



1100 Superior Avenue, Suite 1850  
Cleveland, Ohio 44114  
800-870-5521  
www.RathboneGroup.com

### Beyond the Courtroom:

#### Maximum Recovery in Arbitration Forums Leads to \$165,000 Property Damage Award

Insurance Carriers often enter into agreements voluntarily forgoing litigation in favor of Arbitration Forums (AF). There are many benefits to entering into such agreements including contained costs, speedy resolution, final and binding decisions, and quick recovery. Despite these benefits, the road to an award can be daunting and riddled with defenses attacking AF's jurisdiction and an Applicant's right to recover. Knowledge of AF's Agreement and Rules plays a critical role in overcoming such defenses. Once overcome, the matter remains within AF's jurisdiction, proceeds to liability review, and can ultimately result in a significant award. This article chronicles one such claim that moved beyond the courtroom, overcame jurisdictional defenses, and resulted in maximum recovery.

#### ***Factual History***

In this case, the Homeowner purchased a dryer from a local Distributor in September 2008. The Distributor contracted with an Installer to install the dryer at the Homeowner's residence three days later. Less than a month after installation a fire ignited within the dryer causing \$165,000 in fire and smoke damage to the residence.

#### ***Procedural History***

Litigation was filed July 2010 against the dryer Manufacturer, the Distributor, and

the dryer Installer. Litigation was eventually stayed by agreement of all parties in June 2012 in favor of AF. Arbitration was filed May 2015 to be heard by a Panel of three Arbitrators. Suit was formally dismissed July 2015.

#### ***Affirmative Defense – Statute of Limitations***

Immediately after filing arbitration, the Respondents asserted numerous affirmative defenses challenging AF's jurisdiction starting with a statute of limitations defense. Per AF Rule 1-2,

“... If the applicable statute of limitation has expired, the filing of suit will toll the statute of limitations for 60 calendar days from the suit dismissal/discontinuance. If arbitration is not filed within 60 calendar days of the dismissal/discontinuance, the expiration of the statute of limitations may be asserted as an affirmative defense.”

Respondents argued that the agreement to stay litigation was ordered in June 2012 but arbitration was not filed until May 2015, almost 3 years after the stay. Respondents further argued that unless the Applicant Homeowner could confirm that suit was still in force at least 60 days prior to the May

2015 arbitration filing, Applicant would be barred from recovery.

Applicant argued that although arbitration was filed May 2015, the litigation was not dismissed until July 6, 2015, two months after arbitration was filed. Since arbitration was filed while suit was still pending, the statute of limitations was protected and did not expire until well after the arbitration filing. The Panel agreed with Applicant and denied the affirmative defense for statute of limitations.

***Affirmative Defense – Monetary Limits***

Respondents also asserted a monetary limits defense arguing that AF only retains jurisdiction up to \$100,000 and since this claim exceeded that amount, AF did not have jurisdiction to hear the case.<sup>1</sup>

Applicant cited to AF Agreement, Article Fourth which reads in part,

“The parties may, with written consent, submit a claim:

- that exceeds this forum’s monetary limit”

Applicant argued that Article Fourth allows participants to waive the monetary limits by written consent should they desire to resolve a dispute in arbitration that exceeds the Forum’s monetary limit. Applicant submitted a copy of the Stay evidencing written consent by the parties to have this case heard in Arbitration Forum in

compliance with Article Fourth. Applicant further argued that since consent was given, it could not be revoked and asked that the matter proceed to hearing on the full amount of \$165,000.00. In an attempt to keep the matter in arbitration, Applicant also argued in the alternative, stating that should the Panel conclude that the parties did not waive their monetary limits the Applicant would agree to reduce its demand to the monetary limit of \$100,000.

After review and consideration, the AF panel held that the Stay was sufficient evidence to support written consent and that since the Stay did not contain any restrictions concerning the amount of damages, the Affirmative Defense of monetary limits was denied. The matter proceeded to hearing on the full demand of \$165,000.00.

***Affirmative Defense – Product Liability Exclusion***

Respondent Manufacturer asserted the third and final affirmative defense alleging that since this was a product liability claim the arbitration was filed in the wrong forum without its consent.<sup>2</sup> Respondent Manufacturer argued that in order for AF to retain jurisdiction all parties needed to consent for the matter to be heard in AF and they did not give their consent.

Again, the Applicant argued that the claim was previously sued but stayed in favor of arbitration by consent of all parties. A copy

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<sup>1</sup> AF Rule 1-3 “Compulsory arbitration is applicable to a maximum of  
- \$100,000 Company Claim Amount in the Automobile, Medical Payment, Property and Uninsured Motorists Forums”

<sup>2</sup> Article Second of the AF Agreement was revised in January 2015 to incorporate the exclusion of product

liability claims arising from an alleged defective product. Article Second Exclusions states, “No company shall be required, without its written consent, to arbitrate any claim or suit if ... i) it is a product liability claim arising from an alleged defective product.”

of the stay with Respondents' written consent was submitted as evidence of written consent. Applicant also argued that once given, consent cannot be withdrawn.

The AF Panel agreed and held that the stay confirmed all parties agreed to hear the case in AF and that their consent may not be withdrawn as it was provided for in writing.

### ***Liability Review and Arbitration Decision***

Once the affirmative defenses were denied, the Arbitrators proceeded to a liability review. In the arbitration filing, the Applicant Homeowner's Carrier alleged that the Installer and Distributor were liable for negligently installing the dryer which resulted in the fire and subsequent damage. The Applicant Homeowner Carrier further claimed that Manufacturer was liable for manufacturing a defective product.

The Installer, Distributor, and Manufacturer each denied liability and claimed that the Installer of the dryer vent, who was not named in the litigation and therefore not named as a Respondent in Arbitration, negligently installed the vent against installation instruction. The Respondents argued that the vent installer's negligence was the direct and proximate result of the fire and that Applicant failed to prove negligence against the named Respondents.

Applicant Homeowner amended its contentions and argued that despite any alleged wrongdoing against the vent installer, the dryer Installer still had a duty to inspect the existing vent to make sure it was functioning properly at time of install so as not to impede the functionality of the dryer. Applicant's expert report was introduced as evidence to confirm that the

dryer Installer should have checked the overhead exhaust vent to make sure it complied with the installation requirements of the dryer. By its own admission, the dryer Installer failed to do so. Since he failed to do so, he was liable for the resulting fire and damage.

After review of all the evidence the Panel confirmed that the Manufacturer provided installation requirements for the dryer. Applicant Homeowner, Respondent Distributor, and Respondent Installer all provided C & O reports and expert reports that supported the vent system did not adhere to the manufacturer's install requirements nor to the 2006 International Residential Building codes. The Panel noted that the codes and install requirements state that when using a flexible metal vent duct it must not be crushed. Instead, "it must be stretched out to its fullest length, and it must be installed in the shortest possible distance. The expert reports that were submitted as evidence supported that the [Homeowner's] flexible vent system was installed in a manner that partially crushed the exhaust system with the system making two 180 degree changes over a short distance. The expert reports ... support[ed] that the failure of the series wired devices within the dryer failed due to the abnormally high temperatures in the drum. The abnormally high temperature in the drum was the result of the severe reduction of airflow through the dryer caused by the restrictions in the improperly installed venting system."

The Panel concluded that if Respondent Installer had reviewed the installation instructions provided by Respondent Manufacturer, the Respondent Installer would have seen that the venting was not

up to the manufacturer's requirements nor did it comply with 2006 International Residential Building codes. Respondent Installer should have refused to connect the dryer to the existing dryer venting. Applicant proved 100% liability against dryer Installer for improper installation of the dryer per the manufacturer's installation requirements. Award rendered in favor of Homeowner's Carrier totaling \$165,000.