

When You Just Have To Admit It: Court Of Appeal Holds That Claimant In Underinsured Action Against His Automobile Insurer May Recoup Attorney's Fees For The Insurer's Failure To Admit Requests For Admissions As To Lack Of Negligence On The Part Of The Claimant And Causation Of Medical Damages

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The California Discovery Act provides a sanction for a party litigant's refusal to admit a matter pursuant to a Request for Admission. *See, Code of Civil Procedure* section 2033.420. Very often, party litigants will attempt to avoid admitting matters so that those issues are not conclusive at trial, even though there is very little evidence to dispute the Request for Admission. However, given the costs of litigating factual matters based upon discovery disputes, it is often the case that matters that should be admitted, and are not, go unchallenged.

In Shamsky v. State Farm Mutual Insurance Company (2019) Westlaw 2610898 ("Shamsky case"), Aaron Shamsky ("Shamsky") asserted underinsured claims against his automobile insurer, State Farm Mutual Automobile Insurance Company ("State Farm"). The facts of the Shamsky case are routine. On July 27, 2015, Shamsky's vehicle was hit from behind by a potentially underinsured driver (the accident was part of a multi-vehicle collision). On September 10, 2015, Shamsky's vehicle was hit from behind again by a potentially underinsured driver. Shamsky claimed he suffered a concussion, traumatic brain injury, and ulnar nerve injury to his wrist in the July accident and lower back injuries in the September accident. Shamsky settled with the drivers for their policy limits of \$15,000. He then made claims against his own insurer, respondent State Farm, under his Underinsured Motorist policy for additional damages caused by each of the two accidents.

The parties went to arbitration. The arbitration extended over three days. There appears to have been no evidence submitted suggesting any fault on the part of Shamsky. State Farm called two medical witnesses to contest the medical injury claims but the arbitrator found them to not be credible. The arbitrator found there was no evidence Shamsky "was in any way responsible for the accident of July 27, 2015, and the issue of liability is decided in his favor." The arbitrator awarded Shamsky special damages for all of his medical bills and lost earnings for the period between the July and September accident, and also awarded general damages. The arbitrator noted some of Shamsky's treatment for injuries sustained in the July accident took place after the September accident, and those costs were included in the general damages due to the difficulty of accurately apportioning the medical bills.

Pursuant to Code of Civil Procedure section 2033.420, Shamsky moved for costs of proving the truth of the matters in eight Requests for Admissions which State Farm had denied shortly before the Arbitration (they included two Requests to Admit that Shamsky was without fault and six Requests to Admit that Shamsky's injuries were caused by the July accident). At State Farm's urging, the arbitrator declined to consider Shamsky's motion, and the matter was decided by the trial court which confirmed the arbitration award. However, the trial court denied Shamsky's motion for costs of proof for the Requests for Admissions even though the trial court found that Shamsky had impliedly proven the truth of the matters in the Requests for Admissions (the trial court ruled that Shamsky had the burden to prove that State Farm had no reasonable ground to believe State Farm would prevail on the matter and/or that, there was no other good cause for the failure to admit).

Shamsky appealed the trial court's order contending that the trial court improperly ruled that Shamsky had the burden of proving that State Farm had no reasonable ground to believe it would prevail on the matter and/or that, there was no other good cause for the failure to admit the Requests for Admissions. On appeal, the California Court of Appeal, Second District, ruled that there was very little evidence for the insurer to refuse to admit the matters in question, and ruled that it was State Farm's burden to prove it had a reasonable ground to believe it would prevail on the matter and/or that, there was other good cause for the failure to admit the Requests for Admissions. The Court of Appeal made this ruling even though there was no specific ruling by the arbitrator as to the matters in question (the Court of Appeal held that the trial court did not abuse its discretion in finding the arbitrator "impliedly" ruled in Shamsky's favor on the matters in dispute).

The Shamsky case is important in that it provides additional authority in favor of enforcing a party litigant's ability to have a matter, which is not at issue, admitted.

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