

00-1551-CD
MICHAEL R. LLOYD -vs- LIBERTY MUTUAL INSURANCE COMPANY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL R. LLOYD,
Plaintiff/Petitioner

Vs.

LIBERTY MUTUAL INSURANCE
COMPANY,
Defendant/Respondent

CIVIL DIVISION

No. 00 - 1551 - CD

PETITION TO COMPEL UNINSURANCE
ARBITRATION

Filed on Behalf of:

Plaintiff, MICHAEL R. LLOYD

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

FILED

DEC 13 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MICHAEL R. LLOYD, :
Plaintiff/Petitioner : No. 00 - - CD
Vs. :
LIBERTY MUTUAL INSURANCE COMPANY, :
Defendant/Respondent :

PETITION TO COMPEL UNINSURANCE ARBITRATION

NOW COMES, Michael R. Lloyd, by his attorney, Joseph Colavecchi, Esquire, and respectfully requests this Honorable Court to:

- A. Compel Respondent to arbitrate Petitioners uninsured motorists claim;
- B. Order Respondent to select a second Arbitrator; and,
- C. Compel Respondent to pay Petitioners counselor's fees.

In support, Petitioner respectfully represents the following:

1. Petitioner Michael R. Lloyd, an adult individual residing at 94 Fiesta Road, Rochester, New York 14626.
2. Respondent, Liberty Mutual Insurance Company, is an insurance company licensed to do business under the laws of the Commonwealth of Pennsylvania, with offices located in 135 Corporate Woods, Suite 380, Rochester, New York 14623.

RECEIVED
JUL 12 1937
PENNSYLVANIA
COURT OF COMMONS
PHILADELPHIA

3. On July 12, 1937, Michael R. Lloyd was injured in a motor vehicle accident in Richmond Township, Tioga County, Pennsylvania.

4. On the date of the accident, Michael R. Lloyd was named insured on an automobile insurance policy issued by Liberty Mutual Insurance Company having policy number A02-231-127067-2000. A copy of the policy is in the possession of Liberty Mutual Insurance Company.

5. Said policy was in full force and effect on July and provided for minimum motorist coverage of \$25,000 per vehicle. There were three vehicles covered under the insurance coverage.

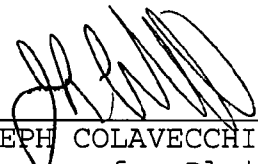
6. The subject automobile accident was caused by the negligence of Fullington Auto Bus Company. At the time of the accident, the insurance company for Fullington Auto Bus Company was involved, which in effect, meant that Fullington Auto Bus Company was uninsured.

7. This petition is being filed in order to toll the Statute of Limitation and in order to go forward with the Uninsurance Arbitration.

8. This Court has jurisdiction over this matter because Fullington Auto Bus Company, the Defendant in the motor vehicle accident, has its principal place of business in Clearfield County, Pennsylvania.

WHEREFORE, Michael R. Lloyd respectfully requests this Honorable Court to issue a Rule upon Liberty Mutual Insurance Company to show cause why Petitioners uninsurance motorists claim should not be submitted to Arbitration and that Respondent be compelled to select an Arbitrator.

Respectfully submitted,



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiff
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
814/765-1566

| | | | | | | |
|---|---|-----|--|---|--|--|
| IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA. CIVIL DIVISION No. 00 - - CD | MICHAEL R. LLOYD, Plaintiff/Petitioner | vs. | LIBERTY MUTUAL INSURANCE COMPANY, Defendant/Respondent | PETITION TO COMPEL UNINSURANCE ARBITRATION | <div>FILED</div> <div>DEC 13 2000</div> <div>01/10/23/ Atty Colavecchi</div> <div>William A. Shaw</div> <div>Prothonotary</div> <div>pd \$80.00</div> <div>4cc Atty Colavecchi</div> | COLAVECCHI RYAN & COLAVECCHI ATTORNEYS AT LAW 221 EAST MARKET STREET (ACROSS FROM COURTHOUSE) P. O. BOX 131 CLEARFIELD, PA 16830 |
|---|---|-----|--|---|--|--|

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL R. LLOYD,
Plaintiff/Petitioner

Vs.

LIBERTY MUTUAL INSURANCE
COMPANY,
Defendant/Respondent

CIVIL DIVISION

No. 00 - 1681 - CD

RULE

Filed on Behalf of:

Plaintiff, MICHAEL R. LLOYD

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

FILED

DEC 15 2000

William A. Shaw
Prothonotary

THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MICHAEL R. LLOYD, :
Plaintiff/Petitioner : No. 00 - - CD
Vs. :
LIBERTY MUTUAL INSURANCE COMPANY, :
Defendant/Respondent :

RULE

AND NOW, this 15th day of December 2000, upon consideration of the foregoing Petition to Compel Uninsurance Arbitration, a Rule is hereby issued and directed to Liberty Mutual Insurance Company to show cause why the claim of Michael R. Lloyd should not be submitted to Arbitration.

This Rule is Returnable before this Court on the 17th day of January 2001, with a hearing scheduled to be held in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania. at 10:30 A.M.

BY THE COURT:

JUDGE

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
CIVIL DIVISION

No. 00 - - CD

MICHAEL R. LLOYD,
Plaintiff/Petitioner

vs.

LIBERTY MUTUAL INSURANCE
COMPANY,

Defendant/Respondent

RULE

DEC 15 2014
04:00 PM
William A. Colavecchi
Pro Se
EJA

**COLAVECCHI
RYAN & COLAVECCHI**

ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL R. LLOYD,
Plaintiff/Petitioner

vs.

LIBERTY MUTUAL INSURANCE
COMPANY,
Defendant/Respondent

CIVIL DIVISION

No. 00 - 1551 - CD

AFFIDAVIT OF SERVICE

Filed on behalf of:

Plaintiff/Petitioner,
MICHAEL R. LLOYD

Counsel of Record for
Said Party:

JOSEPH COLAVECCHI, ESQUIRE
PA I.D. 06810

COLAVECCHI, RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED

DEC 27 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

MICHAEL R. LLOYD, :
Plaintiff/Petitioner: :
vs. : No. 00 - 1551 - CD
LIBERTY MUTUAL INSURANCE :
COMPANY, :
Defendant/Respondent:

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CLEARFIELD : SS

Before me, the undersigned officer, personally appeared JOSEPH COLAVECCHI, ESQUIRE, who, being duly sworn according to law, deposes and says that on December 19, 2000, a certified copy of a Petition to Compel Insurance Arbitration as filed on behalf of Michael R. Lloyd was mailed to Ronald P. Weber, Claims Department, Liberty Mutual Group, by certified mail, return receipt requested.

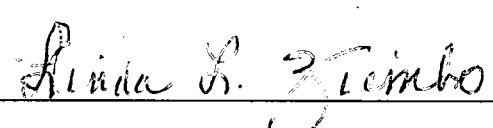
The return receipt was received from the Post Office showing that Ronald P. Weber picked up the letter containing the certified copy of the Petition to Compel Uninsurance Arbitration on December 21, 2000. A copy of this return receipt is attached hereto.

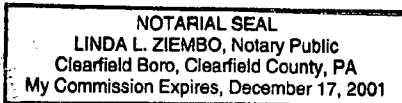
The above statements are true and correct to the best of
affiant's knowledge, information and belief.



JOSEPH COLAVECCHI, ESQUIRE

Sworn to and subscribed before me
this 26th day of December, 2000.



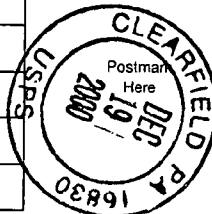


U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Michael Lloyd

RONALD P. WEBER, LIBERTY MUTUAL

| | |
|---|----------------|
| Postage | \$.55 |
| Certified Fee | 1.40 |
| Return Receipt Fee (Endorsement Required) | 1.25 |
| Restricted Delivery Fee (Endorsement Required) | |
| Total Postage & Fees | \$ 3.20 |



Recipient's Name (Please Print Clearly) (to be completed by mailer)

RONALD P. WEBER, LIBERTY MUTUAL GROUP

Street, Apt. No., or PO Box No.

P.O. Box 9030

City, State, ZIP+4

Williamsville, NY 14231-9030

PS Form 3800, February 2000

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ronald P. Weber
 Liberty Mutual Group
 P.O. Box 9030
 Williamsville, NY 14231-9030

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X

☐ Agent
☐ Addressee

Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

7099 3400 0016 7883 2382

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

LAW OFFICES OF
 COLAVECCHI
 RYAN & COLAVECCHI
 221 E. MARKET ST.
 (ACROSS FROM
 COURTHOUSE)
 P. O. BOX 131
 CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No. 00 - 1551 - CD

MICHAEL R. LLOYD,
Plaintiff/Petitioner

vs.

LIBERTY MUTUAL INSURANCE
COMPANY,
Defendant/Respondent

AFFIDAVIT OF SERVICE

FILED No
15:11 8d CC
DEC 27 2000
William A. Shaw
Prothonotary

**COLAVECCHI
RYAN & COLAVECCHI**
ATTORNEYS AT LAW
221 EAST MARKET STREET
ACROSS FROM COURTHOUSE
P. O. BOX 131
CLEARFIELD, PA 16830

Just
for

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL R. LLOYD,
Plaintiff/Petitioner

Vs.

LIBERTY MUTUAL INSURANCE
COMPANY,
Defendant/Respondent

CIVIL DIVISION

No. 00 - 1551 - CD

PRAECIPE TO WITHDRAW PETITION TO
COMPEL UNINSURANCE ARBITRATION

Filed on Behalf of:

Plaintiff, MICHAEL R. LLOYD

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED

OCT 02 2001

William A. Shaw
Prothonotary


IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MICHAEL R. LLOYD, :
Plaintiff/Petitioner: No. 00 - 1551 - CD :
Vs. :
LIBERTY MUTUAL INSURANCE COMPANY, :
Defendant/Respondent: :

**PRAECIPE TO WITHDRAW PETITION
TO COMPEL UNINSURANCE ARBITRATION**

TO: WILLIAM SHAW, PROTHONOTARY

Please mark the record that I have withdrawn my Petition to
Compel Uninsurance Arbitration in the above-captioned case.



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiff



DATE

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
CIVIL DIVISION
No. 00 - 1551 - CD

MICHAEL R. LLOYD,
Plaintiff/Petitioner

vs.

LIBERY MUTUAL INSURANCE COMPANY,
Defendant/Respondent

PRAECIPE TO WITHDRAW PETITION
TO COMPEL UNINSURANCE ARBITRATION

FILED

OCT 02 2001

m 11/08/2001

William A. Shaw

Prothonotary

[Signature]

**COLAVECCHI
RYAN & COLAVECCHI**

ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MICHAEL R. LLOYD,

Plaintiff/Petitioner,

v.

LIBERTY MUTUAL INSURANCE
COMPANY,

Defendant.

) No. 00-1551-CD

)

) PRELIMINARY OBJECTIONS

) Filed on behalf of:

) Liberty Mutual Insurance Company

)

)

) Counsel of record for this

) Party:

)

) Gerald J. Hutton, Esquire

) PA I.D. #23098

)

) BASHLINE & HUTTON

) Suite 1650

) One PPG Place

) Pittsburgh, PA 15222

)

) (412) 391-7005

) (412) 391-0568 FAX

) Firm I.D. 150

FILED

JAN 15 2001

William A. Shaw
Prothonotary

PRELIMINARY OBJECTIONS

AND NOW, comes defendant, Liberty Mutual Insurance Company, by its attorneys, Bashline & Hutton and Gerald J. Hutton, Esquire, and sets forth the following Preliminary Objections to plaintiff's Petition to Compel Uninsurance Arbitration, and in support thereof sets forth the following:

JURISDICTION

1. Plaintiff Michael R. Lloyd is an adult individual residing at 94 Fiesta Road, Rochester, New York 14626, and at all times relevant hereto had been a citizen of the State of New York.

2. Liberty Mutual Fire Insurance Company had issued to Michael R. Lloyd a policy of automobile insurance in accordance with the laws of the State of New York, which policy covered vehicles registered within the State of New York, all as set forth in the attached declaration sheets, and Supplemental Uninsured Motorist Endorsement which declaration sheets and endorsement are attached hereto as Exhibit "A" and "B" respectively and expressly incorporated here by reference.

3. The motor vehicle accident complained of by plaintiff allegedly occurred on July 19, 1997 on State Route 15 in Tioga County, Richmond Township, Pennsylvania.

4. At the time of the motor vehicle accident complained of plaintiff Michael Lloyd was not occupying any of the vehicles insured under the Liberty Mutual policy. At the time of the accident Michael Lloyd was operating a certain 1994 Mack truck also licensed in the State of New York and owned by his employer, Wegmans Food Markets, Inc. and insured by Reliance Insurance Company.

5. Plaintiff seeks a Court Order compelling uninsured motorist arbitration.

6. Jurisdiction for the Courts of Common Pleas to compel arbitration is provided by 42 Pa. C.S.A. §7318. This statute provides:

“The making of an agreement described in Section 7303 providing for arbitration in this Commonwealth confers jurisdiction on the courts of this commonwealth to enforce the agreement under the subchapter and to enter judgment on award made thereunder.” [Emphasis supplied.]

7. Plaintiff fails to attach to the Petition to Compel Arbitration an agreement to arbitrate within the Commonwealth of Pennsylvania and there exists no agreement between Michael Lloyd and Liberty Mutual wherein the parties agree to arbitrate disputes in the Commonwealth of Pennsylvania.

8. This Court lacks jurisdiction as there exists no agreement wherein the parties agree to arbitrate disputes in the Commonwealth of Pennsylvania as mandated by 42 Pa.C.S.A. §7318.

WHEREFORE, defendant respectfully requests that the Court dismiss the plaintiff's Petition to Compel for lack of jurisdiction.

IMPROPER VENUE

8. Defendant hereby incorporates paragraphs 1 through 8 as though fully set forth here.

9. Plaintiff's Petition to Compel should be dismissed for lack of venue as Plaintiff has failed to set forth any agreement where the parties have agreed to arbitration within Clearfield County, Pennsylvania. 42 Pa.C.S.A. 7319.

10. Petitioner Michael Lloyd and Liberty Mutual Fire Insurance Company entered into an agreement providing for “Supplemental Uninsured Motorist” (SUM) benefits as provided under the laws of the State of New York, which agreement provides for the submission of

matters to the American Arbitration Association as required by New York Insurance Law, Section 60.2.3, a copy of which is attached hereto as Exhibit “C” and expressly incorporated here by reference, NY Comp Codes R.& Regs. Title 11, §60.2.3.

11. The policy of insurance issued by Liberty Mutual Fire Insurance Company provided for arbitration with the American Arbitration Association for disputes involving “supplemental uninsured/underinsured motorist coverage” and adopted pursuant to New York Insurance Law Regulations, which rules and regulations of the AAA as promulgated by the New York State Superintendent of Insurance provide:

“The Arbitration hearing will be held in the arbitrator’s office or any other appropriate place selected by the AAA, and to the extent practicable, within the general locale of the applicant’s residence but in no event more than one hundred miles from such residence. . . .” [Emphasis supplied.]

A copy of the American Arbitration Association Rules for Arbitration of Supplemental uninsured/underinsured motorist disputes in the State of New York is attached hereto as Exhibit “D” and incorporated here by reference.

12. This Court lacks venue to hear this matter as arbitration hearings are to be governed in accordance with the mandates of the New York Insurance Law and Regulations as adopted with the American Arbitration Association calling for hearing at or near the plaintiff’s residence, which is Rochester, Monroe County, New York and not in Clearfield County, Pennsylvania.

WHEREFORE, defendant requests that the petition be dismissed for lack of venue.

DEMURRER

13. Defendant hereby incorporates paragraphs.1 through 12 as though fully set forth here.

14. Plaintiff's Complaint fails to set forth a claim upon which relief can be granted as plaintiff fails to attach an agreement providing for common law arbitration and/or arbitration within the provisions of 42 Pa.C.S.A. §7302, et. seq.

15. Plaintiff is not entitled to benefits under the policy of insurance issued by Liberty Mutual Insurance Company as the policy of insurance and the Insurance Law and Regulations of the State of New York provide that the vehicle plaintiff occupied's coverage is a higher priority, and that coverage under the Liberty Mutual policy is provided only if the Liberty Mutual coverage limits are excess that of the higher priority policy, all as set forth more fully in attached Exhibit "B," paragraph 8.

16. Liberty Mutual is advised and believes the policy of insurance for the vehicle plaintiff occupied at the time of the accident is in an amount of \$25,000 or greater, and that accordingly plaintiff is not entitled to benefits under the Liberty policy as the Liberty policy provided for benefits of \$25,000 and the policy insurance and New York Insurance Law and Regulation preclude the stacking of benefits, all as set forth more fully in attached Exhibit "B," paragraph 7.

17. Plaintiff is not entitled to selection of an arbitrator and the Court is not permitted to designate arbitrators as the selection, qualification, payment and financing of the arbitration hearing are governed by the New York Insurance Administration Code, Title 11, Sec. 60-24, a copy of which is attached hereto as Exhibit "E" and expressly incorporated here.

WHEREFORE, defendant requests that the plaintiff's Petition to Compel Uninsurance Arbitration be dismissed, with costs in behalf of defendant sustained.

Respectfully submitted,

BASHLINE & HUTTON

By: 

Gerald J. Hutton, Esquire
Attorneys for Defendant
Liberty Mutual Insurance Company

EXHIBIT A

LIBERTY MUTUAL FIRE INSURANCE COMPANY
LIBERTYGUARD AUTO POLICY DECLARATIONS
BOSTON, MASSACHUSETTS

POLICY NUMBER

AO2-221-127067-906 8

THESE DECLARATIONS EFFECTIVE 09/30/96

NAMED INSURED AND MAILING ADDRESS

MICHAEL R LLOYD
94 FIESTA RD
ROCHESTER NY 14626-3861

FOR SERVICE CALL OR WRITE:
135 CORPORATE WOODS SUITE 380
ROCHESTER NY 14623

716-424-6050
CLAIMS: 800-457-9140

POLICY PERIOD: 09/30/96 TO 09/30/97 12:01AM STANDARD TIME AT THE ADDRESS OF THE NAMED INSURED AS STATED IN THE POLICY. THIS POLICY SHALL EXPIRE ON THE DATE SHOWN EXCEPT THAT IT MAY BE CONTINUED IN FORCE FOR SUCCESSIVE POLICY PERIODS BY THE PAYMENT OF THE REQUIRED RENEWAL PREMIUM. EACH SUCH POLICY PERIOD SHALL BE FOR THE PERIOD SPECIFIED IN THE RENEWAL DECLARATIONS.

COVERAGES AND LIMITS UNDER YOUR AUTO POLICY: COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE

| PART | | VEH 1 | VEH 2 |
|--|--------------------------|--------|-------|
| A. LIABILITY | \$ 100,000 EACH ACCIDENT | \$ 196 | 205 |
| B. MEDICAL PAYMENTS | \$ 1,000 EACH PERSON | \$ 1 | 1 |
| C. SUPPLEMENTARY UNINSURED MOTORISTS (SUM) | | \$ 21 | 21 |
| BODILY INJURY | \$ 25,000 EACH PERSON | | |
| | \$ 50,000 EACH ACCIDENT | | |

REFER TO THE SPECIAL STATE PROVISIONS MESSAGE ON THE LAST PAGE OF THESE DECLARATIONS FOR INFORMATION CONCERNING SUM COVERAGE.

| | | | |
|----------------------------------|-----------|-------|-------|
| PERSONAL INJURY PROTECTION (PIP) | | | |
| MANDATORY BASIC ECONOMIC LOSS | \$ 50,000 | \$ 64 | 67 |
| NO DEDUCTIBLE | | | |
| OPTIONAL BASIC ECONOMIC LOSS | N/A | | |
| ADDITIONAL PIP | \$ 50,000 | | |
| | ----- | ----- | ----- |
| AGGREGATE PIP BENEFITS AVAILABLE | \$100,000 | \$ 64 | 67 |
| DEATH EXPENSE | \$ 2,000 | | |

| | | | |
|--|--------------------|--------|-----|
| D. COVERAGE FOR DAMAGE TO YOUR AUTO | | | |
| OTHER THAN COLLISION | | \$ 33 | 27 |
| ACTUAL CASH VALUE LESS DEDUCTIBLE SHOWN: | | | |
| VEH 1 \$ 200/GLASS | VEH 2 \$ 200/GLASS | | |
| COLLISION | | \$ N/A | N/A |

| | | | |
|---|--------|-----|--|
| OPTIONAL COVERAGE | | | |
| TOWING AND LABOR COST - \$50 EACH DISABLEMENT | \$ 4 | 4 | |
| NY MOTOR VEHICLE LAW ENFORCEMENT FEE: | \$ 1 | 1 | |
| ANNUAL PREMIUM PER VEHICLE: | \$ 320 | 326 | |

| OFFICE | REP | N/R | 1ST YR | POL CODE | AMOUNT | ISSUED | USN | GRN | MAIL | RO. | VEN | USE | TAX TERM | TOWN/COUNTY CODE | ID | MERIT | PF | FRZ | ED | INSP | QAR |
|--------|------|-----|--------|----------|--------|----------|-----|-----|------|-----|-----|-----|----------|------------------|----|-------|----|-----|----|------|-----|
| 825 | 0000 | 3 | 73 | 10 | 0 | 08/27/96 | 00 | 00 | | N9 | 1 | 01 | 2626 | 000 | 4 | 910 | 8 | 00 | 1 | 00 | N |
| | | | | | | | | | | | 2 | 01 | 2626 | 000 | 4 | 910 | 8 | 00 | 1 | 00 | N |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |

JACKET 3075 1289

RESTRAINT 5500

LIBERTY MUTUAL FIRE INSURANCE COMPANY
LIBERTYGUARD AUTO POLICY DECLARATIONS
BOSTON, MASSACHUSETTS

POLICY NUMBER

AO2-221-127067-906 8

THESE DECLARATIONS EFFECTIVE 09/30/96

NAMED INSURED AND MAILING ADDRESS

MICHAEL R LLOYD
94 FIESTA RD
ROCHESTER NY 14626-3861

FOR SERVICE CALL OR WRITE:

135 CORPORATE WOODS SUITE 380
ROCHESTER NY 14623716-424-6050
CLAIMS: 800-457-9140

(CONTINUED FROM PREVIOUS PAGE)

SAFE DRIVER INSURANCE PLAN CREDIT:

\$- 60.00 **

** THIS CREDIT IS ALREADY CALCULATED IN THE ABOVE COVERAGE PREMIUMS.

TOTAL ANNUAL POLICY PREMIUM:

\$ 646.00

ENDORSEMENTS ATTACHED TO YOUR POLICY:

2330 CHANGE OF FACSIMILE SIGNATURE
 2323 ANNUAL MEETING DATE CHANGE
 PP 05 87 11 91 PERSONAL INJURY PROTECTION COVERAGE - NEW YORK
 PP 05 88 06 95 ADDITIONAL PERSONAL INJURY PROTECTION COVERAGE - NEW YORK
 PP 04 09 10 93 SUPPLEMENTARY UNINSURED MOTORISTS - NEW YORK
 PP 04 10 10 93 SPLIT SUPPLEMENTARY UNINSURED MOTORISTS LIMITS - NEW YORK
 PP 01 79 01 96 AMENDMENT OF POLICY PROVISIONS
 PP 03 03 04 86 TOWING AND LABOR COSTS COVERAGE
 PP 03 65 08 86 FULL COVERAGE WINDOW GLASS - NEW YORK
 PP 03 46 08 90 RENTAL VEHICLE COVERAGE ENDORSEMENT - NEW YORK

VEHICLES COVERED BY YOUR POLICY:

| VEH | YR | MAKE | MODEL | IDENTIFICATION # | CLASS | STATE | RATING TERRITORY | RATING SYMBOL |
|-----|----|------|--------|-------------------|-------|-------|---------------------|------------------|
| 1 | 82 | GMC | PICKUP | 1GTCC14D4CF710401 | 24 | NY 31 | 077 | 07 |
| 2 | 78 | FORD | | E37HHCH3924 | 25 | NY 31 | 077 | 06 |

YOUR PREMIUM REFLECTS THE FOLLOWING. IF INCORRECT, CONTACT YOUR SERVICE OFFICE.

CLASS 25 PREFERRED RATE - NO YOUTHFUL OPERATORS - COMMUTING 3 OR MORE BUT
LESS THAN 10 MILES ONE WAY - NO PRINCIPAL OPERATOR AGE 65 OR OVER.CLASS 24 PREFERRED RATE - PLEASURE USE - NO YOUTHFUL OPERATORS - COMMUTING
LESS THAN 3 MILES ONE WAY - NO PRINCIPAL OPERATOR AGE 50 OR OVER.

VEH 1,2 GARAGED AT NAMED INSURED'S ADDRESS

VEHICLES OWNED BY OTHER THAN THE NAMED INSURED:

VEH 1 MICHAEL R LLOYD

SAFE DRIVER INSURANCE PLAN:

VEH 1 SC-C ACC FORGIVEN 10% CR

VEH 2 10% CREDIT

| OFFICE | REP | NIR | 1ST YR | POL CODE | AMOUNT | ISSUED | VEN | CSH | MAIL | RO. | VEH | USE | TAX TERM | TOWN/COUNTY CODE | IO | MERIT | DT | PRB | ED | INSP | CSR |
|--------|------|-----|--------|----------|--------|----------|-----|-----|------|-----|-----|-----|----------|------------------|----|-------|----|-----|----|------|-----|
| 825 | 0000 | 3 | 73 | 10 | 0 | 08/27/96 | 00 | 00 | | N9 | 1 | 01 | 2626 | 000 | 4 | 910 | 8 | 00 | 1 | 00 | N |
| | | | | | | | | | | | 2 | 01 | 2626 | 000 | 4 | 910 | 8 | 00 | 1 | 00 | N |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |

JACKET 3075 1289

RESTRAINT 5500

LIBERTY MUTUAL FIRE INSURANCE COMPANY
LIBERTYGUARD AUTO POLICY DECLARATIONS
BOSTON, MASSACHUSETTS

POLICY NUMBER

AO2-221-127067-906 8

THESE DECLARATIONS EFFECTIVE 09/30/96

NAMED INSURED AND MAILING ADDRESS

MICHAEL R LLOYD
94 FIESTA RD
ROCHESTER NY 14626-3861FOR SERVICE CALL OR WRITE:
135 CORPORATE WOODS SUITE 380
ROCHESTER NY 14623716-424-6050
CLAIMS: 800-457-9140

(CONTINUED FROM PREVIOUS PAGE)

DISCOUNTS APPLIED TO YOUR POLICY:**

VEHICLE(S):

1,2 MULTI-CAR

\$ 93.00

**THESE PREMIUM CREDITS OR CHARGES ARE ALREADY CALCULATED IN THE
COVERAGE PREMIUMS. WHERE MULTIPLE CREDITS OR CHARGES APPLY,
CUMULATIVE RESULTS MAY AFFECT AMOUNTS SHOWN.THE FOLLOWING DISCOUNTS DISPLAYED WITH "YES" HAVE BEEN APPLIED TO YOUR
POLICY. THE DISCOUNTS INDICATED AS "NO" HAVE NOT BEEN APPLIED TO YOUR
POLICY. IF YOU BELIEVE THAT YOU MAY BE ELIGIBLE FOR ANY DISCOUNT(S)
LISTED AS "NO", PLEASE CONTACT YOUR LOCAL SALES OR SERVICE REPRESENTATIVE
SHOWN ON THE FIRST PAGE OF YOUR POLICY DECLARATIONS.

DISCOUNTS:

VEH 1 VEH 2

ACCIDENT PREVENTION COURSE
ANTI-LOCK BRAKES
ANTI-THEFT DEVICE(S)
DAYTIME RUNNING LAMPS
DRIVER TRAINING
MULTI-CAR
PASSIVE RESTRAINT
(AUTOMATIC SEAT BELT AND/OR AIR BAGS)
PIP CREDITNO NO
NO NO
NO NO
NO NO
NO NO
YES YES
NO NO
NO NO

OPERATOR INFORMATION:

NO. NAME

1 MICHAEL R LLOYD

DATE OF BIRTH

05/02/51

SPECIAL STATE PROVISIONS:

SUM:

THE MAXIMUM AMOUNT PAYABLE UNDER SUM COVERAGE SHALL BE
THE POLICY'S SUM LIMITS REDUCED AND THUS OFFSET BY MOTOR
VEHICLE BODILY INJURY LIABILITY INSURANCE POLICY OR BOND
PAYMENTS RECEIVED FROM, OR ON THE BEHALF OF, ANY NEGLIGENT PARTY
INVOLVED IN THE ACCIDENT, AS SPECIFIED IN THE SUM ENDORSEMENT.

| OFFICE | REP | N/R | 1ST YR | POL CODE | AMOUNT | ISSUED | USE | CSR | MAIL | RO | VEN | USE | TAX | TOWN/COUNTY | IC | MERIT | PF | FRS | ED | INSP | QTR |
|--------|------|-----|--------|----------|--------|----------|-----|-----|------|----|-----|-----|------|-------------|----|-------|----|-----|----|------|-----|
| 825 | 0000 | 3 | 73 | 10 | 0 | 08/27/96 | 00 | 00 | | N9 | 1 | 01 | 2626 | 000 | 4 | 910 | 8 | 00 | 1 | 00 | N |
| | | | | | | | | | | | 2 | 01 | 2626 | 000 | 4 | 910 | 8 | 00 | 1 | 00 | N |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |

JACKET 3075 1289

RESTRAINT 5500

EXHIBIT B

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SUPPLEMENTARY UNINSURED MOTORISTS ENDORSEMENT - NEW YORK

We, the company, agree with you, as the named insured, in return for payment of the premium for this coverage, to provide Supplementary Uninsured Motorists (SUM) coverage, subject to the following terms and conditions:

INSURING AGREEMENTS

I. **Definitions.** For purposes of this SUM endorsement, the following terms have the following meanings.

(a) **Insured.** The unqualified term "insured" means:

(1) You, as the named insured and, while residents of the same household, your spouse and the relatives of either you or your spouse;

(2) Any other person while occupying:

(i) A motor vehicle insured for SUM under this policy; or

(ii) Any other motor vehicle while being operated by you or your spouse; and

(3) Any person, with respect to damages such person is entitled to recover, because of bodily injury to which this coverage applies sustained by an insured under paragraph (1) or (2) above.

(b) **Bodily Injury.** The term "bodily injury" means bodily harm, including sickness, disease or death resulting therefrom.

(c) **Uninsured Motor Vehicle.** The term "uninsured motor vehicle" means a motor vehicle that, through its ownership, maintenance or use, results in bodily injury to an insured, and for which:

(1) No bodily injury liability insurance policy or bond applies to such vehicle (including a vehicle that was stolen, operated without the owner's permission, or unregistered) at the time of the accident; or

(2) Neither owner nor driver can be identified (including a hit-and-run vehicle), and which causes bodily injury to an insured by physical contact with the insured or with a motor vehicle occupied by the insured at the time of the accident, provided that:

(i) The insured or someone on the insured's behalf shall have reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles and shall have filed with the Company a statement under oath that the insured or the insured's legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and

(ii) At the request of the Company, the insured or the insured's legal representative makes available for inspection the automobile the insured was occupying at the time of the accident; or

(3) There is a bodily injury liability insurance coverage or bond applicable to such motor vehicle at the time of the accident, but:

(i) The amount of such insurance coverage or bond is less than the third-party bodily injury liability limit of this policy; or

(ii) The amount of such insurance coverage or bond has been reduced, by payments to other persons injured in the accident, to an amount less than the third-party bodily injury liability limit of this policy; or

(iii) The insurer writing such insurance coverage or bond denies coverage, or such insurer is or becomes insolvent:

The term "uninsured motor vehicle" does not include a motor vehicle that is:

- (1) Insured under the liability coverage of this policy; or
 - (2) Owned by you, as the named insured, or your spouse residing in your household; or
 - (3) Self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered, or any similar state or federal law, to the extent that the required amount of such coverage is equal to, or greater than, the third-party bodily injury liability limits of this policy; or
 - (4) Owned by the United States of America, Canada, a state, a political subdivision of any such government, or an agency of any of the foregoing; or
 - (5) A land motor vehicle or trailer, while located for use as a residence or premises and not as a vehicle, or while operated on rails or crawler-treads; or
 - (6) A farm type vehicle or equipment designed for use principally off public roads, except while actually upon public roads.
- (d) **Occupying.** The term "occupying" means in, upon, entering into, or exiting from a motor vehicle.
- (e) **State.** The term "state" includes the District of Columbia, a territory or possession of the United States, and a province of Canada.

II. Damages for Bodily Injury Caused by Uninsured Motor Vehicles

We will pay all sums that the insured or the insured's legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, caused by an accident arising out of such uninsured motor vehicle's ownership, maintenance or use, subject to the Exclusions, Conditions, Limits and other provisions of this SUM endorsement.

III. SUM Coverage Period and Territory

This SUM coverage applies only to accidents that occur:

1. During the policy period shown in the Declarations; and
2. In the United States, its territories or possessions, or Canada.

EXCLUSIONS

This SUM coverage does not apply:

1. To bodily injury to an insured, including care or loss of services recoverable by an insured, is such insured, such insured's legal representatives, or any person entitled to payment under this coverage, without our written consent, settles any lawsuit against any person or organization that may be legally liable for such injury, care or loss of services, but this provision shall be subject to Condition 10.
2. To bodily injury to an insured incurred while occupying a motor vehicle owned by that insured, if such motor vehicle is not insured for SUM coverage by the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of this policy.
3. For non-economic loss, resulting from bodily injury to an insured and arising from an accident in New York State, unless the insured has sustained serious injury as defined in Section 5102(d) of the New York Insurance Law.

CONDITIONS

1. **Policy Provisions.** None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to this SUM coverage except: "Duties After an Accident or Loss"; "Fraud"; and "Termination" if applicable.

2. **Notice and Proof of Claim.** As soon as practicable, the insured or other person making claim shall give us written notice of claim under this SUM coverage.

As soon as practicable after our written request, the insured or other person making claim shall give us written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details we need to determine the SUM amount payable.

The insured and every other person making claim hereunder shall, as may reasonably be required, submit to examinations under oath by any person we name and subscribe the same. Proof of claim shall be made upon forms we furnish unless we fail to furnish such forms within 15 days after receiving notice of claim.

3. **Medical Reports.** The insured shall submit to physical examinations by physicians we select when and as often as we may reasonably require. The insured, or in the event of the insured's incapacity, such insured's legal representative (or in the event of such insured's death, the insured's legal representative or the person or persons entitled to sue therefor), shall upon each request from us authorize us to obtain relevant medical reports and copies of relevant records.
4. **Notice of Legal Action.** If the insured or such insured's legal representative brings any lawsuit against any person or organization legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with the lawsuit shall be forwarded immediately to us by the insured or the insured's legal representative.
5. **SUM Limit.** The SUM limit payable under this SUM endorsement shall be:
- (a) The SUM limit stated in the Declarations; or
 - (b) If the bodily injury results in death, we will provide a SUM limit of the higher of the SUM limit stated in the Declarations, or \$50,000 for such bodily injury resulting in death sustained by one person as the result of any one accident and, subject to this per person limit, \$100,000 for such bodily injury resulting in death sustained by two or more persons as the result of any one accident.
6. **Maximum SUM Payments.** Regardless of the number of insureds, our maximum payment under this SUM endorsement shall be the difference between:
- (a) The SUM limit; and
 - (b) The motor vehicle bodily injury liability insurance or bond payments received by the insured or the insured's legal representative, from or on behalf of all persons that may be legally liable for the bodily injury sustained by the insured.
- The SUM limit shown on the Declarations is the amount of coverage for all damages due to bodily injury in any one accident.

7. **Non-Stacking.** Regardless of the number of vehicles involved, persons covered, claims made, vehicles or premiums shown in this policy, or premium paid, the limits, whether for uninsured motorists coverage or supplementary uninsured motorists coverage, shall never be added together or combined for two or more vehicles to determine the extent of insurance coverage available to an insured injured in the same accident.
8. **Priority of Coverage.** If an insured is entitled to uninsured motorists coverage or supplementary uninsured motorists coverage under more than one policy, the maximum amount such insured may recover shall not exceed the highest limit of such coverage for any one vehicle under any one policy, and the following order of priority shall apply:
- (a) A policy covering a motor vehicle occupied by the injured person at the time of the accident;
 - (b) A policy covering a motor vehicle not involved in the accident under which the injured person is a named insured; and
 - (c) A policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.
- Coverage available under a lower priority policy applies only to the extent that it exceeds the coverage of a higher priority policy.
9. **Exhaustion Required.** Except as provided in Condition 10, we will pay under this SUM coverage only after the limits of liability have been used up under all motor vehicle bodily injury liability insurance policies or bonds applicable at the time of the accident in regard to any one person who may be legally liable for the bodily injury sustained by the insured.
10. **Release or Advance.** In accidents involving the insured and one or more negligent parties, if such insured settles with any such party for the available limit of the motor vehicle bodily injury liability coverage of such party, release may be executed with such party after thirty calendar days actual written notice to us, unless within this time period we agree to advance such settlement amounts to the insured in return for the cooperation of the insured in our lawsuit on behalf of the insured.

We shall have a right to the proceeds of any such lawsuit equal to the amount advanced to the insured and any additional amounts paid under this SUM coverage. Any excess above those amounts shall be paid to the insured.

An insured shall not otherwise settle with any negligent party, without our written consent, such that our rights would be impaired.

11. Non-Duplication. This SUM coverage shall not duplicate any of the following:

- (a) Benefits payable under workers' compensation or other similar laws;
- (b) Non-occupational disability benefits under article nine of the Workers' Compensation Law or other similar law;
- (c) Any amounts recovered or recoverable pursuant to article fifty-one of the New York Insurance Law or any similar motor vehicle insurance payable without regard to fault;
- (d) Any valid or collectible motor vehicle medical payments insurance; or
- (e) Any amounts recovered as bodily injury damages from sources other than motor vehicle bodily injury liability insurance policies or bonds.

12. Arbitration. If any insured making claim under this SUM coverage and we do not agree that such insured is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, or do not agree as to the amount of payment that may be owing under this SUM coverage, then, at the option and upon written demand of such insured, the matter or matters upon which such insured and we do not agree shall be settled by arbitration, administered by the American Arbitration Association, pursuant to procedures prescribed or approved by the Superintendent of Insurance for this purpose.

If, however, the maximum amount of SUM coverage provided by this endorsement equals the amount of coverage required to be provided by section 3420(f)(1) of the New York Insurance Law and Article 6 or 8 of the New York Vehicle and Traffic Law, then such disagreement shall be settled by such arbitration procedures upon written demand of either the insured or us.

Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, and any such insured and we each agree to be bound by any award made by the arbitrator as to this SUM coverage. For purposes of this Condition, the term "insured" includes any person authorized to act on behalf of the insured.

13. Subrogation. If we make a payment under this SUM coverage, we have the right to recover the amount of this payment from any person legally responsible for the bodily injury or loss of the person to whom, or for whose benefit, such payment was made to the extent of the payment. The insured or any person acting on behalf of the insured must do whatever is necessary to transfer this right of recovery to us. Except as permitted by Condition 10, such person shall do nothing to prejudice this right.

14. Payment of Loss by Company. We shall pay any amount due under this SUM coverage to the insured or, at our option, to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents.

15. Action Against Company. No lawsuit shall lie against us unless the insured or the insured's legal representative has first fully complied with all the terms of this SUM coverage.

16. Survivor Rights. If you or your spouse, if a resident of the same household, dies, this SUM coverage shall cover:

- (a) The survivor as named insured;
- (b) The decedent's legal representative as named insured, but only while acting within the scope of such representative's duties as such; and
- (c) Any relative who was an insured at the time of such death.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

EXHIBIT C

NEW YORK INSURANCE ADMINISTRATIVE CODE
TITLE 11. INSURANCE DEPARTMENT
CHAPTER III. POLICY AND CERTIFICATE PROVISIONS
SUBCHAPTER B. PROPERTY AND CASUALTY INSURANCE
PART 60. MINIMUM PROVISIONS FOR AUTOMOBILE LIABILITY INSURANCE POLICIES AND
SUPPLEMENTARY UNINSURED MOTORISTS INSURANCE
SUBPART 60-2. SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS INSURANCE
REGULATION NO. 35-D

Current with amendments received through New York State
Register Volume XXII, Issue 50, December 13, 2000.

Section 60-2.3. REQUIREMENTS FOR SUM ENDORSEMENTS

(a) The declarations page of every new or renewal motor vehicle liability insurance policy issued, if SUM coverage is purchased by the policyholder, shall state:

(1) the SUM limits, instead of the amount of mandatory uninsured motorists coverage; and

(2) the maximum amount payable under SUM coverage shall be the policy's SUM limits reduced and thus offset by motor vehicle bodily injury liability insurance policy or bond payments received from, or on behalf of, any negligent party involved in the accident, as specified in the SUM endorsement.

(b) If SUM coverage is provided under a personal umbrella liability policy:

(1) the limits shall be excess of the SUM coverage provided in the underlying motor vehicle liability policy;

(2) the coverage shall be consistent with all applicable requirements of the SUM endorsement prescribed in this section; and

(3) the declarations page shall state the SUM limits.

(c) Every SUM endorsement issued shall be the Supplementary Uninsured/Underinsured Motorists Endorsement prescribed by subdivision (f) of this section.

(d) The prescribed SUM endorsement:

(1) includes the mandatory uninsured motorists (UM) coverage required by section 3420(f)(1) of the Insurance Law;

(2) applies to accidents in and out of New York State, subject to the territorial limits stated in the SUM endorsement; and

(3) has been determined by the superintendent, as required by section 3425(d)(3) of the Insurance Law, to contain at least substantially equivalent value in the aggregate of benefits as those contained in previously approved SUM endorsements.

(e) If the policyholder does not purchase SUM coverage, then the insurer shall issue, instead of the SUM endorsement prescribed by subdivision (f) of this section, the mandatory uninsured motorists endorsement as prescribed by the Motor Vehicle Accident Indemnification Corporation (MVAIC) and approved by the superintendent.

(f) Prescribed SUM endorsement:

SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS ENDORSEMENT--NEW YORK

We, the company, agree with you, as the named insured, in return for payment of the premium for this coverage, to provide Supplementary Uninsured/Underinsured Motorists (SUM) coverage, subject to the following terms and conditions:

INSURING AGREEMENTS

I. Definitions: For purposes of this SUM endorsement, the following terms have the following meanings.

(a) Insured. The unqualified term "insured" means:

(1) you, as the named insured and, while residents of the same household, your spouse and the relatives of either you or your spouse;

(2) any other person while occupying:

(i) a motor vehicle insured for SUM under this policy; or

(ii) any other motor vehicle while being operated by you or your spouse; and

(3) any person, with respect to damages such person is entitled to recover, because of bodily injury to which this coverage applies sustained by an insured under paragraph (1) or (2) above.

(b) Bodily Injury. The term "bodily injury" means bodily harm, including sickness, disease or death resulting therefrom.

(c) Uninsured Motor Vehicle. The term "uninsured motor vehicle" means a motor vehicle that, through its ownership, maintenance or use, results in bodily injury to an insured, and for which:

(1) no bodily injury liability insurance policy or bond applies to such vehicle (including a vehicle that was stolen, operated without the owner's permission, or unregistered) at the time of the accident; or

(2) neither owner nor driver can be identified (including a hit-and-run vehicle), and which causes bodily injury to an insured by physical contact with the insured or with a motor vehicle occupied by the insured at the time of the accident, provided that:

(i) the insured or someone on the insured's behalf shall have reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles and shall have filed with the Company a statement under oath that the insured or the insured's legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and

(ii) at the request of the Company, the insured or the insured's legal representative makes available for inspection the automobile the insured was occupying at the time of the accident; or

(3) there is a bodily injury liability insurance coverage or bond applicable to such motor vehicle at the time of the accident, but;

(i) the amount of such insurance coverage or bond is less than the third-party bodily injury liability limit of this policy; or

(ii) the amount of such insurance coverage or bond has been reduced, by payments to other persons injured in the accident, to an amount less than the third-party bodily injury liability limit of this policy; or

(iii) the insurer writing such insurance coverage or bond denies coverage, or such insurer is or becomes insolvent. The term "uninsured motor vehicle" does not include a motor vehicle that is:

- (1) insured under the liability coverage of this policy; or
 - (2) owned by you, as the named insured, or your spouse residing in your household; or
 - (3) self-insured within the meaning of the financial responsibility law of the State in which the motor vehicle is registered, or any similar state or Federal law, to the extent that the required amount of such coverage is equal to, or greater than, the third-party bodily injury liability limits of this policy; or
 - (4) owned by the United States of America, Canada, a state, a political subdivision of any such government, or an agency of any of the foregoing; or
 - (5) a land motor vehicle or trailer, while located for use as a residence or premises and not as a vehicle, or while operated on rails or crawler-treads; or
 - (6) a farm type vehicle or equipment designed for use principally off public roads, except while actually upon public roads.
- (d) Occupying. The term "occupying" means in, upon, entering into, or exiting from a motor vehicle.
- (e) State. The term "state" includes the District of Columbia, a territory or possession of the United States, and a province of Canada.

II. Damages for Bodily Injury Caused by Uninsured Motor Vehicles:

We will pay all sums that the insured or the insured's legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, caused by an accident arising out of such uninsured motor vehicle's ownership, maintenance or use, subject to the Exclusions, Conditions, Limits and other provisions of this SUM endorsement.

III. SUM Coverage Period and Territory:

This SUM coverage applies only to accidents that occur:

1. during the policy period shown in the Declarations; and
2. in the United States, its territories or possessions, or Canada.

EXCLUSIONS

This SUM coverage does not apply:

1. to bodily injury to an insured, including care or loss of services recoverable by an insured, if such insured, such insured's legal representatives, or any person entitled to payment under this coverage, without our written consent, settles any lawsuit against any person or organization that may be legally liable for such injury, care or loss of services, but this provision shall be subject to Condition 10.
2. to bodily injury to an insured incurred while occupying a motor vehicle owned by that insured, if such motor vehicle is not insured for SUM coverage by the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of this policy.
3. for non-economic loss, resulting from bodily injury to an insured and arising from an accident in New York State, unless the insured has sustained serious injury as defined in Section 5102(d) of the New York Insurance Law.

CONDITIONS

1. Policy Provisions: None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to this SUM coverage except: "Duties After an Accident or Loss"; "Fraud"; and "Termination" if applicable. [FN1]

2. Notice and Proof of Claim: As soon as practicable, the insured or other person making claim shall give us written notice of claim under this SUM coverage.

As soon as practicable after our written request, the insured or other person making claim shall give us written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details we need to determine the SUM amount payable.

The insured and every other person making claim hereunder shall, as may reasonably be required, submit to examinations under oath by any person we name and subscribe the same. Proof of claim shall be made upon forms we furnish unless we fail to furnish such forms within 15 days after receiving notice of claim.

3. Medical Reports: The insured shall submit to physical examinations by physicians we select when and as often as we may reasonably require. The insured, or in the event of the insured's incapacity, such insured's legal representative (or in the event of such insured's death, the insured's legal representative or the person or persons entitled to sue therefor), shall upon each request from us authorize us to obtain relevant medical reports and copies of relevant records.

4. Notice of Legal Action: If the insured or such insured's legal representative brings any lawsuit against any person or organization legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with the lawsuit shall be forwarded immediately to us by the insured or the insured's legal representative.

5. SUM Limits: The SUM limits payable under this SUM endorsement shall be:

(a) the SUM limits stated in the Declarations; or

(b) if the bodily injury results in death, we will provide SUM limits of the higher of the SUM limits stated in the Declarations, or \$50,000 for such bodily injury resulting in death sustained by one person as the result of any one accident and, subject to this per person limit, \$100,000 for such bodily injury resulting in death sustained by two or more persons as the result of any one accident.

6. Maximum SUM Payments: Regardless of the number of insureds, our maximum payment under this SUM endorsement shall be the difference between:

(a) the SUM limits; and

(b) the motor vehicle bodily injury liability insurance or bond payments received by the insured or the insured's legal representative, from or on behalf of all persons that may be legally liable for the bodily injury sustained by the insured.

The SUM limit shown on the Declarations is the amount of coverage for all damages due in bodily injury in any one accident. [FN2] (The SUM limit shown on the Declarations for "Each Person" is the amount of coverage for all damages due to bodily injury to one person. The SUM limit shown under "Each Accident" is, subject to the limit for each person, the total amount of coverage for all damages due to bodily injury to two or more persons in the same accident). [FN3]

7. Non-Stacking: Regardless of the number of vehicles involved, persons covered, claims made, vehicles or premiums shown in this policy, or premium paid, the limits, whether for uninsured motorists coverage or supplementary uninsured/underinsured motorists coverage, shall never be added together or combined for two or more vehicles to determine the extent of insurance coverage available to an insured injured in the same accident.

8. Priority of Coverage: If an insured is entitled to uninsured motorists coverage or supplementary uninsured/underinsured motorists coverage under more than one policy, the maximum amount such insured may recover shall not exceed the highest limit of such coverage for any one vehicle under any one policy, and the following order of priority shall apply:

- (a) a policy covering a motor vehicle occupied by the injured person at the time of the accident;
- (b) a policy covering a motor vehicle not involved in the accident under which the injured person is a named insured; and
- (c) a policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

Coverage available under a lower priority policy applies only to the extent that it exceeds the coverage of a higher priority policy.

9. Exhaustion Required: Except as provided in Condition 10, we will pay under this SUM coverage only after the limits of liability have been used up under all motor vehicle bodily injury liability insurance policies or bonds applicable at the time of the accident in regard to any one person who may be legally liable for the bodily injury sustained by the insured.

10. Release or Advance: In accidents involving the insured and one or more negligent parties, if such insured settles with any such party for the available limit of the motor vehicle bodily injury liability coverage of such party, release may be executed with such party after thirty calendar days actual written notice to us, unless within this time period we agree to advance such settlement amounts to the insured in return for the cooperation of the insured in our lawsuit on behalf of the insured.

We shall have a right to the proceeds of any such lawsuit equal to the amount advanced to the insured and any additional amounts paid under this SUM coverage. Any excess above those amounts shall be paid to the insured.

An insured shall not otherwise settle with any negligent party, without our written consent, such that our rights would be impaired.

11. Non-Duplication: This SUM coverage shall not duplicate any of the following:

- (a) benefits payable under workers' compensation or other similar laws;
- (b) non-occupational disability benefits under article nine of the Workers' Compensation Law or other similar law;
- (c) any amounts recovered or recoverable pursuant to article fifty-one of the New York Insurance Law or any similar motor vehicle insurance payable without regard to fault;
- (d) any valid or collectible motor vehicle medical payments insurance; or
- (e) any amounts recovered as bodily injury damages from sources other than motor vehicle bodily injury liability insurance policies or bonds.

12. Arbitration: If any insured making claim under this SUM coverage and we do not agree that such insured is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, or do not agree as to the amount of payment that may be owing under this SUM coverage, then, at the option and upon written demand of such insured, the matter or matters upon which such insured and we do not agree shall be settled by arbitration, administered by the American Arbitration Association, pursuant to procedures prescribed or approved by the Superintendent of Insurance for this purpose.

If, however, the maximum amount of SUM coverage provided by this endorsement equals the amount of coverage

required to be provided by section 3420(f)(1) of the New York Insurance Law and Article 6 or 8 of the New York Vehicle and Traffic Law, then such disagreement shall be settled by such arbitration procedures upon written demand of either the insured or us. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, and any such insured and we each agree to be bound by any award made by the arbitrator as to this SUM coverage. For purposes of this Condition, the term "insured" includes any person authorized to act on behalf of the insured.

13. Subrogation: If we make a payment under this SUM coverage, we have the right to recover the amount of this payment from any person legally responsible for the bodily injury or loss of the person to whom, or for whose benefit, such payment was made to the extent of the payment. The insured or any person acting on behalf of the insured must do whatever is necessary to transfer this right of recovery to us. Except as permitted by Condition 10, such person shall do nothing to prejudice this right.

14. Payment of Loss by Company: We shall pay any amount due under this SUM coverage to the insured or, at our option, to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents.

15. Action Against Company: No lawsuit shall lie against us unless the insured or the insured's legal representative has first fully complied with all the terms of this SUM coverage.

16. Survivor Rights: If you or your spouse, if a resident of the same household, dies, this SUM coverage shall cover:

(1) the survivor as named insured;

(2) the decedent's legal representative as named insured, but only while acting within the scope of such representative's duties as such; and

(3) any relative who was an insured at the time of such death.

(Sec. filed June 17, 1992; amds. filed: June 14, 1993 as emergency measure, expired 90 days after filing; Nov. 2, 1993; Aug. 13, 1996 as emergency measure; Nov. 8, 1996 as emergency measure; Feb. 3, 1997 as emergency measure; Feb. 10, 1997; June 12, 1998 as emergency measure; Sept. 3, 1998 as emergency measure; Nov. 23, 1998 as emergency measure; Jan. 12, 1999 eff. Jan. 27, 1999.)

[FN1] Appropriate terms may be substituted to conform with terms used in the policy.

[FN2] Language in this sentence should be used for SUM endorsements issued with a combined single limit, in which case Condition 5 should speak throughout in terms of a singular limit, rather than plural limits.

[FN3] Language in parentheses should be used for SUM endorsements issued with split limits.

11 NY ADC 60-2.3
END OF DOCUMENT

EXHIBIT D



American Arbitration Association Rules for Arbitration of Supplementary Uninsured/Underinsured Motorist Insurance Disputes and Uninsured Motorist Insurance Disputes in the State of New York

Effective on October 1, 1998

Effective for Requests Filed with the American Arbitration Association for Disputes Involving Supplementary Uninsured/Underinsured Motorist Coverage Arising Out of Accidents Covered under Policies Issued or Renewed on or after October 1, 1993, and for Disputes Involving Uninsured Motorist Coverage Arising Out of Accidents Covered under Policies Issued or Renewed on or after September 1, 1996.

Adopted Pursuant to New York Insurance Law and Regulations Promulgated by the New York State Superintendent of Insurance

INTRODUCTION

Pursuant to Section 3420(f)(2) of the New York Insurance Law, the Superintendent of Insurance promulgated Part 60-2 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Regulation 35-D), entitled Supplementary Uninsured Motorist ("SUM") Insurance, prescribing the SUM endorsement to be used for motor vehicle bodily injury liability policies issued or renewed on or after October 1, 1993. Pursuant to Section 5206 of the New York Insurance Law, the New York Motor Vehicle Accident Indemnification Corporation ("MVAIC") prescribed the Uninsured Motorist ("UM") endorsement to be used for motor vehicle bodily injury liability policies issued or renewed on or after September 1, 1996. The American Arbitration Association is privileged to administer the optional arbitration provisions under these endorsements.

Requests for arbitration of claims involving accidents pursuant to the Supplementary Uninsured/Underinsured Motorist endorsement in policies issued or renewed on or after October 1, 1993, or pursuant to the Uninsured Motorist endorsement in policies issued or renewed after September 1, 1996, may be filed with the American Arbitration Association and will be administered under these rules. All other disputes involving a motor vehicle uninsured motorist claim not subject to these rules will be arbitrated in accordance with the Association's Accident Claims Arbitration Rules.

If an insured making a claim under an issued SUM endorsement and the insurer do not agree that the insured is legally entitled to recover damages from the owner or operator of an uninsured/underinsured motor vehicle because of bodily injury sustained by the insured or do not agree as to the amount of payment that may be owing under SUM coverage, then, at the option and upon written demand of the insured, the matters upon which the insured and the insurer do not agree may be settled by arbitration administered by the American Arbitration Association pursuant to the procedures that follow. If, however, the maximum amount of coverage provided by the SUM endorsement equals the amount of coverage required to be provided by Section 3420(f)(1) of the New York Insurance Law and Article 6 or 8 of the New York Vehicle and Traffic Law, then the disagreement shall be settled by such arbitration procedures upon written demand of either the insured or the insurer.

If any person making a claim under the UM endorsement and the company do not agree that that person is legally entitled to recover damages from the owner or operator of an uninsured automobile because of the amount of payment that might be owing under the endorsement, then, upon written demand of either, the matters on which that person and the company do not agree shall be settled by arbitration administered by the American Arbitration Association pursuant to the procedures that follow and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

**RULES FOR ARBITRATION IN THE STATE OF NEW YORK OF
SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORIST INSURANCE
DISPUTES PURSUANT TO POLICIES ISSUED ON OR AFTER OCTOBER 1,
1993, AND UNINSURED MOTORIST INSURANCE DISPUTES PURSUANT TO
POLICIES ISSUED OR RENEWED AFTER SEPTEMBER 1, 1996**

1. Agreement of the Parties

The parties make these rules a part of their arbitration agreement whenever the policy contains a Supplementary Uninsured Motorist ("SUM") endorsement issued or renewed after October 1, 1993, or whenever the policy contains an Uninsured Motorist ("UM") endorsement issued or renewed after September 1, 1996. These rules and any amendment to them shall apply in the form obtaining when arbitration is initiated, except for any provision that is inconsistent with the arbitration agreement or with applicable law.

2. Administrator and Delegation of Duties

The authority and duties of the American Arbitration Association ("AAA"), delegated to it by the Superintendent of Insurance of the State of New York ("Superintendent"), are prescribed in these rules and may be carried out through such of the AAA's representatives as it may direct.

3. Administration

The AAA may, at its discretion, assign the administration of an arbitration to any of its regional offices within the State of New York.

4. Initiation of Arbitration

All arbitration notices shall be filed in triplicate with the AAA together with a filing fee in the amount of \$250. A copy of the demand for arbitration shall also be sent by the applicant via registered or U.S. certified mail, return receipt requested, or by any other method legally authorized for service of a summons to the claim office of the insurer under whose policy arbitration is sought.

The demand shall set forth:

- a. the name, address, and telephone number of the insured person(s) and the filing attorney;
- b. the name, address, and policy number of the policyholder;
- c. the identity and location of the claim office of the insurer, if known; the claim file number, if known; and the name of the individual with whom the claim was discussed;
- d. the date and location of the accident;
- e. the nature of the dispute and the injuries alleged;

- f. amount of policy limits and the amount claimed thereunder;
- g. the amount of the policy limit of the tortfeasor;
- h. the address of the AAA regional office at which copies of the demand are being filed; and,
- i. the effective date of the policy under which the demand is made.

Issues as to coverage or applicable policy limits may be referred to voluntary coverage arbitration by an arbitrator upon the written agreement of all parties. Those issues will be submitted to the arbitrator on documents only unless the parties agree otherwise or the arbitrator determines that an oral hearing is necessary.

If within twenty (20) days after service of a demand or a notice of intention to arbitrate the insurer moves in court in accordance with Section 7503 of the Civil Practice Law and Rules to contest coverage, applicable policy limits, or the stacking of policy coverage, the AAA will suspend administration until such issues are decided if the application is received by the AAA within thirty (30) calendar days after acknowledgment of the demand. Notwithstanding the aforementioned procedure, the AAA will proceed with administration of the matter at the request of applicant, unless the insurer obtains a court order staying the proceedings.

5. Serving of Notice

With the exception of the demand, which shall be served by registered or U.S. certified mail, return receipt requested, or by any other method legally authorized for the service of a summons, each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, or for the entry of judgment on any award made under these rules may be served upon such party or its attorney at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard has been granted to such party.

To facilitate communication between the parties and the AAA, the parties agree that communications with the AAA via facsimile machines, telexes, telegrams, or other written forms of electronic communication are valid and proper notice under these rules.

6. Change of Claim

If a party desires to make any new or different claim, the same shall be made in writing and filed with the AAA and a copy shall be mailed to the other party. After the arbitrator has been appointed, no new or different claim may be submitted except with the arbitrator's consent.

7. Arbitrators for Hearings Held in the State of New York

All arbitrators are appointed to the panel by, and serve at the pleasure of, the Superintendent. The Superintendent forwards the names of all appointed arbitrators to the AAA and informs the AAA of all additions to and deletions from the panel.

8. Arbitrators for Hearings Held Outside the State of New York

For a hearing that will be held outside the State of New York, the arbitrator shall be a licensed attorney in the state where the hearing is held. Any additional qualifications shall be established by the AAA in consultation with the Department of Insurance on a case-by-case basis.

9. Appointment of Arbitrators to Cases

The AAA will select an arbitrator who will hear the case and will submit the name of the arbitrator to each party to the arbitration. The AAA shall maintain information concerning the professional background of each of the arbitrators and such information shall be available to a party to the arbitration upon request.

No person can serve as an arbitrator in any arbitration in which such person has any financial or personal interest or bias. If a party challenges an arbitrator, the specific grounds for the challenge must be submitted in writing to the AAA, which will solicit comments on said challenge from the other party, shall determine whether the arbitrator shall be disqualified, and shall inform the parties of its decision, which shall be final and binding. If an arbitrator is removed from a case for any reason or is otherwise unable to perform the duties of the office, the AAA will appoint another arbitrator to the case.

10. Oaths

Arbitrators will take an annual oath of office. Arbitrators will require all witnesses to testify under oath or affirm that their statements are true under the penalties of perjury.

11. Time and Place of Arbitration

The arbitration hearing will be held in the arbitrator's office or any other appropriate place selected by the AAA, and, to the extent practicable, within the general locale of the applicant's residence but in no event more than one hundred (100) miles from such residence. The arbitrator will fix the time and date for each hearing. At least thirty (30) calendar days prior to the hearing, the AAA will mail a Notice of Hearing to each party.

12. Communication with the Arbitrator

There can be no direct communication between the parties and the arbitrator other than at oral hearings. Any other oral or written communication from the parties to the arbitrator must be directed to the AAA for transmission to the arbitrator.

13. Representation at Arbitration

Applicants must either represent themselves or be represented by counsel. An insurance carrier may be represented by counsel or by an authorized W-2 employee of that carrier.

A party intending to be represented by counsel or an authorized W-2 employee must notify the other party and the AAA of the name of their representative at least three (3) days prior to the date set for the hearing at which the representative is first to appear. When an arbitration is initiated by counsel or when an attorney replies for the other party, such notice is deemed to have been given.

14. Order of Proceedings

A hearing shall be opened by the recording of the place, time, and date of the hearing and the presence of the arbitrator, the parties, and counsel, if any, and by the receipt by the arbitrator of the statement of the claim and answer, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. The applicant shall then present its claims, proofs, and witnesses, who shall submit to questions or other examination. The respondent shall then present its defenses, proofs, and witnesses, who shall submit to questions or other examination. The arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and exhibits in the order received shall be made a part of the record.

The arbitrator, for good cause shown, may waive oral hearings upon the written agreement of all parties. If the parties are unable to agree on the procedure, the AAA shall specify a fair and equitable procedure.

15. Adjournments

The arbitrator may, for good cause shown, postpone the hearing upon the request of a party or upon the arbitrator's own initiative.

(a) Each party may cause one adjournment without the payment of an adjournment fee if the adjournment request is received by the AAA more than two (2) business days prior to the scheduled arbitration. There shall be an adjournment fee of \$50 payable to the AAA by the party which requests and obtains a subsequent adjournment, provided the subsequent request for adjournment was made more than two (2) business days prior to the hearing.

(b) Notwithstanding any other section of this rule, a \$100 adjournment fee shall be payable for any adjournment which is caused within two (2) business days prior to the scheduled hearing by the party causing such adjournment. The \$100 adjournment fee will be assessed for all adjournments caused within two (2) business days prior to the scheduled hearing regardless of whether it is the party's first adjournment request or a subsequent request.

16. Record of Proceedings and Interpreters

A stenographic record of the arbitration proceedings shall not be required. However, a party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other party of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. The taking of a transcript will cause that transcript to become the official record of the proceeding. The transcript shall be made available to the arbitrator and to the other party for inspection at a time and a place determined by the arbitrator.

Any party desiring the services of an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of such services.

No person shall serve as an interpreter in any arbitration in which such person has a financial or personal interest. The party hiring the services of an interpreter shall inform the other party and the AAA of the identity of said interpreter at least ten (10) days prior to the scheduled day of hearing when the interpreter will render his or her services. An interpreter shall disclose to the AAA any circumstance likely to create an appearance of bias or that might serve to disqualify such interpreter. Upon

receipt of such information, the AAA shall immediately disclose it to the parties. If the parties challenge the interpreter, the specific grounds for the challenge shall be submitted in writing. The AAA shall determine whether the interpreter should be disqualified and shall inform the parties of its decision, which shall be final and binding.

17. Attendance at Hearings

Any person having a direct interest in the arbitration is entitled to attend the hearings. The arbitrator shall have discretion to determine the propriety of the attendance of any other person.

18. Arbitration in the Absence of a Party or a Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made in favor of an appearing party solely on the default of another party. The arbitrator shall require the appearing party to submit such evidence as may be required for the making of an award. The arbitrator may require the appearance of a party at the hearing if the arbitrator determines that the party's appearance is necessary for a fair and just resolution of the dispute and to afford all parties due process.

19. Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the arbitrator may deem necessary to understand and determine the dispute. An arbitrator may subpoena witnesses or documents as authorized by law upon request of any party or upon their own initiative.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary.

All documents to be submitted to the arbitrator shall be simultaneously transmitted to the other party at least fifteen (15) calendar days prior to the hearing. The arbitrator shall determine whether all parties received such documents prior to the hearing.

If a party to the arbitration intends to introduce a witness, expert witness and/or the treating physician at the hearing, the identity of the witness, expert witness and/or the treating physician must be given to all parties at least fifteen (15) calendar days prior to the hearing.

The expenses of witnesses for either side shall be paid by the party producing such witnesses.

20. Evidence by Affidavits and Posthearing Filing of Documents

The arbitrator may receive and consider the evidence of witnesses by affidavits but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

If the arbitrator directs that documents are to be submitted to the arbitrator after the hearing, they shall be simultaneously sent to the AAA, for transmittal to the arbitrator, and the other party within the time set by the arbitrator. All parties shall

be afforded an opportunity to examine such documents and comment on them.

21. Independent Health Service Consultants

- a. The AAA shall maintain a list of independent health service consultants to review medical evidence upon the request of the arbitrator, who shall specify the areas to be reviewed.
- b. An independent health service consultant shall be selected by the AAA from its list and, to the extent practicable, shall be a specialist in the field requested by the arbitrator. If a medical examination of the insured injured person is requested by the arbitrator, such examination shall be conducted at the health consultant's office, which shall be located in the general locale of the injured person's residence or at a place agreed to by the parties and the consultant.
- c. Within thirty (30) calendar days after review of medical evidence or examination of the injured person, the health service consultant shall submit to the AAA a written report which shall contain the consultant's advisory opinion for consideration by the arbitrator. The AAA shall transmit the report to the arbitrator and the parties.
- d. The independent health service consultant's fee, which shall include a written report, shall be paid by the AAA and its cost shall be charged as an administrative expense of the SUM forum.
- e. No person shall serve as an independent health service consultant in any arbitration in which such person has any financial or personal interest or bias. An independent health service consultant shall disclose to the AAA any circumstance likely to create an appearance of bias or that might serve to disqualify such consultant. Upon receipt of such information, the AAA shall immediately disclose it to the parties. If a party challenges a health service consultant, the specific grounds for the challenge shall be submitted in writing. The AAA shall determine whether the health service consultant should be disqualified and shall inform the parties of its decision, which shall be final and binding. If a health service consultant is removed from a case for any reason or is otherwise unable to perform his or her duties, the AAA shall appoint another health service consultant to the case.

22. Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed and a record thereof shall be made. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided for in Section 20 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of another agreement by the parties, upon the closing of the hearing.

23. Reopening of Hearing

The arbitrator may, for good cause, reopen the hearing at any time before the award is made.

24. Waiver of Rules

A party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its

objections in writing shall be deemed to have waived the right to object.

25. Extensions of Time

The arbitrator may, for good cause, extend any period of time established by these rules except the time for making the award. The AAA shall notify the parties of any such extensions and its reasons.

26. Time of the Award

The award shall be made and delivered no later than thirty (30) calendar days from the date the hearing is closed. Failure to adhere to this time limit shall not nullify the award.

27. Form and Scope of the Award

The award shall be rendered in writing in a format approved by the Superintendent. The award shall state the issues in dispute and contain the arbitrator's findings and conclusions. The award shall be signed by the arbitrator and shall be transmitted to the parties by the AAA with a copy to the Department of Insurance. The award shall contain a decision on all issues submitted to the arbitrator.

28. Awards upon Settlement

The insurer shall provide the arbitrator with the terms of settlement no later than thirty (30) calendar days following the scheduled date of the hearing.

If the parties settle their dispute during the course of arbitration, the arbitrator shall set forth the terms of the agreed settlement in an award which shall provide that the parties agree that the settlement is final and binding and shall not be subject to review by a court. The award shall be signed by the arbitrator and shall be transmitted to the parties by the AAA, with a copy to the Department of Insurance.

29. Delivery of the Award to Parties

The parties shall accept as delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their designated representatives at their last known addresses, or by any other form of service permitted by law. The AAA shall note on such award or transmittal letter the date of mailing and keep a record of same.

30. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted by the AAA, subject to consultation with and approval of the Superintendent.

31. Exclusion of Liability

Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration. The participation of a party in an arbitration proceeding shall be a waiver of any claim against an arbitrator or the AAA for any act or omission in connection with any arbitration conducted under these rules.

32. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to such party at its expense certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to an arbitration.

33. Return of Filing Fee

An applicant, having paid the filing fee of \$250 referred to in Section 4 of these rules, shall be entitled to a return of the filing fee from the respondent if said applicant receives an award which grants all damages demanded. The arbitrator shall in the award direct the respondent to return the filing fee to the applicant. There shall be no return of the filing fee under any other circumstances.

34. Financing

The cost of administering the AAA SUM arbitration forum shall be paid annually by insurers to the AAA upon receipt of a statement. This cost shall be allocated among insurers in an equitable manner approved by the Superintendent. This allocation shall, to the extent practicable, be a function of the frequency with which the insurer is named as a respondent in AAA SUM arbitration proceedings.

The amount of filing fees collected by the AAA shall be used to defray the cost of administering the SUM arbitration program as administered by the AAA and shall cause the final accounting to be presented for approval to the Superintendent to be offset by the amount of filing fees so collected.

35. The SUM Optional Arbitration Advisory Committee

The Superintendent shall select an advisory committee to review the operations and the actual cost of all arbitrations under these rules.

Rules, forms, procedures and guides are subject to periodic change and updating.

American Arbitration Association
666 Old Country Road
Garden City, NY 11530-2004
(516) 222-1660/745-6447 (Fax)

AAA209-9/98

©2000 American Arbitration Association. All Rights Reserved.

EXHIBIT E

NEW YORK INSURANCE ADMINISTRATIVE CODE
TITLE 11. INSURANCE DEPARTMENT
CHAPTER III. POLICY AND CERTIFICATE PROVISIONS
SUBCHAPTER B. PROPERTY AND CASUALTY INSURANCE
PART 60. MINIMUM PROVISIONS FOR AUTOMOBILE LIABILITY INSURANCE POLICIES AND
SUPPLEMENTARY UNINSURED MOTORISTS INSURANCE
SUBPART 60-2. SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS INSURANCE
REGULATION NO. 35-D

Current with amendments received through New York State
Register Volume XXII, Issue 50, December 13, 2000.

Section 60-2.4. ARBITRATION OF SUM CLAIMS

(a) All arbitrations involving SUM coverage under the endorsement prescribed in section 60-2.3 of this Subpart shall be conducted in accordance with procedures established by the American Arbitration Association (AAA) and approved by the superintendent. All requests for AAA arbitration of SUM disputes shall be filed directly with the AAA.

(b) Qualifications of arbitrators for a hearing held in New York State. (1) Arbitrator screening committee. The superintendent shall appoint an advisory committee of six members, who will review the qualifications of applicants for the position of supplementary uninsured/underinsured motorists arbitrator for hearings to be held in New York State and review the performance of the appointed arbitrators. The screening committee shall make recommendations to the superintendent pertaining to the appointment and dismissal of SUM arbitrators. The committee shall consist of one representative of the New York State Bar Association, one representative of the New York State Trial Lawyers Association, two representatives of insurers, a nonvoting AAA representative and a nonvoting representative of the Insurance Department. Tie votes shall be reported as such to the superintendent.

(2) A SUM arbitrator shall be an attorney, licensed to practice law in New York State, with at least 10 years of experience which the Arbitrator Screening Committee has determined qualifies such attorney to review and resolve the issues involved in supplementary uninsured motorists disputes. Documentation of such experience shall be submitted to, and reviewed by, the superintendent prior to the appointment of an arbitrator.

(3) All SUM arbitrators shall be appointed by, and serve at the pleasure of, the superintendent. An arbitrator candidate shall disclose to the superintendent any circumstance which is likely to create an appearance of bias or which might disqualify such person as an arbitrator, and the superintendent shall determine whether the candidate should be disqualified. The superintendent shall forward the name of all SUM arbitrators to the AAA, and promptly inform the AAA of all additions to, and deletions from, the panel.

(4) No person shall, during the period of appointment as an arbitrator, have any practice or professional connection with any firm or insurer involved in any degree with automobile insurance or negligence law. The Arbitrator Screening Committee, subject to the approval of the superintendent, shall establish any additional qualifications for appointment as a SUM arbitrator.

(c) Arbitrator's compensation. Arbitrators shall contract on an annual basis with the AAA. The rate of compensation shall be determined by the AAA, after consultation with the Arbitrator Screening Committee. Arbitrators shall be independent contractors, and shall not be employees of the AAA.

(d) SUM Optional Arbitration Advisory Committee. The insurer members of the No-Fault Optional Arbitration Advisory Committee, constituted pursuant to section 65.17(b)(3)(iv) of this Title, shall constitute an advisory committee that reviews the operations and the actual costs of the AAA SUM arbitration forum.

(e) Financing. (1) The cost of administering the AAA SUM arbitration forum shall be paid annually by insurers to

the AAA upon receipt of a statement therefrom. This cost shall be distributed among insurers in an equitable manner approved by the Superintendent of Insurance. This distribution shall, to the extent practicable, be a function of the degree to which an insurer is named as a respondent in AAA SUM arbitration proceedings.

(2) Semiannually, commencing July 1, 1993 and continuing every six months thereafter, the AAA shall prepare an estimate of the expenses expected to be incurred for the operation of the AAA SUM forum during the subsequent six-month period. The projected cost of the AAA SUM forum shall be assessed on a proportionate basis to those insurers named as respondents on cases forwarded to the AAA in the preceding calendar year and shall be subject to the approval of the superintendent. The AAA shall send to each applicable insurer a bill for the amount due and any payment due shall be made to the AAA within 30 days after billing date.

(3) On an annual basis, as of December 31st of each year, the AAA shall prepare a detailed analysis of the actual costs incurred for the operation of the AAA SUM forum. This analysis shall be forwarded to the SUM Optional Arbitration Advisory Committee and the superintendent on or before April 30th of each year. The SUM Optional Arbitration Advisory Committee shall notify the AAA and the superintendent whether they accept or reject the AAA's cost analysis in whole or in part. In the event that the AAA and the SUM Optional Arbitration Advisory Committee cannot resolve any differences that may exist, such differences will be referred to the superintendent for resolution. The superintendent's decision shall be binding on the AAA and insurers.

(4) Once the AAA submits a final cost analysis that has either been approved by the SUM Optional Arbitration Advisory Committee or resolved by the superintendent in the event of a dispute, the AAA shall send to each applicable insurer an accounting of the actual assessment. Any adjustment shall be made to the bill for the subsequent estimated assessment.

(Sec. filed June 17, 1992; amds. filed: June 14, 1993 as emergency measure, expired 90 days after filing; Nov. 2, 1993; June 12, 1998 as emergency measure; Sept. 3, 1998 as emergency measure; Nov. 23, 1998 as emergency measure; Jan. 12, 1999 eff. Jan. 27, 1999. Amended (b)(1).)

11 NY ADC 60-2.4
END OF DOCUMENT

VERIFICATION

The undersigned, John Panko, who is Claims Manager for Liberty Mutual Insurance Company, avers that the statements of fact contained in the attached Preliminary Objections are true and correct to the best of his/her information, knowledge and belief, and are made subject to the penalties of 18 Pa. Cons. Stat. Ann §4909 relating to unsworn falsification to authorities.

Date: 1/12/01

John Panko

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Preliminary Objections was served upon the following by first class mail, postage prepaid, on the 12th day of January 2001:

Joseph Colavecchi, Esquire
Colavecchi Ryan & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

Bashline & Hutton

By: 

Gerald J. Hutton, Esquire
Attorneys for Defendant
Liberty Mutual Insurance Company

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MICHAEL R. LLOYD,

No. 00-1551-CD

Plaintiff/Petitioner,

v.

LIBERTY MUTUAL INSURANCE
COMPANY,

Defendant.

ORDER OF COURT

AND NOW, to-wit, this ____ day of _____, 2001, upon presentation of the attached Preliminary Objections, it appearing that this Court lacks jurisdiction under the Pennsylvania Arbitration Act, 42 Pa.C.S.A. §7318, it is hereby ORDERED, ADJUDGED and DECREED that the Petition to Compel Uninsurance Arbitration filed by Michael Lloyd against Liberty Mutual Insurance Company is dismissed.

BY THE COURT:

_____. J.