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Michigan Court Limits Common Law Arbitration Principles

By Timothy Bahorski

In *Fran, d/b/a Rainbow's End v Harleysville Ins Company*, 2006 Mich. App. Lexis 585, (decided March 7, 2006) the Michigan Court of Appeals held that the common rule of unilateral revocation of an arbitration agreement does not apply where it conflicts with a statutory mandate that an appraisal be included in every fire policy.

Pursuant to a provision in its insurance policy, Harleysville made a written demand for a binding appraisal regarding an insured loss after the parties were unable to agree on the amount of the loss. The insured, however, viewed the policy provision as a common-law arbitration clause subject to unilateral revocation. It exercised the alleged right to revoke, refusing to participate in an appraisal. The trial court agreed with the insured and denied Harleysville's motion for an appraisal. Harleysville appealed and the Michigan Court of Appeals affirmed the trial court in an unpublished opinion per curiam on January 12, 2006. Harleysville then filed a motion for reconsideration, which the Court of Appeals granted.

On reconsideration, the Court of Appeals, in a published opinion, vacated the previous unpublished opinion and concluded that the trial court erred in its ruling. The Court of Appeals found that because Michigan Statute, MCL 500.2833(1)(m), mandates inclusion of the appraisal provision contained in the fire insurance policy at issue, and because the statutory language of §2833(1)(m) specifically directs that "either party may make a written demand that the amount of the loss or the actual cash value be set by appraisal[,]" the common-law principle of unilateral revocation would succumb to the overriding legislative authority.

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According to the Michigan Court of Appeals, parties may not unilaterally revoke an arbitration agreement when it is mandated by law. In this particular case, the parties could not unilaterally revoke an appraisal following a fire, since the applicable Michigan Statute requires that every fire policy include an appraisal provision.

It must be remembered that this ruling cuts both ways. Once one of the parties to the disagreement demands an appraisal, the other party must comply.

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The Court of Appeals noted that, as a general rule, appraisal clauses are viewed as common-law arbitration agreements. Pursuant to common-law arbitration principles, either party may unilaterally revoke the agreement at any time before the announcement of the award, regardless of which party initiated the arbitration. Here, however, the court noted that the involved appraisal clause was mandated by statute. When common-law principles and clear statutory language conflict, the statute controls. The Court of Appeals held that:

> "allowing one party to unilaterally revoke the appraisal clause and terminate the appraisal process would run contrary to the parties' specific agreement as reflected in the insurance policy and it would directly conflict with MCL 500.2833(1)(m), which requires the policy to include an appraisal clause that provides for an appraisal process to be conducted on the demand of one party only. If one party is permitted to reject and forgo the appraisal process despite a demand to invoke the process by the other party, the language of § 2833(1)(m) would be rendered nugatory and mere surplusage; this is not permissible."

The appraisal clause in question did give Harleysville "the right to deny the claim" even if there was an appraisal. In a footnote, the court also commented, "To the extent that this last sentence can be read as providing defendant insurer the right to unilaterally reject the appraisal process or reject the amount determined via an appraisal, such an interpretation cannot withstand scrutiny as it is contrary to MCL 500.2833(1)(m)." Instead, the court "view[ed] this language as merely indicating that defendant insurer need not pay a claim in the amount determined in the appraisal process on grounds other than simply a disagreement with the dollar figure arrived at in the appraisal, e.g., discovery that a homeowner committed arson. Bad faith, fraud, misconduct, or manifest mistake can also provide grounds to reject the appraisal and deny the claim."

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We welcome your questions and comments.

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