

## Insurer Entitled to Arbitrate Disputed UIM Claim Before Insured Could Pursue Bad Faith Action

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***Brett Mclsaac v. Foremost Insurance Company Grand Rapids***, Michigan, A160389 (Sonoma County Super. Ct. No. SCV-265433) (Filed 4/30/21; certified for publication 5/19/21)

Mclsaac had an auto insurance policy with Foremost that provided \$100,000 per person in underinsured motorist (“UIM”) coverage. The policy had a UIM coverage endorsement which read:

“**Arbitration** [¶] A. If we and an ‘insured’ do not agree: [¶] 1. Whether that person is legally entitled to recover damages under this coverage; or [¶] 2. As to the amount of damages; [¶] then the matter will be settled by arbitration.

Mclsaac was involved in an accident caused by an underinsured motorist. After recovering the \$15,000 limit from the at fault driver’s insurer, Mclsaac made a UIM claim to Foremost and demanded the remaining \$85,000 UIM limit. Foremost investigated the claim, and made a settlement offer that was less than the policy limit. Mclsaac then demanded UIM arbitration. Foremost served discovery requests and attempted to take Mclsaac’s deposition in the arbitration proceedings. Mclsaac did not appear for his noticed deposition and, instead, filed a civil suit against Foremost for breach of contract, unjust enrichment, breach of the covenant of good faith and fair dealing, and bad faith. Mclsaac alleged that Foremost had failed to adequately investigate the UIM claim and improperly attempted to settle it for less than the claim was worth.

Foremost filed a petition to compel arbitration and stay the action. Mclsaac opposed the petition, contending that his suit was not solely about the amount of his damages, but also about whether Foremost breached the insurance contract and acted in bad faith. The trial court agreed with Mclsaac and denied Foremost’s motion, finding that the lawsuit “was not a dispute over coverage or the amount, but instead a cause of action for insurance bad faith.” Foremost appealed.

The Court of Appeal reversed. Although the court agreed that Mclsaac’s bad faith claim was not subject to the policy’s arbitration provision, it noted that Foremost had not moved to compel arbitration of the bad faith claim. Rather, it sought to compel arbitration of the parties’ dispute over damages, which was subject to arbitration, and Mclsaac could litigate his bad faith claim after the arbitration concluded. Because Mclsaac failed to present evidence showing that any of the exceptions to arbitration set forth in Code of Civil Procedure §1281.2(a)-(c) applied, the court held

that the motion to compel arbitration should have been granted.

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