

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Recovery Equipment & Supplies,
LLC
(Applicant)

- and -

Enterprise Rent A Car
(Respondent)

AAA Case No.	17-21-1206-7787
Applicant's File No.	00085165
Insurer's Claim File No.	16620125
NAIC No.	Self-Insured

ARBITRATION AWARD

I, Cathryn Ann Cohen, 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 06/08/2022
Declared closed by the arbitrator on 06/08/2022

Justin Rosenbaum, Esq. from Drachman Katz, LLP participated for the Applicant

Jack Vobis, Esq. from McCormack, Mattei & Holler participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$708.65**, 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

Applicant seeks \$708.65 reimbursement of charges for a lumbosacral orthosis (LSO) provided on November 27, 2020 to Assignor a 32-year-old male driver involved in a motor vehicle accident on November 3, 2020.

Respondent denied the claim based on failure to submit written notice of the accident within 30 days after the date of the accident without providing reasonable justification for such late notice of accident.

4. Findings, Conclusions, and Basis Therefor

Applicant seeks \$708.65 reimbursement of charges for a lumbosacral orthosis (LSO) provided on November 27, 2020 to Assignor a 32-year-old male driver involved in a motor vehicle accident on November 3, 2020.

By global denial dated January 5, 2021, issued to Assignor c/o its named insured Letisha Ravelo, Respondent denied reimbursement stating, pursuant to NYCRR 65-2.4(b), written notice of the claim was not submitted to the self-insurer within 30 days of the accident, therefore, the claim is denied and advising that such late notice will be excused should the applicant or the assignee provide reasonable justification for the failure to give timely notice.

By timely specific denial dated January 20, 2021, issued to Applicant, for the bill received January 12, 2021, Respondent denied reimbursement raising the same defense set forth above based on late notice of the accident.

I have reviewed the documents contained in the ADR Center record of the case maintained by the AAA as of the date of the hearing.

The record reveals that Respondent located at P.O. Box 5000 Manhasset, NY 11030 sent a letter to its named insured dated November 12, 2020 acknowledging that its insured may have sustained injuries from an accident on November 3, 2020, and enclosing a blank NF-2 form indicating date of loss 11/03/20 and claim number 16620125 and requesting that it be filled out and returned. Respondent sent a second letter, with blank NF-2 dated November 17, 2020 to its insured requesting completion and return of the NF-2. Respondent submits the affidavit of Thomas Figurski, employed by Respondent as a Technical Specialist for Claims, averring, in pertinent part, that claim number 16620125 was assigned to claims arising from the motor vehicle accident involving Assignor from the accident alleged to have occurred on November 3, 2020; that the claim number is referenced on all correspondence generated and mailed by Respondent; and that Respondent did not receive an application for no-fault benefits (NF-2).

Applicant submits a letter dated November 18, 2020, from the attorney for Assignor addressed to, "Damage Recovery, P.O. Box 801988, Kansas City MO 64180 Claim No. 16620125, giving notice of the accident, requesting confirmation of coverage and enclosing a completed NF-2, signed November 18, 2020, along with the attorney's affirmation of mailing of these items to Respondent at Damage Recovery P.O. Box 801988 Kansas City, MO 64180 on November 18, 2020.

Applicant also submits a letter from the attorney to Respondent addressed to ELCO Insurance Company P.O. Box 801988 Kansas City, MO 64180 claim number 16620125, dated December 16, 2021, with proof of mailing, more than a year later, acknowledging that Respondent has denied the claim due to late notice of the accident but claiming the NF-2 was submitted to Respondent on November 18, 2020 and requesting the providers be paid.

There is no evidence that written notice of the accident in the form of the completed NF-2 or any correspondence from the lawyer or the insured or anybody was mailed to Respondent at its proper address reflected on the denial as well as on its correspondence sent to its insured, which is ELCO CLAIMS Services P.O. Box 5000, Manhasset, NY 11030. Moreover, there is no evidence that written proof providing reasonable justification for the failure to submit timely notice of the accident was mailed to Respondent at its proper address, namely, ELCO CLAIMS Services P.O. Box 5000, Manhasset, NY 11030. As such, Respondent's denial for lack of coverage based on the failure to provide Respondent with written notice of the accident within 30 days after the date of the accident without providing reasonable justification for such late notice of accident is supported by substantial evidence. The denial based on the 30-day rule is sustained.

Accordingly, Applicant's request for reimbursement is denied for lack of coverage.

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 New York

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

06/30/2022

(Dated)

Cathryn Ann Cohen

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:
b1b32bbdd91e56a292e398910eb35458

Electronically Signed

Your name: Cathryn Ann Cohen
Signed on: 06/30/2022