A M E R I C A N A R B I T R A T I O N A S S O C I A T I O N
NO-FAULT/ACCIDENT CLAIMS

In the Matter of the Arbitration between

(Claimant)

v.

ARBELLA MUTUAL & LIBERTY MUTUAL INSURANCE COMPANIES

(Respondent)

AAA CASE NO.: 18 Z 600 09051 03
INS. CO. CLAIMS NO.: 000050027 (Arabella); LA35900130629203 (Liberty)
DRP NAME: John J. Fannan
NATURE OF DISPUTE: DEEMER STATUTE, STATUTE OF LIMITATIONS

AWARD OF DISPUTE RESOLUTION PROFESSIONAL

I, THE UNDERSIGNED DISPUTE RESOLUTION PROFESSIONAL (DRP), designated by the American Arbitration Association under the Rules for the Arbitration of No-Fault Disputes in the State of New Jersey, adopted pursuant to the 1998 New Jersey "Automobile Insurance Cost Reduction Act" as governed by *N.J.S.A. 39:6A-5, et. seq*., and, I have been duly sworn and have considered such proofs and allegations as were submitted by the Parties. The Award is **DETERMINED** as follows:

Injured Person(s) hereinafter referred to as: The Claimant

1. Oral Hearings were held on: November 4, 2003

2. ALL PARTIES APPEARED at the oral hearing(s).

NO ONE appeared telephonically.

3. Claims in the Demand for Arbitration WERE NOT amended at the oral hearing as permitted by the DRP (Amendments, if any, set forth below). STIPULATIONS were not made by the parties regarding the issues to be determined (Stipulations, if any, set forth below).

The claim of the claimant for payment of GE Group Administration ($11,208.89) was amended prior to the hearing by correspondence dated September 10, 2003 to reflect a claim of the Rawlings Company for $20,814.08.

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

I find the Claimant was injured as the result of an automobile accident which occurred on February 6, 2001. I further find that the Claimant was eligible to make claim for PIP

benefits pursuant to the terms and conditions of a policy of automobile insurance issued to him by respondent Arbella Mutual and under the terms and conditions of a policy of automobile insurance issued by respondent Liberty Mutual to David Morge.

It is undisputed the claimant underwent extensive medical treatment for the injuries he sustained in this accident. It is claimed there is open and unpaid the bill of Dr. Nordstrom in an amount of $310.00 as well as a healthcare lien asserted by the Rawlings Company in an amount of $20,814.08. It is not disputed that the claimant, upon learning that his PIP benefits under the Arbella Mutual policy had been exhausted, submitted his subsequent medical bills through his health insurance carrier for payment. Those payments were made and the amount paid is now asserted as a lien.

The claimant acknowledges that the policy of insurance issued to him by Arbella Mutual was written in Massachusetts and it is further acknowledged by the claimant that he was a resident of Massachusetts. The accident in question took place in New Jersey. Under the Arbella Mutual policy, payment of PIP Medical expenses was "capped" at $2000.00, which respondent argues is consistent with Massachusetts Law. No evidence has been introduced to challenge that assertion. The argument raised by the claimant is that the "Deemer Statute" compels Arbella to increase its PIP coverage. I disagree.

NJSA 17:28-1.4 (the so-called "Deemer Statute") provides in relevant part:

> "…any insurer authorized to do business in New Jersey to include New Jersey Personal Injury Protection Coverage in policies which are sold in another state whenever the automobile insured under the policy is operated in New Jersey."

An out-of-state resident injured in a New Jersey automobile accident is entitled to recover personal injury protection benefits equivalent to those mandated by New Jersey No-Fault Law, where the insurer transacted business in New Jersey, regardless of whether the State of residence of the injured party offered such benefits to New Jersey residents or whether the vehicle was principally garaged in New Jersey or otherwise. Adams v. Keystone Insurance Company , 264 NJ Super 367 (App. Div. 1993). An insurer has an obligation to provide medical benefits to insureds beyond the policy limits where the automobile accident occurred in New Jersey, under New Jersey Laws which require insurers to pay reasonable medical expenses. Allstate Insurance v. McNichol , 420 PA Super 571 (1992).

The New Jersey Statute creates a cause of action for out-of-state residents injured in New Jersey Automobile accidents against their own liability insurers for full personal injury protection benefits provided by New Jersey Law, even if the benefits may not be actually included in the terms of the policy, provided the insurer does business in New Jersey. D'Orio v. West Jersey Health Systems, (797 F.Supp. 371 (D) NJ 1992). The "Deemer Statute" requires insurers to provide out-of-state insureds the same insurance coverage required for in-state motorists. Park v. Park, 309 NJ Super 312 (App. Div. 1998), cert. denied 156 NJ 381 (1998). However, applicability of the "Deemer Statute" provisions is

triggered only in instances where the insurance company transacts business in the State of New Jersey or is licensed to transact business in the State of New Jersey. It is represented that Arbella Mutual is not so licensed and does not transact business in New Jersey, and no evidence is offered in refutation of that assertion. In fact, Arbella does not appear among the list of licensed insurance carriers in the records maintained by the New Jersey Department of Banking & Insurance.

I therefore find the "Deemer Statute" does not apply in this instance and respondent Arbella has no liability beyond the $2000.00 PIP medical expenses payment "cap" contained in its policy, an amount which has already been paid. Therefore, the portion of this claim which seeks payment of medical bills from Arbella Mutual is denied.

With respect to Liberty Mutual, the argument is made that the claim against Liberty is barred by operation of the Statute of Limitations. Liberty argues that while the accident occurred on February 6, 2001, the Demand for Arbitration was dated May 23, 2003, more than two years after the date of the accident.

NJSA 39:6A-13.1(a) provides that any action for the payment of PIP benefits shall be commenced not later than two years after the injured person suffers a loss or incurs an expense which the insured knows or should know was caused by the accident, or not later than four years after the accident whichever is earlier, provided, however, that if benefits have been paid before then an action for further benefits may be commenced not later than two years after the last payment of benefits. In the Explanations of Benefits provided by Arbella Insurance Group there is EOB #068281 which was processed on July 13, 2001 which authorized payment of CPT Code L1815 (knee orthosis) for date of service 5/18/01. Clearly, Arbella's last payment of benefits was made on July 13, 2001. Inasmuch as the Demand for Arbitration was filed within two years of that date, the Demand is timely.

Further, the argument of Liberty ignores the letter dated February 11, 2002 sent by Liberty Mutual (Joseph Zocco-Parashac) to claimant's counsel which states as follows:

> "I have received both of your letters dated 1/3/02 and 1/23/02 in which you advised me about the medical bill status for your client, (the claimant). Our position at this time is to cover those medical expenses that were covered by GE Group Administrators, due to the fact that (the claimant) exhausted his benefits with Arbella Insurance Company, since Liberty Mutual would be secondary and not GE."

The letter goes on to indicate that once claimant information and medical bills were received, Liberty "will reopen this claim, will have the all of the bills processed per the New Jersey Fee Schedule and will reimburse GE for payments they rendered in error." This letter is in fact subsequent to a letter dated December 11, 2001 from Liberty Mutual (Matthew Kurtz) to claimant's counsel which advises that he was requesting permission to "review (the claimant's) Liberty Mutual PIP Claim File."

Clearly, any delay in filing the Demand for Arbitration was at least in part occasioned by the conduct of Liberty Mutual in acknowledging they would provide coverage for the medical bills at issue. Certainly, it was reasonable for the claimant to rely on this representation. The principles of equitable *estoppel* would certainly apply to bar Liberty Mutual from now denying that which they formerly represented as true, and from asserting the shelter of a defense premised on that prior statement, the content of which they now chose to either ignore or attempt to deny.

I find the respondent Liberty Mutual is responsible for payment of the bills which are at issue and payment of same is awarded to the claimant.

No evidence has been presented which would contest the reasonableness, medical necessity and causal relationship between the injuries treated and the subject accident. I do find the reports and records submitted by the claimant have established to a preponderance of the evidence that the treatments which were rendered were reasonable, medically necessary and for a condition or conditions causally related to the subject accident.

As to payment of the bills, I do find Dr. Nordstrom is entitled to payment of $310.00. As to the $20,814.08 lien asserted by Rawlings Company, the successor to GE Group Administrators, payment of that amount is awarded, subject to application of the New Jersey Fee Schedule. NJAC 11:3-29.4(a) clearly establishes that an insurer's limit of liability for medically necessary expenses payable under PIP coverage is the fee set forth in the Fee Schedule. It is acknowledged in the Administrative Code that Fee Schedule amounts are maximums. A review of the payments made by the health insurance carrier reveals that most services were paid at amounts less than maximums set forth in the Fee Schedule. In those instances, the liability of the carrier (Liberty Mutual) is what was paid. However, a review of those bills clearly indicates that the health insurance carrier did not apply the provisions of NJAC 11:3-29.4(m), the Daily Maximum Allowable Fee of $90.00 for physical medicine and rehabilitation procedures, which is applicable to all treatment after May 21, 2001. In computing the amount owed to the Rawlings Company, Liberty Mutual is entitled to apply the Daily Maximum Allowable Fee of $90.00 set forth in NJAC 11:3-29.4(m), for physical medicine and rehabilitation procedures administered after May 21, 2001.

Inasmuch as no computation of interest has been provided, the claim for interest is deemed to have been waived.

I further find the claimant was successful and is entitled to an award of counsel fees. Counsel for the claimant has submitted a Certification of Services wherein is sought counsel fees in the amount of $4,562.50 together with costs of $350.00. Counsel for the respondent has entered an objection to an award of counsel fees in that amount, citing particular opposition to both the total number of hours billed (18.25) and the hourly billing rate ($250.00). I have reviewed the items entered on the Certification of Services and recognize the issues involved in this claim elevated the matter to a level of complexity above that which might be expected of the ordinary PIP Claim. I also note

that claimant was successful as to Liberty Mutual and not as to Arbella. I find an award of counsel fees in the amount of $2200.00 to be consonant with the amount at issue herein and consistent with the requisites of RPC 1.5 as well as consistent with the degree of effort, expertise and experience required for a successful prosecution of this claim. I also award costs in the amount of $285.00. I further find the award of counsel fees in that amount to be consistent with the mandates of the Court in Enright v. Lubow, 215 NJ Super 306, (App. Div.), cert. Denied 108 NJ 193 (1987) as well as of Scullion v. State Farm, 345 N.J. Super 431 (App. Div. 2001).

This matter was the subject of an oral hearings conducted on November 4, 2003 and was held open to afford the parties the opportunity to make additional submissions. It was declared closed of November 11, 2003.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Dr. Nordstrom	$310.00	$310.00	Dr. Nordstrom
Rawlings Company	$20,814.08	$20,814.08*	Rawlings Co.

Explanations of the application of the medical fee schedule, deductibles, co-payments, or other particular calculations of Amounts Awarded, are set forth below.

The amounts awarded are assessed against respondent Liberty Mutual Insurance Company only. The claim against Arbella Mutual Insurance Company is denied.

Further, the amounts awarded are subject to reduction by application of the New Jersey Fee Schedule, particularly the provisions of NJAC 11:3-29.4(m) the Daily Maximum Allowable Fee of $90.00. Respondent Liberty Mutual shall also apply such portion of the relevant policy of insurance deductible and co-payment as remains open and unsatisfied.

6. INCOME CONTINUATION BENEFITS: Not in Issue

7. ESSENTIAL SERVICES BENEFITS: Not in Issue

8. DEATH BENEFITS: Not in Issue

9. FUNERAL EXPENSE BENEFITS: Not in Issue

10. I find that the CLAIMANT did prevail, and I award the following COSTS/ATTORNEYS FEES under N.J.S.A. 39:6A-5.2 and INTEREST under N.J.S.A. 39:6A-5h.

(A) Other COSTS as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): $285.00

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): $2200.00

(C) INTEREST is as follows: Waived.

This Award is in **FULL SATISFACTION** of all Claims submitted to this arbitration.

December 19, 2003
Date

_____
John J. Fannan, Esq.