

STATE OF MICHIGAN
COURT OF APPEALS

TERRI KONOPSKI and PATRICK KONOPSKI,

Plaintiffs-Appellees,

v

CITIZENS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
February 20, 2001

No. 220027
Wayne Circuit Court
LC No. 98-815654-NZ

Before: Meter, P.J., and Neff and O'Connell, JJ.

MEMORANDUM.

Defendant appeals as of right the order granting plaintiffs' motion for summary disposition in this insurance dispute. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs filed a claim for underinsured motorist benefits under their automobile insurance policy with defendant. The claim was submitted to arbitration under a contractual arbitration clause, resulting in an award of \$185,000 to plaintiffs. When plaintiffs moved to enforce the award, defendant attempted to invoke its right under the policy to vacate the award and demand a trial. The trial court rejected defendant's argument and granted plaintiffs' motion to enforce the award.

Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute that he had not agreed to so submit. *Amtower v Roney & Co (On Remand)*, 232 Mich App 226, 234; 590 NW2d 580 (1998). Parties to an arbitration contract can provide that certain issues be determined by the court, if they so specify in their contract. *Id.*

The relevant policy language makes arbitration binding only under certain conditions:

The amount of damages. This applies only if the amount does not exceed the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which 'your covered auto' is primarily garaged. If the amount exceeds that limit, either party may demand a right to trial. This demand must be made within 60 days of the arbitrators' decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

In *Tellkamp v Wolverine Mutual Ins Co*, 219 Mich App 231, 235-240; 556 NW2d 504 (1996), this Court upheld a similar policy provision. The policy language allowed either party to demand a jury trial when the arbitration award exceeded the minimum coverage required by law. *Id.* at 236. Here, the \$185,000 arbitration award exceeded the \$20,000 minimum liability coverage specified in Michigan's financial responsibility law. Accordingly, under *Tellkamp*, the trial court erred in granting plaintiffs' motion for summary disposition.

The trial court declined to follow *Tellkamp*, focusing on the policy limits involved. However, policy limits do not affect either party's ability to reject the arbitration award if it is over \$20,000. The trial court erred in failing to follow *Tellkamp*.

Reversed and remanded for trial. We do not retain jurisdiction.

/s/ Patrick M. Meter

/s/ Janet T. Neff

/s/ Peter D. O'Connell