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71390-6
ORIGINAL

NO. 713906
COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

JULIA EVANS, et al., Appellants/Petitioners,
v.
CHARITY EDWARDS, et al., Respondents

PETITIONER'S BRIEF

David A. Kohles, WSBA #7678
Attorney for Appellants/Petitioners Julia Evans, et al.
26231 72nd Avenue NW, Suite 202, Stanwood, WA 98292
(360) 629-4100

Respondents' Counsel:

Dawna J. Campbell (*for Respondents Metlife*)
Chris L. Winstanley
Fallon & McKinley, PLLC
1111 3rd Avenue, Suite 2400
Seattle, WA 98101

Marie Dolack (*for Respondents Safeco*)
Law Offices of Kelley J. Sweeney
1191 2nd Avenue, Suite 500
Seattle, WA 98101

Amy Rosario (*for Respondents Mercado*)
Moore & Davis
19909 120th Avenue NE, Suite 201
Bothell, WA 98011

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Reference Material

WSBA ADR Deskbook
Sec. 2.3(b)(i) Appendix A, pp. 2, 3; Appendix B, p. 3, 6

A. Introduction

Discretionary Review was granted in this matter to Appellant in a well-reasoned decision by Commissioner Maseko Kanazawa dated February 20, 2014. An expedited briefing schedule was also set by Commissioner Kanazawa because the same issue involved in this appeal is already before this court in another appeal for which discretionary review was also granted. *Lind v. State Farm Mut. Auto. Ins. Co.*, Docket No. 70162-2-I. Commissioner Neel granted the motion for discretionary review in that case on July 3, 2013. The *Lind* matter has already been fully briefed. This brief, therefore, will be short and reference extensively to the briefing already done in both cases. The simple issue involved in these appeals allowing simplicity of briefing is: Did this court mean what it said in *Mercier v. Geico Indem. Co.*, 139 Wn.App. 891, 165 P.3d 375 (2007) that a MAR arbitrator had the authority to subtract offsets and award a net money award?

B. Assignments of Error

1. Assignments of Error

1. The trial court erred in entering the order of October 30, 2013, granting respondent's motion for an order removing this case from mandatory arbitration (MAR).

2. The trial court erred in entering an order dated December 4, 2013, denying petitioner's motion for reconsideration of its order dated October 30, 2013.

2. Issues Pertaining to Assignments of Error

1. When a party puts a UIM claim into MAR, do the controlling statute and rules allow the arbitrator to award a net award up to the \$50,000.00 MAR limits after deduction of offsets? (Assignment of Error 1 and 2.)
2. Or are UIM claims essentially barred from MAR where the damages exceed \$50,000.00? (Assignment of Error 1 and 2.)

C. Statement of the Case

The facts relevant to this appeal are undisputed and set out by the parties in their respective pleadings relative to the motion for discretionary review. They are repeated here to the extent necessary to provide citations to the clerk's papers.

Julia Evans was a 12-year-old passenger in a vehicle involved in a rear-end collision on December 7, 2006. (CP 31) She was seat-belted in the back seat of a king cab pickup and was thrust violently forward and back. She experienced head, neck, shoulders, mid- and low-back injuries which have persisted to date. (*Id.*) She is currently 19 years of age and a college student.

Ms. Evans' claim as a minor against the liable driver was settled for policy limits pursuant to court authority by Snohomish County Order dated May 3, 2010. (CP 12 & 16) Unfortunately, the liability limits of the liable driver was only \$25,000 per person. She then pursued claims against the underinsured motorist's (UIM) insurers¹ who share responsibility for her damages over and about the \$25,000 limits that she recovered. (CP 31) Both insurance policies also had PIP benefits and both policies paid for medical treatment for Ms. Evans under these PIP coverages as well.

The UIM policies for Ms. Evans contained contractual "sue me" clauses requiring a lawsuit rather than arbitration to resolve claims. (CP 53) When negotiations failed to resolve the matter by settlement, Ms. Evans included the UIM carriers in her original lawsuit (CP 31) against the liable driver, Charity Edwards, who has since been dismissed. (CP 16) Believing her UIM claims were more cost effectively resolved in arbitration, she submitted the matter to mandatory arbitration by filing her initial statement of arbitrability limiting her UIM claims to a maximum of \$50,000. (CP 60) The intention was to present the matter to an arbitrator who would determine gross damages, subtract the \$25,000 received from

¹ There are two insurance carriers because there was UIM coverage on the vehicle in which Ms. Evans was a passenger and her parents had UIM coverage under their family policy under which Ms. Evans was an insured.

the liability carrier and PIP medical payments as appropriate, and make a net award within the \$50,000 mandatory arbitration limits. (Exhibit 4 & 5 to CP 51.)

Defendant Metropolitan Casualty Insurance Company (Metropolitan) objected to this claiming that the maximum that could be recovered under the UIM policies in arbitration would be \$25,000 (less the PIP payments) because this was the difference between the \$25,000 limits recovered from the liability carrier and the maximum of \$50,000 allowed for awards in mandatory arbitration. (*Id.*) Metropolitan brought a motion in Snohomish County Superior Court (CP 45) in which co-defendant Safeco Insurance Company of America (Safeco) joined. (CP 51) On October 30, 2013 the matter was heard before the Honorable Joseph Wilson who granted defendants' motion. (CP 58) Ms. Evans brought a timely motion for reconsideration (CP 62) which Judge Wilson denied by order dated December 4, 2013. (CP 64) Notice of this motion was filed on January 2, 2014. (CP 65)

D. Argument

As identified by appellant *Lind* in her opening brief before this court at p. 9, these cases come down to a simple distinction between damages and awards in the context of MAR. The larger issue is that, if

correct, the trial court's ruling eliminates nearly all UIM claims from using MAR.

1. Standard of Review

The trial court's interpretation of arbitration statutes are questions of law reviewed de novo. *In re Smith-Bartlett*, 95 Wn. App. 633, 636, 976 P.2d 173 (Div. 3 1999). Claims of waiver are a mixed question of law and fact. But where the parties do not dispute the facts, the question is one of law for the court, which is reviewed de novo. *Brundridge v. Fluor Federal Services, Inc.*, 164 Wn.2d 432, 441, 191 P.3d 879 (2008).

2. RCW 7.06 Authorizes A MAR Arbitrator To Award UIM Damages Up To \$50,000.00 Even When The Underlying Damages Exceed This Amount

The issues in this appeal have been adequately and ably briefed. Appellant incorporates by this reference and asks the court to review the arguments contained in appellant's Motion for Discretionary Review dated January 15, 2014; appellant's Reply to the Response Regarding Motion for Discretionary Review dated February 4, 2014; appellant *Lind's* Petitioner's Brief dated November 18, 2013; and appellant *Lind's* Petitioner's Reply Brief dated January 27, 2014. For convenience, portions of Petitioner's Motion for Discretionary Review and Motion for Reconsideration are attached here and incorporated by this reference as

Appendix A & B, respectively. Citations in those briefs are also incorporated in the Table of Authorities above.

Although respondent has tried to muddy the issue here it is really a simple concept. Ms. Evans wants to pursue the simpler and less expensive route of arbitration to obtain an award “where the sole relief sought is a money judgment” up to \$50,000.00. This is the jurisdictional standard set by RCW 7.06.020(1). To obtain a \$50,000.00 award, Ms. Evans must show damages over \$75,000.00 because the respondent UIM carrier is allowed a credit for offset of \$25,000.00 for the liability limits obtained against the tortfeasor’s liability insurance policy and possibly a credit for PIP payments. This court has already ruled in *Mercier* and presumably has already established that this was within the MAR arbitrator’s authority.

We see nothing in RCW 7.06 or the rules that would have prevented the arbitrator from reading the contract, admitting evidence of insurance limits, *giving GEICO appropriate credit for the payments Mercier had already received*, and coming up with a *net award* upon which the superior court could have entered judgment without further ado... (emphasis added)

Mercier, 139 Wn.App. para. 18, p. 901.

The alternative conclusion advanced by the UIM insurance carriers would be unacceptable for multiple reasons. The insurance carrier’s position would bar MAR for the majority of UIM claims. Any claim

where the underlying liability limits were \$50,000.00 would automatically not be able to use MAR. Any claim such as the present matter where the underlying limits are \$25,000.00 would limit the claimant to a UIM recovery up to \$25,000.00 only (less any PIP offsets). These results are not required by the MAR statute and for judicial economy and expectations of UIM insureds illogical and unacceptable.

E. Conclusion

Petitioner requests that this court rule that RCW 7.06 allows a MAR arbitrator to make a net award up to \$50,000 after deduction of offsets; vacate the trial court's order refusing to authorize the MAR arbitrator to make such an award; and remand the matter for resumption of the arbitration process.

April 2, 2014.

Respectfully submitted,



David A. Kohles
Attorney for Appellant/Petitioner
WSBA # 7678

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Civil Motions Judge
Hearing Date: Under Advisement

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IN THE SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

JULIA EVANS; and MARY EVANS AND
JEFFREY EVANS, INDIVIDUALLY, AND THE
MARITAL COMMUNITY COMPOSED
THEREOF,

Plaintiffs

v.

CHARITY EDWARDS AND JOHN DOE
EDWARDS, INDIVIDUALLY, AND THE
MARITAL COMMUNITY COMPOSED
THEREOF, METROPOLITAN CASUALTY
INSURANCE COMPANY, AND SAFECO
INSURANCE COMPANY OF AMERICA, AND
KATHIA MERCADO,

Defendants.

Cause No.: 09-2-11282-5

PLAINTIFFS' MOTION FOR
RECONSIDERATION OF THE
COURT'S ORDER RETURNING THIS
CASE TO THE TRIAL DOCKET

Defendant Metlife brought a motion claiming that mandatory arbitration was not appropriate under the facts of this case. The argument, with which the court agreed, is that if damages exceed the arbitration limits of \$50,000 that the UIM claim against the insurance carrier cannot go forward even though the claim against the UIM carrier would be limited to a maximum of \$50,000. Plaintiffs believe that the court's ruling was based on errors of law and fact and the court is respectfully requested to reverse its determination.

Appendix A, p. 1

1 Plaintiff's claim is not a personal injury action against the driver of the car that rear-ended her but
2 instead an action asserting a claim under the insurance contract between the parties, the maximum amount
3 of which cannot exceed \$100,000. Plaintiff wants to avail herself the lower costs and expenditures
4 hearing under mandatory arbitration allows.

5 Mandatory arbitration is a statutory system governed by RCW 7.06 et seq and the mandatory
6 arbitration civil rules. Pursuant to RCW 7.06.020 mandatory arbitration is available where the sole relief
7 sought is a money judgment and where no party asserts a claim in excess of \$50,000.

8 The Superior Court for Snohomish County Local Mandatory Arbitration Rule 1.2 provides as
9 follows:

10
11 MATTERS SUBJECT TO ARBITRATION. Pursuant to the authority granted by
12 statute, a claim is subject to mandatory arbitration only if it does not exceed fifty
thousand dollars (\$50,000), exclusive of attorney fees, interest and costs...

13 The Washington State Bar Association Alternative Dispute Resolution Deskbook notes that the
14 term "claim" is not defined in RCW 7.06.020 or in the MAR civil rules other than in reference to a
15 "money judgment" and concludes that a "claim" as used in the statute and rule "presumably is
16 synonymous with its use under the civil rules (e.g. CR8). ADR Deskbook Sec. 2.3(b)(i) at pg. 2-12.

17 Pursuant to CR 8 a "claim for relief" consists of (1) a short and plain statement of the claim
18 showing the pleader is entitled to relief and (2) *a demand for judgment for the relief to which he deems*
19 *himself entitled* (emphasis added).

20 Thus, an action is subject to MAR where the *demand for judgment* does not exceed \$50,000,
21 which is the case here. As an example of this the ADR Deskbook provides the following:

22
23 "A similar issue arises under the comparative negligence statute, Ch. 4.22 RCW.
24 Plaintiff has a claim for \$70,000 but concedes the plaintiff is 50% negligent so that the
25 final award would not exceed the arbitration limit of \$35,000 (the former MAR limit).
Is the case subject to arbitration? Because the case involves only a money judgment
and the Plaintiff is not seeking an amount in excess of the arbitration limit, the case is
subject to arbitration. As long as the claimant chooses to limit the award to no more

Appendix A, p. 2

1 than the jurisdictional limit, the case is subject to arbitration. ADR Deskbook Sec.
2.3(b)(i) at pg. 2-13.”

2 This example recognizes that affirmative defenses credits for the underlying liability limits as
3 alleged by Metlife reduce the Plaintiff's total damages and it is the *net* award that is subject to and cannot
4 exceed the MAR limit.

5 As further example of the application of this rule the court is directed to Pierce County Local Rule
6 PCLMAR 1.2 which in effect adopted the ADR example and states:

7
8 **Matters Subject to Arbitration.**

9 The limit for claims subject to mandatory arbitration is \$50,000. For the purposes of
10 this rule, a “claim” is defined to be the *net* value of the claim, after all reductions for
11 comparative negligence or set-offs; e.g. if the plaintiff's damages are \$70,000 and the
12 plaintiff is 50% comparatively negligent, the plaintiff's claim is for \$35,000 (emphasis
13 added).

14 This rule would be invalid if the mandatory arbitration statute is interpreted as Metlife claims in its
15 motion.

16 Metlife has argued that permitting the arbitrator to issue a “net” award would allow an arbitration
17 of “any matter and any claim, regardless of the value of the claim” which is incorrect. It is the amount of
18 the “claim” that would determine whether or not the matter is subject to MAR and so long as the amount
19 of the “claim” is \$50,000 or less than the matter is subject to MAR.

20 The following example demonstrates the absurdity of Metlife's position: Assume a plaintiff's
21 injury has a value of \$50,100 and the responsible third party has a liability limit of \$50,000. The UIM
22 insurer owes \$100 but won't pay so the plaintiff sues as required by the insurance contract. Following
23 Metlife's logic the plaintiff in that situation would have to have a jury trial to recover the \$100 instead of
24 being able to resolve the matter quickly and inexpensively in MAR.

25 **The arbitrator has the authority to consider set offs to determine a NET judgment.** The case
of *Mercier v. GEICO, Indem. Co.* 139 Wn. App. 891, 165 P.3d 375 (2007) makes it clear that the

Appendix A, p. 3

1 arbitrator has the authority to do exactly what the insurance contract between the parties dictates; i.e.,
2 determine the full value of the plaintiff's damages. From that figure the arbitrator would deduct the
3 amount of the third party coverage (the \$25,000) and also deduct any duplication of damages for medical
4 expenses paid under PIP (\$10,000) to arrive at the amount of the claim upon which the judgment is to be
5 entered which could not be greater than \$50,000.

6 The *Mercier* facts are essentially the same as in this case. The appellant, Mr. Mercier, settled his
7 third party claim for \$25,000 and had \$10,000 in PIP payments by his insurer, GEICO, and sought the UIM
8 limits of \$50,000 through mandatory arbitration in King County Superior Court. *Id.* at 894. Although the
9 arbitrator did not award the limits of \$50,000 and made a gross award rather than a net award, the Court
10 specifically stated that the arbitrator has broad authority to decide issues like those claimed by plaintiffs
11 here. *Id.* at 900. Specifically, the Court stated at p. 901:

13 "We see nothing in RCW 7.06 or the rules that would have prevented the arbitrator
14 from reading the contract, admitting evidence of insurance limits, giving GEICO
15 appropriate credit for the payments Mercier had already received, and coming up with
16 a **net award** upon which the Superior Court could have entered judgment without
17 further ado." (emphasis added).

18 The fact that there may need to be a mathematical calculation made to arrive at the amount, if any,
19 the plaintiff is entitled to on her contract claim is of no consequence to whether the case is subject to
20 arbitration. Many other types of claims may involve such a calculation to determine the total amount of
21 damages to which a party is entitled.

22 Metlife's position that the arbitrator's authority (and hence the jurisdictional limit) to determine
23 the value of the claim is \$50,000 *before* offsets or set offs is not what the MAR statute anticipated or what
24 the Court of Appeals held in *Mercier*.

25 **The purpose of mandatory arbitration is served by denying the Defendant's motion.** The
purpose of authorizing mandatory arbitration in certain civil cases is to alleviate court congestion and

Appendix A, p. 4

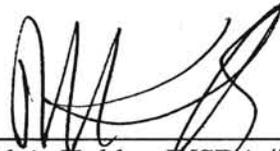
1 reduce delay in hearing civil cases. It is also designed to resolve cases quickly and inexpensively. This
2 purpose is served by this case being referred to MAR.

3 If the insurer prevails in its argument then the Plaintiffs will incur not only substantial and non-
4 recoverable costs and expenses associated with the jury trial but also experience the inevitable delay in
5 having the matter heard, especially in Snohomish County. Trial expense and delay are of little or no
6 concern to an insurer such as Metlife but they are of the utmost concern to the Plaintiffs, particularly when
7 as in this case the maximum amount recoverable in any event is limited.

8 The denial of Metlife's motion and allowance of this claim to be arbitrated will not make all UIM
9 claims subject to arbitration "regardless of the actual value of those claims" as asserted by Metlife. The
10 only UIM claims which will be subject to the rule will be those where the net judgment will not exceed
11 \$50,000, either because the contractual UIM limit is \$50,000 or less or because the claimant has waived
12 the right to a net judgment in excess of \$50,000. This will provide Plaintiffs with a less costly and
13 timely/efficient venue to resolve the UIM dispute and hence obtain the maximum benefit of the policy.
14 Such is the purpose of mandatory arbitration.

15
16 RESPECTFULLY SUBMITTED this 7th day of November, 2013.

17 DAVID A. KOHLES, INC., P.S.

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19 

20 David A. Kohles, WSBA #7678
21 Attorney for Plaintiffs

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Appendix A, p. 5

B

between the \$25,000 limits recovered from the liability carrier and the maximum of \$50,000 allowed for awards in mandatory arbitration. Metropolitan brought a motion in Snohomish County Superior Court in which co-defendant Safeco Insurance Company of America (Safeco) joined. On October 30, 2013 the matter was heard before the Honorable Joseph Wilson who granted defendants' motion. Ms. Evans brought a timely motion for reconsideration which Judge Wilson denied by order dated December 4, 2013. Notice of this motion was filed on January 2, 2014.

E. ARGUMENT

1. BASIS FOR THIS MOTION.

Plaintiff relies upon RAP 2.3 (b)(2) as the basis for this discretionary appeal. RAP

2.3 (b)(2) provides:

"(b) Considerations Governing Acceptance of Review...
discretionary review may be accepted only in the following
circumstances:

(2) The superior court has committed probable error and the
decision of the court substantially alters the status quo or
substantially limits the freedom of a party to act."

**2. UNDERINSURED MOTORIST CLAIMS (UIM) ARE CONTRACTUAL
CLAIMS THAT REQUIRE SETOFF CREDITS TO DETERMINE THE
AMOUNT OF THE CLAIM.**

The language of the two policies at issue here are standard provisions for UIM coverages in this state. The policies limit UIM claims to damages over the amount recovered or recoverable from a liability policy. The Metropolitan policy provides in relevant part:

We will pay for damages for bodily injury...

...

**The amount payable under this coverage will be reduced by any
amount:**

1. paid by or on behalf of any liable parties.

...
The amounts specified above shall reduce the damages which you may be entitled to recover and will not reduce the limit of this coverage shown in the Declarations.

The Safeco policy states in relevant part:

A. We will pay damages which an insured is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of bodily injury:

...
We will not make a duplicate payment under this coverage for any element of loss for which payment had been made by or on behalf of persons or organizations who may be legally responsible.

3. **MANDATORY ARBITRATION IS THE APPROPRIATE VEHICLE FOR RESOLVING THIS DISPUTE.**

Mandatory arbitration is a statutory system governed by RCW 7.06 *et seq* and the mandatory arbitration civil rules. RCW 7.006.020(1) provides:

"All civil actions, except for appeals from municipal and district court, which are at issue in the superior court in counties which have authorized arbitration where the sole relief sought is a money judgment and where no party asserts a claim in excess of \$15,000, or if approved by the Superior Court of a county by two thirds or greater vote of the Judges thereof, up to \$50,000, exclusive of interest and costs, are subject to mandatory arbitration ..."
(Emphasis added.)

The judges of Snohomish County have approved arbitrations up to the \$50,000.00 limits. The statute can therefore be paraphrased as follows:

"All civil actions where the sole relief sought is a money judgment and where no party asserts a claim in excess of \$50,000 ... are subject to mandatory arbitration."

As the Washington State Bar Association Alternative Dispute Resolution Deskbook notes, the term "claim" is not defined in RCW 7.06.020 or MAR 1.2 other than in reference to a "money judgment" and concludes that a "claim" as used in the statute

and rules "presumably is synonymous with its use under the civil rules (e.g. CR 8). ADR Deskbook Sec. 2.3 (b)(i) at pp. 2-12.

Pursuant to CR 8, a "claim for relief" consists of (1) a short and plain statement of the claim show the pleader is entitled to relief, and (2) *a demand for judgment for the relief to which he deems himself entitled.*" (emphasis added).

Thus, an action is subject to MAR where the *demand for judgment* does not exceed \$50,000.00, which is the case here.

The short, simple answer to this entire controversy is that plaintiff seeks a judgment against Metropolitan and Safeco for up to \$50,000, or the MAR jurisdictional limits. It is therefore a "civil action where the sole relief sought is a money judgment ..." which is not in excess of \$50,000. If plaintiff seeks \$50,000 and they seek it as a money judgment, then the matter is subject to mandatory arbitration by the clear, plain meaning of the statute.

4. THE ARBITRATOR HAS THE AUTHORITY TO CONSIDER SETOFFS.

The arbitrator has the authority to consider setoffs when calculating an award. If there is any difficulty in conceptualizing the arbitrator's authority in this case, it stems from the fact that the calculation to come to \$50,000 may involve a first step of establishing damages which may exceed \$50,000 limit. The case of *Mercier v. Geico*, 139 Wn.App. 891, 165 P.3d 375 (Div. I 2007), makes it clear that the arbitrator has the authority to do exactly what the insurance contract between the parties dictates, i.e., determine the full value of Ms. Evans' damages, and from that figure deduct the amount of the third party coverage (the \$25,000.00 liability limits) and also deduct any duplication of damages for medical expenses paid under PIP if appropriate to arrive at the

amount of the claim upon which judgment is to be entered, and in no event greater than \$50,000.00.

Mercier is strikingly similar to this case, although in *Mercier* it was GEICO that argued that the arbitrator was required to take into account setoffs for medical payments and the settlement *Mercier* had already received in calculating its final net award, while *Mercier* argued for a gross award. *Mercier*, 139 Wn.App. at 897.

Mercier had received \$25,000 from the at-fault carrier and filed suit in superior court to determine his right to the proceeds of his underinsured motorist policy. In that case, the limits of the underinsured motorist policy was \$100,000 and Mr. *Mercier* had been paid \$10,000 in medical expenses under his PIP coverage. There, the court, at page 901, specifically stated that the arbitrator has broad authority to decide issues in a case as follows:

"We see nothing in RCW 7.06 or the rules that would have prevented the arbitrator from reading the contract, admitting evidence of insurance limits, *giving GEICO appropriate credit for the payments Mercier had already received*, and coming up with a *net award* upon which the superior court could have entered judgment without further ado..." (emphasis added)

Division I held that the court did not err when it credited GEICO with \$35,000.00 before entering judgment (*Id.*, at 903), and that the arbitrator could have done that when making the award. Although *Mercier* came to the court in a slightly different posture than this case, the court's reasoning is sound. This case is not a personal injury action against the driver of the car that collided with the vehicle in which Ms. Evans was a passenger. It is an action asserting a claim under the contracts of insurance between the parties. By selecting arbitration, plaintiff has agreed that the maximum amount at issue cannot exceed \$50,000.00, which is the limit of mandatory arbitration. The fact that there

may need to be a mathematical calculation made to arrive at the amount is of no consequence.

In Ms. Evans' case, the \$25,000.00 she has received from the liability carrier and any PIP amounts, if appropriate, can properly be denominated as setoffs or in the words of the court, "giving GEICO appropriate credit for the payments Mercier had already received ... " Thus, it is quite clear that the authority of the arbitrator exists to make an award of up to \$50,000 so long as it is the NET award given to one of the parties.

5. FAIRNESS DICTATES THAT UIM INSURANCE CARRIERS SHOULD NOT BE ABLE TO FORCE EVERY CLAIMANT TO GO THROUGH AN EXPENSIVE JURY TRIAL.

The trial court's ruling here has significant repercussions. Insurance carriers can use it to force their insureds into complicated and expensive jury trials for small claims. This case is a good example where the insurance carriers are forcing Ms. Evans to go through a jury trial even if the overall damages for Ms. Evans would be slightly over a total of \$50,000. She could easily spend \$10,000 in costs to go to a jury trial over what she would have to spend for an arbitration hearing. The injustice is particularly obvious if the underlying liability insurance limits are the common amount of \$50,000 per person. All such UIM claimants would be barred from any arbitration claim even if their UIM claim is only a few thousand dollars. Ms. Evans has an undesirable choice to waive her UIM claim for any amounts she would otherwise be due over \$25,000 if she wants to stay in MAR following the logic proposed by the insurance company. A claimant with underlying \$50,000 liability recovery would not even have that choice. They would be forced to a jury trial even where their maximum claim is \$1,000, \$5,000, or \$50,000 so long as their damages are over \$50,000.

6. THE WSBA DESKBOOK APPROVES CALCULATIONS WHICH EXCEED \$50,000 SO LONG AS THE NET RESULT IS \$50,000 OR LESS.

Persuasive authority confirms that claims are arbitrable in MAR where damages exceeding \$50,000 are alleged. It is clear that the arbitrator can exceed \$50,000 in making calculations so long as he arrives at a net award of \$50,000 or less. One scenario which confirms this is a plaintiff whose damages exceed \$50,000 but was comparatively at fault for causing his injuries. In such a situation, the case is subject to mandatory arbitration but the maximum potential award is \$50,000. The Washington State Bar Association Alternative Dispute Resolution Deskbook: Arbitration and Mediation in Washington states as follows:

"A similar issue arises under the comparative negligence statute, Ch. 4.22 RCW. Plaintiff has a claim for \$70,000 but concedes that plaintiff is 50% negligent so that the final award would not exceed the arbitration limit of \$35,000. Is the case subject to arbitration? Because the case involves only a money judgment and the plaintiff is not seeking an amount in excess of the arbitration limit, the case is subject to arbitration."

§2.3(l)(b)(I). Again, the key is that the plaintiff is not seeking more than the jurisdictional limit. As always, the arbitrator is limited to \$50,000 in a total award.

F. CONCLUSION

This court should accept review of the decision designated in Part B of this motion for the reasons indicated in Part E.

DATED this 15th day of January, 2014.

Respectfully submitted



David A. Kohles, WSBA #7678
David A. Kohles, Inc., P.S.

ORIGINAL

NO. 713906

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

JULIA EVANS, et al., Appellants/Petitioners,

v.

CHARITY EDWARDS, et al., Respondents

DECLARATION OF SERVICE

David A. Kohles, WSBA #7678
Attorney for Appellants/Petitioners Julia Evans, et al.
26231 72nd Avenue NW, Suite 202, Stanwood, WA 98292
(360) 629-4100

Respondents' Counsel:

Dawna J. Campbell (*for Respondents Metlife*)
Chris L. Winstanley
Fallon & McKinley, PLLC
1111 3rd Avenue, Suite 2400
Seattle, WA 98101

Marie Dolack (*for Respondents Safeco*)
Law Offices of Kelley J. Sweeney
1191 2nd Avenue, Suite 500
Seattle, WA 98101

Amy Rosario (*for Respondents Mercado*)
Moore & Davis
19909 120th Avenue NE, Suite 201
Bothell, WA 98011

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COURT OF APPEALS DIV 1
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DECLARATION OF SERVICE

I hereby declare that, on the date given below, I caused to be served the foregoing original and copies of Petitioner's Brief and this accompanying Declaration of Service on the following individuals listed below in the manner indicated:

Clerk of the Court
Court of Appeals, Division I
One Union Square
600 University Street
Seattle, WA 98101-1176
Original Only (per RAP 18.5(c))

Via U.S. Mail
 Via Facsimile
 Via Hand Delivery
 Via E-mail

Dawna J. Campbell
Chris L. Winstanley
Fallon & McKinley, PLLC
1111 3rd Avenue, Suite 2400
Seattle, WA 98101
Attorney for Defendant Metlife

Via U.S. Mail
 Via Facsimile
 Via Hand Delivery
 Via E-mail

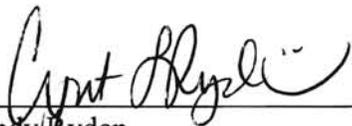
Marie Dolack
Law Offices of Kelley J. Sweeney
1191 2nd Avenue, Suite 500
Seattle, WA 98101
Attorney for Defendant Safeco

Via U.S. Mail
 Via Facsimile
 Via Hand Delivery
 Via E-mail

Amy Rosario
Moore & Davis
19909 120th Avenue NE, Suite 201
Bothell, WA 98011
Attorney for Defendant Mercado

Via U.S. Mail
 Via Facsimile
 Via Hand Delivery
 Via E-mail

DATED this 2nd day of April, 2014 in Stanwood, Snohomish
County, Washington.



Cindy Ryden