

LAW OFFICES
SCHWEBEL, GOETZ, SIEBEN & MOSKAL, P. A.

DIANE C. HANSON (1946-1985)

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WILLIAM R. SIEBEN †
DAVID J. MOSKAL **
RICHARD L. TOUSIGNANT
WILLIAM A. CRANDALL **
PAUL E. GODLEWSKI †
LARRY E. STERN **
MARK H. GRUESNER
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July 12, 1993

MAX H. HACKER
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ROBERT L. LAZEAR
CANDACE L. DALE
LAURIE J. SIEFF
SHARON L. VAN DYCK
T. JOSEPH CRUMLEY
CHRISTINE D. ZONNEVELD
JAMES S. BALLENTINE

OF COUNSEL
MICHAEL G. SIMON

† ALSO ADMITTED IN WISCONSIN
** ALSO ADMITTED IN NORTH DAKOTA
*** ALSO ADMITTED IN COLORADO
* ALSO ADMITTED IN ARIZONA

Supreme Court Administrator/
Clerk of Appellate Courts
245 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

Re: Recommendation to Adopt a Proposed
Amendment to the Rules of Procedure
for No-Fault Arbitration
Court File No. C6-74-45550

OFFICE OF
APPELLATE COURTS
JUL 12 1993
FILED

Dear Clerk:

Enclosed herein for filing is an original and twelve copies of
the following:

1. Request to Make Oral Presentation;
2. Statement of Position of David J. Moskal
Regarding a Recommended Amendment to the Rules
of Procedure for a No-Fault Arbitration; and
3. Appendix.

Thank you.

Sincerely,

David J. Moskal
David J. Moskal (mcc)

DJM/mpn
enclosure

LAW OFFICES
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DIANE C. HANSON (1948-1985)

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Supreme Court Administrator
245 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

OFFICE OF
APPELLATE COURTS

JUL 12 1993

FILED

In Re: Recommendation to Amend the Rules of Procedure for No-Fault Arbitration

Dear Court Administrator:

Enclosed for filing find the original plus 12 copies of the following documents:

1. Request to Make Oral Presentation; and
2. Statement of Position of Peter W. Riley Regarding Petition of American Arbitration Association to Amend the Minnesota No-Fault Arbitration Rules.

Please disregard our filing dated July 9, 1993.

Very truly yours,

Peter W. Riley
Peter W. Riley

PWR/dd
Enclosure



American Arbitration Association

514 Nicollet Mall, Suite 670, Minneapolis, Minnesota 55402-1092

Telephone (612) 332-6545 Fax: (612) 342-2334

July 26, 1993

JAMES R. DEYE
Regional Vice President

To: Minnesota Supreme Court
Minnesota Supreme Court Standing Committee on
No-Fault Automobile Insurance Arbitration

From: James R. Deye *JRD*

Re: Written Rationale of the Committee for Proposed Rule Changes

Pursuant to the request of the Court, enclosed is the Committee's written rationale for the proposed changes to the Minnesota No-Fault Automobile Insurance Arbitration Rules.

OFFICE OF
APPELLATE COURTS

JUL 27 1993

FILED

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John D. Quinlivan
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Michael D. LaFontaine

Timothy J. Sanda
John A. Nelson
Michael L. Antoline
Shelly M. Davis
Steven B. Creason
Brian L. Williams
Kara M. Fay

July 19, 1993

**REPLY TO:
ST. CLOUD**

ATTENTION JAMES DEYE
AMERICAN ARBITRATION ASSOCIATION
514 NICOLLET MALL
SUITE 670
MINNEAPOLIS MN 55402-1092

MR LEONARD E LINDQUIST
ATTORNEY AT LAW
4200 IDS CENTER
MINNEAPOLIS MN 55402

Re: Standing Committee

Gentlemen:

As follow up to the July 16 meeting of the Standing Committee, enclosed please find my draft of what was approved by those then present.

As I understand it, the American Arbitration Association will circulate a copy of this written rationale to all members of the Standing Committee. In addition, the Arbitration Association will see to it that sufficient copies (I believe it is 12 in number) are forwarded to Fred Grittner at the Supreme Court.

Very truly yours,


Michael J. Ford

MJF/mu

Enclosure

RECEIVED
MINNEAPOLIS

JUL 22 1993

AMERICAN
ARBITRATION ASSOC

**STANDING COMMITTEE
MINNESOTA NO-FAULT**

(July 16, 1993)

**RATIONALE FOR PROPOSED AMENDMENTS
TO RULES 5C, 39, AND 32**

At the July 16, 1993 meeting of the Standing Committee, the following written rationale was approved with respect to proposed amendments to Rules 5C, 39, and 32. The amendments themselves were actually approved at a Committee meeting on July 24, 1992 and this written rationale is submitted to the Supreme Court at the court's request.

- A. Amendment to Rule 5C (see attached proposed Rule changes).

Rationale: This amendment was part of a packet of proposed Rule changes regarding joinder submitted by Peter Riley. As eventually passed by the Standing Committee, this Rule change will provide a mechanism for resolution of claims against multiple insurers (respondents). Typically, this can arise when the claimant has been involved in two motor vehicle accidents. In order to avoid the unfairness of one insurer pointing the finger at the absent accident, and insurance company, this proposed amendment to Rule 5C provides a mechanism to bring in both insurers to the same arbitration proceeding and thereby avoid the possibility of inconsistent results in separate proceedings.

- B. Amendment to Rule 39 (see attached proposed Rule changes).

Rationale: The proposed amendment to Rule 39 provides for an additional fee paid by multiple respondents in one proceeding. Each respondent is required to pay the same fee, \$180.00. It is not felt by the Standing Committee that this will be an inordinate charge for an insurance company who may bear some responsibility for the payment of no-fault benefits but has, thus far, refused to do so.

- C. Amendment to Rule 32 (see attached proposed Rule changes).

Rationale: This proposal was made by Robert Hauer who drafted the proposed rule at the request of the AAA Staff and is designed to

Atten James Deye
July 16, 1993
Page 2

address a recurring issue in no-fault arbitration proceedings. At the July 24, 1992 meeting where this proposal was adopted, the vote split 5 to 3 to approve the Rule. Those in opposition to the Rule feel that the Standing Committee is arrogating to itself powers best left to the legislature and this court. In addition, those in opposition to the Rule feel that arbitrators should not be precluded from awarding fees where the contract, Rule 11, or Minn. Stat. § 549.21 or other authority so provide. Those in support of the proposed Rule, feel that it merely codifies what should be clear judicial precedent as announced by this Court in *Garrick vs. Northland Ins. Co.*, 469 N.W.2d 709 (Minn. 1991) and reaffirmed by the Intermediate Court of Appeals in a number of decisions subsequent to *Garrick*. See, e.g. *Empire Fire and Marine Insurance Company vs. Carlson*, 476 N.W.2d 666 (Minn. Ct. App. 1991; *Bunker vs. Hartford Insurance Company*, unpublished opinion, Court File No. C6-92-11 (Minn. Ct. App. May 19, 1992).

The majority which voted in favor of the rule believe that it is needed to make clear the power of no fault arbitrators with respect to awards of attorney fees. Absent this rule, claimants have been requesting attorneys' fees which leads to an increased administrative burden on the AAA staff as they have to field questions from arbitrators as to the propriety of these requests. In addition parties aggrieved by an improper award of fees must take the matter before a District Court judge in a proceeding to vacate or confirm the award.

STATE OF MINNESOTA

IN SUPREME COURT

C6-74-45550

OFFICE OF
APPELLATE COURTS

JUL 12 1993

FILED

In Re:

Recommendation to Amend the Rules
of Procedure for No-Fault
Arbitration

REQUEST TO MAKE
ORAL PRESENTATION

Peter W. Riley hereby requests leave of this Court to make
an oral presentation at the hearing in the above-entitled matter
on July 15, 1993.

Dated: July 9, 1993.

SCHWEBEL, GOETZ, SIEBEN & MOSKAL, P.A.

By

Peter W. Riley
Peter W. Riley (#91765)

5120 IDS Center

Minneapolis, Minnesota 55402-2246

(612) 333-8361

STATE OF MINNESOTA

IN SUPREME COURT

C6-74-45550

In Re:

Recommendation to Amend the Rules
of Procedure for No-Fault
Arbitration

STATEMENT OF POSITION OF
PETER W. RILEY REGARDING
PETITION OF AMERICAN
ARBITRATION ASSOCIATION
TO AMEND THE MINNESOTA
NO-FAULT ARBITRATION RULES

I. BACKGROUND

The undersigned is one of the members of this Court's Standing Committee on Administration of the no-fault rules (hereinafter "Standing Committee"). In addition, he is a member, along with Louise Douvre and Robert Hauer, of the Standing Committee's Subcommittee on the No-Fault Rules.

The Rules subcommittee voted, two to one, to recommend to the Standing Committee a rule which would prohibit the award of any attorneys' fees by arbitrators. This rule was proposed by a member of the no-fault Standing Committee who is a defense attorney who exclusively represents insurance companies in no-fault arbitrations.

On a close vote, the Standing Committee voted to recommend to this Court the new rule which would prohibit the award of attorneys' fees. The purpose of this submission is to present the reasoning of the dissenters on the No-Fault Standing Committee who felt this rule should not be adopted.

II. THE PURPOSE OF THE NO-FAULT RULES IS TO SPECIFY PROCEDURE, NOT SUBSTANTIVE LAW

Rule 1 of the Rules of Procedure for No-Fault Arbitration as adopted by this Court provides, "arbitration under Minnesota Statute Section 65B.525 shall be administered by a Standing Committee of 12 members to be appointed by the Minnesota Supreme Court." It is clear from the language of this Rule that the powers of the no-fault Standing Committee and the provisions of the Rules are to be limited to administrative rules; it is not the intent of the Rules nor of this Court that the committee serve to legislate matters of substance relating to the no-fault law. The purpose of the Rules is directly analogous to the Minnesota Rules of Civil Procedure, which govern the manner of handling of civil litigation in the courts of Minnesota.

Accordingly, just as the Rules of Civil Procedure should not and do not deal with matters of substance such as damages to be awarded in a civil suit, the arbitration Rules should not, indeed cannot properly deal with such matters as whether or not attorneys' fees are properly awardable in a no-fault arbitration.

To the contrary, the question of attorneys' fees, to the extent it exists, is properly addressed, in the first instance, to an arbitrator, and then, should it be necessary, to the courts of this State. What is abundantly clear, however, is that this Court should not attempt to legislate through the Rules what is more properly decided by it through the adversary process.

III. ATTORNEYS' FEES AWARDS ARE RARE; ACCORDINGLY, THERE IS NO NEED FOR A RULE.

At the outset of the consideration of the attorneys' fee issue, the Rules Subcommittee inquired of the American Arbitration Association as to the percentage of cases in which attorneys' fees are awarded. Although this author does not recall the exact figure presented, the percentage of cases in which attorneys' fees awarded was extremely low. As such, the Rule, which is in any event improper, is entirely unnecessary. If an insurer respondent feels aggrieved by a decision of an arbitrator, the District Courts and, if necessary, the Appellate Courts, can deal with the issue in an appropriate adversary context, where the issues and law can be fully considered.

IV. THE PROPOSED RULE IS CONTRARY TO MINNESOTA LAW.

At both the subcommittee level, as well as before the Standing Committee, there was extensive discussion as to whether or not the proposed rule correctly stated the law. In the absence of any case from this Court directly on point, members of both the subcommittee and the committee debated authorities both for and against the Rule. The very fact that legal debate was necessary regarding the implication of cases such as Garrick v. Northland Insurance, 469 N.W.2d 709 (Minn. 1991), Minn. Stat. § 549.21, and Rule 11 of the Minnesota Rules of Civil Procedure demonstrates that the issue before the Court is one of law and fact, and not one that is appropriate for an administrative rule.

Without engaging in a lengthy discussion as to the merits of one position or the other, suffice it to say that conduct of the insurer which violates Chapter 72A of the Minnesota Statutes, or

which would justify an award under Minn. Stat. § 549.21, or Rule 11 of the Minnesota Rules of Civil Procedure should have some remedy within the power of an arbitrator. Should this Court feel otherwise, however, the forum in which to make such a determination is not in an administrative rule, but rather in an adversary proceeding properly brought before it with factual context and full briefing of the law.

V. CONCLUSION

In the time that this author has been a member of this Court's Standing Committee on no-fault rules, I have been struck by the collegiality of the committee and the sincere interest of all members to seek rules of administration which would serve the best interests of all concerned. In this author's opinion, however, the proposed rule on attorneys' fees is a marked deviation from that practice. The rule amounts, in essence, to an attempt by members of the committee to impose their view of law upon this Court, and ultimately litigants. This is hardly the proper function of this Court's rules on administration. Accordingly, this author respectfully requests that the Court reject the proposed rule on attorneys' fees.

Respectfully submitted,

SCHWEBEL, GOETZ, SIEBEN & MOSKAL, P.A.

By Peter W. Riley
Peter W. Riley (#91765)
5120 IDS Center
Minneapolis, Minnesota 55402-2246
(612) 333-8361

STATE OF MINNESOTA
IN SUPREME COURT
C6-74-45550

OFFICE OF
APPELLATE COURTS
JUL 12 1993
FILED

In Re:

Recommendation to Adopt a Proposed
Amendment to the Rules of Procedure
for No-Fault Arbitration

REQUEST TO MAKE
ORAL PRESENTATION

David J. Moskal hereby requests leave of this Court to make
an oral presentation at the hearing in the above-entitled matter
on July 15, 1993.

Dated: July 12, 1993.

SCHWEBEL, GOETZ, SIEBEN & MOSKAL, P.A.

By David J. Moskal (mcc)
David J. Moskal (#123067)
5120 IDS Center
Minneapolis, Minnesota 55402-2246
(612) 333-8361

STATE OF MINNESOTA

IN SUPREME COURT

C6-74-45550

In Re:

Recommendation to Adopt a Proposed
Amendment to the Rules of Procedure
for No-Fault Arbitration

STATEMENT OF POSITION
OF DAVID J. MOSKAL
REGARDING A RECOMMENDED
AMENDMENT TO THE RULES
OF PROCEDURE FOR A
NO-FAULT ARBITRATION

I. INTRODUCTION.

The undersigned is an attorney practicing law in Minneapolis, exclusively representing plaintiffs with personal injury claims. The majority of my clients have been injured in automobile accidents. During the course of my nine years of practice in this area, I have represented more than a thousand clients at no-fault arbitration hearings. In fact, I have probably represented more no-fault claimants at such hearings than any other lawyer in the state, averaging two to three arbitration hearings a week. Based upon my extensive background and experience in this area, I am firmly convinced that the No-Fault Standing Committee's proposed amendment to the Rules of Procedure for No-Fault Arbitration must be rejected. For this reason, I would like to take a little of this Court's time on July 15, 1993 to discuss my personal experiences and I offer this Statement as well.

II. AN AMENDMENT TO THE NO-FAULT RULES IS AN INAPPROPRIATE VEHICLE FOR OBTAINING A SUBSTANTIVE CHANGE IN THE LAW.

The Committee for Administration of No-Fault Arbitration is asking this Court to effectuate a substantive change in the law with an amendment to the Rules of Procedure for No-Fault Arbitration. The no-fault rules are, however, procedural in nature and as such are not appropriate vehicles for substantive enactments. The existing law is sufficient to deal with the issues surrounding awards of attorney's fees and the district courts are the appropriate sounding boards for legal arguments about attorney's fees.

Minn. Stat. § 549.21, Subd. 2 provides in part:

Upon motion of a party, or upon the court's own motion, the Court in its discretion may award to that party costs, disbursements, reasonable attorneys' fees and witness fees if the party or attorney against whom costs, disbursements, reasonable attorney and witness fees are charged acted in bad faith; asserted a claim or defense that is frivolous and that is costly to the other party; asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass; or committed a fraud upon the court.

An arbitrator at a no-fault arbitration hearing is certainly in a position to assess the propriety of an award of attorney's fees. If either party has a quarrel with the arbitrator's decision, review by the district court is available pursuant to Minn. Stat. §§ 572.18, 572.19 and 572.20. Minn. Stat. § 572.26 specifically provides for appellate review of such district court orders. Consequently, a full and fair adjudication of the issue of attorney's fees is available to no-fault claimants and their insurers. The legal issues surrounding the award of attorney's fees in no-fault arbitrations are properly addressed through the

courts on a case by case basis. The system is functioning well and should not be artificially altered by amendment to the no-fault rules.

III. ATTORNEYS' FEES ARE NOT OFTEN AWARDED; HOWEVER IN THOSE FEW INSTANCES IN WHICH THEY ARE APPROPRIATE THEY ARE CRITICALLY NEEDED TO DETER BAD FAITH CONDUCT.

Attorneys' fees are not often awarded by arbitrators in no-fault arbitrations. (See Appendix for examples of awards of attorneys' fees.) In the majority of cases the parties conduct themselves with honor and dignity and an award of such fees is simply not necessary. However, I have found that in approximately one case out of every thirty I have arbitrated, there is evidence of bad faith behavior on the part of the insurer with respect to the handling of the no-fault claim. In such cases, the availability of an award of attorneys' fees is critical. Absent such an option, there simply is no deterrent to bad faith conduct. The availability of attorneys' fees for bad faith behavior is critical to maintaining the balance of power in the system and to ensuring that the parties on both sides are afforded justice.

IV. CONCLUSION.

I strongly urge this Court to refuse to enact the recommended amendment of the Standing Committee for Administration of No-Fault Arbitration. The system currently in place is adequate to effectively deal with the issue of attorneys' fees in arbitration awards. An amendment to a procedural rule is not an appropriate vehicle for enacting substantive changes in the law. Moreover, the potential for an

award of attorney's fees is critical to maintaining the balance of power in the mandatory no-fault arbitration system and to ensuring justice for both claimants and insurers. I, thus, respectfully request that this Court reject the recommendation of the Standing Committee for Administration of No-Fault Arbitration.

Dated: July 12, 1993.

SCHWEBEL, GOETZ, SIEBEN & MOSKAL, P.A.

By David J. Moskal (mcc)
David J. Moskal (#123067)
5120 IDS Center
Minneapolis, Minnesota 55402-2246
(612) 333-8361

APPENDIX

| | <u>Page</u> |
|---|--------------------|
| <u>In the Matter of the Arbitration Between:</u> | |
| Thomas Adams and Continental Loss Adjusting Case No. 56 600 01403 91 | A-1 |
| Jane S. Eaton and Allstate Insurance Company Case No. 56 600 02020 91 | A-2 |
| Ronald Henderson and Kemper National Insurance Companies Case No. 56 600 00851 92 | A-4 |
| Thomas Herbers and MSI Insurance Case No. 56 600 2,968 92 | A-6 |
| Kevin Hoffman and State Farm Insurance Companies Case No. 56 600 00103 91 | A-7 |
| Michele Jansen and CNA Insurance Company Case No. 56 600 01713 89 | A-8 |
| Steven Lucas and Empire Fire & Marine Insurance Company Case No. 56 600 3,132 92 | A-9 |
| Charles Phipps and Allstate Insurance Company Case No. 56 600 02552 90 | A-10 |
| Wayne Rahl and CNA Insurance Company Case No. 56 600 2,400 92 | A-11 |
| Rockets Redglare and American International Adjustment Company Case No. 56 600 02948 90 | A-12 |
| Andrew Savage and MSI Insurance Company Case No. 56 600 00983 90 | A-22 |
| Odell Sumpter, III and State Farm Insurance Companies Case No. 56 600 01065 90 | A-24 |
| Victoria Tesmer and Farmers Insurance Group Case No. 56 600 02750 90 | A-25 |

AMERICAN ARBITRATION ASSOCIATION
MINNESOTA NO-FAULT TRIBUNAL

In the Matter of the Arbitration between

Thomas Adams

-AND-

Continental Loss Adjusting

CASE NUMBER: 56 600 01403 91

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, designated in accordance with MSA 65B.525, having been duly sworn and having heard the proofs and allegations of the parties, AWARDS as follows:

RESPONDENT shall pay to CLAIMANT medical expense benefits incurred as a result of the October 16, 1988 accident, as follows:

| | |
|----------------------|----------|
| Kenwood Chiropractic | \$420.00 |
| Mileage | 75.50 |
| Costs | |
| Medical records | 130.10 |
| Medical reports | 150.00 |
| Other costs | 105.00 |
| Attorneys's fees | 300.00 |
| Interest | 26.03 |

Arbitrator's compensation in the amount of \$300.00 shall be borne by RESPONDENT and paid as directed by the American Arbitration Association.

RESPONDENT shall reimburse to CLAIMANT the \$60.00 filing fee.

This award is in full settlement of all claims submitted to this arbitration.

DATE: March 24, 1992

SIGNED: Michael Douglas Olafson
Michael Douglas Olafson, Arbitrator

AMERICAN ARBITRATION ASSOCIATION
ACCIDENT CLAIMS ARBITRATION TRIBUNAL

* * * * *

In The Matter of the Arbitration between:

Jane S. Eaton

and

Allstate Insurance Company

Case No: 56 600 02020 91

* * * * *

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, designated under the arbitration agreement between the parties, having been duly sworn and having heard the proofs and allegations of the parties, AWARDS as follows:

The Arbitrator finds that CLAIMANT, Jane S. Eaton, has proven expenses for medical expense benefits (Section 65B.44 Subd. 2) as follows:

1. Kenwood Chiropractic; May 3, 1991 through April 21, 1992, chiropractic services and other testing in the amount of \$1,335.00.
2. Pain Assessment & Rehabilitation Center, Ltd., physician services in the amount of \$150.00.
3. Medical Scanning Consultants, December 9, 1990, diagnostic testing services in the amount of \$20.00.
4. Dr. Donald Harada, February 8, 1991 through February 27, 1991, chiropractic services and diagnostic testing in the amount of \$613.76.

Thus, CLAIMANT is awarded as medical expense benefits the sum of \$2,118.76.

The Arbitrator finds that CLAIMANT, Jane S. Eaton, is entitled to \$322.00 in mileage transportation expense benefits (Section 65B.44, Subd. 2) through April 21, 1992.

Overdue Payments: Section 65B.54 Subd. 2.

CLAIMANT is awarded the sum of \$311.00 as interest on overdue payments of medical expense benefits.

Arbitrator's Compensation:

Arbitrator's compensation in the amount of \$300.00 shall be borne by Respondent, Allstate Insurance Company and paid as directed by the American Arbitration Association.

Expenses:

CLAIMANT is entitled to reimbursement for the following incurred expenses:

1. American Arbitration Association filing fee - \$ 60.00
2. Medical records \$ 150.00
3. Three (3) Arbitration Booklets @\$25.00 each - \$ 75.00
\$ 285.00

Thus, CLAIMANT is awarded \$285.00 as costs and disbursements.

Attorney's Fee:

CLAIMANT is awarded \$300.00 for attorney's fees.

This Award is in full settlement of all claims submitted to this arbitration.

Signed and dated: Dennis Atchison 4/30/92
Dennis Atchison, Arbitrator Date

AMERICAN ARBITRATION ASSOCIATION
MINNESOTA NO-FAULT TRIBUNAL

In the Matter of the Arbitration between
Ronald Henderson, Claimant,
Kemper National Insurance Companies, Respondent.

CASE NUMBER: 56 600 00851 92

ARBITRATOR'S AWARD

The undersigned arbitrator, designated in accordance with MSA § 65B.525, having been duly sworn and having heard and considered the evidence, law and arguments submitted by the parties, awards as follows:

Respondent shall pay to Claimant medical expense benefits incurred as a result of the accident on March 5, 1991 as follows:

Unpaid Medical

| | | |
|--|-----------------|------------------|
| Kenwood Chiropractic Arts 8/1/91 through 10/4/91 (actual) | \$910.00 | |
| (paid by Kemper) | (918.00) | |
| 10/15/91 through 7/23/92 | <u>1,015.00</u> | \$ 1,007.00 |
| Lisa Bever, massage therapist November 1991 through December 1991 | | 270.00 |
| various massage (Ron has check entries) 12/26/91 through 6/10/92 | | 798.00 |
| MILEAGE 3/13/91 through 7/23/92 297 miles x .25/mile = | | <u>74.25</u> |
| TOTAL AND CONTINUING: | | <u>\$2149.25</u> |

together with interest in the amount of \$119.98, expenses in the amount of \$103.00 to include the administrative fees of the American Arbitration Association in the amount of \$60.00, for a total amount payable to Claimant of \$2432.23 .

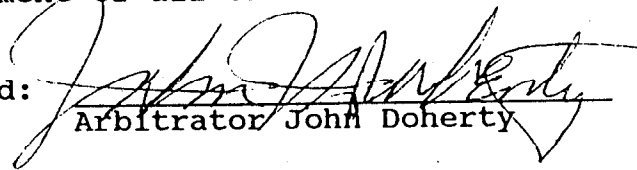
Arbitrator's compensation in the amount of \$300.00 shall be borne in full by the Respondent.

Respondent shall also pay attorney's fees to Claimant in the amount of \$300.00.

This award is in full settlement of all claims submitted to this arbitrator to date.

Date: Aug 8, 1992.

Signed:


Arbitrator John Doherty

AMERICAN ARBITRATION ASSOCIATION
MINNESOTA NO-FAULT TRIBUNAL

In the Matter of the Arbitration between

Thomas Herbers
and
MSI Insurance

CASE NUMBER: 56 600 2,968 92

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, designated in accordance with MSA 65B.525, having been duly sworn and having heard the proofs and allegations of the parties, AWARDS as follows:

As a result of the accident on January 16, 1992 RESPONDENT MSI Insurance shall pay to CLAIMANT Thomas Herbers the following no-fault benefits:

| | |
|--------------------|-------------|
| Medical Expenses | \$ 3,231.00 |
| Interest | 529.65 |
| Costs: | |
| Statements of Case | 35.00 |
| Medical Report | 125.00 |
| Medical Records | 52.00 |
| Attorney's fees | 400.00 |
| Total Costs | 612.00 |

The balance of the claim is HEREBY DENIED.

Arbitrator's compensation in the amount of \$300.00 shall be borne by RESPONDENT and paid as directed by the American Arbitration Association.

RESPONDENT shall reimburse to CLAIMANT the \$60.00 filing fee.

This award is in full settlement of all claims submitted to this arbitration.

DATE: 5/27/93

SIGNED: 

Charles M. Goldstein, Esq., Arbitrator

AMERICAN ARBITRATION ASSOCIATION

MINNESOTA NO-FAULT TRIBUNAL

In the Matter of the Arbitration between

Kevin Hoffman, Claimant,

and

State Farm Insurance Companies, Respondent.

CASE NUMBER: 56 600 00103 91

ARBITRATOR'S AWARD

The undersigned arbitrator, designated in accordance with MSA § 65B.525, having been duly sworn and having heard and considered the evidence, law and arguments submitted by the parties, awards as follows:

Respondent shall pay to Claimant medical expense benefits incurred as a result of the accident on 12/6/88 as follows:

Unpaid Medical (thru Sept. 9, 1991)
\$1,598.00

MILEAGE (thru Sept. 9, 1991)
\$ 167.20

TOTAL: \$1,765.20

together with interest in the amount of \$140.97, costs in the amount of \$147.00, to include the administrative fees of the American Arbitration Association in the amount of \$60.00, for a total amount payable to Claimant of \$2,013.17.

Respondent shall also pay attorney's fees to Claimant in the amount of \$350.00.

Arbitrator's compensation in the amount of \$300.00 shall be borne in full by the Respondent.

This award is in full settlement of all claims submitted to this arbitrator to date.

Date: 9-24-, 1991.

Signed: *Sandra Kluge*

AMERICAN ARBITRATION ASSOCIATION

MINNESOTA NO-FAULT TRIBUNAL

In the Matter of the Arbitration between

Michele Jansen

-AND-

CNA Insurance Company

CASE NUMBER: 56 600 01713 89

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, designated in accordance with MSA 65B.525, having been duly sworn and having heard the proofs and allegations of the parties, AWARDS as follows:

As a result of the accident on January 19, 1989, Respondent shall pay to Claimant no-fault benefits as follows:

| | |
|------------------------------|------------|
| Kenwood Chiropractic | \$2,510.00 |
| Pain Assessment & Rehab | 310.00 |
| Neurophysiological Institute | 375.00 |
| YMCA Membership | 399.00 |
| Mileage | 131.00 |

Respondent shall pay interest in the amount of 15% per annum from 30 days after due date of above payments.

Respondent shall pay to Claimant attorney's fees in the sum of \$350.00.

Arbitrator's compensation in the amount of \$150.00 shall be borne by RESPONDENT and paid as directed by the American Arbitration Association.

RESPONDENT shall reimburse to CLAIMANT the \$50.00 filing fee.

This award is in full settlement of all claims submitted to this arbitration.

DATE:

9/28/90

SIGNED:

Mitchel I. Kirshbaum
Mitchel I. Kirshbaum, Arbitrator

**AMERICAN ARBITRATION ASSOCIATION
MINNESOTA NO-FAULT TRIBUNAL**

In the Matter of the Arbitration between

Steven Lucas
and
Empire Fire & Marine Insurance Company

CASE NUMBER: 56 600 3,132 92

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, designated in accordance with MSA 65B.525, having been duly sworn and having heard the proofs and allegations of the parties, AWARDS as follows:

Respondent, Empire Fire & Marine Insurance Company, shall pay to Claimant, Steven Lucas, the following no-fault benefits:

| | |
|--------------------------|------------|
| Medical Expense Benefits | \$1,302.14 |
| Attorney Fees | 300.00 |

Respondent shall also pay interest from 12/18/92 to the date of the award.

Arbitrator's compensation in the amount of \$300.00 shall be borne equally between the parties (\$150.00 each) and paid as directed by the American Arbitration Association.

Administrative fees of the American Arbitration Association shall be borne as incurred.

This award is in full settlement of all claims submitted to this arbitration.

DATE: June 7, 1993

SIGNED: 
Ira C. Peterson Jr., Esq., Arbitrator

AMERICAN ARBITRATION ASSOCIATION
MINNESOTA NO-FAULT TRIBUNAL

In the Matter of the Arbitration between

Charles Phipps

-AND-

Allstate Insurance Company

CASE NUMBER: 56 600 02552 90

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, designated in accordance with MSA 65B.525, having been duly sworn and having heard the proofs and allegations of the parties, AWARDS as follows:

Respondent shall pay to Claimant the following no-fault benefits incurred as a result of the April 8, 1990 accident:

| | |
|---|------------|
| Unpaid Medical Specials (including mileage) | \$1,543.75 |
| 15% Statutory Interest | 39.51 |
| Costs | 68.79 |
| Attorney fees | 300.00 |

Arbitrator's compensation in the amount of \$150.00 shall be borne by RESPONDENT and paid as directed by the American Arbitration Association.

RESPONDENT shall reimburse to CLAIMANT the \$50.00 filing fee.

This award is in full settlement of all claims submitted to this arbitration.

DATE:

6/17/91

SIGNED:

Norman L. Newhall Jr.

Norman L. Newhall Jr., Arbitrator

AMERICAN ARBITRATION ASSOCIATION
MINNESOTA NO-FAULT TRIBUNAL

In the Matter of the Arbitration between

Wayne Rahl
and
CNA Insurance Company

CASE NUMBER: 56 600 2,400 92

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, designated in accordance with MSA 65B.525, having been duly sworn and having heard the proofs and allegations of the parties, AWARDS as follows:

RESPONDENT shall pay to CLAIMANT No-Fault benefits incurred as a result of the accident on June 22, 1990 as follows:

| | |
|-------------------------------------|------------|
| Medical expense benefits: | |
| Jordan Chiropractic Clinic | \$ 765.00 |
| Interest (from 6/22/92 to 12/30/92) | 116.55 |
| Medical reports | 21.00 |
| Attorney's Fees | 300.00 |
| | <hr/> |
| TOTAL AWARD: | \$1,202.55 |

Arbitrator's compensation in the amount of \$300.00 shall be borne by RESPONDENT and paid as directed by the American Arbitration Association.

RESPONDENT shall reimburse to CLAIMANT the \$60.00 filing fee.

This award is in full settlement of all claims submitted to this arbitration.

DATE: 12/31/92

SIGNED: _____

Philip J. Stern, Esq., Arbitrator

AMERICAN ARBITRATION ASSOCIATION

MINNESOTA NO-FAULT TRIBUNAL

In the Matter of the Arbitration between

Rockets Redglare

- and -

American International Adjustment Company

Case No. 56 600 02948 90

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, designated in accordance with Minn. Stat. § 65B.525, having been duly sworn and having heard and considered the evidence, proofs and arguments of the parties, FINDS as follows:

1. The CLAIMANT did sustain a disabling injury in the accident of May 26, 1990 which interferes with her capacity to work on a full time basis and which requires continuing medical treatment.

2. Before the CLAIMANT sustained the injuries complained of in the accident of May 26, 1990, she sustained a disabling injury in the accident of September 30, 1988 which interfered with her capacity to work on a full time basis and from which she had not yet recovered and for which she was receiving treatment when the accident of May 26, 1990 occurred.

3. The CLAIMANT filed Petition herein on December 18, 1990, at which time the amount in controversy for unpaid medical expenses, income loss and replacement services did not exceed the then-existing jurisdictional limit, \$5000.00.

4. CLAIMANT'S testimony concerning the nature and extent of her injuries, the effect of these injuries on her life and the benefit she received from medical treatment was entirely credible, in view of its consistency with other evidence in the record and CLAIMANT'S tone, demeanor and responsiveness during both direct and cross examination.

APPORTIONMENT

5. The Minnesota No-Fault Law, unlike the Minnesota Worker's Compensation Law (Minn. Stat. § 176.101, subd. 4a) does not authorize apportionment between a preexisting condition or disability and a subsequent condition or disability.

6. Prior to the enactment of Minn. Stat. § 176.101, subd. 4a in 1984, the common law did not authorize apportionment in worker's compensation proceedings. The present statute allows apportionment only if the preexisting disability (not "injury") is clearly evidenced in a medical report or record made prior to the current personal injury.

7. Fairness and equity under the common law of the State of Minnesota favor apportionment under appropriate circumstances, but such circumstances exist only if there is an adequate factual basis upon which to clearly distinguish one injury or disability from another. Speculation and conjecture can never provide an adequate factual basis upon which to make an apportionment.

8. The party seeking apportionment has the burden of establishing the factual basis upon which apportionment may be reasonably and clearly determined.

9. One of CLAIMANT'S experts, Dr. Steven S. Lebow stated in his letter dated April 3, 1991 that:

"I don't think proportioning the disability is doable until she stabilizes completely from the second accident."

10. Although RESPONDENT'S expert, Dr. Harold Hanson, MD expressed the opinion in his report of examination of CLAIMANT on November 6, 1990 that the treatment to date had been reasonable, that CLAIMANT had received maximum benefit from the medical and chiropractic care that she had received to date, and that CLAIMANT has a degree of permanent partial disability of the spine in reference to the herniated disk at L5-S1 level, this expert did not express any opinion on the issue of apportionment.

11. RESPONDENT has not introduced any other evidence on the issue of apportionment, and accordingly has not met its burden of proof assumed by reason of asserting a right to apportion CLAIMANT'S injuries.

ATTORNEY'S FEES

12. Rule 32, Minnesota No-Fault Arbitration Rules, provides, in pertinent part:

"The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable consistent with the Minnesota No-Fault Act."

13. Minn. Stat. § 65B.46, subd.1, provides as follows:

"If the accident causing injury occurs in this state, every person suffering loss from injury arising out of maintenance or use of a motor vehicle has a right to basic economic loss benefits."

14. Both of the accidents involved took place in the State of Minnesota.

15. Unless an attorney is willing to represent a CLAIMANT without charging a fee or unless a medical service provider or replacement service provider is willing to relinquish all or part of his or her claim for payment for services rendered, a CLAIMANT who has to pay an attorney to represent him or her in an arbitration proceeding does not receive the basic economic loss benefits to which he or she has a right pursuant to the Minnesota No-Fault Law, unless an attorney's fee is awarded to him or her.

16. At the hearing of the above matter RESPONDENT'S counsel stated that he had case authority establishing that out-of-pocket costs were not recoverable in matter such as the present one. The case cited by counsel in his brief, Krummi v. MSI Insurance Co., 363 N.W.2d 856 (Minn. App. 1985) does not assert or purport to assert that costs are not recoverable in proceedings of this kind.

17. RESPONDENT'S counsel, by letter dated May 24, 1991, objected to these arbitration proceedings on the grounds the benefits in controversy exceeded the jurisdictional limit of \$5000.00. By letter dated August 16, 1991, RESPONDENT'S counsel asserted that CLAIMANT'S medical expenses as of March 19, 1991 total \$10,042.50.

18. RESPONDENT'S PIP Payment Records, which should have been readily available to RESPONDENT'S counsel, reflect payments to CLAIMANT'S treating physicians totaling \$4046 as of December 18, 1990 with respect to the accident to May 26, 1990 and payments to CLAIMANT'S medical providers totaling \$5472 with respect to the September 30, 1988 accident.

19. In RESPONDENT'S post-trial brief RESPONDENT asserts, "The chiropractic care may, in fact, be continuing to irritate the Claimant's back prolonging her recovery." Despite a careful examination of the medical records herein, there is no support for this assertion in any of the medical records, including the report of the independent medical examiner, Dr. Harold Hanson, M.D., dated November 6, 1990.

20. RESPONDENT'S counsel argued that it is likely that any back injury that is objectively verifiable at present was present as early as 1984. While there is evidence in the record to indicate that CLAIMANT had experienced a condition following the September 30, 1990 accident similar to a condition in 1985, RESPONDENT did not offer any evidence indicating that CLAIMANT was disabled following the 1985 injury.

21. Although RESPONDENT offered an excerpt from the Minnesota Chiropractic Association Standards of Practice, the materials submitted did not include the section on PRN Care, which describes the parameters involved when a condition

necessitates continuing care.

INCOME LOSS

22. Counsel for RESPONDENT argued that Erickson v. Great American Insurance Co., 466 N.W.2d 430 (Minn. App. 1991) barred CLAIMANT'S claim for income loss in this case.

23. CLAIMANT was regularly unable to work on account of the injuries she sustained in the September 30, 1988 and May 26, 1990 accidents and this inability to work resulted in income loss to her. CLAIMANT'S testimony in this regard was corroborated by her employer, James McComb.

OTHER ISSUES

24. CLAIMANT executed a release with respect to her liability claim arising out of the May 26, 1990 accident which released expressly stated:

"This release is not intended as a release of any past, present or future benefits under the Minnesota No-Fault Act."

25. At times pertinent herein, CLAIMANT'S wage rate was \$14.71 per hour, and not \$15.93 as previously calculated by RESPONDENT. Accordingly, RESPONDENT has overpaid CLAIMANT in the amount of \$230.00 for income loss benefits paid between May 26, 1990 and February 1, 1991.

26. Counsel for both CLAIMANT and RESPONDENT agreed to the postponement resulting in the imposition of a postponement fee totaling \$100.00, paid equally by CLAIMANT and RESPONDENT.

Based upon the foregoing FINDINGS, the Arbitrator AWARDS as follows:

1. RESPONDENT shall pay to CLAIMANT medical expense benefits incurred as a result of the accidents on September 30, 1988 and May 26, 1990, pursuant to Minn. Stat. § 65B.44, subd. 2, as follows:

| PROVIDER | DATE OF SERVICE | AMOUNT DUE |
|----------------------|-----------------|---------------|
| Noran Clinic | 01-23-91 | \$ 113.00 |
| Noran Clinic | 05-01-91 | <u>113.00</u> |
| subtotal | | \$ 226.00 |
| Kenwood Chiropractic | 11-30-90 | 35.00 |
| | 12-14-90 | 35.00 |
| | 12-06-90 | 35.00 |

| | |
|----------|--------|
| 12-18-90 | 35.00 |
| 01-03-91 | 35.00 |
| 01-08-91 | 35.00 |
| 01-10-91 | 35.00 |
| 01-14-91 | 35.00 |
| 01-17-91 | 155.00 |
| 01-22-91 | 35.00 |
| 01-24-91 | 35.00 |
| 01-29-91 | 35.00 |
| 01-30-91 | 20.00 |
| 02-01-91 | 35.00 |
| 02-08-91 | 35.00 |
| 03-05-91 | 95.00 |
| 03-15-91 | 35.00 |
| 03-18-91 | 35.00 |
| 03-19-91 | 35.00 |
| 04-01-91 | 65.00 |
| 04-04-91 | 35.00 |
| 04-11-91 | 55.00 |
| 04-12-91 | 35.00 |
| 04-17-91 | 35.00 |
| 04-25-91 | 35.00 |
| 05-01-91 | 35.00 |
| 05-02-91 | 50.00 |
| 05-03-91 | 35.00 |
| 05-06-91 | 35.00 |
| 05-08-91 | 50.00 |
| 05-10-91 | 35.00 |
| 05-13-91 | 35.00 |
| 05-15-91 | 50.00 |
| 05-22-91 | 35.00 |
| 05-23-91 | 35.00 |
| 05-29-91 | 35.00 |
| 05-31-91 | 35.00 |
| 06-03-91 | 35.00 |
| 06-05-91 | 50.00 |
| 06-07-91 | 35.00 |
| 06-17-91 | 35.00 |
| 06-21-91 | 35.00 |
| 06-25-91 | 35.00 |
| 06-27-91 | 35.00 |
| 07-08-91 | 35.00 |
| 07-11-91 | 35.00 |
| 07-16-91 | 35.00 |
| 07-18-91 | 35.00 |
| 07-23-91 | 35.00 |
| 07-25-91 | 35.00 |
| 07-29-91 | 35.00 |
| 08-07-91 | 35.00 |
| 08-13-91 | 35.00 |
| 08-15-91 | 35.00 |
| 08-21-91 | 35.00 |
| 08-22-91 | 35.00 |
| 08-27-91 | 35.00 |

| | |
|----------|-------|
| 08-29-91 | 35.00 |
| 09-03-91 | 35.00 |
| 09-06-91 | 35.00 |
| 09-09-91 | 35.00 |
| 09-12-91 | 35.00 |
| 09-17-91 | 35.00 |
| 09-19-91 | 35.00 |
| 09-26-91 | 35.00 |
| 09-27-91 | 35.00 |
| 10-01-91 | 35.00 |
| 10-04-91 | 35.00 |
| 10-08-91 | 35.00 |
| 10-14-91 | 35.00 |
| 10-18-91 | 35.00 |
| 10-24-91 | 35.00 |
| 10-28-91 | 35.00 |
| 10-31-91 | 35.00 |
| 11-04-91 | 35.00 |
| 11-08-91 | 35.00 |
| 11-11-91 | 35.00 |
| 11-13-91 | 35.00 |
| 11-20-91 | 35.00 |
| 11-22-91 | 35.00 |
| 11-25-91 | 35.00 |
| 11-27-91 | 35.00 |
| 12-03-91 | 35.00 |
| 12-06-91 | 35.00 |
| 12-10-91 | 35.00 |
| 12-18-91 | 35.00 |
| 12-23-91 | 35.00 |
| 12-24-91 | 35.00 |
| 01-02-92 | 35.00 |
| 01-03-92 | 35.00 |
| 01-09-92 | 35.00 |
| 01-16-92 | 35.00 |
| 01-20-92 | 35.00 |
| 01-23-92 | 35.00 |
| 01-30-92 | 35.00 |
| 02-06-92 | 95.00 |
| 02-14-92 | 55.00 |
| 02-25-92 | 35.00 |
| 03-05-92 | 35.00 |
| 03-13-92 | 35.00 |
| 03-19-92 | 35.00 |
| 03-23-92 | 35.00 |
| 03-31-92 | 35.00 |
| 04-02-92 | 35.00 |
| 04-10-92 | 35.00 |
| 04-15-92 | 35.00 |
| 04-20-92 | 35.00 |
| 04-24-92 | 35.00 |
| 04-29-92 | 35.00 |
| 05-01-92 | 35.00 |
| 05-06-92 | 35.00 |

| | |
|----------|--------------|
| 05-08-92 | 35.00 |
| 05-11-92 | 50.00 |
| 05-15-92 | 35.00 |
| 06-03-92 | 35.00 |
| 06-09-92 | 35.00 |
| 06-15-92 | 35.00 |
| 06-18-92 | 35.00 |
| 06-19-92 | 35.00 |
| 06-23-92 | 35.00 |
| 06-25-92 | 35.00 |
| 06-26-92 | 35.00 |
| 07-08-92 | 35.00 |
| 07-13-92 | 35.00 |
| 07-14-92 | 35.00 |
| 07-15-92 | 35.00 |
| 07-16-92 | 35.00 |
| 07-21-92 | 35.00 |
| 07-23-92 | 35.00 |
| 07-28-92 | 35.00 |
| 07-30-92 | 35.00 |
| 08-04-92 | 35.00 |
| 08-06-92 | 35.00 |
| 08-17-92 | 35.00 |
| 08-18-92 | <u>35.00</u> |

subtotal \$ 5,095.00

TOTAL \$ 5,321.00

2. CLAIMANT shall be entitled to overdue payment penalty pursuant to Minn. Stat. § 65B.54, subd. 2, with respect to any medical expense benefits, commencing on the date of the service, and not thirty (30) days thereafter.

3. RESPONDENT shall pay to CLAIMANT mileage reimbursement benefits as a result of the accidents on September 30, 1988 and May 26, 1990, pursuant to Minn. Stat. § 65B.44, subd. 3, as follows:

11/30/91 through 8/18/92 \$ 35.88

4. CLAIMANT shall be entitled to overdue payment penalty pursuant to Minn. Stat. § 65B.54, subd. 2, with respect to any mileage reimbursement benefits, commencing on the date incurred, and not thirty (30) days thereafter.

5. RESPONDENT shall pay to CLAIMANT income loss benefits as a result of the accidents on September 30, 1988 and May 26, 1990, pursuant to Minn. Stat. § 65B.44, subd. 3, as follows:

| DATE OF SERVICE | AMOUNT DUE |
|-----------------|------------|
| 03-08-91 | \$ 137.54 |
| 03-15-91 | 162.55 |

| | |
|----------|--------|
| 03-22-91 | 168.80 |
| 03-29-91 | 118.78 |
| 04-05-91 | 168.80 |
| 04-12-91 | 118.78 |
| 04-19-91 | 125.04 |
| 04-26-91 | 118.78 |
| 05-03-92 | 231.32 |
| 05-10-91 | 112.53 |
| 05-17-91 | 81.27 |
| 05-24-91 | 118.78 |
| 05-31-91 | 193.80 |
| 06-07-91 | 171.92 |
| 06-14-91 | 175.05 |
| 06-21-91 | 156.29 |
| 06-28-91 | 118.78 |
| 07-05-91 | 143.79 |
| 07-12-91 | 131.29 |
| 07-19-91 | 87.52 |
| 07-26-91 | 150.04 |
| 08-02-91 | 6.25 |
| 08-09-91 | 206.31 |
| 08-16-91 | 106.28 |
| 08-23-91 | 225.06 |
| 08-30-91 | 162.55 |
| 09-06-91 | 125.04 |
| 09-13-91 | 131.29 |
| 09-20-91 | 200.06 |
| 09-27-91 | 250.00 |
| 10-04-91 | 153.17 |
| 10-11-91 | 243.82 |
| 10-18-91 | 125.04 |
| 10-25-91 | 150.04 |
| 11-01-91 | 193.81 |
| 11-08-91 | 168.80 |
| 11-15-91 | 162.55 |
| 11-22-91 | 165.67 |
| 11-29-91 | 12.50 |
| 12-06-91 | 12.50 |
| 12-13-91 | 75.02 |
| 12-20-91 | 68.77 |
| 12-27-91 | 25.01 |
| 01-10-92 | 75.02 |
| 01-17-92 | 62.52 |
| 01-24-92 | 68.77 |
| 01-31-92 | 50.01 |
| 02-07-92 | 50.01 |
| 02-14-92 | 50.01 |
| 02-21-92 | 37.51 |
| 02-28-92 | 56.27 |
| 03-06-92 | 75.02 |
| 03-13-92 | 200.06 |
| 03-20-92 | 95.62 |
| 03-27-92 | 37.51 |

| | |
|----------|--------|
| 04-03-92 | 50.01 |
| 04-10-92 | 125.04 |
| 04-17-92 | 131.29 |
| 04-24-92 | 95.62 |
| 05-01-92 | 140.66 |
| 05-08-92 | 6.25 |
| 05-15-92 | 96.90 |
| 05-22-92 | 87.52 |
| 06-05-92 | 150.04 |
| 06-12-92 | 56.27 |
| 06-19-92 | 50.01 |
| 06-26-92 | 95.62 |
| 07-03-92 | 106.28 |
| 07-10-92 | 168.78 |
| 07-17-92 | 250.00 |
| 07-24-92 | 118.78 |
| 07-31-92 | 162.55 |
| 08-07-92 | 96.90 |
| 08-20-92 | 62.52 |

Total Income Loss \$9,161.04

6. RESPONDENT is entitled to offset the above amounts for income loss by the amount of its overpayment, \$230.00.

7. CLAIMANT shall be entitled to overdue payment penalty pursuant to Minn. Stat. § 65B.54, subd. 3, with respect to any income loss benefits, commencing on the date of the service, and not thirty (30) days thereafter, except that the first \$230.00 in income loss benefits shall not give rise to an overdue payment penalty.

5. CLAIMANT shall be entitled to replacement service benefits pursuant to Minn. Stat. § 65B.44, subd. 5, as follows:

| | | |
|----------------|----------|----------|
| Moving Expense | 06-30-92 | \$420.00 |
|----------------|----------|----------|

6. CLAIMANT shall be entitled to overdue payment penalty pursuant to Minn. Stat. § 65B.54, subd. 3, with respect to replacement service benefits commencing on the date of the service, and not thirty (30) days thereafter.

7. RESPONDENT shall reimburse to CLAIMANT the following:

| | |
|---------------|---------|
| a. Filing fee | \$50.00 |
|---------------|---------|

b. Medical records as follows:

| | |
|-----------------------------|----------|
| Noran Clinic | \$107.03 |
| Henn. County Medical Center | \$ 7.99 |
| Kenwood Chiropractic | \$ 84.00 |

c. Medical Reports:

| | |
|----------------------|----------|
| Noran Clinic | \$145.00 |
| Kenwood Chiropractic | \$200.00 |

d. Employment Records:

| | |
|--------------|----------|
| McComb Group | \$ 42.30 |
|--------------|----------|

e. Arbitration Books \$ 90.00

g. Attorney's Fee \$300.00

CLAIMANT shall not be entitled to reimbursement for her share of the postponement fee.

8. Arbitrator's compensation in the amount of \$300.00 shall be borne by RESPONDENT and paid as directed by the American Arbitration Association.

This Award is in full settlement of all claims submitted to this arbitration.

Dated: 9/28/92

Signed: Allen H. Gibas
Allen H. Gibas, Arbitrator

AMERICAN ARBITRATION ASSOCIATION

MINNESOTA NO-FAULT TRIBUNAL

In the Matter of the Arbitration between

Andrew Savage, Claimant,

and

MSI Insurance Company, Respondent.

CASE NUMBER: 56 600 00983 90

ARBITRATOR'S AWARD

The undersigned arbitrator, designated in accordance with MSA 65B.525, having been duly sworn and having heard and considered the evidence, law and arguments submitted by the parties, awards as follows:

Respondent shall pay to Claimant medical expense benefits incurred as a result of the accident on 1/11/89 as follows:

Unpaid Medical

| | |
|--------------------|-----------|
| Joseph Carr, D.C. | \$ 540.00 |
| 1/19/90 - 10/30/90 | |

MILEAGE

| | |
|--------------------------|----------|
| Dr. Joseph Carr | 1,425.00 |
| 50 visits (114 miles rt) | |
| 5,700 miles x \$.25/mi | |

| | |
|-------------------------------|------|
| Rum River Medical Association | 3.25 |
| 1 visit (13 miles rt) | |
| 13 miles x \$.25/mi | |

| | |
|-----------------------------|-------|
| Columbia Park Medical Group | 27.00 |
| 1 visit (108 miles rt) | |
| 108 miles x \$.25/mi | |

| | | |
|-------------------------------|--------------|-----------------|
| North Memorial Medical Center | <u>27.50</u> | |
| 1 visit (110 miles rt) | | |
| 110 miles x \$.25/mi | | <u>1,482.75</u> |
| TOTAL and continuing: | | \$2,022.75 |
| Interest Due: | | 57.76 |

Arbitrator's compensation in the amount of \$150.00 shall be borne in full by the respondent, and respondent shall reimburse claimant \$50.00 for filing fee.

TOTAL DUE CLAIMANT: \$2,280.51

Reasonable attorney's fees are found to be \$400.00. Attorney fees are awarded.

This award is in full settlement of all claims submitted to this arbitrator to date.

Dated: January 14, 1991

Signed: 
Dennis R. Johnson

AMERICAN ARBITRATION ASSOCIATION

MINNESOTA NO-FAULT TRIBUNAL

In the Matter of the Arbitration between

Odell Sumpter, III

-AND-

State Farm Insurance Companies

CASE NUMBER: 56 600 01065 90

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, designated in accordance with MSA 65B.525, having been duly sworn and having heard the proofs and allegations of the parties, AWARDS as follows:

Respondent shall pay to Claimant the following no-fault benefits incurred as a result of the February 16, 1989 accident:

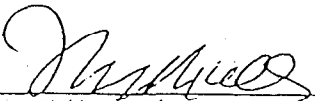
| | |
|---------------------------------|----------|
| Abbott Northwestern Hospital | \$ 35.15 |
| Dr. Ellis | 90.00 |
| Health One | 618.00 |
| EMPI | 685.00 |
| Dr. F. Lewis | 200.00 |
| Minneapolis Clinic of Neurology | 275.00 |
| Metropolitan Rehab Consultants | 1,580.00 |
| Wage Loss | 5,558.05 |
| Costs | 669.11 |
| Attorney fees | 750.00 |

Arbitrator's compensation in the amount of \$150.00 shall be borne by RESPONDENT and paid as directed by the American Arbitration Association.

Administrative fees of the American Arbitration Association shall be borne as incurred.

This award is in full settlement of all claims submitted to this arbitration.

DATE: Dec 17

SIGNED: 

Thomas M. Kelly, Arbitrator

AMERICAN ARBITRATION ASSOCIATION
MINNESOTA NO-FAULT TRIBUNAL

In the Matter of the Arbitration between

Victoria Tesmer

-AND-

Farmers Insurance Group

CASE NUMBER: 56 600 02750 90

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, designated in accordance with MSA 65B.525, having been duly sworn and having heard the proofs and allegations of the parties, AWARDS as follows:

As a result of the February 23, 1990 automobile accident, RESPONDENT Farmers Insurance Group shall pay to CLAIMANT Victoria Tesmer medical expense benefits (including medical travel) in the sum of \$3,854.50.

RESPONDENT shall pay to CLAIMANT interest in the sum of \$207.88.

RESPONDENT shall pay to CLAIMANT costs (including attorney fees) in the sum of \$933.50.

Arbitrator's compensation in the amount of \$150.00 shall be borne by RESPONDENT and paid as directed by the American Arbitration Association.

RESPONDENT shall reimburse to CLAIMANT the \$50.00 filing fee.

This award is in full settlement of all claims submitted to this arbitration.

DATE: 10/11/91

SIGNED: _____

Timothy J. McCoy, Arbitrator