

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Prometheus Imaging LLC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-20-1177-9622
Applicant's File No.	n/a
Insurer's Claim File No.	0669555380000001
NAIC No.	22055

ARBITRATION AWARD

I, Paul Israelson, 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: injured person.

1. Hearing(s) held on 04/27/2021
Declared closed by the arbitrator on 04/27/2021

Roman Kulik Esq. from Kulik Law Firm, PC participated in person for the Applicant

Jon Marconi Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,827.19**, was AMENDED and permitted by the arbitrator at the oral hearing.

The applicant amended its claim to \$1,188.43.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties agree that, with the claim amended to \$1,188.43, the applicant has submitted its claim in accordance with the fee schedule.

3. Summary of Issues in Dispute

May the respondent deny the applicant's claim on the basis that the applicant failed to provide the requested additional verification within 120 days from the date of the initial request for additional verification?

4. Findings, Conclusions, and Basis Therefor

On April 27, 2021, the hearing for the within arbitration matter was conducted and closed.

At the hearing, the applicant did not raise any argument as to the timeliness of the respondent's denial of the applicant's claim.

The date of the subject automobile accident was October 22, 2019.

The applicant made a claim in the amended amount of \$1,188.43, breaking down as follows:

\$650.00 for the January 27, 2020 ultrasound of the injured person cervical spine and lumbar spine;

\$210.05 for the January 28, 2020 ultrasound of the injured person's carotid artery;

\$190.33 for the January 28, 2020 ultrasound of the injured person's lower extremity veins; and

\$138.05 for the January 28, 2020 ultrasound of the injured person's cranial artery system.

The respondent denied the applicant's claim on the basis that the applicant failed to provide requested additional verification within 120 days from the date of the initial request for additional verification, as required by 11 NYCRR 65-3.5 (o).

The following facts are relevant to the respondent's denial of the applicant's claim on the basis that the applicant failed to provide requested additional verification within 120 days from the date of the initial request for additional verification, as required by 11 NYCRR 65-3.5 (o).

On October 28, 2019, Anthony Palmieri appeared on behalf of the applicant for an examination under oath.

Subsequent to Mr. Palmieri's examination under oath, the respondent requested additional verification germane to Mr. Palmieri's examination under oath testimony.

On January 30, 2020, the applicant provided responses to the post-examination under oath additional verification requests made by the respondent. On January 31, 2020, the respondent received these same responses to the respondent's requests for additional verification.

On February 14, 2020 the respondent received the applicant's claim (as more specifically delineated above).

On March 2, 2020 and again on April 6, 2020, the respondent corresponded with the applicant, with a copy to the applicant's attorney (who had represented the applicant and Mr. Palmieri at his examination under oath), requesting that the applicant provide the following additional verification, and specifically indicating that these same additional verification requests had been made by the respondent subsequent to Mr. Palmieri's examination under oath, however, had not yet been fully complied with.

1. W-2, 1099 or proof of earnings for Alina Kuzeyeva for employment allegedly beginning at some point in May of 2019.
 - a. Please note that what has currently been provided in your January 30, 2020 response letter as Exhibit F, a Chase for Business printout, merely indicates that money was wired from an account to a person named Alina. There is no indication as to whether this individual is in fact Alina Kuzeyeva and/or if this is an account owned by Prometheus Imaging, LLC. Additionally, there is no indication as to whether Alina Kuzeyeva is a W-2 employee or independent contractor. As such, the response provided is clearly insufficient to show proof of earnings and GEICO continues its prior demand.
2. A copy of the purchase agreements for the GE Vivid E ultrasound machines, to the extent they exist.
 - a. Please provide an explanation how the purchase agreement for the above ultrasound machine is not within the possession or control of your client.
3. A copy of the maintenance agreements for the following ultrasound machine(s) and/or device(s) for the following serial numbers that were included in Prometheus Imaging, LLCs response letter dated January 30, 2020, Exhibit I:
 - a. Serial Number 335432WX3
 - b. Serial Number 162303PD2
 - c. Serial Number 282455WX5
 - d. Serial Number 244627WX6
 - i. Please note that the above serial numbers were not referenced in the maintenance contract provided between Prometheus Imaging, LLC and Diagnostic Ultrasound Service, Inc.
4. Cashed rent checks for August 2019 and October 2019 issued to Tony Mancini/Citywide Realty from Prometheus Imaging/Anthony Palmieri for the space at 2060 Eastchester Avenue.
 - a. The above stated two (2) months of rent checks have not been included in Prometheus Imaging, LLCs response letter. See Response Letter dated January 30, 2020, Exhibit J
5. Cashed rent checks for August 2019, September 2019 and October 2019 issued to Tony Mancini/Citywide Realty from Prometheus Imaging/Anthony Palmieri for the space at 1634 East Tremont Avenue.
 - a. The above stated three (3) months of rent checks have not been included in Prometheus Imaging, LLCs response letter. See Response Letter dated January 30, 2020, Exhibit K
6. Please provide the full name of Prometheus Imaging, LLCs contact person at 2060 Eastchester Avenue.
 - a. All that has been provided is the individuals first name.
7. The written lease agreement between Prometheus Imaging, LLC and Back to Health

Chiropractic concerning the location at 6695 Amboy Road, Staten Island, New York 11236

a. Mr. Palmieri testified that he signed a written lease agreement with Dr. Mandracchia (sic)

on behalf of Back to Health Chiropractic for the above location in June of 2019. See EUO

Transcript of Prometheus Imaging, LLC pg. 85 87 generally.

b. If as noted in Prometheus Imaging, LLCs response letter, the written lease agreement does not exist, please provide an explanation for same.

8. Cashed rent checks issued to Back to Health Chiropractic from Prometheus Imaging, LLC

for the following months:

a. June 2019, to the extent that the lease agreement called for such payment

b. July 2019

c. August 2019

9. The written lease agreement between Prometheus Imaging, LLC and Dr. Burg concerning

the location at 9413 Flatlands Avenue, Brooklyn, New York 11236.

a. Mr. Palmieri testified that he signed a written lease agreement with Dr. Burg (sic) for the

above location. See EUO Transcript of Prometheus Imaging, LLC pg. 76 78 generally.

b. If as noted in Prometheus Imaging, LLCs response letter, the written lease agreement does not exist, please provide an explanation for same.

10. Cashed rent checks from the past 6 months issued to Dr. Burg from Prometheus Imaging, LLC.

a. The statement provided in Prometheus Imaging, LLCs response letter simply states that

the item requested is not within the possession or control of your client. However, if rent checks were provided to Dr. Burg by Prometheus Imaging, LLC, as noted in Mr. Palmieris

testimony, then it is clear that he would surely be in the best position to procure and produce such documents.

11. Cashed rent checks issued to Darcy Chiropractic P.C. from Prometheus Imaging, LLC

concerning the 1819 Merrick Avenue, Merrick, New York 11566 location for the following months:

a. August 2019, to the extent that the lease agreement called for such payment

b. September 2019

c. October 2019

12. Cashed rent checks from the past 6 months issued to Tepper Chiropractic from Prometheus Imaging, LLC concerning the location at 959 Brush Hollow Road, Westbury, New York 11590.

a. The statement provided in Prometheus Imaging, LLCs response letter simply states that

the item requested is not within the possession or control of your client. However, if rent

checks were provided to Tepper Chiropractic by Prometheus Imaging, LLC, as noted in Mr.

Palmieri's testimony, then it is clear that he would surely be in the best position to procure and produce such documents.

13. A copy of John Gustavi's medical license

a. According to the testimony of Mr. Palmieri, Dr. Gustavi is a retired cardiologist and has

been providing imaging review for Prometheus Imaging, LLC for roughly three (3) years. As

Dr. Gustavi is providing impressions for Prometheus Imaging, LLC, this request is clearly

proper. Mr. Palmieri testified that he pays Dr. Gustavi for his services and as such, this demand for production is proper and necessary. See EUO Transcript of Prometheus Imaging, LLC pg. 112 125 generally.

14. Cashed checks showing proof of payment to John Gustavi, MD for the past 6 months.

a. See 22(a) above.

15. A copy of Richard Denise and Ralph Daiutos medical licenses

a. Mr. Palmieri testified that he has an agreement with ADMS a/k/a Northeast Radiology.

The above individuals are allegedly employees of ADMS. Said employees provide evaluation and impressions for the imaging services provided by Prometheus Imaging, LLC

and as such, the medical credentials of same are pertinent to this claim. GEICO reiterates

its prior and proper demand. See EUO Transcript of Prometheus Imaging, LLC pg. 119 122

generally.

16. Written billing agreement between Prometheus Imaging, LLC and Dunamis Billing Company (hereinafter Dunamis).

a. Mr. Palmieri testified that he entered into a billing agreement with Dunamis in January of

2019. He further stated that he signed said billing agreement on behalf of Prometheus Imaging, LLC. See EUO Transcript of Prometheus Imaging, LLC pg. 136 139 generally. As

such, GEICO reiterates its prior and proper demand.

17. Cashed checks showing proof of payment to Dunamis from Prometheus Imaging, LLC for

the past 6 months as well as corresponding invoices.

a. See 23(a) above

18. The hand-written sign in sheet for dos 7/19/19 for patient [name of patient].

a. Please be aware that what has been provided is a black piece of paper. See Response Letter dated January 30, 2020, Exhibit T.

19. The hand-written sign in sheet for dos 6/13/19 for patient [name of patient].

a. What has been provided is a letter from Dr. Charles A. Fundaro stating that the above patient was in his care on the requested date. This is not the document that was requested.

See Response Letter dated January 30, 2020, Exhibit U. Again, please provide the document indicated above.

20. Proof of earnings under Prometheus Imaging for Anthony Palmieri.

21. Corporate K-1 document, to the extent one exists.

22. Last six (6) months of corporate bank statements for Prometheus Imaging, LLC.

a. Please explain why all checks made payable to employees of Prometheus Imaging, LLC

and leaseholders as well as service and maintenance contracts included in your response letter are being disbursed from the Veritas Imaging corporate bank account.

23. Last six (6) months of corporate credit card statements for Prometheus Imaging, LLC.

24. Corporate bank statements for Veritas Imaging for the period of January 2019 to present

a. Given the information that can be gleaned from the documents provided it is evident that

Prometheus Imaging, LLC is still issuing payments directly from the Veritas Imaging bank

account. As there are no documents that list a corporate bank account for Prometheus Imaging, LLC, GEICO has expanded its request for Veritas Imaging bank accounts to include all statements. See also GEICO's above request, 22(a).

25. Corporate credit card statements for Veritas Imaging for the period of January 2019 to

May 2019.

On July 8, 2020, the respondent denied the applicant's claim on the basis that the applicant failed to provide requested additional verification within 120 days from the date of the initial request for additional verification, as required by 11 NYCRR 65-3.5 (o), and as more fully detailed below.

To date, the applicant has not provided the respondent with the additional verification specified in the respondent's March 2, 2020 and April 6, 2020 requests for additional verification.

In this regard, the respondent's March 2, 2020 and April 6, 2020 requests for additional verification set forth sufficient factual basis legitimating the respondent's right to receive the materials requested in these same requests for additional verification, specifically providing a factual basis for the respondent to investigate whether or not the applicant was operating its radiologic facility in a fraudulent manner consistent with the Court of Appeals dicta and holding in *State Farm Mut. Auto. Ins. Co. v. Robert Mallela*, 4 N.Y.3d 313, 794 N.Y.S.2d 700 (2005), whether or not various individuals working for or on behalf of the applicant are W-2 employees or independent contractors and whether or not various individuals working for or on behalf of the applicant possess the required license to perform the subject radiologic services.

With specific regard to the respondent's requests for additional verification providing a factual basis for the respondent to investigate whether or not the applicant was operating its radiologic facility in a fraudulent manner consistent with the Court of Appeals dicta and holding in *State Farm Mut. Auto. Ins. Co. v. Robert Mallela*, 4 N.Y.3d 313, 794 N.Y.S.2d 700 (2005), the Court of Appeals in *State Farm Mut. Auto. Ins. Co. v. Robert Mallela*, supra, held that, where a medical provider has structured the management and operation of its medical facility such that the licensed medical professional who is the legal owner of the medical provider does not receive the profits from the medical

facility, but rather, a management company owned by individuals who do not have a medical license receives the profits from the medical facility, the medical provider has been fraudulently incorporated, and therefore, is not eligible for no-fault recovery. Specifically, the Court of Appeals in *State Farm Mut. Auto. Ins. Co. v. Robert Mallela*, supra, stated:

"State Farm alleged, in essence, that to obtain payments from the carriers under the requirements of no-fault insurance, defendants willfully evaded New York law prohibiting nonphysicians from sharing ownership in medical service corporations. ...

According to the complaint, the unlicensed defendants paid physicians to use their names on paperwork filed with the State to establish medical service corporations. Once the medical service corporations were established under the facially valid cover of the nominal physician-owners, the nonphysicians actually operated the companies. To maintain the appearance that the physicians owned the entities, the nonphysicians caused the corporations to hire management companies (owned by the nonphysicians), which billed the medical corporations inflated rates for routine services. In this manner, the actual profits did not go to the nominal owners but were channeled to the nonphysicians who owned the management companies.

Notably, State Farm never alleged that the actual care received by patients was unnecessary or improper. The patients insured by State Farm presumably received appropriate care from a health professional qualified to give that care. State Farm's complaint centers on fraud in the corporate form rather than on the quality of care provided....

Insurance Law § 5102 et seq. requires no-fault carriers to reimburse patients (or, as in this case, their medical provider assignees) for "basic economic loss."

Interpreting the statute, the Superintendent of Insurance promulgated 11 NYCRR 65-3.16(a) (12) (effective April 4, 2002) and excluded from the meaning of "basic economic loss" payments made to unlicensed or fraudulently licensed providers, thus rendering them ineligible for reimbursement....

If State Farm's allegations are true, as we must construe them to be at this stage, the defendant companies undisputedly fail to meet the applicable state licensing requirements, which prohibit nonphysicians from owning or controlling medical service corporations. Furthermore, a fraudulently incorporated medical company is "[a] provider of health care services" within the meaning of the regulation....

The Superintendent's regulation allowing carriers to withhold reimbursement from fraudulently licensed medical corporations governs this case. We hold that on the strength of this regulation, carriers may look beyond the face of licensing documents to identify willful and material failure to abide by state and local law."

State Farm Mut. Auto. Ins. Co. v. Robert Mallela, 4 N.Y. 3d at 319-321.

As such, I determine that the respondent had a "good reason" to request the additional verification requested on March 2, 2020 and April 6, 2020, as required by 11 NYCRR 65-3.2(c).

Upon review of the record and listening to both sides' arguments regarding the issue as to whether or not the applicant has substantially complied with the respondent's March 2, 2020 and April 6, 2020 requests for additional verification, I determine that the

applicant must still provide the additional verification specifically set forth in these same requests for additional verification/the applicant has substantially complied with these same requests for additional verification.

Additionally, it is noted that the respondent's March 2, 2020 request for additional verification was untimely as required by 11 NYCRR 65-3.6 (b). Specifically, on January 31, 2020, the respondent received the applicant's responses to its previously served post-examination under oath request for additional verification. As such, in accordance with 11 NYCRR 65-3.6 (b), the respondent had 10 calendar days, i.e. up to and including February 10, 2020, to inform the applicant as to which portions of the respondent's requests for additional verification remained outstanding. In this regard, the respondent waited until March 2, 2020 to inform the applicant as to which portions of the respondent's requests for additional verification remained outstanding.

Thus, I am presented with a situation where, on the one hand, I have determined that the applicant has not complied with the respondent's March 2, 2020 in April 6, 2020 requests for additional verification and that these same requests for additional verification are germane to illegitimate bases for the respondent to investigate and verify the applicant's claim; and on the other hand, the respondent's March 2, 2020 request for additional verification was untimely as required by 11 NYCRR 65-3.6 (b). Under such same circumstances, I am most comfortable dismissing the applicant's claim without prejudice to its renewal rather than denying the applicant's claim as required by 11 NYCRR 65-3.5 (o) and as argued by the respondent.

When making this determination I am mindful of the fact that some of my fellow arbitrators have previously determined that the applicant had already substantially complied with the respondent's post-examination under oath request for verification, and that such same determination would moot the need for the respondent's March 2, 2020 and April 6, 2020 requests for additional verification. Without intending any disrespect to my fellow arbitrators who have made this determination, I point out that I am not bound by their determination, as determined by the Court of Appeals ruling in *Matter of Falzone v New York Cent. Mut. Fire Ins. Co.*, 15 N.Y.3d 530, 914 N.Y.S.2d 67 (2010). In this regard, the Court of Appeals in *Matter of Falzone v New York Cent. Mut. Fire Ins. Co.*, supra, stated:

"Here, the prior (no-fault) arbitration award involved the same parties, the same accident, the same injuries, and resolution of the same issue (causation) as the subsequent (SUM) arbitration award. Respondent insurer, a party to the prior arbitration, lost on the causation issue. Petitioner, the prevailing party on that issue in the prior arbitration, reasonably argued that collateral estoppel should apply to bar relitigation of the causation issue in the subsequent SUM arbitration. The SUM arbitrator rejected petitioner's argument, had the parties relitigate the causation issue and, contrary to the no-fault arbitrator's determination, found in respondent insurer's favor on the causation issue.

It is not for us to decide whether the SUM arbitrator erred in not applying collateral estoppel (i.e., not giving preclusive effect to the no-fault arbitrator's determination on the issue of causation). Because the SUM arbitration award was not patently irrational or so egregious as to violate public policy, the instant SUM arbitration award (and whether the SUM arbitrator erred or exceeded his authority) is beyond this Court's review powers."

Matter of Falzone v New York Cent. Mut. Fire Ins. Co., 15 N.Y.3d at 535.

The Court of Appeals in Matter of Falzone v New York Cent. Mut. Fire Ins. Co., supra, very clearly ruled that the doctrine of collateral estoppel does not bind a subsequent arbitrator to the prior findings made by a prior arbitrator who already ruled on the same issues to be determined by the subsequent arbitrator involving the same parties. Consequently, pursuant to the Court of Appeals ruling in Matter of Falzone v New York Cent. Mut. Fire Ins. Co., supra, I am not bound by the rulings of my fellow arbitrators who may have already determined whether or not the respondent is entitled to receive the additional verification which the applicant has not yet provided (notwithstanding the fact that I respect and appreciate the authority, legal acumen and dedication of my fellow arbitrators).

I have reviewed and considered all other arguments, contentions and evidence from both the applicant and the respondent, and find them to be without merit.

In accordance with the foregoing, the applicant's claim for the above described subject radiological services is dismissed without prejudice, pending the applicant supplying to the respondent with the additional verification specifically set forth in the respondent's March 2, 2020 and April 6, 2020 requests for additional verification.

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

05/01/2021
(Dated)

Paul Israelson

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:
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Electronically Signed

Your name: Paul Israelson
Signed on: 05/01/2021