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.
FIRST TRENTON
(Respondent)

AAA CASE NO.: 18 Z 600 04096 03
INS. CO. CLAIMS NO.: 111592SMS
DRP NAME: Barry E. Moscowitz
NATURE OF DISPUTE: Eligibility

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: FB, FP, and GB.

1. ORAL HEARING held on November 3, 2003.

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

Respondent appeared telephonically.

3. Claims in the Demand for Arbitration were NOT AMENDED at the oral hearing (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).

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

FINDINGS OF FACT:

Claimant submitted:

Demand for Arbitration dated March 6, 2003; and
Letter dated November 21, 2003.

Respondent submitted:

Letter dated September 4, 2003; and
Letter dated November 4, 2003.

On April 6, 2001, FB, FP, and GB were injured in an automobile accident. As a result of their injuries, FB, FP, and GB went to claimant for treatment. From August 7 through October 4, 2001, claimant treated FB; from August 8 through October 10, 2001, claimant treated FP; and from June 27 through October 12, 2001, claimant treated GB. More specifically, FB, FP, and GB underwent chiropractic treatment.

Claimant submitted the bills for this treatment to respondent for payment. Respondent, however, denied payment. As a result, claimant filed this Demand for Arbitration.

The issue presented is two-fold: (1) whether or not FB, FP, and GB are eligible for medical expense benefits from respondent; and (2) if FB, FP, and GB are eligible for medical expense benefits from respondent, then whether or not claimant was an improper corporate structure at the time of the accident.

Regarding the first issue, claimant argues that FB, FP, and GB are eligible for medical expense benefits from respondent. In support of its argument, claimant relies upon its argument contained in its November 21, 2003 submission, including the documents attached to it. Beginning with FB, claimant asserts, "Respondent has failed to supply any evidence whatsoever that [FB] allegedly made a material misrepresentation when he testified that both [FP] and [GB] were passengers in his motor vehicle." As claimant continues, "The mere fact that [FB] and [GB] were not listed as passengers in the police report does not mean that the claims are fraudulent or that [FP] and [GB] were not passengers in the vehicle." Finally, claimant concludes, "Just because the police officer neglected to list the names of the passengers in the vehicle, does not mean that there were not passengers in the vehicle . . . the parties were asked merely how the accident happened . . . ."

Next, concerning both FP and GB, claimant asserts, "Respondent has failed to supply any proof whatsoever that the resident relative policy was in effect, and in full force, on the vehicles that were allegedly owned by [FP's] uncle and [GB's] daughter." As claimant continues, "Respondent does not supply any proof that [FP's] uncle even was the registered owner of a motor vehicle. Respondent also does not supply any proof that [GB's] daughter was the registered owner of a motor vehicle. Respondent does not give the names of any insurance companies or policy numbers. Respondent does not even provide the names of the purported insureds. Respondent does not supply any confirmations of coverage from these other insurance companies." Finally, claimant concludes, "There is absolutely no evidence that these family members were the registered owners of any motor vehicle, and there is no evidence that any policies were in effect for these purported vehicles at the time of the accident."

Respondent, on the other hand, argues that FB, FP, and GB are not eligible for medical expense benefits from respondent. In support of its argument, respondent relies upon its argument contained in its November 4, 2003 submission and the documents attached to

it. Beginning with FB, respondent argues in its November 4, 2003 submission, "Attached hereto as Exhibit B is a copy of the police report that states [FB] was the only passenger in the car at the time of the accident, but during [FB's] Examination Under Oath he states that [GB] and [FP] were passengers in the vehicle at the time of the accident."

Next, concerning both FP and GB, respondent argues, ". . . in addition to not being listed as passengers in the police report they are not entitled to PIP benefits because during their Examinations Under Oath they both testified to residing with a relative that had automobile insurance." In addition, respondent argues that both were requested to provide copies of the registrations and insurance information and that neither did so.

Regarding the second issue, claimant argues that claimant was a proper corporate structure at the time of the accident. In support of its argument, claimant relies upon its argument contained in its November 21, 2003 submission including the documents attached to it. More specifically, claimant writes, "Again, respondent fails to supply any proof that at the time of the accident, [claimant] was an improper structure . . . Respondent attaches a corporate search demonstrating that shows that [claimant] was owned by a General Corporation in 1997. This accident occurred in 2001."

Respondent, on the other hand, argues that claimant was an improper corporate structure at the time of the accident. In support of its argument, respondent relies upon its argument contained in its November 4, 2003 submission. As respondent argues, "New Jersey has long recognized that professional services cannot be rendered through a general business corporation . . . Here, claimant . . . is a fictitious name for a medical provider that is owned by a general corporation called Double K Management Corp." As respondent continues, "General business corporations cannot engage in the practice of medicine and/or chiropractic. Accordingly, the rendering of chiropractic services is beyond the scope of conduct permitted by the laws of the State of New Jersey." Finally, as respondent concludes, "Based on the foregoing, [claimant] violated the corporate practice of medicine doctrine and therefore it is not entitled to payment for services rendered."

CONCLUSIONS OF LAW:

Regarding the first issue, I conclude that claimant has proven by a preponderance of the evidence that FB is eligible for medical expense benefits. I base this conclusion upon the information and documentation before me. The fact that the police report did not list FP and GB as passengers does not mean that FB made a material misrepresentation. As a result, FB shall be eligible for medical expense benefits from respondent.

I also conclude, however, that claimant has not proven by a preponderance of the evidence that FP and GB are eligible for medical expense benefits from respondent. Again, I base this conclusion upon the information and documentation before me. In short, claimant argues that respondent has not provided any proof of other insurance; yet, respondent requested this information from claimant during the examinations under oath and claimant failed to do so. Now, claimant wants to rely on its failure to provide the

requested information and documentation as the basis for its argument for eligibility. As a result, this issue remains unresolved. Claimant has failed to prove by a preponderance of the evidence that FP and GB are eligible for medical expense benefits from respondent.

Regarding the next issue, I conclude that claimant has not proven by a preponderance of the evidence that it was a proper corporate structure at the time of the accident. I base this conclusion upon the information and documentation before me. In short, the only proof claimant submits is its statement that claimant was owned by a General Corporation in 1997 and that the accident occurred in 2001. Claimant offers no proof that it was not owned by a General Corporation at the time of the accident. As a result, claimant has failed to prove by a preponderance of the evidence that it was a proper corporate structure at the time of the accident. Claimant shall not be awarded the medical expense benefits at issue.

5. MEDICAL EXPENSE BENEFITS:

Denied

Provider	Amount Claimed	Amount Awarded	Payable to

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

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 not prevail, and I award no 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): $

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

(C) INTEREST is as follows: Not In Issue $.

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

February 7, 2004
Date

Barry E. Moscowitz, Esq.