American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

St. Barnabas Hospital (Applicant)	AAA Case No.	17-21-1224-5228
	Applicant's File No.	N/A
- and -	Insurer's Claim File No.	462G240V
	NAIC No.	25178
State Farm Mutual Automobile Insurance Company (Respondent)		

ARBITRATION AWARD

I, Paul Weidenbaum, 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: IP

1. Hearing(s) held on 04/14/2022, 06/28/2022
   Declared closed by the arbitrator on 06/28/2022

   Greg Henig from Law Offices of Joseph Henig, P.C. participated in person for the Applicant

   Daniel Fuentes from Freiberg, Peck & Kang, LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$11,397.03**, 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
4. Findings, Conclusions, and Basis Therefor

   This arbitration arises out of hospital services provided to the injured person, a 30 year old male, who was involved in a motor vehicle accident which occurred on 9/2/21. Applicant seeks reimbursement in the sum of $11,397.03 for dates of service 9/3/21 and 9/4/21. Respondent denied reimbursement based upon a contention that there was no No-Fault coverage for the claimant as he was riding an e-bike at the time of the collision

with the Respondent's motor vehicle on 9/2/21. In a letter dated 1/3/22 authored by Nicole McErlean, Esq. of the Respondent's counsel's office, Ms. McErlean sets forth at length the defense contentions asserted by Respondent, as follows:

The bill at issue, and Respondent's defense, are set forth in the chart below: No Coverage In New York, an E-scooter would still be considered a "motor vehicle" under the NY VTL 125. "(Every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power.") New York State's Vehicle & Traffic Law Article 48-A indicates that if a limited use motorcycle/scooter has the ability to travel over 20mph, it is required to carry insurance. Pursuant to the VTL, class C motorcycles, which have a maximum speed of 20mph, are not required to carry insurance. An unregistered/uninsured E-scooter would thus be considered an "uninsured motor vehicle." As such, the no-fault regulation 11 NYCRR 653.12(a)(4) would apply. In addition, the operator and/or passenger would not be considered a pedestrian. As such, the claimant would have to look to his own policy (or MVAIC). § 65-3.12 Sources of mandatory personal injury protection benefits. (a) Institution of claims for first-party benefits-priority. (1) Subject to paragraph (9) of this subdivision, an applicant who is an operator or occupant of an insured motor vehicle, or any other person, not occupying another motor vehicle or a motorcycle, who sustains a personal injury arising out of the use or operation in New York State of such motor vehicle, shall institute the claim against the insurer of such motor vehicle. (2) An applicant who is neither an operator nor an occupant of a motor vehicle or a motorcycle, and who sustains a personal injury arising out of the use or operation in New York State of more than one insured motor vehicle or insured motorcycle shall institute the claim against the insurer of any one of such motor vehicles or motorcycles unless the insurers agree among themselves that one of them will accept and pay the claim initially. (3) An applicant who is a named insured or a relative of a named insured, other than the occupant of a motorcycle, and who sustains a personal injury arising out of the use or operation of a motor vehicle outside of New York State, shall institute the claim against the insurer of the named insured or the insurer of the relative. Where there is more than one insurer which would be the source of benefits, the insurers may agree among themselves, if there is a valid basis therefor, that one of them will accept and pay the claim initially. If there is no such agreement, the provisions of subdivisions (b) and (e) of this section shall apply. (4) An applicant who is a named insured or a relative of a named insured, other than the occupant of a motorcycle, and who sustains a personal injury arising out of the use or operation of an uninsured motor vehicle in New York State, shall institute the claim against the insurer of the named insured or the insurer of the relative. Where there is more than one insurer which would be the source of benefits, the insurers may agree among themselves, if there is a valid basis therefor, that one of them will accept and pay the claim initially. If there is no such agreement, the provisions of subdivisions (b) and (e) of this section shall apply. If there is no such insurer and the accident occurs in New York State, then an applicant who is a qualified person as defined in article 52 of the Insurance Law shall institute the claim against the MVAIC.

Enclosed, please find the documents Respondent shall rely on at the arbitration in support of its position that the claimant is not an EIP eligible for coverage under any

policy with Respondent. As such, there is no coverage for this loss. The primary source of recovery is the claimant's household policy as the claimant is not the named insured and not a member of the named insured's household. In addition, Applicant billed in excess of the fee schedule.

EXHIBIT A: Medical Bill via AR-1

EXHIBIT B: Police Report

EXHIBIT C: Application for Benefits

EXHIBIT D: Reservation of Rights

THERE IS NO COVERAGE AS THE VEHICLE CLAIMANT WAS OCCUPYING WAS A MOTORCYCLE

"The obligation remains upon the Claimant, in the first instance, to supply sufficient information to an insurer in an NF-2 form to permit an insurer to determine whether the injured party is actually an insured." Lenox Hill Radiology v. Government Employees Ins. Co., 28 Misc.3d 141(A), 939 N.Y.S.2d 788, 789, 2010 N. Y. Slip Op. 51638(U) (App. Term 1 Dept. Sept. 21, 2010). An insurer may assert at any time that the accident arises from an insurance fraud scheme or that the alleged injury was not caused by an insured incident and is therefore not covered under the policy. See Vital Points Acupuncture, P.C. v. New York Central Mutual Fire Ins. Co., 6 Misc.3d 1031(A), 800 N.Y.S.2d 358 (Table), 2005 N.Y. Slip Op. 50267(U), 2005 WL 515601 (Civ. Ct. Kings Co., Bluth, J., Mar. 3, 2005). See also, A.B. Medical Services PLLC v. State Farm Mutual Automobile Ins. Co., 4 Misc.3d 83, 781 N.Y.S.2d 822 (App. Term 9th & 10th Dists.) 2004. It is Respondent's burden to come forward with proof in admissible form to establish "the fact" or evidentiary foundation for its belief that there is no coverage. See Mount Sinai Hosp. v. Triboro Coach, 263 A.D. 11 (2d Dept. 1999), quoting Central Gen. Hosp. v. Chubb Group of Ins. Co., 90 N.Y.2d at 199. See also Hospital for Joint Diseases v. Hertz Corp., 9 A.D.3d 392 (2d Dept 2004); St. Luke's Roosevelt Hosp. v. Roosevelt Hosp. v. Allstate Ins. Co., 303 A.D.2d 743, 744 (2d Dept. 2003).

Under Insurance Law §5101 et. seq., New York's Comprehensive Motor Vehicle Insurance Reparation Act, no-fault first party benefits are reimbursable to an injured party or his or her assignee for all medically necessary expenses on account of personal injuries arising out of the use or operation of a motor vehicle. The Mandatory Personal Injury Protection Endorsement at 11 NYCRR 65-1.1 defines an EIP as: (a) (b) (c) (d) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle; the named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle, while not occupying a motorcycle; any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle in the State of New York while not occupying another motor vehicle; or any New York State resident who sustains personal injury arising out of the use or operation of the

insured motor vehicle outside of New York while not occupying another motor vehicle. Importantly, Vehicle and Traffic Law § 370 requires rental car companies to provide primary insurance to their renters up to the minimum liability limits provided by the statute. Even if Respondent failed to disclaim, it would not be precluded from asserting that its policy did not contemplate coverage in the first instance. See, Zappone v. Home Ins. Co., 55 N.Y.2d 131 [N.Y. 1982]; Albert J. Schiff Associates, Inc. v. Flack, 51 N.Y.2d 692 [N.Y. 1980]; see also, Fair Price 3 Med. Supply Corp. v. Travelers Indem. Co., 10 N.Y.3d 556 [N.Y. 2008]; cf., General Acci. Ins. Group v. Cirucci, 46 N.Y.2d 862 [N.Y. 1979]. As the Respondent's defense is a coverage defense and it cannot be precluded regardless of a failure to timely deny the claim (see Central Gen. Hosp. v Chubb Group of Ins. Cos., 90 NY2d 195 (1997). Finally, there is nothing in the record that supports coverage with the Respondent. See 11 NYCRR §§ 65-1.1 & 65-2.2; see also, ELRAC, Inc. v. Ward, 96 N.Y.2d 58 (2001); Pinnacle Open MRI, P.C. v. Republic W. Ins. Co., 18 Misc. 3d 626 [N.Y. Dist. Ct. 2008].

THERE IS NO COVERAGE AS THE CLAIMANT WAS NEITHER THE INSURED NOR A MEMBER OF OUR INSURED'S HOUSEHOLD.

"The obligation remains upon the Claimant, in the first instance, to supply sufficient information to an insurer in an NF-2 form to permit an insurer to determine whether the injured party is actually an insured." Lenox Hill Radiology v. Government Employees Ins. Co., 28 Misc.3d 141(A), 939 N.Y.S.2d 788, 789, 2010 N. Y. Slip Op. 51638(U) (App. Term 1 Dept. Sept. 21, 2010). An insurer may assert at any time that the accident arises from an insurance fraud scheme or that the alleged injury was not caused by an insured incident and is therefore not covered under the policy. See Vital Points Acupuncture, P.C. v. New York Central Mutual Fire Ins. Co., 6 Misc.3d 1031(A), 800 N.Y.S.2d 358 (Table), 2005 N.Y. Slip Op. 50267(U), 2005 WL 515601 (Civ. Ct. Kings Co., Bluth, J., Mar. 3, 2005). See also, A.B. Medical Services PLLC v. State Farm Mutual Automobile Ins. Co., 4 Misc.3d 83, 781 N.Y.S.2d 822 (App. Term 9th & 10th Dists.) 2004. It is Respondent's burden to come forward with proof in admissible form to establish "the fact" or evidentiary foundation for its belief that there is no coverage. See Mount Sinai Hosp. v. Triboro Coach, 263 A.D. 11 (2d Dept. 1999), quoting Central Gen. Hosp. v. Chubb Group of Ins. Co., 90 N.Y.2d at 199. See also Hospital for Joint Diseases v. Hertz Corp., 9 A.D.3d 392 (2d Dept 2004); St. Luke's Roosevelt Hosp. v. Roosevelt Hosp. v. Allstate Ins. Co., 303 A.D.2d 743, 744 (2d Dept. 2003).

Under Insurance Law §5101 et. seq., New York's Comprehensive Motor Vehicle Insurance Reparation Act, no-fault first party benefits are reimbursable to an injured party or his or her assignee for all medically necessary expenses on account of personal injuries arising out of the use or operation of a motor vehicle. The Mandatory Personal Injury Protection Endorsement at 11 NYCRR 65-1.1 defines an EIP as: (a) (b) (c) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle; the named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle, while not occupying a motorcycle; any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle in the

State of New York while not occupying another motor vehicle; or 4 (d) any New York State resident who sustains personal injury arising out of the use or operation of the insured motor vehicle outside of New York while not occupying another motor vehicle. Even if Respondent failed to disclaim, it would not be precluded from asserting that its policy did not contemplate coverage in the first instance. See, Zappone v. Home Ins. Co., 55 N.Y.2d 131 [N.Y. 1982]; Albert J. Schiff Associates, Inc. v. Flack, 51 N.Y.2d 692 [N.Y. 1980]; see also, Fair Price Med. Supply Corp. v. Travelers Indem. Co., 10 N.Y.3d 556 [N.Y. 2008]; cf., General Acci. Ins. Group v. Cirucci, 46 N.Y.2d 862 [N.Y. 1979]. As the Respondent's defense is a coverage defense and it cannot be precluded regardless of a failure to timely deny the claim (see Central Gen. Hosp. v Chubb Group of Ins. Cos., 90 NY2d 195 (1997). Finally, there is nothing in the record that supports coverage with the Respondent. See 11 NYCRR §§ 65-1.1 & 65-2.2; see also, ELRAC, Inc. v. Ward, 96 N.Y.2d 58 (2001); Pinnacle Open MRI, P.C. v. Republic W. Ins. Co., 18 Misc. 3d 626 [N.Y. Dist. Ct. 2008].

Briefly, then, the chief contention upon which the Respondent relies for its defense of a lack of No-Fault coverage is that the 'vehicle' which the claimant was riding at the time of the collision between the claimant and the Respondent's insured motor vehicle was akin to a motorcycle, thus it was subject to the motorcycle exclusion. However, apart from the conclusory assertion that it was in the nature of a motorcycle which appears to rest on the description found in the Police Report that the claimant was riding an 'e-bike', the Respodnent offers no evidentiary support for the contention the claimant was operating a motorcycle, thus invoking the motorcycle exclusion.

For tis part, Applicant has cited the Second Department, Appellate Division case of *Englington Medical, P.C. v. Motor Vehicle Accident Indemnification Corporation,* 81 A.D. 3d 223 [2011], which states in relevant part, as follows:

The facts in *Englington Medical, P.C. v. MVAIC* are as follows:

On July 10, 2004, in Brooklyn, then 16 year old Victoria Cruz was riding her 'mini-bike'. At the intersection of Liberty Avenue and Schenck Avenue, Cruz was struck and injured by an unidentified vehicle whose driver disregarded a red light. The unidentified vehicle then fled the scene of the accident. Cruz did not have insurance on her mini-bike to cover her resulting medical care. Following the accident, the plaintiff, Englington Medical, P.C., provided Cruz with medical services. Cruz, by her guardian, assigned Englington her rights to recover, from any responsible insurer or entity, first-party No-Fault benefits reflecting the cost of those medical services.

On August 12, 2004, Cruz, by her guardian, submitted a notice of intention to make a claim against MVAIC. In January 2006, after MVAIC failed to provide requested reimbursements to Englington, as assignee of Cruz's no-fault benefits, Englington commenced this action against MVAIC in the Civil Court, Kings County, to recover the cost of the medical services it rendered to Cruz, plus interest and an attorney's fee.

In its answer, MVAIC asserted various affirmative defenses, including an allegation that Cruz was not a "qualified person" within the meaning of Article 52 of the Insurance Law. In January 2006, MVAIC moved pursuant to CPLR 3211(a) to dismiss the complaint, and, alternatively, pursuant to CPLR 3212 for summary judgment dismissing the complaint. MVAIC argued that (1) the vehicle operated by Cruz was uninsured and owned by her and, thus, she was not a qualified person entitled to recover no-fault benefits or, in the alternative, (2) Cruz was driving a "motorcycle" at the time of the accident, and motorcycle riders are not entitled to recover no-fault benefits. MVAIC further contended that, as such, Englington, as Cruz's assignee, stood in her shoes and, therefore, was similarly not entitled to recover those benefits. MVAIC also argued that it was not required to issue a timely denial of coverage because no coverage existed.

In support of its motion, MVAIC submitted, inter alia, Cruz's notarized notice of intention to file a claim, a copy of the police accident report, and an affidavit from a MVAIC qualifications examiner.

In opposition to the motion, Englington contended that MVAIC did not meet its prima facie burden on its motion for summary judgment as it had not offered proof that Cruz was operating a motorcycle at the time of the accident. Englington argued that, even if Cruz's mini-bike were in fact a motorcycle, it was nonetheless entitled to recover Cruz's no-fault benefits because a mini-bike is not the type of motorcycle that requires insurance. Englington further argued that MVAIC failed to pay or deny its claim within 30 days of receipt.

In an order entered September 11, 2007, the Civil Court denied MVAIC's motion on the ground that MVAIC failed to timely disclaim coverage within 30 days of receiving the claim for no-fault benefits. MVAIC appealed that order to the Appellate Term of the Supreme Court for the Second, Eleventh and Thirteenth Judicial Districts [hereinafter the Appellate Term]. In an order dated October 31, 2008, the Appellate Term affirmed the order of the Civil Court, but on different grounds (21 Misc. 3d 133[A], 2008 N.Y. Slip Op 52179 [U]. In a separate order in a related action entitled Greater Health Through Chiropractic, P.C. v. MVAIC, also dated October 31, 2008, and incorporated in the order appealed from, the Appellate Term stated:

"Although plaintiff's assignor would be ineligible to receive first-party no-fault benefits if her injuries were sustained as a result of her use or operation of a motorcycle, MVAIC failed to submit sufficient evidence establishing that the vehicle she was using or operating at the time of the accident was a motorcycle. As a result, MVAIC's motion for summary judgment was properly denied, albeit on other grounds." (Greater Health Through Chiropractic, P.C. v. MVAIC, 21 Misc. 3d 133[A], N.Y. Slip Op 52179 [U]…

In a decision and order on motion dated March 18, 2009, this court granted MVAIC leave to appeal from the order of the Appellate Term that was entered in the instant action. For the reasons set forth below, we affirm.

On appeal, MVAIC maintains that it was entitled to summary judgment because it established, prima facie, that Cruz was not a "qualified person" entitled to recover no-fault benefits, as the vehicle which she was operating was owned by her and was not insured. Further, MVAIC argues that Englington is not entitled to recover no-fault benefits because Cruz was operating a "motorcycle" at the time of the accident. Finally, MVAIC contends that the ground upon which the Civil Court denied its motion-its alleged failure to timely disclaim-was improper because MVAIC does not have a duty to timely disclaim where there is a lack of coverage in the first instance.

The New York State Legislature created MVAIC to "provide no-fault benefits for qualified persons for basic economic loss arising out of the use and operation in this State of an uninsured motor vehicle" (Insurance Law Section 5201). The Legislature's purpose in establishing MVAIC was to afford injured parties the same protection that they would have had the tortfeasor involved in a motor vehicle accident been covered by insurance (See Morisi v. MVAIC, 19 A.D.2d 727). This court has held that the statutory provisions creating and regulating MVAIC should be liberally construed to serve those ends (See Matter of Dixon v. MVAIC, 56 A.D. 2d 650, 651 [referring to Insurance Law former Section 608]. The statute requiring MVAIC to pay first-party no-fault benefits reads, in pertinent part, that MVAIC "shall…provide for the payment of first-party benefits to a qualified for basic economic loss arising out of the use and operation in this State of an uninsured motor vehicle" (Insurance Law Section 5221 (b)(1).). In this regard, MVAIC provides insurance coverage to in-state victims of hit-and-run accidents where the culpable driver is never identified (See Insurance Law Section 5202 (b)(2)). However, Insurance Law Section 5202 (b)(2) stipulates that only "qualified persons" are entitled to MVAIC no-fault coverage (See Matter of MVAIC v. Aetna Cas. Sur. Co., 89 N.Y. 2d 214,221).

As relevant to the instant case, the term "qualified person" means "a resident of this State, other than an insured or the owner of an uninsured motor vehicle and his [or her] spouse when a passenger in such vehicle, or his [or her] legal representative" [Insurance Law Section 5202 (b)(1). Thus, a person is not a qualified person if he or she is (1) an insured person, since that person would have an insurer upon which he or she could make a claim for first-party no-fault benefits, or (2) an owner of an uninsured motor vehicle, since Insurance Law Article 52 is not intended to provide relief to those who fail to obtain insurance. The term "uninsured motor vehicle" is defined by reference to the term "insured motor vehicle", which means a motor vehicle as to which there is maintained proof of financial security as defined in Vehicle and Traffic Law Section 311(Insurance Law Section 5202 (c)). An "uninsured motor vehicle" is a motor vehicle which is not an "insured motor vehicle". Generally, motorcycle riders, whether operators or passengers, are not entitled to first-party no-fault benefits from MVAIC (See Insurance Law Section 5103 (a)(1) and (a)(2); see also Quinones v. MVAIC, 6 Misc. 3d 1007[A], 2004 N.Y. Slip Op 51729[U]; 2-27 New Appleman New York Insurance Law Section 27.04 [3] [Second Edition] ["Occupants of a motorcycle are excluded from coverage and are never entitled to no-fault benefits"]. A motorcycle is defined in the Insurance Law as "any

motorcycle, as defined in Vehicle and Traffic Law Section 123, and which is required to carry financial security pursuant to article six, eight, or forty-eight-A of the vehicle and traffic law" (Insurance Law Section 5102 (m). The Vehicle and Traffic Law defines a motorcycle as a "motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor" (Vehicle and Traffic Law Section 123). Pursuant to the Vehicle and Traffic Law, Class C motorcycles, which have a maximum speed of 20 miles per hour, are not required to carry insurance (See Vehicle and Traffic Law Sections 121-b, 2265). Construing these provisions together, the operator of, or passenger on a Class C motorcycle is entitled to no-fault benefits in the absence of any other statutory preclusion of benefits (see Tyler v. Traveler's Ins. Co., 110 Misc. 2d 471, 473 [operators of and passengers on "Class C mopeds, minibikes and go-carts are entitled to first-party benefits under no-fault")…Thus, not all motorcycles are required to carry insurance.

On its motion for summary judgment, MVAIC had the burden of establishing, by proof in admissible form, its prima facie entitlement to judgment as a matter of law (see CPLR Section 3212(b); Zuckerman v. City of New York, 49 N.Y. 2d 557, 561). To meet its burden, MVAIC was required to establish, prima facie, that Cruz was not a "qualified person" entitled to no-fault benefits either because she owned an uninsured vehicle despite being statutorily required to carry insurance, or because, at the time of the accident, she was operating a "motorcycle" within the meaning of Insurance Law Section 5102 (m). Here, MVAIC failed to meet its burden. The only admissible evidence proffered by MVAIC as to the type of vehicle that Cruz was operating when the accident occurred was a form completed on her behalf, setting forth her notice of intention to make a claim for no-fault benefits…The claim form was signed by Priscilla Garcia-Cruz's mother and guardian-and indicated that Cruz was the owner and operator of a vehicle designated as vehicle #1, which was described as a 2004 Mini-Bike for which no insurance existed. Critically, the make and model of the vehicle designated as vehicle #2 is listed as "unknown". Clearly, the term "mini-bike" refers to some type of motorized, tow or three-wheeled vehicle…Nevertheless, the use of the word "Mini-Bike" in the claim form, standing alone, is insufficient to establish whether Cruz's vehicle was or was not a Class C motorcycle with a maximum speed of 20 miles per hour, because the critical factor in determining a motorcycle's class is its maximum speed. Thus, MVAIC failed to establish that the vehicle that Cruz was operating was either an uninsured motor vehicle for which she was required to carry insurance, or a motorcycle of a class which required her to carry insurance. Since MVAIC failed to meet its prima facie burden on its motion for summary judgment, the burden never shifted to Englington to submit, in proper admissible form, evidence sufficient to raise a triable issue of fact, despite MVAIC's contention that Englington had the burden of proving that Cruz's vehicle was not required to carry insurance, and failed to meet that alleged burden…MVAIC misconstrues the burden applicable to the parties, which is a fundamental aspect of a motion for summary judgment. As the movant, MVAIC must first come forward with admissible evidence demonstrating, prima facie, the absence of material issues of fact and that, on those facts, it is or would be entitled to judgment as a matter of law…

The police accident report submitted by MVAIC in the case at bar described the subject accident as a hit-and-run, and indicated that the police officer at the scene issued three traffic summonses to Cruz for violations of Vehicle and Traffic Law Section 509 (driving a motor vehicle without a license); Section 401 (1)(a) 9driving an unregistered vehicle), and Section 319 (driving without insurance). These are simply allegations, not proof that Cruz actually violated those provisions of the Vehicle and Traffic Law, or that her vehicle was required to be registered or insured. Accordingly, the evidence that these summonses were issued was insufficient to establish, as a matter of law, that the vehicle operated by Cruz was required to be insured pursuant to the Insurance Law…

Moreover, Englington, as the opponent of MVAIC's motion for summary judgment, did not have a burden, in the first instance, of establishing that Cruz was a "qualified person" or that it was entitled to no-fault benefits as Cruz's assignee…

…the order of the Appellate Term, which is the order under review here, merely denied MVAIC's motion for summary judgment and did not "create" coverage. Moreover, in light of our determination, this court need not address this contention because there can be no coverage unless and until it is determined at trial that Cruz is a qualified person. Accordingly, the order dated October 31, 2008, is affirmed.

Applying the reasoning in the Englington Medical, P.C. v. MVAIC matter, set forth at length above, to the facts and circumstances presented in the instant matter, it is clear to this arbitrator that MVAIC has failed to establish by a prepoderance of the credible evidence submitted herein that the injured person is subject to the motorcycle exclusion. Accordingyl, it is my determination that the Respondent's defense cannot be sustained, and reimbursement as requested is due and owing.

This decision is in full disposition of all claims for reimbursement of No-Fault benefits presently pending before this arbitrator.

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 applicant is AWARDED the following:

A.

Medical		**From/To**	**Claim Amount**	**Status**
	St. Barnabas Hospital	**09/03/21 - 09/04/21**	**$11,397.03**	**Awarded: $11,397.03**
Total			**$11,397.03**	**Awarded: $11,397.03**

B. The insurer shall also compute and pay the applicant interest set forth below. 10/27/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from the filing date for this case, 10/27/21, until payment has been made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

After calculating the sum total of the first party benefits awarded in this arbitration plus the interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20% of that sum total, subject to a minimum of $60 and a maximum of $850. see 11 NYCRR Section 65-4.6(c) and (e). However, if the benefits and interest awarded thereon are less than or equal to Respondent's written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRr Section 65-4.6(b). For cases filed after February 4, 2015 there is no minimum fee and a maximum fee of $1,360.00.

D. The respondent shall also pay the applicant forty dollars ($40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

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

06/28/2022
(Dated)

Paul Weidenbaum

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:
99ab3065e88f26b49487650251416d41

Electronically Signed

Your name: Paul Weidenbaum
Signed on: 06/28/2022