

A11-1520

*State of Minnesota
In Court of Appeals*

GARLYN, INC. d/b/a POLZIN GLASS,

Respondent,

v.

AUTO-OWNERS INSURANCE COMPANY,

Appellant.

RESPONDENT'S BRIEF AND APPENDIX

Blethen, Gage & Krause, PLLP

William A. Moeller (#143923)
Kevin A. Velasquez (#387890)
127 South Second Street
PO Box 3049
Mankato, MN 56001
Phone: (507) 345-1166

Attorneys for Appellant

Livgard & Lloyd PLLP

Charles J. Lloyd (#174257)
Rachael J. Abrahamson (#348934)
Kristine M. Kerig (#386808)
2520 University Avenue SE
Suite 202
Minneapolis, MN 55414
Phone: (612) 825-7777

Attorneys for Respondent

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUES

- I. Did the district court err when it declined to invade the province of the arbitrator in denying Auto-Owners' motion to vacate the arbitrator's award?
- A. Manner Raised in District Court:**
Appellant brought a motion to vacate the arbitrator's award.
- B. Statement of the District Court's Ruling:**
The district court denied the motion to vacate the arbitrator's award.
- C. Method preserved for appeal:**
Auto-Owners timely brought a motion to vacate the award contending that the arbitrator misinterpreted the insurance policy and failed to properly apply the burden of proof.
- D. List of the Most Apposite Cases, Rules and Statutes:**
Minn. Stat. §572.19, Subd. 1 (2010)
State v. Minnesota Assn of Prof'l Employees, 504 N.W.2d 751 (Minn. 1993)
Liberty Mut. Ins. Co. v. Sankey, 605 N.W.2d 411 (Minn. App. 2000)
Glass Service Co. v. Illinois Farmers Ins. Co., (unpublished) No. A06-1076, 2007 WL 1815781 (Minn. App. 2007)
- II. Did the district court err when it confirmed the arbitrator's award of pre-award interest as required by Minnesota Statutes?
- A. Manner Raised in District Court:**
Appellant brought a motion to vacate the arbitrator's award.
- B. Statement of the District Court's Ruling:**
The district court found that the arbitrator did not err in awarding pre-award interest and denied Auto-Owners' motion to vacate the award.
- C. Method preserved for appeal:**
Appellant raised the issue in its memorandum in support of its motion to vacate.
- D. List of the Most Apposite Cases, Rules and Statutes:**
Glass Service v. Ill. Farmers, (unpublished) No. A06-1076, 2007 WL 1815781 (Minn. App. 2007)
Minn. Stat. §549.09, Subd. 1(b)
Minn. Stat. §572.15(a)

INTRODUCTION

Auto-Owners Insurance Company comes to this Court in yet another to attempt by an insurance company to vacate an entirely proper arbitration award issued against it and in favor of Polzin Glass. Auto-Owners' appeal is nothing more than an effort to overturn the arbitrator's factual findings. The fact that Auto-Owners contends that the arbitrator applied the incorrect legal standard by ruling against Auto-Owners does not convert what Auto-Owners knows is an unreviewable factual determination into a reviewable legal determination. Auto-Owners contends that the arbitrator improperly concluded from the evidence presented at the arbitration that Auto-Owners breached its own policy, and somehow thereby shifted the burden of proof to Auto-Owners. This is, on its face, a fact question over which, respectfully, this Court has no more ability to substitute its judgment for that of the arbitrator than the district court did, no matter what the factual record shows. The district court properly declined to invade the province of the arbitrator on the purely factual determinations that Auto-Owners attempts to mischaracterize as legal issues.

Auto-Owners also alleges that the arbitrator exceeded his authority in awarding Polzin preaward interest. The district court recognized that Auto-Owners' position here is plainly contrary to Minnesota law. Accordingly, this Court should affirm the district court's decision in its entirety.

STATEMENT OF THE CASE

Polzin Glass initiated the action below on November 24, 2009 by serving upon Auto-Owners a complaint for declaratory relief seeking to consolidate for arbitration 73 short paid invoices. After Auto-Owners answered, Polzin Glass moved the district court for an order consolidating the disputed invoices into a single proceeding for purposes of arbitration. Over Auto-Owners' objection, the Hennepin County District Court, the Honorable Tanya M. Bransford presiding, granted Rapid's motion and ordered the disputed invoices to be arbitrated in a single proceeding.

Thereafter, the parties proceeded to arbitration pursuant to the No-Fault Act, Minn. Stat. §65B.525, subd. 1, and the Minnesota Supreme Court's opinion in *Illinois Farmers Ins. Co. v. Glass Service Co.*, 683 N.W.2d 792 (Minn. 2004). The arbitration took place on April 14, 2010 before Mark Genereaux, an arbitrator selected pursuant to the no-fault arbitration rules.

An award in the amount of \$30,923.83 plus preaward interest under Minn. Stat. §549.09 was issued in favor of Polzin on November 5, 2010.

On February 8, 2011, Auto-Owners filed its motion to vacate the arbitration award. Auto-Owners alleged that the arbitrator exceeded his authority by finding that Polzin and not Auto-Owners presented credible evidence as to the reasonableness of its pricing structure. Auto-Owners also alleged that the arbitrator exceeded his authority in applying Auto-Owners' policy to the evidence before him. Finally, Auto-Owners asked the district court to assign as error the arbitrator's award of statutorily authorized preaward interest. On June 21, 2011, the Hennepin County District Court, Judge

Bransford presiding, denied in its entirety Auto-Owners motion. Judgment was subsequently entered on July 21, 2011. Auto-Owners filed its notice of appeal on August 23, 2011.

STATEMENT OF THE FACTS

Polzin Glass is a small business which repairs and replaces auto glass. Resp. App. 9. When a customer has damaged auto glass, it is Polzin's custom and practice to accept an assignment of that customer's insurance proceeds as payment for its repair or replacement services. Resp. App. 9-10. Polzin then sends its invoice to the customer's insurance company, which must pay Polzin directly pursuant to Minn. Stat. §72A.201, Subd. 6(14) (2010), leaving the customer out of the transaction thereafter. Resp. App. 10. During the relevant time period, it was not uncommon for Auto Owners to pay Polzin less than the amount of its invoices, after which Polzin seeks full payment through arbitration under the No-Fault Act. Resp. App. 2, 5.

At issue herein are 73 Auto-Owners insured claims spanning February of 2004 to May of 2008. Resp. App. 7-8. During the relevant time period, Polzin Glass submitted 140 invoices to Auto-Owners. Of those 140 invoices, Auto-Owners paid Polzin in full on 67 of them. Resp. App. 15 at ¶4. Auto-Owners short paid only 73, notwithstanding the fact that the invoices were priced identically. Resp. App. 14 at ¶2. Polzin went through several examples of invoices during the arbitration showing how Auto-Owners' payments were completely arbitrary. The clearest example involved the replacement of the same

windshield three times for Simon Brothers Cement.¹ The windshield was replaced for the first time on April 10, 2006. Polzin billed Auto-Owners \$420.64 which Auto-Owners paid in full. Resp. App. 19-21. On March 5, 2007, Polzin replaced the windshield again. Polzin billed Auto-Owners \$421.69 (the only difference from the prior invoice being a slight change in the NAGS list price). Resp. App. 17-18. Auto-Owners paid only \$70.24. Resp. App. 16. On November 29, 2007, Polzin replaced the windshield a third time, billing Auto-Owners \$428.49 (again, the only difference being due to a change in the NAGS list price). Resp. App. 19-21. This time, Auto-Owners paid Polzin's bill in full. *Id.* Interestingly enough, Simon Brothers also had a windshield replaced in a different Chevrolet pickup that used the exact same windshield as the truck where the windshield was replaced three times. That replacement occurred on October 16, 2006. There Polzin billed Auto-Owners \$421.93 for the replacement service. Resp. App. 17-18. Auto-Owners paid Polzin \$131.93. Resp. App. 16. During that time frame, Polzin's invoices ranged from \$420.64 to \$428.49. In contrast, Auto-Owners' payments ranged from \$70.24 to \$428.49. Significantly, the same policy language was in place for every one of the invoices that was presented to the arbitrator, both those that were short paid and those that were paid in full. Auto-Owners presented no witnesses to explain the changes in payments because no rational explanation is possible. On this evidence alone, the arbitrator was fully justified in making the factual finding that Auto-Owners breached the terms of its insurance policy when it failed to pay Polzin's invoices in full.

¹ We know that it was the same windshield because Polzin lists the vehicle's unique Vehicle Identification Number on its invoices; in the example discussed here, the VIN is the same on each of the three invoices.

ARGUMENT

1. Minnesota Law Is Clear As To The Limited Circumstances Under Which Arbitration Awards Are To Be Disturbed.

A. Appropriate Application Of The Standard Of Review Requires The District Court And The Underlying Arbitration Award Be Affirmed.

The widely accepted standard of review makes it all but impossible for Auto-Owners to obtain any relief from the arbitration award about which it complains. At the outset, Minn. Stat. §572.19 sets forth the bases on which the district court may vacate an arbitrator's award: fraud, corruption, evident partiality, an arbitrator who exceeded his or her powers, the absence of an agreement to arbitrate, and a refusal to postpone the arbitration or comparable procedural irregularities leading to substantial prejudice. Clearly, all of these are extreme circumstances, and read together it is obvious that the arbitrator's award is meant to stand in the absence of outrageous irregularity. To the detriment of the process, insurance companies have perverted the intent of §572.19 and ask district courts to review No-Fault arbitrators' proper awards with alarming predictability. Auto-Owners cites no applicable case in which an insurance company has prevailed on such a motion. Now, in the face of that persistent failure, Auto-Owners presses this doomed review one step further.

No-fault arbitrators' factual findings are conclusive and are not subject to review. *Xiong v. Western National Mut. Ins. Co.*, (unpublished) No. A05-569, 2005 WL 3372779 at *2 (Minn. App. Dec. 13, 2005); *Barneson v. Western National Mut. Ins. Co.*, 486 N.W.2d 878, 882 (Minn. App. 1992). Moreover, public policy in Minnesota strongly favors the finality of arbitration awards. *Xiong*, 2005 WL 3372779 at *2; *Erickson v.*

Great American Ins. Cos., 466 N.W.2d 430, 432 (Minn. App. 1991). Therefore, judicial appeal from an arbitration award is subject to a particularly narrow standard of review.

State v. Minnesota Assn of Prof'l Employees, 504 N.W.2d 751, 755 (Minn. 1993). In the *Professional Employees* case, our Supreme Court wrote:

This court has noted that only when it is clearly established that arbitrators have clearly exceeded their powers must a court vacate an arbitration award....Every reasonable presumption must be exercised in favor of the finality and validity of the arbitration award,...and courts will not overturn an award merely because they disagree with the arbitrator's decision on the merits.

504 N.W.2d at 754-55 (citations omitted).

The current state of the law is that no-fault arbitrator findings of fact are “conclusive,” while legal determinations are subject to *de novo* review. *Barneson v. W. Nat'l Mut. Ins. Co.*, 486 N.W.2d 176, 177 (Minn.App.1992). This approach reflects the “desire for consistency in interpretation of the No-Fault Act;” it marks a noteworthy exception to the general rule that arbitrators are the final judges of both law and fact. *Weaver v. State Farm Ins. Cos.*, 609 N.W.2d 878, 882 (Minn.2000). This Court is not bound by the district court's decision on legal determinations, and reviews the district court's review of the arbitrator's legal determinations *de novo*. *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn.1984).

The arbitrator's award of interest was purely a mathematical exercise, governed by the application of the interest statute Minn. Stat. §549.09. The determination of which interest rate is to be applied is not one of discretion but rather governed by the amount of the award. By statute, if the award is greater than \$50,000, then the 10% interest rate

applies, if it is less, the 4% interest rate applies. In this instance, the award was less than \$50,000 and therefore the proper rate of interest was 4%, which was exactly what the arbitrator's award provided, and what the district court affirmed. As a legal determination by the district court involving interpretation of Minnesota statutes, this is an issue that this Court reviews *de novo*. *Krueger v. Zeman Const. Co.*, 781 N.W.2d 858, 861 (Minn. 2010).

B. The Reason No-Fault Arbitrations Are Treated Differently Than Other Arbitrations Does Not Apply To Auto Glass Claims.

A narrow exception to the general rule of arbitration finality authorizes even district courts to conduct the *de novo* review of legal determinations by no-fault arbitrators “in the area of automobile reparation.” *Johnson v. American Family Mut. Ins. Co.*, 426 N.W. 2d 419, 421 (Minn. 1988). “We think that consistency mandates that the courts interpret the no-fault statutes, not various panels of arbitrators.” *Id.* The area of automobile reparation is broad—it does not refer to the field of automobile repair, rather it is limited by statute to “basic economic loss benefits and residual liability coverage....” Minn. Stat. §65B.48, Subd. 1 (2010). Basic economic loss accrues monthly as loss occurs, and includes such categories as income loss, replacement services loss, survivor's replacement services loss, and medical or funeral expenses. Minn. Stat. §65B.54, Subd. 1. “Basic economic loss benefits’ *do not* include benefits for physical damage done to property including motor vehicles and their contents.” Minn. Stat. §65B.44, Subd. 8 (*emphasis added*). The No-Fault Act was created to address an entirely different set of circumstances than we are faced with here, and the need for keeping arbitrators from

interpreting the Act in those cases is more logical. That need does not apply in the distinct circumstance of auto glass cases.

Indeed, auto glass cases are excluded from the benefits of other no-fault cases. For example, auto glass cases are not eligible for the 15% penalty interest rate available for no-fault claims, see Minn. Stat. §65B.54, Subd. 2. The reasoning behind the restriction *Johnson* and its progeny applied against no-fault arbitrators interpreting the No-Fault Act was the Act—the other cases which involve the No-Fault Act actually implicate the intricacies of the Act. Auto glass cases are straightforward applications of non-mandatory provisions of insurance policies to repetitive fact disputes over the “formulaic” method by which glass work is priced and reimbursed. *Ill. Farmers v. Glass Service*, 683 N.W.2d at 806. While the framework of no-fault arbitration lends itself well to these cases, much of the Act explicitly omits property damage claims, and thus the need to judicially review these arbitrations *de novo* is absent. It creates a separate layer of inefficiency that is becoming increasingly inefficient, contrary to the very intent of the Act. Minn. Stat. §65B.42.

Because Auto-Owners’ appeal in no way implicates interpretation of the No-Fault Act, the exception to the typical standard of review applicable to arbitration awards should not be utilized in this case. The proper standard of review is whether the arbitrator exceeded his authority in interpreting the insurance policy and issuing the award, the same standard of review this Court used in reviewing a similar issue arising out of an auto glass arbitration. *See Glass Service v. Ill. Farmers*, (unpublished) 2007 WL 1815781. There, this Court wrote concerning review of three separate arbitration

awards where the appealing insurer argued, as Progressive does here, the arbitrators misinterpreted the policy obligations:

The arbitrators were presented with appellant's insurance policy and the applicable endorsements, and were empowered with the authority to determine how much appellant owed respondent under the issued policy. This determination included a consideration of the applicable policy provisions. The nature of the dispute fell within the arbitrators' authority to resolve.

Id. at *9. That same conclusion is applicable here.

2. The Arbitrator's Proper Factual Findings Are Not Reviewable Under Any Standard Of Review.

The key inquiry is whether the arbitrator has exceeded his authority, as it is the only possible basis from Minn. Stat. §572.19 under which allegedly applying the incorrect legal standard or burden of proof would fall. Auto-Owners' mere insertion of legal terms like "legal standard" and "burden of proof" into its brief does not convert unreviewable factual issues into reviewable legal questions. This Court, in reviewing a No-Fault award wrote very directly:

Liberty Mutual argues that the arbitrator exceeded his powers because his award is unsupported by the facts and evidence. However, it was well within the arbitrator's authority to determine this claim for wage loss benefits, which is subject to mandatory arbitration. *See* Minn. Stat. §§ 65B.44, subd. 3 (no-fault wage loss benefits), 65B.525, subd. 1 (mandatory arbitration). An arbitrator has the authority to make factual findings and determine what constitutes "reasonable proof" of a wage loss claim....Whether the record supports an arbitrator's findings is not an issue for our review....

Thus, the only issue before us is whether the question decided by the arbitrator was within his authority to decide; we may not examine the underlying evidence and record, or otherwise delve into the merits of the award. Because the arbitrator in this case had the power to determine

Sankey's claim for wage loss benefits under the no-fault act, the district court properly denied Liberty Mutual's motion to vacate.

Liberty Mut. Ins. Co. v. Sankey, 605 N.W.2d 411, 413-14 (Minn. App. 2000) (citations omitted).

This is not the first time an insurance company has attempted to challenge an arbitrator's finding that the insurance company breached the terms of its own insurance policy. In *Glass Service v. Ill. Farmers*, the issue placed before the court by Farmers was the application by the arbitrator of two different endorsements which established Farmers' limit of liability. No. A06-1074, 2007 WL 1815781. As this Court properly noted, "[t]he arbitrators were presented with appellant's insurance policy and the applicable endorsements, and were empowered with the authority to determine how much appellant owed respondent under the issued policy. This determination included a consideration of the applicable policy provisions. The nature of the dispute fell within the arbitrators' authority to resolve." *Id.* at *9.

In the present case, the arbitrator plainly had the power to decide the claim arising out of the comprehensive insurance coverage that was submitted to him for resolution. Not only did the No-Fault Act provide for these disputes to be arbitrated, but the Minnesota Supreme Court specifically held that these cases be arbitrated. *Ill. Farmers Ins. Co. v. Glass Service Co.*, 683 N.W.2d 792, 803 (Minn. 2004). Furthermore, the decision by the arbitrator that Auto-Owners seeks to challenge is the heart of the dispute between the parties. That is, whether Auto-Owners has breached the terms of its insurance policy. Auto-Owners attempts to mischaracterize this issue as one of insurance

policy interpretation, presenting this Court with the standard of review for interpreting an insurance policy and discussing that issue at some length. App. Brief, p. 5-7. Just like the circumstances of *Glass Service v. Ill. Farmers*, 2007 WL 1815781, at *8-9, the arbitrator was presented with a set of facts and an applicable insurance policy. Clearly, the question of the arbitrator's power to resolve these disputes is settled and as this Court stated in *Liberty Mutual*, "[w]hether the record supports an arbitrator's findings is not an issue for our review." 605 N.W.2d at 413-14. Accordingly, Auto-Owners' attempt to vacate the arbitration award based entirely on claims that the arbitrator exceeded his powers was properly denied by the district court and that decision should be affirmed.

A. The Arbitrator Properly Applied Auto-Owners' Policy Language To The Evidence Presented To Determine That Polzin's Charges Are Reasonable.

Auto-Owners misinterprets both statutory and case law in an attempt to bolster its position. Auto-Owners relies upon Minn. Stat. §72A.201, Subd. 6(14), part of the Unfair Claims Practices Act, as a central part of its argument. The UCPA is an administrative remedy, not available for private enforcement. *Morris v. American Family Mutual Ins. Co.*, 386 N.W.2d 233, 235 (Minn. 1986). Although the UCPA may inform some of the decisions Auto-Owners makes for fear of penalization at the hands of the Commissioner of Commerce, it has absolutely no application to this dispute. Even the *Star Windshield* case, cited so heavily in Auto-Owners' brief, referenced that limitation. *Star Windshield Repair, Inc. v. Western National Ins. Co.*, 768 N.W.2d 346, 349, n. 5 (Minn. 2009). Nowhere in the *Star Windshield* decision does the Minnesota Supreme Court suggest that insurance policies in auto glass disputes are to be interpreted "in light of the statutory

framework in Section 72A.201.” App. Brief, p. 9, *compare, Star Windshield*, 768 N.W.2d at 348. Instead, the *Star Windshield* opinion began with a review of legislation comprising the “comprehensive scheme covering automobile insurance,” which included citations to portions of both the No-Fault Act and the UCPA, as well as the anti-incentive statute. *Star Windshield*, 768 N.W.2d at 348-49.

Also contrary to Auto-Owners’ assertion, the *Glass Service v. Ill. Farmers* case remains good law and instructive for another mischaracterized issue presented to this Court. *Glass Service Co. v. Progressive Specialty Ins. Co.*, 603 N.W.2d 849 (Minn. App. 2000). In that case, this Court wrote:

We in no way intend to suggest that appellant and other insurers should not be allowed to control costs. But adding “necessary” to the policy language gave appellant no additional tool with which to manage costs, for the concept of reasonableness inherently encompasses the concept of “necessary” as stated in appellant’s policy. The trial court properly focused on the reasonableness of respondent’s charges.

Glass Service v. Progressive, 603 N.W.2d at 852. In other words, reasonable and necessary are used interchangeably. If something is reasonable, it is necessary. Auto-Owners concedes as much in its brief, attempting to somehow differentiate between upper and lower limits of reasonable prices, and read a further limitation to only the lower limits of reasonableness into the policy, contrary to what is written. App. Brief, p. 7. Only an insurance company could argue that an admittedly reasonable claim could nevertheless be somehow properly denied. In this context, however, that is not possible.

Clearly, the arbitrator applied the proper legal standard under current Minnesota law. Looking solely to what was necessary, the uncontradicted evidence shows that

Polzin identified what was necessary for a proper windshield replacement through both documents and testimony and further proved that its service met what was necessary. Auto-Owners presented nothing to counter that proof. Resp. App. 15 at ¶5 and 22-24. Accordingly, the arbitrator refused to discount his award to the level suggested by the insurance company, based on Auto-Owners' own insurance policy language. The arbitrator afforded little credibility to Auto-Owners' evidence because it did not meet the standard of the policy, that is, Auto-Owners failed to establish that its comparison prices were "material of a similar kind or quality." App. Add., p. 1. That is a factual finding that cannot be reviewed and it is completely consistent with the express terms of Auto-Owners' insurance policy.

Courts only have the authority to review the arbitrator's decision under very limited circumstances, none of which involve factual findings. *See*, Minn. Stat. §572.20 (2010); *see also*, *Falgren v. State Bd. of Teaching*, 545 N.W.2d 901, 906 (Minn. 1996) (noting that the statute effectively bars any review of the arbitrator's findings of fact). Arbitrator Generaux properly made findings of fact as to the applicable insurance coverage, pursuant to authority specifically granted to him by Minn. Stat. §65B.525, Subd. 1.

B. Polzin Proved That Auto-Owners Breached Its Contract And The Arbitrator Found Polzin Proved That Breach—There Was No Burden Of Proof Error.

Auto-Owners argues the arbitrator applied the incorrect burden of proof, in that he shifted the burden of proof to Auto-Owners. A very similar burden of proof argument was made by the appellant insurance company and rejected in *Glass Service v. Progressive*, 603 N.W.2d at 852-53. Even with a more generous standard of review, as it

involved a trial court proceeding rather than an arbitration, this Court still did not find clear error in *Glass Service*, and left the trial court's findings undisturbed. *Id.* at 853. Auto-Owners correctly asserts that Polzin bore the burden of proof at the arbitration, as the claimant. *D.H. Blattner & Sons, Inc. v. Fireman's Ins. Co. of Newark*, 535 N.W.2d 671, 675 (Minn. App. 1995). Here, Polzin met its burden of proof and the arbitrator found more persuasive the evidence presented by Polzin over the evidence which was presented by Auto-Owners, as a fact finder must do when presented with conflicting evidence. The arbitrator found as follows:

The testimony and documentary evidence produced at the hearing shows that Claimant billed reasonable amounts for its services. Although Respondent produced hearsay evidence that the billed amounts were not reasonable based on rates charged by other glass vendors, that evidence was afforded little credibility due to its character, and the lack of any evidence outlining whether the products and installation process used by the other glass vendors was of a "material of a similar kind or quality," as required by the insurance contract.

App. Add., p. 1. Far from shifting the burden of proof to Auto-Owners, the arbitrator was simply explaining the reasoning behind his decision, which he had no obligation to do. *Hilltop Constr., Inc. v. Lou Park Apartments*, 324 N.W.2d 236, 239-40 (Minn. 1982). Every arbitration and fact finding endeavor necessarily involves weighing the relative merits of evidence—that does not convert those findings into legal conclusions, nor does it mean the arbitrator has somehow shifted the burden of proof by considering the evidence submitted by the party who does not bear it.

Moreover, even if this Court were inclined to review the facts presented in this case, one fact completely lays to waste Auto-Owners' position: during the relevant time

period, Polzin Glass submitted 140 invoices to Auto-Owners. Of those 140 invoices, Auto-Owners paid Polzin in full on 67 of them. Resp. App. 15 at ¶4. Auto-Owners short paid only 73, notwithstanding the fact that the invoices were priced identically. Resp. App. 14 at ¶2. Polzin went through several examples of invoices during the arbitration showing how Auto-Owners' payments were completely arbitrary. Significantly, the same policy language was in place for every one of the invoices that was presented to the arbitrator, both those that were short paid and those that were paid in full. Auto-Owners presented no witnesses to explain the changes in payments because no rational explanation is possible. On this evidence alone, the arbitrator was fully justified in making the factual finding that Auto-Owners breached the terms of its insurance policy when it failed to pay Polzin's invoices in full.

3. The Arbitrator Properly Awarded Pre-Award Interest, Squarely Within His Authority.

The issue of whether Polzin is entitled to pre-award interest has been addressed by the legislature and by this Court. Auto-Owners' position relative to interest is therefore clearly without basis.

In the present case, the amount of the *award* in favor of Polzin Glass was in excess of \$30,000. Applying the plain language of the statute, Polzin would be entitled to pre-award interest at the rate of 4%. Auto-Owners argues that because the arbitration involved the consolidation of individual claims, the award should be considered to be an aggregation of individual awards, none of which are more than the \$7,500 conciliation

court threshold and therefore interest is not available. Auto-Owners' position is simply wrong.

Minn. Stat. §549.09 does not refer to the amount of the claims comprising the award; rather, the statute is concerned only with the total amount of the award. Minn. Stat. §549.09. Consistent with that is the notion that arbitrators need not break down their awards to identify specific elements of their awards or explain how their awards were reached. *See Hilltop Constr. Inc. v. Lou Park Apartments*, 324 N.W.2d 236, 239-40 (Minn. 1982) (rejecting appeal relating to an arbitration award where the arbitrators, among other things, failed to break down the award into its component parts).

The Minnesota Legislature has enacted a law stating bluntly: an arbitration award “must include interest.” Minn. Stat. §572.15(a). That statute alone lays to waste Auto-Owners' argument. More significantly, however, this Court held, in applying Minn. Stat. §572.15(a) and Minn. Stat. §549.09 together, that preaward interest in consolidated glass cases is appropriate and required by statute. *Glass Service v. Ill. Farmers*, 2007 WL 1815781, at *1, *9-10. There, the Court was reviewing a district court's order modifying three arbitration awards to add preaward interest where arbitrators failed to include preaward interest in the awards. This Court, in affirming the addition of preaward interest, held that “The statute [Minn. Stat. §549.09] further provides instances when preaward interest shall not be awarded, none of which are applicable here.” *Id.* at *10. In other words, this Court has already determined that the exception to preaward interest relied upon by Auto-Owners is not applicable.

Moreover, earlier in its opinion, the Court held that the Supreme Court authorized the issuance of awards in consolidated cases that exceeded \$10,000. Specifically, in rejecting Farmers' argument that the arbitrators had no authority to issue awards in excess of the No-Fault Act's jurisdictional limit, this Court held: "[T]he supreme court contemplated the fact that if the matter was able to be consolidated into one proceeding, the award would be in excess of the \$10,000 jurisdictional limit set forth in the No-Fault Act. This language provides the arbitrators with the authority to issue awards for each category of claims that exceed \$10,000." *Glass Service v. Ill. Farmers*, 2007 WL 1815781, *4. This Court plainly did not engage in the fiction that the award is actually hundreds of individual awards but rather acknowledged that once the invoices were consolidated, a single award could be issued by the arbitrator.

It is important to note that this Court's decision in *Glass Service v. Ill. Farmers* is the follow up to the Supreme Court's decision in *Illinois Farmers Ins. Co. v. Glass Service Co.* 683 N.W.2d 792 (Minn. 2004). The awards at issue before this Court in the *Glass Service v. Ill. Farmers* case were from the consolidated arbitrations in the same case where Supreme Court originally held that consolidated arbitrations were permitted. *Ill. Farmers v. Glass Service*, 683 N.W.2d at 806-07. Clearly, if Auto-Owners' analysis were to be applied, it would have been applied in the *Glass Service* case, and subsequent cases for that matter. Instead, this Court determined that none of the exceptions to preaward interest were applicable there and none are therefore applicable here.

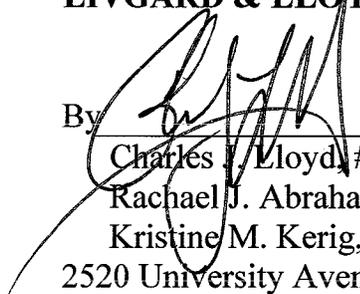
CONCLUSION

It is well established in this state that arbitrators' decisions are to be afforded a great deal of deference, in most circumstances that includes both legal and factual determinations. Here, the arbitrator did not exceed his authority; he simply applied the insurance policy to the facts before him and resolved the parties' dispute, which is squarely within his province. Furthermore, in doing so, he made no error with respect to the burden of proof; it always remained with Polzin and Polzin met it persuasively. There is similarly no error in the arbitrator's award of statutorily authorized preaward interest.

For all of the reasons set forth in this brief, Polzin Glass respectfully requests that the judgment of the district court be affirmed in its entirety.

Dated: 24 October 2011

LIVGARD & LLOYD PLLP

By 

Charles J. Lloyd, #174257

Rachael J. Abrahamson, #348934

Kristine M. Kerig, #386808

2520 University Avenue SE,
Suite 202

Minneapolis, MN 55414

Telephone: (612) 825-7777

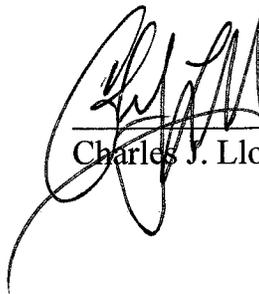
Facsimile: (612) 825-3977

ATTORNEYS FOR RESPONDENT

CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font (Times New Roman). The length of this brief is 5,038. This brief was prepared using Microsoft Office Word 2007.

Dated: October 24, 2011



Charles J. Lloyd