

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Surgicore Of Jersey City, LLC
(Applicant)

- and -

Country-Wide Insurance Company
(Respondent)

AAA Case No. 17-19-1131-0822

Applicant's File No. SS-107897

Insurer's Claim File No. 000329071 001

NAIC No. 10839

ARBITRATION AWARD

I, Deepak Sohi, 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: EIP

1. Hearing(s) held on 09/10/2020
Declared closed by the arbitrator on 09/10/2020

Abraham Meir from Samandarov & Associates, P.C. participated in person for the Applicant

Saroja Cuffey from Jaffe & Velazquez, LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 18,052.17**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault compensation with respect to its bill. The parties also stipulated that Respondent's NF-10 denial of claim form wastimely issued.

3. Summary of Issues in Dispute

This arbitration arises out of medical treatment, specifically arthroscopic surgery of the left shoulder provided to the EIP, a 41-year-old male, who was involved in a motor vehicle accident as a driver on 7/30/2017.

Applicant is seeking reimbursement for the facility fee for the arthroscopic surgery of the left shoulder provided to the EIP on date of service 11/1/2017. Respondent contends that Applicant is barred from pursuing this claim based on the doctrine of *res judicata*, as all matters involving this EIP and date of accident having been previously adjudged and decreed, by the Supreme Court of the State of New York, County of New York, Hon. Francis A. Kahn, III, J.S.C., that the Respondent has no obligation to pay first party no-fault benefits for treatment rendered to this EIP.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the parties as contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association and the oral arguments of the parties' representatives at the hearing. No witnesses testified at the hearing. I reviewed the documents contained in the ECF for both parties and make my decision in reliance thereon.

RES JUDICATA

ARTHROSCOPIC SURGERY OF THE LEFT SHOULDER

DATE OF SERVICE 11/1/2017

The Respondent contends that Applicant is barred from pursuing this claim based on the doctrine of *res judicata*, as all matters involving this EIP and date of accident having been previously adjudged and declared, by the Supreme Court of the State of New York, County of New York, Hon. Francis A. Kahn III, J.S.C., that the Respondent has no obligation to pay first party no-fault benefits for treatment rendered by this provider Applicant.

"The doctrines of *res judicata* and collateral estoppel are designed to put an end to a matter once it is duly decided (*see* Siegel, NY Prac § 442, at 747 [4th ed]). *Res judicata*, or claim preclusion, is invoked when a party, or those in privity with the party, seek to relitigate a disposition on the merits of claims or causes of action arising out of the same transaction or series of transactions which were raised or

could have been raised in the prior litigation (*see* Matter of Hunter, 4 NY3d 260, 269 [2005]; Schuylkill Fuel Corp. v Nieberg Realty Corp., 250 NY 304, 306-307 [1929]). It is well settled that default judgments can have res judicata effect (*see* Lazides v P & G Enters., 58 AD3d 607 [2009]; Ava Acupuncture, P.C. v N Y Cent. Mut. Fire Ins. Co., 34 Misc. 3d 149[A], 2012 NY Slip Op 50233[U] [App Term, 2d, 11th & 13th Jud. Dists. 2012])." Eagle Surgical Supply, Inc. v. AIG Indemnity Ins. Co., 40 Misc.3d 139(A), 980 N.Y.S.2d 275 (Table), 2013 N.Y. Slip Op. 51441(U) at 1-2, 2013 WL 4756881 (App. Term 2d, 11th & 13th Dists. Aug. 21, 2013).

"Res judicata serves to preclude the renewal of issues actually litigated and resolved in a prior proceeding as well as claims for different relief which arise out of the same factual grouping 'or transaction', and which should have or could have been resolved in the prior proceeding" (Braunstein v. Braunstein, 114 AD2d 46 [2d Dept 1985]; *see also* Breslin Realty Development Corp. v. Shaw, 72 AD3d 258 [2d Dept 2010]; MEW Equity LLC v. Sutton Land Services, L.L.C., 2012 WL 5933050 [NY Sup Ct 2012]).

Res judicata and collateral estoppel are applicable to arbitration awards, including those rendered in disputes over no-fault benefits, and will bar relitigation of the same claim or issue. A.B. Medical Services PLLC v. New York Central Mutual Fire Ins. Co., 12 Misc.3d 500, 820 N.Y.S.2d 422 (Civ. Ct. Kings Co. 2006), *citing* Matter of Ranni, 58 N.Y.2d 715, 458 N.Y.S.2d 910 (1982); Monroe v. Providence Washington Ins. Co., 126 A.D.2d 929, 511 N.Y.S.2d 449 (3d Dept. 1987).

In support of its contention Respondent submits an Order from the Supreme Court of the State of New York, County of New York, under Index No.: 651869/2018, dated 9/11/2019, signed by the Honorable Francis A. Kahn, III, J.S.C. The Order states, in pertinent part, "[O]RDERED, and DECLARED that Defendant JV (EIP herein) is not an eligible injured person entitled to no-fault benefits under Plaintiff's insurance policy VS7806121-17 (subject insurance policy number herein), Claim No.: 00032907-001 (subject claim number herein); and it is further ADJUDGED and DECLARED that plaintiff is not obligated to honor or pay claims for reimbursement submitted by the defaulting Defendants (one of which listed is the Applicant herein) named in this motion, as assignees of, under

Country-wide Insurance policy VS7806121-17, Claim No.: 00032907-001, nor is Plaintiff required to pay, provide, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under Country-wide Insurance policy VS7806121-17, Claim No.: 00032907-001 from the alleged accident of July 30, 2017 (subject motor vehicle accident date) involving V (EIP) as V is not an eligible injured person as defined by the policy and/or New York State Insurance Regulation 68...

Where the Supreme Court has issued an order in a declaratory judgment action declaring that an insurer has no present or future obligation to furnish benefits under the Mandatory Personal Injury Protection coverage to certain medical providers and their assignors, an action by one of the providers to recover assigned first-party No-Fault benefits for medical services provided to the assignors is barred under the doctrine of res judicata notwithstanding that the Supreme Court's order was entered on default. Ava Acupuncture, P.C. v. NY Central Mutual Fire Ins. Co., 34 Misc.3d 149(A), 950 N.Y.S.2d 490 (Table), 2012 N.Y. Slip Op. 50233(U), 2012 WL 502676 (App. Term 2d, 11th & 13th Dists. Feb. 9, 2012). To hold otherwise could result in a judgment in the instant action which would destroy or impair rights established by the order rendered by the Supreme Court in the declaratory judgment action (see Schuylkill Fuel Corp. v Nieberg Realty Corp., 250 N.Y. 304, 306-307 [1929]). Contrary to plaintiff's contention, the Supreme Court's order is a conclusive final determination, notwithstanding that it was entered on default, and res judicata applies to an order or judgment taken by default which has not been vacated (see Lazides v P & G Enters., 58 A.D.3d 607 [2009]; Matter of Allstate Ins. Co. v Williams, 29 A.D.3d 688 [2006]; Matter of Eagle Ins. Co. v Facey, 272 A.D.2d 399 [2000]).

If the Supreme Court enters judgment on default declaring that health service providers-assignees were not entitled to recover No-Fault benefits arising out of the accident in question, an action commenced by one of the providers seeking No-Fault benefits is barred under the doctrine of res judicata. Flushing Traditional Acupuncture, P.C. v. Kemper Ins. Co., 42 Misc.3d 133(A), 984 N.Y.S.2d 631 (Table), 2014 NY Slip Op 50052(U), 2014 WL 274523 (App. Term 2d, 11th & 13th Dists. Jan. 10, 2014).

A Supreme Court order granting a declaratory judgment that the insurer is not obligated to pay any claims for No-Fault benefits constitutes res

judicata despite the failure to serve the claimant with a copy and notice of entry. Great Health Care Chiropractic, P.C. v. American Transit Ins. Co., 44 Misc.3d 143(A), 998 N.Y.S.2d 306 (Table), 2014 N.Y. Slip Op. 51324(U), 2014 WL 4251014 (App. Term 2d, 11th & 13th Dists. Aug. 20, 2014).

Accordingly, in light of the foregoing, based on the arguments of counsel, and after thorough review and consideration of all submissions, I find in favor of the Respondent and the Applicant's claim is denied.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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 DENIED in its entirety

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

09/12/2020
(Dated)

Deepak Sohi

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:
881b42527351a455eb01ab8aea491b8b

Electronically Signed

Your name: Deepak Sohi
Signed on: 09/12/2020