

**AMERICAN ARBITRATION ASSOCIATION
NO-FAULT/ACCIDENT CLAIMS**

In the Matter of the Arbitration between

(Claimant)

v.
Prudential Insurance and Liberty
Mutual Insurance Company
(Respondent)

AAA CASE NO.: 18 Z 600 03818 02
INS. CO. CLAIMS NO.: AB303-100196
45V00542C
DRP NAME: Richard A. De Michele
NATURE OF DISPUTE: Medical
Expense Benefits

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: MR.

1. ORAL HEARING held on October 8, 2002.
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 (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:

In reference to medical expense benefits Arbitrator finds that med pay benefits coverage under the Liberty Mutual policy is applicable. Liberty Mutual argues that there is no coverage under Nebinger v. Maryland Casualty Company, 312 N.J. Super 400 (App. Div. 1998). This argument is not persuasive. The issue in Nebinger, is whether a minibus is a “vehicle used for the transportation of passengers for hire” which requires medical expense benefits pursuant to N.J.S.A. 17:28-1.6 Here, the Liberty policy provides medical expense benefits. The question of whether Liberty was statutorily required to provide the coverage is moot. The Liberty policy provides medical benefits for Claimant.

Liberty Mutual next argues that they are at a minimum entitled to pro rata share of the expenses under the limited liability section D Other Insurance. The relevant section of the Liberty Mutual policy states “if two or more insurers are liable pay to extended medical benefits coverage for the same bodily injury we shall be entitled to recover from the other insureds, a pro rata share of the benefits we paid. A pro rata share is proportioned are liability bears to the total loss of the applicable limits. “Liberty Mutual is only entitled a pro rata reimbursement for medical benefits paid. If the Prudential insured, MR, contributed to the happening of the accident. As stated above the Claimant, MR was a passenger on the bus. As such, MR and Prudential has no liability for the happening of this accident. Accordingly, Liberty Mutual’s claim that they should be entitled to a pro rata reimbursement for medical benefits paid must fail. I find that the claim as presented is payable in full.

I am awarding counsel fees in the amount of \$1,785.00. Olewinsky v. Aetna Cas & Sur, 234 N.J. Super 429 (Law Div. 1988).

I am awarding cost in the amount of \$325.00.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
United Medical	\$4,985.21	\$4,985.21	United Medical
Pennsauken MRI	\$1,150.00	\$1,150.00	Pennsauken MRI
Garden State Orthopedics	\$185.00	\$185.00	Garden State Orthopedics

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 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): \$325.00

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$1,785.00.

(C) INTEREST is as follows: Waived.

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

January 30, 2003

Date

Richard A. De Michele, Esq.