

Rhode Island Supreme Court Affirms Superior Court Ruling in an Arbitration Award Involving a Providence Water Supply Board Employee

David DiSano v. Argonaut Insurance Company, 178 A.3d 982, 2018 WL 1076522 (R.I. Feb. 28, 2018)

John J. Cloherty successfully defended Argonaut Insurance Company in an appeal before the Rhode Island Supreme Court. The insured, Providence Water Supply Board, had paid significant sums to its employee, David Disano, in worker's compensation benefits after his water truck was struck in a low-speed accident. Despite recovering benefits from the other driver's insurer, from his own personal auto insurer, and from the worker's compensation insurer, plaintiff brought an Underinsured Motorist Policy claim against his employer's auto insurer. Attorney Cloherty defended the insurer at arbitration held over two days wherein plaintiff sought an Award of \$900,000. After deliberations, the Arbitration panel found in favor of the defendant insurer, awarding plaintiff no damages at all. On appeal, the Rhode Island Supreme Court refused to vacate the Arbitration award.

Background

This arbitration arose from an automobile accident in Cranston, Rhode Island between a large 2005 GMC pickup truck owned by the Providence Water Supply Board ("PWSB") being driven by its employee David Disano, and a 1996 Jeep owned and driven by Mr. Justin Lorello. This collision was relatively minor: essentially a low-impact low-speed collision causing a small scrape on the side of the PWSB truck, and a small dent and damage to the front driver's-side bumper and headlight of the Jeep. Despite the low-speed, low-impact collision, and despite plaintiff being the belted driver of a large utility truck having three times the mass of the Jeep, and despite the plaintiff not reporting any injuries to the Police or the Water Department Supervisor who responded to the scene, and despite plaintiff getting discharged after 15 minutes at the emergency room for complaints of only back pain - somehow plaintiff asserted this accident caused him to undergo a total left hip replacement surgery ten months later, never returning to work and needing a disability retirement. Contending the proceeds from the other driver's insurance and his personal auto insurance were inadequate, plaintiff claimed underinsured-motorist coverage through PWSB's insurance policy with Argonaut.

Arbitration Decision

Under the policy's arbitration provision, a hearing was held in August 2014. The majority of arbitrators found in favor of Argonaut.

"The majority found Lorello (the other party involved in the accident) liable for the April 14, 2010 accident. The majority also found that: (1) Lorello's insurer, Liberty Insurance Company, had paid DiSano \$25,000, the policy limit; (2) DiSano's insurer, Metropolitan Property and Casualty Insurance Company, had paid DiSano \$25,000, the underinsured-motorist coverage policy limit; and (3) the workers' compensation insurer for PWSB, Liberty Mutual, had paid DiSano \$258,303 in workers' compensation benefits. Consequently, the majority determined that Argonaut was entitled to an offset of \$308,303 from any damages awarded to DiSano in the arbitration, which it calculated by adding the aforementioned insurance payments and workers' compensation benefits received by DiSano."

Superior Court Decision

DiSano filed a petition in the Superior Court to vacate the arbitration award. He claimed the arbitration miscalculated the offset amount in its decision. Mr. Cloherty defended the arbitration decision as properly calculating the offset amount, and also argued that, “the purported inadequacy of an arbitration award is not a ground upon which the courts can vacate an arbitration award.”

DiSano also filed a notice to depose the dissenting arbitrator. Mr. Cloherty argued that: (1) Superior Court Arbitration Rule 5(f) prohibits the deposition of an arbitrator; (2) common law provides arbitrators with quasi-judicial immunity; and (3) there is no factual or legal basis to depose the dissenting arbitrator.

The Superior Court upheld the arbitration decision and granted Argonaut’s motion to quash the deposition subpoena.

Rhode Island Supreme Court Decision

The Supreme Court upheld the Superior Court’s decision citing, “Further, even if the arbitrators did err by failing to subtract the amount of workers’ compensation benefits attributable to DiSano’s hip replacement from the offset amount, ‘[a]n arbitrator’s award will not be overturned for mere errors of law.’ *Atwood Health Properties, LLC v. Calson Construction Co.*, 111 A.3d 311, 315 (R.I. 2015). ...”

Read the full opinion [here](#).