

STATE OF MICHIGAN
COURT OF APPEALS

AUTO-OWNERS INSURANCE CO,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE CO,

Defendant-Appellee.

UNPUBLISHED

November 6, 1998

No. 201809

Ingham Circuit Court

LC No. 96-083792 CZ

Before: Markman, P.J., and Bandstra and J.F. Kowalski*, JJ.

MEMORANDUM.

In this declaratory judgment action, plaintiff seeks a modification of an arbitration award to reflect a “50/50” apportioning between the parties of the medical expenses initially paid by defendant as a consequence of injuries suffered in an automobile accident by the minor child of the insured of both parties. The trial court denied plaintiff’s modification request. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff argues that the arbitrators exceeded the scope of their authority when they failed to apportion on a pro rata basis the medical expenses incurred in this case as required by MCL 500.3114; MSA 24.13114, and, as a consequence, entered an award that violates both statute and case law. Defendant’s submission to the arbitration committee clearly indicated that defendant sought reimbursement for the entire \$33,616.10. Accordingly, the appropriate time to have raised the apportionment issue was before the arbitration committee rendered its award and not after an adverse award was made. Plaintiff’s failure to raise the apportionment issue before the arbitration committee waives appellate consideration of plaintiff’s claimed error. *Graceman v Goldstein*, 93 Md App 658; 613 A2d 1049, 1056 (1992); *Lebow v Bogner-Seitel Realty, Inc*, 55 AD2d 695; 389 NYS2d 51, 52 (1976).

We affirm.

* Circuit judge, sitting on the Court of Appeals by assignment.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski