

COURT OF APPEALS: UIM CARRIER MUST INTERVENE TO PRESERVE RIGHT TO JURY TRIAL

In Mathena v. Allstate Ins. Co., (File A06-647, January 23, 2007) an unpublished decision of the Minnesota Court of Appeals, the court held that UIM insurers must intervene in the underlying liability case, if given adequate notice and opportunity, or it may waive certain rights, including the right to a jury trial.

In Mathena, the insured was seriously injured in an automobile accident and commenced a suit against the tortfeasor. She also notified Allstate, her underinsured motorist (UIM) carrier, on several occasions of the claim against the tortfeasor; that her damages would likely exceed the tortfeasor's policy limits; and she would likely make a claim for UIM benefits. Each time, Allstate either failed to reply or merely indicated it would not participate in the resolution of the claim. Despite notice of a mediation, Allstate did not participate. When the mediation failed, the parties then submitted the case to binding arbitration. Again, Allstate did not intervene, but rather indicated it did not agree to arbitration and it would not be bound by any award. The arbitration resulted in damages in excess of the liability limits. Mathena then submitted a *Schmidt-Clothier* notice to Allstate. Allstate did not substitute, and stated it was not bound by the award.

Mathena moved to confirm the award. Allstate filed a motion to intervene, arguing it had a constitutional right to a jury trial. The district court denied the motion and confirmed the arbitration award, because intervention at such a late stage of litigation presented substantial prejudice to the insured. Mathena then filed her UIM action against Allstate. The district court granted Mathena's motion for summary judgment, holding Allstate had waived its right to a jury trial by failing to intervene in a timely manner in the underlying case. The district court held Allstate was bound by the determination of damages at the arbitration, and entered judgment for the amounts over the tortfeasor's liability limits and interest accruing from the date of the arbitration award.

The Court of Appeals held that for UIM purposes, arbitration is an appropriate way to arrive at a "best settlement" of the underlying liability claim, which can bind both the injured party and the UIM carrier. Despite being a constitutional right, the right to a jury trial may be waived if the intent to do so is a "necessary inference from unequivocal acts or conduct." In this case, Allstate was notified of the intention to claim UIM benefits on at least three separate occasions throughout the claims evaluation and settlement process. Under these facts, Allstate's failure to intervene acted as "unequivocal conduct," resulting a waiver of its right to a jury trial.

This is not an unexpected decision. It is yet another case where the courts have indicated that for an insurer to fully preserve its rights in a UIM claim, it must actively participate in the underlying liability case, provided it was given adequate notice and an opportunity to intervene. Otherwise, the insurer's rights and duties will be deemed waived.

We will follow this case in the event of an appeal to the Minnesota Supreme Court. If you have any questions regarding this case or other automobile-related issues, please contact any member of our Motor Vehicle Practice Group at (952) 831-6544. This letter, and other Minnesota Appellate Court opinion updates, are now available in .pdf form on the News and Resources page of our Firm's website: www.johnson-condon.com.

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