STATE OF MINNESOTA
IN COURT OF APPEALS
A06-1074

Glass Service Co., Inc.,
as Assignee of Brad Benson, et al., claimants,
Respondents,

vs.

Illinois Farmers Insurance Company,
Appellant.

Filed June 26, 2007
Affirmed
Randall, Judge

Ramsey County District Court
File No. C1-02-005860

Charles J. Lloyd, Livgard & Rabuse, P.L.L.P., 2520 University Avenue Southeast, Suite 202, Minneapolis, MN 55414 (for respondent)

Eric J. Magnuson, Diane B. Bratvold, Briggs & Morgan, 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402; and

Steven R. Kluz, Jr., Gregory Erickson, Mohrman & Kaardal, P.A., 33 South Sixth Street, Suite 4100, Minneapolis, MN 55402 (for appellant)

Considered and decided by Randall, Presiding Judge; Klaphake, Judge; and

Willis, Judge.

U N P U B L I S H E D O P I N I O N

RANDALL, Judge

On appeal from the district court order confirming the arbitrators' awards of damages in multiple, individual, consolidated claims under the no-fault law, in which respondent sought additional payments for automobile windshield glass repair and replacement work it had performed for appellant's insureds, appellant argues that the arbitrators exceeded their authority (a) in awarding aggregate damages in multiple individual consolidated claims; (b) in failing to hold respondent to its burden of proof as an assignee and under the arbitration rules; and (c) in awarding damages in contravention of the policy language and governing statute. Appellant also argues the district court erred in modifying the arbitrators' awards to add pre-award interest. We affirm.

FACTS

Appellant Illinois Farmers Insurance Company provides automobile insurance to thousands of Minnesota residents. Between 1997 and 2004, respondent Glass Service Company repaired and replaced the auto glass of many of appellant's policyholders. As payment, respondent accepted an assignment of the proceeds appellant owed each insured under their policies. Respondent then submitted invoices directly to appellant, and appellant issued payment directly to respondent. This appeal arises out of a dispute between
appellant and respondent concerning the amount that appellant must pay respondent for services performed on behalf of approximately 5,700 of appellant's insureds.

Pricing in the auto glass industry is primarily based on three components: glass, adhesives, and labor. The pricing on these components is based on a national price-list publication known as the National Auto Glass Specifications (NAGS). The NAGS benchmark pricing is updated and published quarterly to remain current with new part introductions and revisions to existing parts information, and reflect adjustments for inflation. Like most insurers and glass providers in Minnesota, both respondent and appellant based their glass prices on the NAGS benchmark prices. Respondent charges prices for glass, adhesives, and labor that are percentages of the list prices. While appellant pays respondent based on identical NAGS figures, it employs different percentages of the NAGS list prices to calculate the amount that it pays respondent. Because the NAGS list prices change quarterly and the parties adjust their prices accordingly, the component prices that respondent charges, and the amount that appellant pays, change on a regular basis.

Using its percentage of the NAGS list prices, appellant routinely paid respondent less than the amount billed. However, because the discrepancies between the amounts billed and the amounts reimbursed were relatively small, usually under $500, respondent rarely disputed the individual claims. In fact, if respondent had disputed any of the individual claims, the dispute would have been bound by a mandatory arbitration clause in appellant's insurance policy. The clause requires arbitration of "all cases where a claim made by an insured person is $5000 or less."

In addition to the arbitration clause contained in appellant's insurance policy, the No-Fault Act provides for the "mandatory submission to binding arbitration of all cases at

issue where the claim at the commencement of arbitration is in an amount of $10,000 or less . . . for no-fault benefits or comprehensive or collision damage coverage." Minn. Stat. § 65B.525, subd. 1 (2006). The Act includes auto glass coverage under the umbrella of "comprehensive coverage." Minn. Stat. § 65B.134 (2006). Because none of the 5,700 alleged underpayments here exceeds $5,000, each individual claim, standing alone, is subject to arbitration.

As a result of appellant paying what it considered to be the prevailing competitive rate for respondent's work rather than paying the full amount of the invoices, the 5,700 alleged underpayments amounted collectively to more than $1 million. Consequently, in 2002, respondent served a demand for arbitration of its claims against appellant. In response, appellant sought a declaratory judgment in district court prohibiting arbitration. Respondent subsequently withdrew its demand for arbitration and filed a counterclaim seeking damages for breach of contract. Appellant then moved for summary judgment on the breach of contract and sought a declaration that respondent was required to arbitrate each claim individually. The district court granted summary judgment requiring individual arbitration of the claims, but authorizing the same panel to determine all of the individual claims.

Respondent appealed and this court affirmed the district court's summary judgment ruling, but held that the district court erred when it required that all the claims be arbitrated before the same panel. *Ill. Farmers Ins. Co. v. Glass Service Co.*, 669 N. W.2d 420, 428 (Minn. App. 2003). Rather, this court held that the claims could not be consolidated to be heard by the same arbitration panel. *Id.* The supreme court granted

review and affirmed in part and reversed in part, holding that the No-Fault Act applied to require arbitration under the no-fault rules. *Ill. Farmers Ins. Co. v. Glass Service Co.*, 683 N.W.2d 792, 805 (Minn. 2004) (hereinafter "*Ill. Farmers I*"). The court also held that the consolidation of those proceedings was permitted if the circumstances, as presented to the district court, warranted consolidation. *Id.* at 807. Accordingly, the supreme court remanded the matter to the district court for consideration of whether the disputed invoices could be consolidated into one or more arbitration proceedings. *Id.*

On remand, the district court ordered eight consolidated arbitrations, the first three of which are at issue here. The consolidated arbitrations were organized according to the glass price used in the different formulas respondent utilized during successive intervals to determine the cost of its work. The first arbitration category was classified as "List – 14%," meaning respondent charged 14 percent less than the price published in the NAGS calculator. The second arbitration category, classified as "List," meant that respondent charged the full list price of the published NAGS list price for glass. Finally, the third category, classified as "List + 35%," meant that respondent allegedly charged appellant 35% over the list price for auto glass, based on the industry-accepted NAGS.

Respondent first submitted a petition for arbitration of the "List – 14%" invoices on January 20, 2005. The arbitration petition claimed "an amount in excess of $180,618.87 to be determined." Shortly thereafter, the American Arbitration Association (AAA) issued a letter questioning whether it had jurisdiction over the claim because the claimed amount listed on the petition exceeded the maximum jurisdictional limit of $10,000. The AAA indicated that to initiate the case, it needed an agreement from the

parties to waive the jurisdictional limit. Appellant refused to waive the jurisdictional limit. Respondent subsequently filed a motion seeking emergency relief, requesting that the district court require appellant to arbitrate the dispute. On February 7, 2005, the district court ordered that the claim stated in the petition should proceed.

After AAA accepted respondent's two other petitions setting forth claims for $331,394.12 and $463,487.99 respectively, each category was separately arbitrated with a no-fault arbitrator, and each received a separate arbitrator's decision. On August 22-23, 2005, the parties arbitrated the "List – 14%" claims and the arbitrator awarded $158,109.82 to respondent. On November 15-16, 2005, the parties arbitrated the "List" claims, and respondent was awarded $324,152.91. Finally, the "List + 35%" claims were arbitrated in December 2005, and respondent was awarded $434,035.93. None of the awards included pre-award interest.

Appellant filed separate motions in district court to vacate the three arbitration awards. Respondent subsequently filed a single response to appellant's motions to vacate and sought confirmation and modification of the award to include pre-award interest. In a single order dated April 27, 2006, the district court denied the separate applications to vacate. The district court also modified the three awards by granting pre-award interest to respondent.

Respondent moved to amend the April 27 order to include specific amounts of pre-award interest. Appellant then filed an appeal, which was subsequently dismissed by this court because of the pendency of the motion to amend. The district court filed an amended order on May 11, 2006, directing entry of a single money judgment in the

amount of $1,023,487.25, representing the amount of the three arbitration awards plus $107,188.59 in pre-award interest not included in the arbitrator's awards. Judgment was entered in that amount, plus an additional $12,783 in interest calculated from the date of each arbitration award to the time of judgment. This appeal followed.

D E C I S I O N

I.

Minnesota policy strongly favors the finality of arbitration awards. *Erickson v. Great Am. Ins. Cos.*, 466 N.W.2d 430, 432 (Minn. App. 1991).

Therefore, a judicial appeal from an arbitration award is subject to a particularly narrow standard of review. *State, Office of State Auditor v. Minn. Ass'n of Prof'l Employees*, 504 N.W.2d 751, 754 (Minn. 1993). In no-fault arbitration, "the arbitrator's findings of fact are conclusive," while questions of law are subject to de novo review. *Barneson v. W. Nat'l Mut. Ins. Co.*, 486 N.W.2d 176, 177 (Minn. App. 1992). This rule reflects the desire for consistency in interpretation of the No-Fault Act and is an exception to the general rule that arbitrators are the final judges of both law and fact. *Weaver v. State Farm Ins. Cos.*, 609 N.W.2d 878, 882 (Minn. 2000). This court is not bound by and need not give deference to the district court's decision on a question of law. *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984).

Judicial review of arbitration awards is "limited to those matters where jurisdiction is statutorily granted." *Abd Alla v. Mourssi*, 680 N.W.2d 569, 572 (Minn. App. 2004). An arbitration award may be vacated only upon proof of one or more of the grounds listed in Minn. Stat. § 572.19, subd. 1 (2006). *AFSCME Council 96 v.*

Arrowhead Reg'l Corrections Bd., 356 N.W.2d 295, 299 (Minn. 1984). Upon application of a party, the court shall vacate an arbitration award when (1) the award is obtained by fraud, corruption, or other undue means; (2) there was evident partiality, prejudicial misconduct, or corruption of the arbitrator; (3) the arbitrator exceeded his or her powers; (4) improper conduct of the hearing resulted in substantial prejudice; or (5) there was no arbitration agreement. Minn. Stat. § 572.19, subd. 1.

Appellant argues that the district court erred in failing to vacate the arbitrators' awards for three reasons: (1) the arbitrators exceeded their authority under the No-Fault Act by allowing respondent to aggregate its many individual assigned claims and present summary evidence, and by awarding damages in an aggregated sum that was far in excess of the jurisdictional limit imposed by the No-Fault Act; (2) the arbitrators exceeded their authority in failing to hold respondent to its burden of proof as an assignee and under the No-fault Arbitration Rules; and (3) the arbitrators exceeded their authority in awarding damages to respondent under a standard that contradicts the policy and statutory language that binds respondent as an assignee.

A. Damages in excess of the limit imposed by the No-Fault Act

The No-Fault Act provides:

> Except as otherwise provided in section 72A.327, the Supreme Court and the several courts of general trial jurisdiction of this state shall by rules of court or other constitutionally allowable device, provide for the mandatory submission to binding arbitration of all cases at issue where the claim at the commencement of arbitration is in an amount of $10,000 or less against any insured's reparation obligor for no-fault benefits or comprehensive or collision damage coverage.

Minn. Stat. § 65B.525, subd. 1 (2006). Here, because each award was more than $10,000, appellant argues that the arbitrators exceeded their authority by issuing awards for damages in excess of the jurisdictional limit established by the No-Fault Act.

In *Ill. Farmers I*, the supreme court specifically stated that:

> The form, volume, and amount of the assignments does not, however, transform [respondent's] status as an assignee of 5,700 plus individual claims into a claimant with a single claim of over $1 million. We therefore conclude that [respondent] is an assignee of 5,700 plus individual claims, each of which is subject to mandatory arbitration under the No-Fault Act.

Ill. Farmers Ins. Co. v. Glass Service Co., 683 N.W.2d 792, 804 (Minn. 2004). Based on this language, respondent asserts that "the amount of the individual claims determines whether the No-Fault Act governs the dispute, not the total amount" of the award issued per category. We agree with this reasoning. The language of the No-Fault Act provides for mandatory submission to binding arbitration in "all cases . . . where the *claim* at the commencement of the arbitration is in an amount of $10,000 or less against any insured's reparation obligor for no-fault benefits . . . ." Minn. Stat. § 65B.525, subd. 1 (emphasis added). The statutory language indicates that it is the amount of the *individual* claim that must be under $10,000. As noted above, the supreme court stated that respondent does not have *one claim* against appellant, but rather 5,700 individual claims. *Ill. Farmers*, 683 N.W.2d at 804. Although the aggregate amount of the awards exceeds the $10,000 jurisdictional limit, each of the 5,700 individual claims is under $10,000. A holding that the arbitrators exceeded their authority by issuing awards for each category in excess of $10,000 would conflict with the supreme court's decision in *Ill. Farmers I.* After holding

that respondent had 5,700 individual claims that were subject to mandatory arbitration under the No-Fault Act, the supreme court stated that "[i]f the [district] court finds that some or all of the claims may be joined into one proceeding, it may, in its discretion, order consolidation of those claims." *Id.* at 807. Thus, the court remanded the matter to the district court for a determination of "whether some or all of [respondent's] claims against [appellant] may be consolidated into one or more proceedings." *Id.* The language "one or more proceedings" indicates that the supreme court contemplated the fact that if the matter was able to be consolidated into one proceeding, the award would be in excess of the $10,000 jurisdictional limit set forth in the No-Fault Act. This language provides the arbitrators with the authority to issue awards for each category of claims that exceed $10,000. Accordingly, the arbitrators did not exceed their authority in issuing the awards.

B. Burden of proof

Appellant asserts that because respondent was an assignee of appellant's policy holders, respondent was required to meet the same burden of proof as each of the individual insureds. Appellant claims that this burden of proof mandated that for each individual claim, respondent must prove (1) there was coverage, (2) a loss that fell within the scope of coverage, (3) a failure on the part of appellant to pay the amount due under the policy, and (4) that respondent possessed a valid assignment from the insured. Appellant contends that by resolving the disputes in the aggregate, and not on a claim-by-claim basis, as ordered by the supreme court in *Ill. Farmers I.* the arbitrators exceeded their authority by failing to hold respondent to the appropriate burden of proof.

In *Ill. Farmers I*, the supreme court specifically held that respondent "is an assignee of 5,700 plus individual claims, *each of which* is subject to mandatory arbitration under the No-Fault Act." *Ill. Farmers*, 683 N.W.2d at 804 (emphasis added). Although the court recognized the hardship of arbitrating each of the 5,700 plus claims, the court concluded that it must follow the mandate of the No-Fault Act. *Id.* at 805. The supreme court, however, went on to discuss the possibility of consolidating some or all of respondent's claims. *Id.* The court stated that based on this "state's policy under the Minnesota Uniform Arbitration Act of promoting arbitration as a cost-effective, simplified, and informal alternative to litigation," consolidation may be appropriate in certain situations. *Id.* at 806. The court noted that:

> When deciding whether to order consolidation, courts should consider the efficiencies of consolidation, the danger of inconsistent judgments if disputes are arbitrated separately, and the prejudice that parties may suffer as a result of consolidation. Efficiencies may result from a commonality of witnesses or evidence in multiple proceedings, similarity of claims between the parties, or the dependence of multiple claims on a common set of facts. . . . [But] a court may find that the differences between claims, such as differences in governing law or factual differences between individual claims, make consolidation undesirable.

Id. at 806-07. The court recognized that based on respondent's assertion that the essential dispute in the case concerned the "formulaic" method of reimbursement for glass work, consolidation may be appropriate. *Id.* at 806. Thus, the court remanded the matter to the district court for a determination of "whether some or all of [respondent's] claims against [appellant] may be consolidated into one or more proceedings." *Id.* at 807.

On remand, the district court found that:

> 1. There exist common issues of law and fact with respect to the disputed invoices;
> 2. Efficiencies with respect to resolving the disputes over these invoices greatly weighs in favor of a consolidated arbitration, *particularly given the formulaic manner in which both the [appellant] and [respondent] handle glass claims*.
> 3. Absent consolidation, there is significant danger that separate arbitrations will result in inconsistent results. The only way to avoid inconsistent results is to consolidate the invoices for consideration in one proceeding.

(Emphasis added.) The district court then consolidated the matter "based on the Formulae [respondent] used to compute charges at various times."

The manner in which the district court consolidated the claims is consistent with the supreme court's holding in *Ill. Farmers I*. *See* 683 N.W.2d at 806 (stating that consolidation may be an appropriate way of promoting arbitration as a cost-effective, simplified, and informal alternative to litigation). The fact that the district court consolidated the claims into various groups based on the formulaic method used does not destroy the separateness of each individual claim. *See Peterson v. Minneapolis Star & Tribune*, 282 Minn. 264, 273, 164 N.W.2d 621, 627 (1969) (where cases are consolidated for trial, each claim retains its separate identity); *Simon v. Carroll*, 241 Minn. 211, 218, 62 N.W.2d 822, 827 (1954) (upon consolidation under Minn. R. Civ. P. 42.01, no merger of the action results, each action retains a separate identity, and there is no change in the rights or status of the litigants). As the district court recognized, the heart of this dispute concerns the "formulaic" method of reimbursement for glass work. Each of the 5,700 plus claims was calculated pursuant to one of eight different formulas. By placing each

individual claim into a category based on the formulaic method used to calculate the amount due on the invoice, the reasonableness of that particular formulaic method was determined once, rather than each time a like claim was presented. Consolidation in such a manner established consistency as to whether each formula was reasonable. In other words, to require the arbitrators to make findings with respect to each of the individual consolidated claims would undermine the purpose of the order, leading to inefficient proceedings and potentially inconsistent judgments. Despite appellant's assertion to the contrary, the presentation of generalized evidence regarding the reasonableness of each formula was appropriate.

Appellant argues that the arbitrators exceeded their authority by failing to hold respondent to its burden of proof as an assignee because respondent submitted generalized evidence of their claims rather than specific evidence for each individual claim. To support its claim, appellant asserts that the arbitrators allowed respondent to recover on hundreds of claims where respondent presented no evidence that the insured had signed respondent's invoice, much less intended to assign the claim to respondent.

An arbitrator has authority to find facts and determine the sufficiency of proof in a no-fault claim. *Liberty Mut. Ins. Co. v. Sankey*, 605 N.W.2d 411, 413 (Minn. App. 2000). And an arbitrator's findings of fact are final. *Barneson*, 486 N.W.2d at 177. This court may not review whether the record supports an arbitrator's findings. *Liberty Mut. Ins. Co.*, 605 N.W.2d at 413.

Here, the issue of whether respondent met its burden of proof is a fact issue determined by the arbitrator and not reviewable by this court. *See id.* Even if we were to

review the arbitrators' awards, the record reflects that respondent met its burden of proof. Respondent submitted as evidence signed assignments demonstrating that the policy holders paid respondent for its work by assigning the proceeds due under their insurance policies issued by appellant. The arbitrators' findings and awards reflect that individual claims were considered. For example, for the "List + 35%" claims, respondent sought an award of $19,126.12 for appellant's alleged non-payment of the invoices. The arbitrator denied the request concluding that "[respondent] has failed to produce any compelling or convincing evidence that the [appellant] in fact insured those persons making up the 'non-pay or no pay invoices' as set forth in [respondent's] Arbitration Exhibit No. 27." We conclude the district court did not err in rejecting appellant's claim that the arbitrators failed to hold respondent to the appropriate burden of proof.

C. Damages in connection with the policy language and governing statute

Appellant argues that the arbitrators exceeded their authority by awarding damages in contravention of the applicable policy language and governing statute. According to appellant, the policy language and governing statute defined appellant's payment obligation in terms of a "prevailing competitive rate" for the work performed. Appellant contends that in awarding damages, the arbitrators accepted respondent's claim that appellant was obligated to pay the amount "necessary" to replace the damaged glass, so long as the amount charged by respondent was reasonable. Appellant argues that because respondent charged considerably more than the "prevailing competitive rate," the arbitrators exceed their authority in awarding damages and, therefore, the awards must be vacated.

The record reflects that the claims at issue arose during a five-year time period from August 1997 to April 2002. During this time period, the regulatory structure of the auto glass industry changed significantly. In 1996, the applicable statute required insurers to "assume all reasonable costs sufficient to pay the insured's chosen [glass] vendor." Minn. Stat. § 72A.201, subd. 6(14) (1996). The legislature amended the statute in 2000 to require payment "based on a competitive price," and directed the Commissioner of Commerce to conduct a market survey to determine "a fair and reasonable market price for similar services." Minn. Stat. § 72A201, subd. 6(14) (2000). Under this legislation, the market survey was to be used to establish prices for glass work when an insurer disputed an amount charged by a glass company. *Id.* The statue was amended again in 2002 to require payment "based on a competitive price that is fair and reasonable within the local industry at large." Minn. Stat. § 72A.201, subd. 6(14) (2002).

Prior to 2000, appellant's insurance policy provided that "[o]ur limits of liability for loss shall not exceed . . . [t]he amount which it would cost to repair or replace damaged or stolen property with other of like kind and quality . . . ." In 2000, appellant issued the MN008 endorsement to new and renewing Minnesota customers. This endorsement amended the "Limits of Liability" portion of prior policies to provide as follows:

> For glass losses, the maximum amount that we will *pay for repair or replacement is the prevailing competitive price*. Prevailing competitive price means prices charged by the majority of glass repairers in the local area as determined by a survey conducted by us. The competitive price includes the cost of repair or replacement including labor rates, parts and material. Upon your request, we will identify the facilities that will perform the repairs

for the prevailing competitive price.

The language contained in the MN008 endorsement was consistent with the 2000 legislative changes made to Minn. Stat. § 72A.201, subd. 6(14).

In addition to their standard policy, appellant offered its insured an optional deductible waiver endorsement, E1400, entitled "Safety Glass – Waiver of Deductible Coverage F." This endorsement provided in pertinent part: "For an additional premium, it is agreed that any deductible applying to coverage F – Comprehensive does not apply to safety glass. Our limit of liability for loss is the amount necessary to repair or replace safety glass."

Appellant argues that under the MN008 policy language, as amended in 2000, it was only obligated to pay the prevailing competitive price for auto glass repair or replacement. Conversely, respondent argues that because the majority of the insureds were covered by the E1400 endorsement, and the language in the E1400 endorsement controls, appellant was obligated to pay the "amount necessary to repair or replace safety glass." Appellant interprets the "amount necessary to repair" as a price that is reasonable in the marketplace.

In issuing the awards, the arbitrators did not make findings or conclusions with respect to which endorsement controls. The arbitrators also did not make any findings or conclusions with respect to the prevailing competitive price or the reasonableness of price respondent charged for its services. Instead, the arbitrators simply awarded respondent the amount due for most of the "short paid invoices." The arbitrators also awarded respondent the amount due for some of the unpaid invoices. For the remaining unpaid

invoices, the arbitrators concluded that respondent failed to produce any compelling evidence that appellant, in fact, insured the persons making up the "non-pay or no pay invoices," and, therefore, rejected respondent's request for these unpaid invoices.

The district court denied appellant's motion to vacate the arbitrator's awards for damages. Although not specifically addressed in the district court's memorandum, the court could have confirmed the arbitrators' awards at least two different ways. First, as respondent points out, the district court could have concluded that the arbitrators declined to decide which endorsement controls. Instead, after receiving evidence on the issue, the arbitrators could have found the evidence provided by appellant regarding the "prevailing competitive price" insufficient. Consequently, the arbitrators may have concluded that, regardless of which endorsement controls, the price charged by respondent for its services was within the "prevailing competitive price" range. Such a determination was within the arbitrators' authority, and because it is a factual determination, the awards are unreviewable by this court. *See Liberty Mut. Ins. Co.*, 605 N.W.2d at 413 (stating that an arbitrator has authority to find facts, and this court may not review whether the record supports an arbitrator's findings).

The district court could also have determined that the arbitrators based their awards on a conclusion that the E1400 endorsement controlled and awarded damages on the basis that the price charged by respondent was the "amount necessary to repair." The arbitrators were presented with appellant's insurance policy and the applicable endorsements, and were empowered with the authority to determine how much appellant owed respondent under the issued policy. This determination included a consideration of

the applicable policy provisions. The nature of the dispute fell within the arbitrators' authority to resolve. The fact that the arbitrators did not explain their reasoning in their findings of fact is consistent with the nature of arbitration proceedings because an arbitrator's findings of fact are final. *See Barneson*, 486 N.W.2d at 177. Appellant has already gone to the supreme court and gotten relief. We understand appellant's position and agree that the issues are close, but inherent in arbitration is a two-party mutual agreement to get the issue permanently resolved outside of the formal perimeter of a full-scale trial. We conclude the district court did not err in denying appellant's motion to vacate the awards.

II.

Appellant argues that the district court erred in modifying the arbitrators' awards to add pre-award interest. Generally, this court will not disturb a damage award unless "failure to do so would be shocking or would result in plain injustice." *Hughes v. Sinclair Mktg., Inc.*, 389 N.W.2d 194, 199 (Minn. 1986).

Here, respondent made claims for pre-award interest in its petitions for arbitration. The damages issued by the arbitrators did not include interest. Respondent subsequently moved the district court for pre-award interest. By denying appellant's motion to vacate the arbitration awards, and modifying the award to include prejudgment interest, the district court granted respondent's motion.

In *National Indemnity Co. v. Farm Bureau Mut. Ins. Co.*, the supreme court interpreted the arbitration statute, Minn. Stat. § 572.21, to preclude an award of prejudgment interest when the application for arbitration included interest as an item of

damages and the arbitrators did not award any. 348 N.W.2d at 748, 752 (Minn. 1984). Appellant asserts that because the same situation occurred here, the district court erred in adding pre-award interest to the awards.

We disagree. *National Indemnity Co.* has been superseded by statute. Minn. Stat. § 572.15(a) (2006), now requires most types of awards to include interest. This statute provides: "The award must include interest, except this does not apply to arbitrations between employers and employees . . . ." Minn. Stat. § 572.15(a). Similarly, Minn. Stat. § 549.09, subd. 1 (2006), amended after *National Indemnity* was decided, now provides:

> (a) When a judgment or award is for the recovery of money . . ., interest from the time of the verdict, award, or report until judgment is finally entered shall be computed by the court administrator or arbitrator as provided in paragraph (c) and added to the judgment or award.
>
> (b) Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed as provided in paragraph (c) from the time of the commencement of the action *or a demand for arbitration*, or the time of a written notice of claim, whichever occurs first, except as provided herein. . . . [I]nterest on the judgment or award shall be calculated by the judge or arbitrator in the following manner. The prevailing party shall receive interest on any judgment award from the time of commencement of the action or a demand for arbitration . . . until the time of the verdict, award, or report . . . .

(Emphasis added.) The statute further provides instances when pre-award interest shall not be awarded, none of which are applicable here. *See id.* This is consistent with the cannon of construction expressio unius est exclusio alterius. *See Blacks Law Dictionary*

602 (7th ed. 1999) (defining expressio unius est exclusio alterius as "[a] cannon of construction holding that to express or include one thing implies the exclusion of the other, or of the alternative"). Based on the statutory language, the district court was within its discretion by awarding respondent pre-award interest.

Affirmed.