

January 7, 2005

To Enforce Arbitration Clause, Insurer Must Intervene Before Default Judgment is Entered

On December 16, 2004, the Minnesota Supreme Court held in *Gerdesmeier v. Sutherland*, 690 N.W.2d 126, that an insurer cannot force an insured into mandatory arbitration pursuant to the policy after the insurer received adequate notice of the potential default judgment against the uninsured motorist and the insurer failed to intervene.

Gerdesmeier was injured in an auto accident with an uninsured motorist. On December 3, 2001, nearly one year after the accident and several months after submitting an uninsured motorist claim to his insurer, Illinois Farmers (“Farmers”), Gerdesmeier brought a tort action against the uninsured motorist and provided prompt notice to Farmers of the lawsuit. After the uninsured motorist defaulted, Gerdesmeier notified Farmers he would move for default judgment against the uninsured motorist. Farmers did not intervene, did not oppose the motion for default judgment, and did not demand arbitration pursuant to the terms of the policy. The district court granted default judgment in favor of Gerdesmeier in the amount of \$118,934.24. Gerdesmeier then presented the judgment to Farmers and demanded payment of his \$100,000 UM policy limit. Farmers declined and, for the first time, demanded arbitration of the UM claim.

Gerdesmeier brought suit in district court and the court granted judgment on the pleadings for Gerdesmeier, holding Farmers received notice of the claim and had an opportunity to intervene. Its failure to intervene prevented Farmers from compelling arbitration. The Court of Appeals reversed, holding the arbitration clause required the parties to arbitrate the UM claim despite the default judgment, stating that allowing an insured to obtain and then enforce a default judgment against the insurers when the policy provides for arbitration would allow the insureds to circumvent the mandatory arbitration provisions.

The Minnesota Supreme Court overruled the Court of Appeals, however, and reinstated the district court decision. The purposes of the No-Fault Act preclude enforcement of the arbitration clause under the facts of this case, where its use would delay payment to the victim and require re-litigation of liability and damage issues already established by the judgment against the uninsured motorist. The mandatory arbitration clause could have been enforced, however, if Farmers had demanded arbitration before the insured obtained the default judgment.

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.

Sincerely,

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