy against State Farm arise out of that contract, and are defined by it. In the context of this UIM contract, Lind's gross damages from her underlying accident and the amount she is entitled to recover from State Farm are distinct. Thus, Lind's "claim" is what she is entitled to under the contract, which is the lesser of \$100k or her gross damages from the underlying accident, minus third party payments. CP at 21-22, 30-31.

4. Lind Did Not Waive Underlying Damages over \$50,000

State Farm next argues that *Mercier v. GEICO* does not apply here because in that case the plaintiff's total damages from the underlying accident did not exceed \$50,000 before third party payments were deducted. That is not an effective distinction from this case because *Mercier* does not hold that only such UIM cases may be determined by an

arbitrator under the mandatory arbitration rules. Lind may have waived any award exceeding \$50,000, but her waiver says nothing about her underlying damages, which are necessary to calculate State Farm's liability. *Mercier* is directly on point for the proposition for which Lind cited it: an arbitrator under the rules of mandatory arbitration has authority to adjudicate a UIM claim in its entirety. 139 Wn. App. 891, 901, 165 P.3d 375 (2007), *rev'd on other grounds*, 147 Wn. App. 883, 198 P.3d 525 (2008). Nothing in *Mercier* suggests that its holding depends on whether the damages from the underlying accident exceed the jurisdictional threshold or waiver amount.

Lastly, State Farm argues that UIM claims based on underlying damages above the statutory threshold should not be arbitrated under the mandatory rules because mandatory arbitration is only for claims under the statutory threshold. This logic renders MAR 8.1(b) meaningless and directly conflicts with the purposes of chapter 7.06 RCW and the MARs. If State Farm is right, courts will be clogged with every UIM case involving underlying damages over the statutory threshold, even where the actual amount in controversy is under that amount due to third party payments.

D. Conclusion

State Farm makes two fundamental errors, which underlie all its arguments. First, assuming that all cases arbitrated under the rules of mandatory arbitration are subject to a jurisdictional limit of \$50,000. Second, assuming that Lind's "claim" in this UIM contract action is identical to her tort damages arising from the underlying accident. Both positions are unsupported by authority. This court should hold that under *Mercier* the arbitrator has authority to calculate an award on Lind's UIM claim against State Farm based on her actual underlying tort damages, and no statute or court rule limits the amount of that award.

January 27, 2014

Respectfully submitted,



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