

Article - Courts and Judicial Proceedings

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§3-2A-06.

(a) A party may reject an award or the assessment of costs under an award for any reason. A notice of rejection must be filed with the Director and the arbitration panel and served on the other parties or their counsel within 30 days after the award is served upon the rejecting party, or, if a timely application for modification or correction has been filed within 10 days after a disposition of the application by the panel, whichever is greater.

(b) (1) At or before the time specified in subsection (a) of this section for filing and serving a notice of rejection, the party rejecting the award shall file an action in court to nullify the award or the assessment of costs under the award and shall file a copy of the action with the Director. Failure to file this action timely in court shall constitute a withdrawal of the notice of rejection. Subject to the provisions of subsection (c) of this section, the procedures applicable to the action including the form and necessary allegations in the initial pleading shall be governed by the Maryland Rules. The Director need not be named a party to any action under this section.

(2) If any party to the proceeding elects to have the case tried by a jury in accordance with the Maryland Rules, it shall be tried by a jury. Otherwise, the case shall be tried by a judge.

(3) The trial date for each rejection of a panel determination shall have precedence over all cases except criminal matters and workers' compensation appeals.

(4) The clerk of the court in which an action is filed under this subtitle shall forward a copy of the action to the State Board of Physicians.

(c) An allegation by any party that an award or the assessment of costs under an award is improper because of any ground stated in § 3-223(b) or § 3-224(b)(1), (2), (3), or (4) of this title or § 3-2A-05(h) of this subtitle shall be made by preliminary motion, and shall be determined by the court without a jury prior to trial. Failure to raise such a defense by pretrial preliminary motion shall constitute a waiver of it. If the court finds that a condition stated in § 3-223(b) of this title exists, or that the award or the assessment of costs under an award was not appropriately modified in accordance with § 3-2A-05(h) of this subtitle, it shall modify or correct the award or the assessment of costs under an award. If the rejecting party still desires to proceed with judicial review, the modified or corrected award shall be substituted for the original award. If the court finds that a condition stated in § 3-224(b)(1), (2), (3), or (4) of this title exists, it shall vacate the award, and trial of the case shall proceed as if there had been no award.

(d) Unless vacated by the court pursuant to subsection (c) of this section, the unmodified arbitration award is admissible as evidence in the judicial proceeding. The award shall be presumed to be correct, and the burden is on the party rejecting it to

prove that it is not correct.

(e) (1) Depositions taken in the arbitration proceedings shall be as fully admissible as if noticed in court proceedings. Interrogatories and requests for admissions and production of documents in the arbitration proceedings remain binding in the court proceedings, subject to a duty of supplementation.

(2) The provisions of paragraph (1) of this subsection do not affect any rights to discovery on appeal.

(f) (1) Upon timely request, the trier of fact shall by special verdict or specific findings itemize by category and amount any damages assessed for incurred medical expenses, rehabilitation costs, and loss of earnings. Damages assessed for any future expenses, costs, and losses shall be itemized separately. If the verdict or findings include any amount for such expenses, costs, and losses, a party filing a motion for a new trial may object to the damages as excessive on the ground that the plaintiff has been or will be paid, reimbursed, or indemnified to the extent and subject to the limits stated in § 3-2A-05(h) of this subtitle.

(2) The court shall hold a hearing and receive evidence on the objection.

(3) (i) If the court finds from the evidence that the damages are excessive on the grounds stated in § 3-2A-05(h) of this subtitle, subject to the limits and conditions stated in § 3-2A-05(h) of this subtitle, it may grant a new trial as to such damages or may deny a new trial if the plaintiff agrees to a remittitur of the excess and the order required adequate security when warranted by the conditions stated in § 3-2A-05(h) of this subtitle.

(ii) In the event of a new trial granted under this subsection, evidence considered by the court in granting the remittitur shall be admissible if offered at the new trial and the jury shall be instructed to consider such evidence in reaching its verdict as to damages.

(iii) Upon a determination of those damages at the new trial, no further objection to damages may be made exclusive of any party's right of appeal.

(4) Except as expressly provided by federal law, no person may recover from the plaintiff or assert a claim of subrogation against a defendant for any sum included in a remittitur or awarded in a new trial on damages granted under this subsection.

(5) Nothing in this subsection shall be construed to otherwise limit the common law grounds for remittitur.

(g) If the verdict of the trier of fact is not more favorable to the party that rejected the arbitration panel's award, than was the award, the costs of the judicial proceedings shall be assessed against the rejecting party. Otherwise, the court may determine the assessment of such costs. If the court vacates an assessment of

arbitration costs, it shall reassess those costs as justice requires.

(h) Venue shall be determined in accordance with the provisions of § 6-201 of this article.

(i) The clerk of the court shall file a copy of the verdict or any other final disposition with the Director.

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