

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Five Phases Acupuncture P.C.
(Applicant)

- and -

New Jersey Manufacturers Insurance Co
(Respondent)

AAA Case No. 17-18-1090-5681

Applicant's File No. NA

Insurer's Claim File No. 13-138412-02

NAIC No. 12122

ARBITRATION AWARD

I, Ann Lorraine Russo, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD**:

Injured Person(s) hereinafter referred to as: patient

1. Hearing(s) held on 02/21/2019
Declared closed by the arbitrator on 02/21/2019

Theodore Economou, Esq. from Economou & Economou PC participated in person for the Applicant

Mark Everett, Esq. from Litchfield Cavo, LLP participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 4,009.00**, was NOT AMENDED at the oral hearing.
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

Whether this forum has jurisdiction.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the electronic case folder as of the date of the hearing and oral arguments of counsel for the respective parties. No witness testimony was presented at the hearing.

This case is a companion case with another case for the same applicant, patient and date of accident on 3/18/13 for different dates of services bearing American Arbitration Association case number 17 18 1090 5690.

The dispute in this case is for the nonpayment by the respondent for acupuncture services provided to the patient from 8/1/13 through 9/28/13. The respondent argues that this is a New Jersey policy for a New Jersey accident and that this forum lacks personal and subject matter jurisdiction in this case and that this respondent does not consent to arbitration in New York State. The respondent submitted copies of its policy declaration sheet and accompanying documentation in support of the respondent's defenses. The amount in dispute is \$4,009.00 for the acupuncture services in dispute in this case.

The respondent's position is persuasive in this case. The policy in this case was entered into between the respondent and a New Jersey resident in the State of New Jersey. The accident on 3/18/13 occurred in the state of New Jersey, as provided by respondent's counsel for which the patient in this case was treated by this New York state facility. The respondent's insured was a resident of New Jersey and the policy was issued in New Jersey for the New Jersey policyholder in this case. The respondent's attorney's position that New Jersey law applies to the motor vehicle accident in this case is persuasive. The law provides that an interest analysis be applied to determine which of two (2) competing jurisdictions has the greater interest in having its law applied in litigation. This interest analysis or "center of gravity" or "groupings of contacts approach" gives control to the law of the state that has the most significant relationship to the transaction and the party. *Allstate v. Stolarz*, 81 NY2d 219, 613 NE2d 936; 597 NYS2d 904; 1993 NY LEXIS 1162. The greater interest is to be determined by an evaluation of the facts and contacts which relate to the purpose of the particular law in conflict. See *Matter of State Farm Mutual Automobile Ins. Co. v. Williams*, 7 Misc3d 1029 (Sup Ct., Kings Co. 2005). The policies underlying the competing laws are to be considered which include a spectrum of significant contacts rather than a fortuitous and incidental event. In the case at hand, the respondent's insured is a New Jersey resident that purchased a New Jersey insurance policy. Clearly, the center of gravity or groupings of contacts exists in New Jersey in this case. The respondent's insured is a New Jersey resident, the contract and insurance policy are based upon the application of New Jersey laws and the state with the most and compelling interest to enforce and interpret its laws for matters that occur within in its boundaries is New Jersey State in this case.

The policies underlying the competing laws are to be considered which include a spectrum of significant contacts rather than a fortuitous or incidental event. In the case at hand, the respondent has established that the insured is a New Jersey resident and that the New Jersey resident insured possessed and contracted for a New Jersey policy in the State of New Jersey. The respondent's attorney noted that the insurance policy was negotiated, purchased and the terms of the contract and policy of insurance was created between a New Jersey resident based upon the laws of the State of New Jersey. In

addition, the respondent's attorney provided that the accident occurred in the State of New Jersey. The sole nexus with the State of New York is the address of the applicant medical provider in this case. It is further noted that the assignee in this case, the applicant medical facility is an assignee of the injured party and possess no greater rights and obligations than the injured party assignor. This sole event and factor do not outweigh the events and facts that the policy and contract of insurance applicable in this case is based upon the laws of the State of New Jersey and is between and a New Jersey resident or entities. Based upon the documentation submitted in this case, the State of New Jersey has the most significant interest in applying its laws to its citizens and roadways. In the case at hand, applying the "center of gravity" or "grouping of contacts" inquiry the laws of the State of New Jersey should apply as such result is consonant with the legitimate and reasonable expectations of the contracting parties. See *Allstate v. Stolarz*, supra; In the Matter of *Eagle Insurance Company v. Singletary*, 279 AD2d 56 (2nd Dept. 2000); *Federal Insurance Company vs. McCampbell*, 247 AD2d 359 (2nd Dept. 1998). The respondent has established that the state with the most significant contacts is New Jersey in this case and that the New Jersey law should apply to this case. Consequently, the respondent has established that the law of the State of New Jersey is the State with the most significant interest in determining this case. Consequently, the respondent's attorney's position is persuasive in this case. The respondent submitted documentation in support of the respondent's position in this case.

Respondent asserts that the within arbitration must be dismissed for lack of jurisdiction. Respondent argues that this is a New Jersey automobile insurance carrier with no ties to New York. In support of this claim, Respondent submits an affidavit from Daniel A. Toadvine, Assistant Vice Present for the respondent that attests that the Respondent is only licensed to sell insurance in New Jersey; does not write, produce, or bind insurance policies within the State of New York. The affidavit further states Respondent does not solicit business or advertise in New York. Respondent also submits the declaration page and automobile insurance policy which indicates it was written in New Jersey for a New Jersey insured. There is a lack of personal jurisdiction over an insurer when an affidavit of its corporate officer proves that it was not authorized to conduct business in New York; its affiliates, and subsidiaries do not provide, write, or sell insurance in New York or to its residents; it does not provide goods or services within New York; it does not transact business in New York; and it does not have any offices or agents in New York. *See, Flatlands Medical, P.C. v. AAA Ins.*, 43 Misc.3d 49, 984 N.Y.S.2d 793 (App. Term 2d, 11th & 13th Dists. 2014). The Flatlands court further held the burden of proving jurisdiction is on the party asserting it and, in the face Respondent's contentions that it does no business in New York, the Applicant is obligated to come forth with definitive evidentiary facts to support jurisdiction over the Respondent. Applicant fails to come forth with any evidence contradicting the affidavit provided by Respondent. Therefore, I find the affidavit submitted sufficient to establish that the Respondent is a foreign corporation that is not subject to the jurisdiction of this forum.

Based upon the evidence presented in this case, it is the opinion of this Arbitrator that this forum lacks jurisdiction in this case.

Accordingly, the claim is dismissed without prejudice to the Applicant's right to refile in the proper forum.

5. Optional imposition of administrative costs on Applicant.
Applicable for arbitration requests filed on and after March 1, 2002.

I do NOT impose the administrative costs of arbitration to the applicant, in the amount established for the current calendar year by the Designated Organization.

6. **I find as follows with regard to the policy issues before me:**

- ☐ The policy was not in force on the date of the accident
- ☐ The applicant was excluded under policy conditions or exclusions
- ☐ The applicant violated policy conditions, resulting in exclusion from coverage
- ☐ The applicant was not an "eligible injured person"
- ☐ The conditions for MVAIC eligibility were not met
- ☐ The injured person was not a "qualified person" (under the MVAIC)
- ☐ The applicant's injuries didn't arise out of the "use or operation" of a motor vehicle
- ☐ The respondent is not subject to the jurisdiction of the New York No-Fault arbitration forum

Accordingly, the claim is DISMISSED without prejudice

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York

SS :

County of Nassau

I, Ann Lorraine Russo, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

02/22/2019
(Dated)

Ann Lorraine Russo

IMPORTANT NOTICE

This award is payable within 30 calendar days of the date of transmittal of award to parties.

This award is final and binding unless modified or vacated by a master arbitrator. Insurance Department Regulation No. 68 (11 NYCRR 65-4.10) contains time limits and grounds upon which this award may be appealed to a master arbitrator. An appeal to a master arbitrator

must be made within 21 days after the mailing of this award. All insurers have copies of the regulation. Applicants may obtain a copy from the Insurance Department.

ELECTRONIC SIGNATURE

Document Name: Final Award Form
Unique Modria Document ID:
a29002f8153b87f8c82705af02058399

Electronically Signed

Your name: Ann Lorraine Russo
Signed on: 02/22/2019