

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Preferred Medical PC  
(Applicant)

- and -

Plymouth Rock Assurance Corporation  
(Respondent)

AAA Case No. 17-18-1112-0410  
Applicant's File No. RFA18-224062  
Insurer's Claim File No. 670001570800-001  
NAIC No.

### ARBITRATION AWARD

I, Tali Philipson, 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: Assignor

1. Hearing(s) held on 04/01/2020  
Declared closed by the arbitrator on 04/01/2020

Steven Super, Esq. from Super & Licatesi P.C. participated in person for the Applicant

Kevin Savage, Esq. from Law Office of Patricia A. Palma participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 3,226.23**, 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

The Assignor SM, a 70 year old male, was injured as the driver of an automobile involved in an accident on April 11, 2018. In dispute is the Applicant's claim for an office visit and upper and lower EMG/ NCVs provided to the Assignor on July 13, 2018.

Respondent asserted that it is a New Jersey automobile insurance carrier and therefore is not subject to the jurisdiction of the American Arbitration Association.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the Parties as contained in the Electronic Case Folder maintained by the American Arbitration Association and the oral arguments of the 2 parties' representatives. There were no witnesses. I reviewed the documents contained in the ECF for both parties and make my decision in reliance thereon.

Respondent argued that it is a New Jersey automobile insurance carrier with no offices or bank accounts in NY, that it neither solicits business in NY, nor does it write insurance policies for NY vehicles and that it is not licensed to do so by NY State's Department of Insurance.

Respondent set forth evidence that the automobile insurance policy was executed in New Jersey by an insured that lives in New Jersey and owns a vehicle that is garaged and registered in New Jersey.

Respondent further argued that under NY's long arm statute, a foreign corporation "doing business" in NY may be subject to the AAA's jurisdiction. However, the phrase "doing business" means more than occasional or tangential business activity in NY.

Applicant argued that Respondent waived the defense of lack of personal jurisdiction having issued a denial on a New York State NF-10 Form in which it invited Applicant to file for arbitration in this forum.

Case law dictates that an Applicant must show that an insurer has "a continuous and systematic course of conduct" within NY. See Cardone v. Jimney Peak, Inc., 245 AD2d 1002, 1003, 667 NYS2d 82[3rd Dept, 1997] quoting Tauza v. Susquehanna Coal Co., 220 NY 259, 115 NE 915 [1917] and that "the unilateral act of an out of state insured driving into New York, without more, is insufficient to confer personal jurisdiction over the insurer." American Independent Insurance v. Heights Chiropractic Care, PC, 12 Misc3d 228, 811 NYS2d 904, 2006 NY Slip Op. 26096 held

In addition, the burden of proving lack of personal jurisdiction rests on the party asserting it. See AAA Case No. 412014074250 (Arb. Benzinger), citing Flatlands Med, P.C. v. AAA Ins., 43 Misc.3d 49 (App. Term. 2d Dept. 2d, 11 & 13 2014 Jud. Dists.). Once there is a prima facie showing of lack of jurisdiction, the burden shifts to the party asserting jurisdiction.

After careful consideration of the evidence, I find for the Respondent. First, I find that Respondent submitted sufficient evidence to show that it does not do business in New York. The affidavit of Lisa Wagner, Director of Claims for Plymouth Rock Management Company of New Jersey, attests to the fact that Respondent's office is located in New Jersey, that Respondent does not write, produce, bind or otherwise sell any New York insurance, that Respondent has no offices in the State of New York and that Respondent neither solicits nor advertises for New York business. On the other hand, Applicant failed to proffer sufficient proof to refute Respondent's evidence and show that Respondent is engaged in the transaction of business in New York State.

In addition, I find that Respondent did not waive its jurisdictional defense by issuing a New York No Fault Denial (NF-10). On this issue I rely on Arbitrator Ellen Weisman's

award in Power Supply Inc. and Allstate New Jersey Insurance Co, AAA Case No. 412011052989 wherein she held that the issuance of an NF-10:

...does not subject a New Jersey insurer to jurisdiction in New York. Rather, that action was "ministerial" and "administrative" and does "not rise to the level of the 'systematic business activity' required to confer jurisdiction" as stated by the Court in Carnegie Hill Orthopedic Services v. Allstate Insurance Co., (Civil Ct, N.Y. Co., 2007, citing American Independent Insurance v. Heights Chiropractic Care, P.C., 12 Misc.3d 228, 230 (N.Y. Co., 2006).

I also find support for this position in Tim Canty M.D. PLLC and Palisades Insurance Co., AAA Case No. 17-17-1062-4266, wherein Arbitrator Lisa Abrams ruled that Respondent had not expressly agreed to jurisdiction in New York under similar circumstances.

Thus, based upon the foregoing, I find that Respondent established a lack of jurisdiction defense. Applicant's claim is dismissed without prejudice to re-file in the appropriate jurisdiction.

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

04/14/2020  
(Dated)

Tali Philipson

**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:**  
22c667d0f229cf78201b1351c6309a5c

**Electronically Signed**

Your name: Tali Philipson  
Signed on: 04/14/2020