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In Washington, Binding Arbitration Clauses in Insurance Contracts are No Longer Enforceable

By Matthew J. Sekits, Daniel R. Bentson

The Washington Supreme Court recently interpreted a state statute to prohibit binding arbitration clauses in insurance policies. In *State of Wash. Dep't of Transp. v. James River Ins. Co.*, No. 87644-4 (Wash. Jan. 17, 2013), the contractor on a state highway project named the Washington State Department of Transportation (the "Department") as an insured under the contractor's liability policy with James River Insurance. After a car accident at the project site, representatives of those killed and injured in the accident sued the contractor and the Department. The Department tendered the defense of the suit to James River and James River accepted while reserving rights.

Later, due to a coverage dispute between James River and the Department, James River attempted to enforce the policy's binding arbitration provision. The Department resisted arbitration, and sued James River in state court, seeking a declaration that the policy's binding arbitration provision was unenforceable. The trial court ruled in favor of the Department, holding that RCW 48.18.200(1)(b), which voids any insurance contract provision "depriving the courts of this state of the jurisdiction of action against the insurer," rendered the policy's binding arbitration provision unenforceable. The court further held that federal law did not preempt this state statute.

James River appealed and the Washington Supreme Court granted direct review. On appeal, James River argued that the legislature intended RCW 48.18.200(1)(b) to prohibit forum selection clauses, not binding arbitration provisions. A unanimous Washington Supreme Court rejected this argument, holding that RCW 48.18.200 voids binding arbitration provisions in insurance policies. The court also affirmed the trial court's holding that the Federal Arbitration Act did not preempt RCW 48.18.200.

James River shows that, in Washington, an insurer can no longer enforce mandatory arbitration provisions in insurance contracts. Absent action by the legislature, from now on, insurers must get the consent of insureds before moving forward with arbitration.