

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408999

GEORGE HICKOK	CLAIMANT
STONE EXPRESS (UNINSURED)	RESPONDENT
P.A.M. TRANSPORT, INC.	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
CLARENDON AMERICA INSURANCE COMPANY	RESPONDENT

OPINION FILED JULY 18, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondent Stone Express unrepresented and not appearing.

Respondent P.A.M. Transport, Inc. represented by WAYNE HARRIS, Attorney, Fort Smith, Arkansas.

Respondent Liberty Mutual Insurance Company represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

Respondent Clarendon America Insurance Company represented by JAY WALLACE, Attorney, Dallas, Texas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on April 19, 2005, in Fort Smith, Arkansas. A pre-hearing order had been entered in this case on December 20, 2004. This pre-hearing order purported to set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing, certain changes were made in this pre-hearing order. Stipulation No. 2 was changed to reflect that the claimant's stipulated period of temporary total disability ran from the date of the accident (August 29, 2002) through at least August 29, 2004. A seventh stipulation was added. This stipulation was to the effect that respondent, P.A.M. would satisfy the requirements for a

"general contractor," as that term is used in the Act. Finally, the fourth issue was withdrawn from consideration. A copy of the pre-hearing order with these amendments noted thereon, was made Commission's Exhibit No. I to the hearing.

By agreement of the parties, the following stipulations were offered by the parties and are hereby accepted:

1. On August 29, 2002, the claimant sustained a lumbar spine injury as the result of being struck by the hood of a tractor trailer truck which he was operating.
2. This injury required medical services, including corrective surgery, and was the claimant was totally disabled from on or about the date of this accident through at least August 29, 2004.
3. Clarendon Insurance Company has paid to or on behalf of the claimant medical expenses through August 29, 2004, totaling \$129,556.69 and disability benefits through August 29, 2004 totaling \$47,711.05.
4. The appropriate weekly compensation rates would be \$425.00 for total disability and \$319.00 for permanent partial disability.
5. P.A.M. and Liberty Mutual Insurance Company have denied liability for any workers' compensation benefits to the claimant.
6. Clarendon Insurance Company denies liability for any further payment to or on behalf of the claimant.
7. P.A.M. Transport, Inc. is a "general contractor."

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. The nature of the relationships between the various parties.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability benefits, and attorney's fees.

3. The liability of the various named respondents for any such workers' compensation benefits.

In regard to these issues, the claimant contends:

"a. The claimant contends that he was an employee of either P.A.M. Transportation or Stone Express. The claimant contends that if he was an employee of Stone Express, he is a statutory employee of P.A.M. Transportation because Stone Express was an uninsured subcontractor of P.A.M. Transportation.

b. The claimant contends that he is entitled to disability benefits from August 30, 2002 until a date yet to be determined and reasonably necessary medical treatment.

c. The claimant contends that his attorney is entitled to an appropriate attorney's fee regarding all periods of disability even though the claimant has been paid some disability benefits through an insurance policy paid for by Stone Express."

In regard to these issues, the respondent Stone Express makes no specific contentions.

In regard to these issues, the respondent Clarendon Insurance Company contends:

"On August 29, 2002, respondent carrier no. 1, Clarendon Insurance Company provided occupational accident and contingent liability insurance coverage for the use and benefit of P.A.M. Transport, Inc. Claimant sustained a job related injury to his lumbar spine on August 29, 2002. Clarendon Insurance Company paid temporary total disability benefits beginning August 29, 2002, in the total amount of \$47,711.05 and also paid medical expenses in the amount of \$129,556.69. Respondents are entitled to credit for the amount of temporary total disability and medical expenses which have been paid to claimant for the use and benefit of claimant. At the time of the August 29, 2002 job related injury, claimant was an employee of P.A.M. Transport, Inc. Clarendon denies claimant is entitled to any additional disability benefits or medical benefits in accordance with the terms of the occupational and/or contingent liability insurance coverage."

In regard to these issues, P.A.M. Transport, Inc. and Liberty Mutual Insurance Company contend:

"P.A.M. Transport, Inc. and Liberty Mutual Insurance will contend that the employee/employer/carrier relationship existed between George Hickok, Ed Stone dba Stone Express and Clarendon Insurance Company; that no employee/employer carrier relationship existed between George Hickok, P.A.M. Transport, Inc. and Liberty Mutual Insurance Company; and that the uninsured subcontractor provisions of the Arkansas Workers' Compensation Act do not apply. "

## DISCUSSION

### I. THE RELATIONSHIPS BETWEEN THE VARIOUS PARTIES

The first matter to be addressed is the relationship between the various parties involved in this claim, i.e. issues 1 and 3. The evidence presented reveals a rather unique relationship between the claimant, Stone Express, P.A.M. Transport, Inc., Clarendon America Insurance Company, and Liberty Mutual Insurance Company.

The evidence shows that Stone Express and P.A.M. Transport, Inc. had entered into a leasing contract, whereby Stone Express would provide P.A.M. with a tractor and a driver. Under the terms of this contract, P.A.M. had exclusive right to the use of the tractor and driver for the duration of the contract period (the contract purports to be effective for at least one year from the date of its inception). The initial selection of the driver is left entirely to the discretion of Stone Express. The type of relationship between Stone Express and the driver and the amount of compensation for the driver services are left entirely to the discretion of Stone Express. Ed Stone, the owner of Stone Express, could select himself as the driver. He could elect to take on a partner to perform the services of the driver. He could even elect to enter into an independent contract with the driver. Finally, he could elect to "hire" or form an employment relationship with the driver.

On the other hand, the contract provided that P.A.M. Transport had the right, at its sole discretion, to reject any driver that was furnished by Stone Express to drive the contracted vehicle. This would even include Mr. Stone, himself. P.A.M. Transport further reserved the right to investigate, in any manner it deemed appropriate, the qualifications and abilities of any proposed driver. Finally, under the terms of the contract, P.A.M. reserved the right to supervise and control the activities of the driver in the operation of the specific vehicle identified in the lease.

The contract also expressly provides that, in the event that Stone Express elected to hire or enter into an employment relationship with the driver or any other individuals necessary to fulfill the contract, Stone Express was responsible for all taxes and withholding on such employees and was required to maintain in force a proper policy of workers' compensation insurance covering such drivers or other employees. (paragraph 11 of the contract between Stone and P.A.M.-Respondent Clarendon's Exhibit No. 5 and Respondent P.A.M./Liberty Mutual Insurance Company's Exhibit No. 2). Unfortunately, P.A.M. did not enforce this provision.

The evidence shows that Ed Stone, on behalf of Stone Express, initially selected the claimant to drive the leased tractor. The evidence further shows that the relationship entered into between Stone Express and the claimant was an employment relationship.

The contract between the claimant and Stone Express (in fact, with Ed Stone) was oral only. Under this informal oral agreement the claimant was to be compensated directly by Stone Express or Ed Stone for his services based upon a fixed rate per mile for the miles driven. There was also no requirement or guarantee that the claimant would only be assigned to driving the truck leased to P.A.M. In fact, there was no guarantee of any specific amount of money or miles. There was no specific duration established for this relationship. Both Stone Express and the

claimant could terminate this relationship, at will and without cause, without incurring any liability to the other.

The evidence fails to prove the existence of any direct employment relationship between the claimant and P.A.M. Transport, Inc. Clearly, P.A.M. exercised its right under the contract to investigate the qualifications and abilities of the claimant to operate the truck that had been leased from Stone Express. After this investigation, P.A.M. approved the claimant as being acceptable to operate this leased vehicle. P.A.M. also directed the claimant's day to day activities in the operation of the leased vehicle. However, P.A.M. did not enter into any direct contractual agreement with the claimant, either written or oral, in regard to the operation of this vehicle. While P.A.M. could have prevented the claimant from operating the vehicle that it had leased from Stone Express, P.A.M. could, in no way, directly affect the employment relationship that had previously been entered into by the claimant and Stone Express. P.A.M. had no right to require Stone Express to either terminate or retain the claimant. Most importantly, P.A.M. had no liability to the claimant to compensate him for any services he performed in the operation of the leased vehicle. Nor did P.A.M. have any right or authority to establish the method, manner, or amount in which the claimant was to be compensated for these services.

As the parties have stipulated that the contract between Stone Express and P.A.M. Transport, Inc. created the existence of a subcontractor/general contractor relationship, it becomes necessary to address the effect of Ark. Code Ann. §11-9-402. Subdivision (a) of this subsection states:

"Where a subcontractor fails to secure compensation required by this chapter, the prime contractor shall be liable for compensation to the employees of the subcontractor."

Applicable case law provides that the term "general contractor" is synonymous with the term "prime contractor," as used in this subsection.

Ark. Code Ann. §11-9-404 provides the methods by which the payment of compensation can be secured. There are essentially only two acceptable methods recognized by this subsection. The first is the obtaining and maintaining a policy of workers' compensation insurance with a carrier that has been authorized to write workers' compensation insurance in this jurisdiction. The second, is by receiving authorization from this Commission to be self insured, either individually or through a group.

It is obvious that at the time of the claimant's accident, Stone Express had not been authorized or certified as a self insured employer, either individually or as a member of a group. Thus, Ark. Code Ann. §11-9-402(a) is applicable, unless Stone Express was covered by a policy of workers' compensation insurance.

This is where the first rather unique aspect of this case arises. Clarendon Insurance Company, which is a named respondent in this case, has paid extensive benefits, both medical expenses and disability benefits for the injuries sustained to the claimant in the accident on August 29, 2002. These benefits were paid pursuant to a policy of "Contingent Casualty Liability Contractors/Drivers" insurance. Thus, the first question is whether this policy is sufficient to satisfy Ark. Code Ann. §11-9-402(a).

Clark Gray, the vice-president of Driver Resources/Compliance for P.A.M., testified that P.A.M. merely made this insurance available to Stone Express and its other owner/operators and that these entities were ultimately charged for their proportionate share of the premiums for this insurance. While Stone Express may have ultimately paid the premiums, it is obvious from the policy, itself, that the only named insured and holder of the policy is P.A.M. Transport, Inc. Any subcontractors or any employees of subcontractors are merely secondary beneficiaries under this policy. Stone Express, itself, clearly had no policy of insurance with Clarendon

America Insurance Company (workers' compensation or otherwise).

After consideration of all the evidence presented, I find that the greater weight of the credible evidence establishes the existence of an employment relationship only between the claimant and Stone Express, at the time of his accident on August 29, 2002. However, at the time of this accident, Stone Express was a subcontractor and P.A.M. Transport, Inc. was the prime contractor (general contractor). At the time of this accident, Stone Express had failed to secure workers' compensation for the claimant, in the manner required by Ark. Code Ann. §11-9-404. Therefore, pursuant to the provisions of Ark. Code Ann. §11-9-402(a), P.A.M. also became jointly liable for any and all workers' compensation benefits due for any compensable injuries the claimant may have sustained while he was performing employment services for Stone Express that were in furtherance of its contract with P.A.M.

However, this does not dispose of the liability and rights of Clarendon America. P.A.M., itself, was clearly insured under the "Contingent Casualty Liability Contractors Drivers" policy that had been issued by Clarendon American Insurance Company.

This policy with Clarendon America had a rather bizarre provision that provided:

"In consideration of the premium paid by the insured, the insurer agrees upon the occurrence of a covered contingency as described below, insurer will, subject to the terms, conditions, limitations, and exclusions contained herein:

1. Issue or cause to be issued by Clarendon National Insurance Company, a policy of statutory workers' compensation in the domicile state of the insured including the all states endorsement, but only with respect to a covered contractor or contract driver who may seek to be deemed an employee of the insured by a workers' compensation board, governmental agency or court of competent jurisdiction;

a. Such policy shall be issued in accordance with the laws of the state of domicile of the insured and shall provide for our right and duty to defend the insured with respect to those benefits required under the Workers' Compensation Laws of such state or of such other states as may be determined to apply to the covered contractor or contractor driver.

b. Such policy shall further provide for the payment of such benefits if the covered contractor or contract driver is actually deemed to be an employee of the insured by such workers' compensation board, governmental agency or court of competent jurisdiction; or

2. Issue or cause to be issued voluntary workers' compensation coverage to the covered contractor or contractor driver who is seeking to be deemed an employee of the insured in accordance with the applicable law. (Respondent P.A.M./Liberty Mutual Insurance Company's Exhibit No. 2, page 34, Article II).

The policies also expressly provided that, in the event of these circumstance, the limits of Clarendon's liability for these "workers' compensation equivalent benefits" would be the "statutory limits" of the appropriate jurisdiction. (Respondent P.A.M./Liberty Mutual Insurance Company's Exhibit No. 2, page 32).

Clearly, Stone Express met the definition of a "contractor" as set out in Clarendon's policy. Stone Express (in effect, Ed Stone) was a contractor who had leased to P.A.M. (the insured) on a long term basis a power unit and operated that power unit under P.A.M.'s authority, as an independent contractor. [Although not all independent contractors are subcontractors, a subcontractor must by its very nature be an independent contractor, otherwise they would be an employee]. Clearly, Stone Express or Ed Stone was not an employee of P.A.M., at any time relevant to this case.

The evidence shows that the claimant also satisfies the definition of "contractor driver," as specifically defined in the policy. He had been retained by a contractor (Stone Express) to drive a power unit the contractor owned and had leased to the insured (P.A.M.). Clearly, the claimant was not an actual employee of P.A.M. at the time of his accident or at any other time relevant to this proceeding. Although Ark. Code Ann. §11-9-402 is often described as making an injured employee of an uninsured subcontractor into "statutory" or constructive employee of the prime contractor, this is not actually the case. Nowhere in the express wording of Ark. Code Ann. §11-9-402 does it describe such an individual as being an "employee" of the prime contractor. Subdivision (a) of this subsection merely states that the prime contractor also becomes liable for appropriate workers' compensation benefits to a subcontractor's employees in the event the subcontractor is uninsured. The claimant would remain solely an employee of Stone Express, and Stone Express would still remain primarily liable for any appropriate workers' compensation benefits to which he may be entitled. Ark. Code Ann. §11-9-402(a) simply makes P.A.M. jointly liable for these benefits, but does not create any "employment" relationship between the claimant and P.A.M.

However, the policy with Clarendon America, by its express terms, does not cover all "contract drivers." Article I of this policy states:

"A covered 'contractor' or 'contract driver', subject to the terms, conditions, and exclusions herein, is deemed to be any contractor or contract driver who, based on his state of domicile, is not required by the laws of his state of domicile, to be covered by statutory Workers' Compensation." (Emphasis mine)

While I find it strange that this provision is based upon the driver's state of domicile and not the insured, this is clearly a matter open to mutual contract. The evidence shows that the claimant's state of domicile is Oklahoma. Fortunately, the laws of the state of Oklahoma are similar, in regard to required covered of

employees, to those of this jurisdiction. Under the laws of both Oklahoma and Arkansas, the employment relationship between the claimant and Stone Express would be an employment covered by the statutory provisions of the respective Workers' Compensation Acts, See 850. S. §3 No. 7, No. 8, and No. 10. It is also interesting to note that the Oklahoma Act also extends liability to prime or general contractors for injuries sustained by employees of subcontractors, See 850. S. §11. Therefore, by the terms of the contract the claimant would not be a "covered 'contract driver'" under the insurance policy issued to P.A.M. Transport by Clarendon America.

At this point, it must be noted that this Commission's jurisdiction is very limited and it cannot exceed that expressly conferred by the Act. Although this Commission's jurisdiction has been judicially recognized to extend to interpretation and enforcement of insurance policies, this extension is only applicable to the extent that it is necessary to apply and enforce the provisions of the Workers' Compensation Act.

After consideration of all the evidence presented, I find that the policy issued to P.A.M. by Clarendon America does not represent a policy of workers' compensation coverage for either P.A.M., Stone Express, or the claimant, individually. I further find that this policy of insurance does not represent a policy of "a group health care service plan of whatever form or nature, a group disability policy, a group loss of income policy, a group accident, health or accident and health policy, a self insured employee health or welfare benefit plan, or a group hospital or medical service contract," within the meaning of Ark. Code Ann. §11-9-411. In fact, I find that the claimant was not even "covered" by this policy, regardless of its nature.

In reaching this decision, I recognize that Clarendon America has voluntarily paid extensive amounts to the claimant for disability and to the various medical

providers for medical services for the claimant's accidental injury. However, it does not appear that these payments were required by the terms of the contract between Clarendon America and P.A.M. Transport. Clarendon America may well have legal recourse against someone to recoup these payments. However, these are issues of contract and equity that can and should be addressed in some other more appropriate and qualified forum. These matters do not represent prerequisite or corollary issues that must be addressed by this Commission in order for it to adjudicate the rights of the parties under the Workers' Compensation Act.

In summary, I find that, at the time of his employment related accident, the claimant was an employee of Stone Express and that this was an employment relationship covered by the Arkansas Workers' Compensation Act. I further find that, at the time of the claimant's employment related accident, Stone Express was a subcontractor of P.A.M. Transport and had a failed to secure workers' compensation benefits as required by the Act. I find that, pursuant to Ark. Code Ann. §11-9-402(a), P.A.M. Transport also become liable for any appropriate workers' compensation to which the claimant might be entitled as a result of this accident. I find that, at the time of this accident, Liberty Mutual Insurance Company was the workers' compensation insurance carrier for P.A.M. Transport and would also be liable for any appropriate workers' compensation benefits to which the claimant might be entitled as a result of this accident. Finally, I find that the provisions of Ark. Code Ann. §11-9-411 are inapplicable to this claim, and the respondents P.A.M. Transport and Liberty Mutual Insurance are neither entitled to the set off provided by this subsection nor are they liable to Clarendon America under this subsection for any monies it has paid in regard to the accident of August 29, 2002. However, pursuant to §11-9-402(b), Stone Express remains primarily liable, and P.A.M. Transport and Liberty Mutual Insurance Company are entitled to reimbursement by Stone Express for any awards

herein made against them.

## II. COMPENSABLE INJURY

The parties have stipulated that the claimant sustained a physical injury to his lumbar spine as a result of being struck by the hood of a tractor trailer truck which he was operating. However, this is not the same as a stipulation that his lumbar injury represents a "compensable injury" as that term is used in the Act. Thus, the claimant must prove that his lumbar injury satisfies all of the requirements or a "compensable injury" set out in the Act.

The medical evidence presented is clearly sufficient to "establish" the actual existence of a physical injury to the claimant's lumbar spine that is supported by "objective findings." Thus, the claimant has satisfied the requirements of Ark. Code Ann. §11-9-102(4)(D).

The evidence presented further proves that this physical injury to the claimant's lumbar spine arose out of and occurred in the course of his employment with Stone Express and while he was performing employment services in furtherance of a contractual relationship between Stone Express and P.A. M. Transport. The evidence presented further shows that the physical injury to the claimant's lumbar spine were caused by a specific employment related incident or accident and that the occurrence of the physical injury, itself, is identifiable by time and place. The greater weight of the credible evidence further proves that this physical injury resulted in internal physical harm to the claimant's body, which required medical services and resulted in disability. Therefore, the claimant has met all of the statutory requirements for a "compensable injury," as provided by Ark. Code Ann. §11-9-102(4)(A)(i).

In summary, I find that the claimant has proven by the greater weight of the credible evidence that, on August 29, 2002, he sustained a "compensable injury" to

his lumbar spine, as that term is defined in the Act.

### III. BENEFITS

Next, it becomes necessary to determine the nature and extent of benefits to which the claimant is entitled, as a result of this compensable lumbar injury. Clearly, Ark. Code Ann. §11-9-508 entitles him to "reasonably necessary medical services" for this compensable injury. However, the burden rests upon the claimant to prove that the actual medical services provided actually represent "reasonably necessary medical services" for his compensable injury.

Medical services are "reasonably necessary" when they are necessitated by or connected with the compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended. In the present case, the medical evidence presented shows that the medical services provide the claimant for his lumbar and radicular difficulties, after August 29, 2002, by and at the direction of Dr. Gerald D. Rana, Jr., Dr. Mike Alvis, Dr. Arthur Johnson, and Dr. Winston T. Capel, were all necessitated by or connected with the claimant's compensable lumbar injury. These services were also of a type and nature recognized by the general medical community in this area as being medically appropriate to accurately diagnose the nature and extent of the claimant's physical injury, to resolve or improve the actual physical damage caused by the compensable injury, and to relieve the symptoms the compensable injury is producing. The evidence further shows that these medical services actually accomplished the accurate diagnosing of the nature and extent of the compensable injury, totally relieve the claimant's radicular symptoms, and provided improvement with his lumbar symptoms.

After consideration of all the evidence presented, it is my opinion that the medical services provided to the claimant by these physicians constitute "reasonably

necessary medical services" for his compensable injury. Thus, the respondents P.A.M. Transportation and Liberty Mutual Insurance Company are liable for the expense of these services, under Ark. Code Ann. §11-9-508. However, this liability is limited to the medical fee schedule established by this Commission.

The next benefit sought by the claimant is in the form of temporary total disability. In order to be entitled to such benefits, the claimant must prove that he continued within his healing period from the effects of his compensable injury and was also rendered totally disabled from performing regular gainful employment as a result of the effects of the compensable injury.

The duration of the healing period is essentially a medical question, which must be resolved on the basis of the greater weight of the medical evidence presented. In the present case, the medical evidence clearly establishes that the claimant has continued under active medical treatment for his compensable lumbar injury from the date of its occurrence through at least January 26, 2005. On that date, it was noted that a Functional Capacity Evaluation would now be appropriate, but the claimant was unable to obtain one due to lack of finances.

The greater weight of the evidence presented also reflects that the claimant has been rendered temporarily totally disabled from performing all forms of regular gainful employment, as a result of the effects of his compensable lumbar injury, from shortly after the time of its occurrence through at least January 26, 2005. The medical restrictions and limitations imposed upon him during this period would have effectively precluded any type of gainful employment. The claimant's testimony concerning the magnitude of his symptoms and difficulties would also show a total inability to perform employment. Thus, it is my opinion that the claimant has proven the second and final requirement for his entitlement to temporary total disability benefits for the period of August 29, 2002 through at least January 26, 2005.

## FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 29, 2002, the relationship of employee-employer existed between the claimant and Stone Express. This was a recognized or "covered" employment under the provisions of the Arkansas Workers' Compensation Act.
3. On August 29, 2002, the claimant earned wages sufficient to entitle him to a weekly compensation rate of \$425.00 for total disability and \$319.00 for permanent partial disability.
4. On August 29, 2002, the claimant sustained a compensable injury to his lumbar spine. This compensable injury arose out of and occurred in the course of the claimant's employment with Stone Express.
5. On August 29, 2002, Stone Express was a subcontractor and P.A.M. Transport, Inc. was the general or prime contractor. At the time of the claimant's compensable injury, he was performing services in furtherance of this subcontractor/prime contractor agreement. At the time of the claimant's compensable injury, Stone Express had failed to secure compensation in the manner required by the Act. Therefore, pursuant to Ark. Code Ann. §11-9-402(a), P.A.M. Transport, Inc. as the prime contractor, also became liable to the claimant for appropriate benefits attributable to this compensable injury.
6. On August 29, 2002, P.A.M. Transport, Inc. had a bona fide policy of workers' compensation insurance with Liberty Mutual Insurance Company. Under the provisions of Ark. Code Ann. §11-9-408(c), this policy of workers' compensation insurance insured the entire liability of P.A.M.

Transport, Inc. for any amounts found to be its obligation under the Arkansas Workers' Compensation Act. Thus, under Ark. Code Ann. §11-9-405, Liberty Mutual Insurance Company also became liable for appropriate workers' compensation benefits attributable to the claimant's compensable injury.

7. On August 29, 2002, P.A.M. Transport, Inc. had a policy of insurance with Clarendon America Insurance Company. This policy of insurance did not represent a policy of workers' compensation insurance under the provisions of Ark. Code Ann. §11-9-408. This policy of insurance did not represent a group health carrier service plan of whatever form or nature, a group disability policy, a group loss of insurance policy, a group accident, health, or accident and health policy, a self insured employee health or welfare benefit plan, or a group hospital or medical services contract, within the meaning of Ark. Code Ann. §11-9-411. Finally, any liability which P.A.M. Transport, Inc. may have had to the claimant as a result of his injury was not covered by the provisions of this insurance policy, as the claimant did not meet the requirements contained in the contract to be a "covered" contract driver under the policy (the claimant's state of domicile, Oklahoma, as well as this jurisdiction required that he be "covered by statutory workers' compensation").
8. The medical services rendered to the claimant for his lumbar and radicular difficulties, on and after August 29, 2002, by Dr. Ahmer Hussain, Dr. Mike Alvis, Dr. Arthur Johnson, and Dr. Winston Capel represent reasonably necessary medical services for his compensable injury. Pursuant to Ark. Code Ann. §11-9-508, and §11-9-402(a) liability for these medical expenses rests upon Stone Express, P.A.M. Transport,

Inc. and Liberty Mutual Insurance Company. This liability is subject to the medical fee schedule established by this Commission.

9. The claimant has been rendered temporarily totally disabled, as a result of the effects of his compensable lumbar injury, for the period beginning August 30, 2002 and continuing through, at least, January 26, 2005. Liability for these temporary total disability benefits rests upon Stone Express, P.A.M. Transport, Inc., and Liberty Mutual Insurance Company.
10. Clarendon America Insurance Company has no liability to the claimant, under the provisions of the Arkansas Workers Compensation Act, for any benefits attributable to his compensable injury of August 29, 2002. Clarendon America Insurance Company has no right to restitution under the Arkansas Workers' Compensation Act (specifically, §11-9-411) against any of the named respondents for any amounts Clarendon America has voluntarily paid. Nor, is Stone Express, P.A.M. Transport, Inc. or Liberty Mutual Insurance Company entitled to any credit, under the Arkansas Workers' Compensation Act, for any voluntary payments made by Clarendon America Insurance Company.
11. The respondents Stone Express, P.A.M. Transport, Inc. and Liberty Mutual Insurance Company have controverted this claim in its entirety and denied the claimant's entitlement to any benefits under the Arkansas Workers' Compensation Act.
12. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on all controverted benefits herein and hereinafter awarded to the claimant for his compensable lumbar injury. The respondents' portion of this controverted attorney's fee is the liability

of the respondents Stone Express, P.A.M. Transport, Inc. and Liberty Mutual Insurance Company.

13. The respondents Stone Express, P.A.M. Transport, Inc. and Liberty Mutual Insurance Company are jointly liable for all workers' compensation benefits herein awarded. However, pursuant to Ark. Code Ann. §11-9-402(b), Stone Express is liable to P.A.M. Transport, Inc. and Liberty Mutual Insurance Company for any compensation herein found to be the liability of P.A.M. Transport, Inc. and Liberty Mutual Insurance Company.

#### ORDER

The respondents P.A.M. Transport, Inc. and Liberty Mutual Insurance Company shall pay to the claimant temporary total disability benefits for the period beginning August 30, 2002 and continuing through, at least, January 26, 2005.

The respondents P.A.M. Transport, Inc. and Liberty Mutual Insurance Company shall be liable for the expense of all medical services provided to the claimant for his compensable lumbar injury by and at the direction of Dr. Ahmer Hussain, Dr. Mike Alvis, Dr. Arthur Johnson, and Dr. Winston Capel. Such liability shall be subject to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on all controverted benefits herein and hereinafter awarded to the claimant. One-half of this fee shall be the obligation of the respondents in addition to such benefits. The remaining one-half of this fee shall be withheld by the respondents from the benefits herein awarded to the claimant.

The respondent Stone Express is liable to the respondents P.A.M. Transport, Inc. and Liberty Mutual Insurance Company for any and all benefits herein awarded against said respondents.

For the reasons heretofore set out in this Opinion, Clarendon America Insurance Company has no liability to the claimant under the Arkansas Workers' Compensation Act.

For the reasons heretofore set out in this Opinion, Clarendon America Insurance Company has no right to reimbursement or restitution from the respondents Stone Express, P.A.M. Transport, Inc. or Liberty Mutual Insurance Company under the provisions of the Arkansas Workers' Compensation Act, specifically, Ark. Code Ann. §11-9-411.

For the reasons heretofore set out in this Opinion, the respondents Stone Express, P.A.M. Transport, Inc. and Liberty Mutual Insurance Company is not entitled to the off set provided by Ark. Code Ann. §11-9-411.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

---

MICHAEL L. ELLIG  
Administrative Law Judge