

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ortho City Services Inc
(Applicant)

- and -

Safe Auto Insurance Company
(Respondent)

AAA Case No. 17-21-1214-7605

Applicant's File No. 102168

Insurer's Claim File No. 60004000489

NAIC No.

ARBITRATION AWARD

I, Josh Youngman, 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 08/26/2022
Declared closed by the arbitrator on 08/26/2022

Aleksey Selipanov, Esq. from The Law Offices of John Gallagher, PLLC participated in person for the Applicant

A representative from Safe Auto Insurance Company failed to appear for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,021.74**, 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 evidence shows this arbitration to recover allegedly overdue PIP benefits involves a 23-year old male (C.B.) who sustained injuries in a motor vehicle accident that occurred on December 18, 2020. The evidence also shows following the accident the injured party (IP) sought treatment and received a CPM for his shoulder and a cold water circulation system from April 3, 2021 - April 16, 2021. The applicant's submitted bills seek reimbursement in the amount of \$2,021.74 for the rental of the devices.

The respondent, however, argues that this arbitration cannot proceed as New York law does not apply and this dispute must be filed in the appropriate forum.

The issues presented whether the respondent has presented sufficient evidence to show this dispute was not properly filed in New York, and if not, whether the applicant is entitled to reimbursement for the disputed claim.

4. Findings, Conclusions, and Basis Therefor

This Award is rendered after diligent review and consideration of the parties' evidence submitted to and maintained by the American Arbitration Association's electronic case filing system, "MODRIA," as well as the parties' oral arguments and any testimony presented at this matter's hearing. Evidence that was submitted after this matter's "closing" and without this Arbitrator's authorization was not considered.

In interpreting contractual insurance matters, the Court of Appeals held any conflict between New York and New Jersey law concerning an insured's right to receive benefits under a New Jersey policy should be governed by New Jersey law. Matter of Allstate Ins. Co. v. Stolarz, 81 N.Y.2d 219 (1993). In Stolarz, the Court applied the "center of gravity" and "grouping of contacts" approach to questions of choice of law and held that where the policy was sold in New Jersey to a New Jersey insured, and the uninsured motorist clauses were written to conform to New Jersey statutes, New York had no governmental interest in applying its law to the dispute which was overwhelmingly centered in New Jersey. See also Flatbush Chiropractic, P.C. v. Geico Ins. Co., 2013 NY Slip Op 51104(U) (App. Term 2d Dept. 2013) [Delaware law applies to Delaware accident and Delaware policy].

Here the respondent contends they do not conduct business in New York and are not authorized to conduct business in New York. The respondent submits a statement from their Claims Counsel that states:

Safe Auto does not have a Power of Attorney on file in New York. Safe Auto does not control nor is it controlled by any New York business. Safe Auto is not registered with the New York State Department of Financial Services. Safe Auto is not an authorized insurer and does not hold a Certificate of Authority to transact insurance in the State of New York. Safe Auto does not have any insurance agents appointed to act on its behalf in New York. Safe Auto has not filed a statement with the Superintendent of Insurance agreeing that its automobile insurance policies sold in any other state or Canadian province will be deemed to satisfy the financial security requirements of Article VI or VIII of the New York Vehicle and Traffic Law.

Accordingly, Safe Auto is not bound by any decisions rendered within the forum and requests that this matter be removed from your docket and any applicable dismissal be forwarded to our office.

Further, the respondent alleges that it lacks sufficient contacts with the State of New York to assert personal or long-arm jurisdiction over it and that the evidence proves that the respondent is a foreign corporation that does no business in New York. Thus, the respondent alleges they are exempt from the mandates of CPLR 5107, which states:

(a) Every insurer authorized to transact or transacting business in this state, or controlling or controlled by or under common control by or with such an insurer, which sells a policy providing motor vehicle liability insurance coverage or any similar coverage in any state or Canadian province, shall include in each such policy coverage to satisfy the financial security requirements of article six or eight of the vehicle and traffic law and to provide for the payment of first party benefits pursuant to [subsection \(a\) of section five thousand one hundred three](#) of this article when a motor vehicle covered by such policy is used or operated in this state.

(b) Every policy described in subsection (a) hereof shall be construed as having the coverage required by [subsection \(a\) of section five thousand one hundred three](#) of this article.

I agree with the respondent and find that the respondent is not subject to jurisdiction in this forum.

Further, I note numerous arbitrations have come to the same determination (see AAA Case No.'s: 17-21-1218-6721 (Arb. Alise Schor), 17-20-1167-9362 (Arb. Ellen Weisman), 17-20-1188-0974 (Arb. Kenneth Rybacki), 17-20-11783-8990 (Arb. Kihyun Kim), 17-19-1137-4610 (Arb. Dinsmore Campbell).

In Feida Medical & Acupuncture PC v. Safe Auto Ins. Co., AAA Case No.: 17-20-1173-8990 (2022), Arb. Kihyun Kim stated:

While the record includes the bills and supporting medical reports, as well as the letters from Respondent discussed above, neither party uploaded any affidavits or other supporting evidence that typically would be presented to address whether Respondent is the appropriate carrier for coverage of the claims herein, and/or whether Respondent is appropriately subject to jurisdiction herein.

I note that some other arbitrators have been presented with the same jurisdictional issue concerning Respondent, with similar limited evidence being presented. In Eastern Medical Practice PC and Safe Auto Insurance Company, AAA Case No. 17-20-1167-9362 (December 14, 2020), Arbitrator Ellen Weisman dismissed the matter without prejudice, stating:

I find that the good faith statement of Mr. Mahoney, an attorney, is sufficient to justify dismissal of this matter without prejudice. I am convinced that Respondent neither has contacts nor conducts business in New York State, and that is not licensed or authorized to issue insurance policies in New York State. Therefore, it cannot be subject to its jurisdiction for the purposes of arbitrating this dispute.

This finding is supported by the holding of In the Matter of Eagle Insurance Company v. Gutierrez-Guzman, American Independent Insurance Company, NY Slip Op. 06524 (2d Dept., 8/15/05), in which the Court stated the following: "We agree ... that there is no basis upon which the Supreme Court could properly exercise personal jurisdiction over it ... as (the insurer) produced sufficient un-objected to proof to

demonstrate that it had insufficient contacts with New York State to permit the court to exercise personal jurisdiction over it, even under CPLR 301 and 301, the so-called long-arm statutes. (Citations omitted.) Contrary to (plaintiff's) contention, the mere unilateral act of ... (the) alleged insured, in driving into New York State, without more, was insufficient to permit the court to exercise long-arm jurisdiction... under the CPLR." As a result, I find that this matter must be dismissed without prejudice as Applicant has recourse to file this claim in the appropriate jurisdiction.

Other arbitrators have agreed and found similar statements from Mr. Mahoney, an attorney and officer of the court, to be, at the very least, sufficient to establish, prima facie, that it has no presence and/or insufficient contacts in New York to permit the exercise of personal jurisdiction over Respondent, and absent the submission of proof to the contrary, such arbitrators have dismissed their proceedings without prejudice for the claims to be brought in the proper forum. See *Bisoma Pharmacy Inc. and Safe Auto Insurance Company*, AAA Case No. 17-20-1188-0974 (Arb. Kenneth Rybacki, February 11, 2022); see also, *Macintosh Medical, P.C. and Safe Auto Insurance Company*, AAA Case No. 17-20-1167-9607 (Arb. Alise Schor, January 1, 2022).

On the other hand, other arbitrators have, under similar circumstances, ruled in favor of the Applicant finding insufficient evidence to support Respondent's lack of jurisdiction and other defenses. See *Supportive Products, Corp. and Safe Auto Insurance Company*, AAA Case No. 17-20-1171-2390 (Arb. Michael Resko, September 13, 2021); *New York Pain Management Associates INC and Safe Auto Insurance Company*, AAA Case No. 17-19-1133-9223 (Arb. Linda Filosa, September 13, 2021).

Pursuant to 11 NYCRR65-4.5(o)(1), the arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. On the limited evidence presented, I find that this forum has no jurisdiction over Respondents in this proceeding, and [this] matter should be dismissed without prejudice.

I also note that, while Applicant apparently submitted some claim and/or documentation, which lead to Respondent's "general denial" letter, dated January 2, 2019, to Applicant, Applicant has not submitted any proof of mailing or any other specific evidence to establish its prima facie case for the bills at issue in this proceeding. Thus, even if jurisdiction of over Respondent was found to be appropriate in this proceeding, an award in favor of Applicant would still not be warranted herein.

Conclusion

For the reasons set forth herein, Applicant's claims are dismissed without prejudice. 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 specifically raised at the time of the hearing.

I agree with Arb. Kim's well-reasoned analysis and find the respondent's evidence to be sufficient to show this matter should be dismissed without prejudice. Further, the applicant fails to submit any evidence to rebut the respondent's position or to show why this dispute should be resolved in this forum.

Thus, this matter is dismissed without prejudice.

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

09/05/2022
(Dated)

Josh Youngman

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:
16cb3e40ab8331d5e376b360a392564a

Electronically Signed

Your name: Josh Youngman
Signed on: 09/05/2022