American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Prompt Medical Spine Care, PLLC (Applicant)	AAA Case No.	17-22-1252-9165
	Applicant's File No.	2793415
- and -	Insurer's Claim File No.	214095772
	NAIC No.	16322
Progressive Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Eva Gaspari, 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: E.I.P and/or T.B.

1. Hearing(s) held on 04/27/2023
   Declared closed by the arbitrator on 04/27/2023

   Neda Melamed from Israel Purdy, LLP participated virtually for the Applicant

   Allison L. Silverstein from Law Offices of Perry & Frankson participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$745.02**, 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 dispute arises from the underlying automobile accident which occurred on December 4, 2021, in which the Assignor, (T.B.), a female born in 1977, who was involved a driver. At issue in this arbitration are claims totaling $745.02 for office evaluations on January 20, 2022 and March 7, 2022. Respondent maintains that there is no jurisdiction over it in this forum, as this matter involves a Connecticut policy of insurance, the Vehicle was Registered in Connecticut to a Connecticut policy Holder, and that the accident occurred in Connecticut, reasoning that by virtue of the policy, that the proper forum for this dispute is Connecticut. The issue presented at the hearing is

whether this forum lacks jurisdiction over this insurer and whether it is the appropriate forum for this dispute.

4. Findings, Conclusions, and Basis Therefor

This matter was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, as well as upon the oral arguments of the parties at the time of the hearing. All documents contained in the ADR folder are hereby incorporated into this hearing and in reaching my findings I have reviewed all relevant exhibits contained in the ADR Center. Only submissions which were uploaded into the ADR Center at the time of the hearing were considered in making the instant determination. All matters raised on oral argument at the time of the hearing have been addressed herein. 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.

The first issue presented is whether there is jurisdiction over the Respondent in this forum.

LEGAL ARGUMENTS

To that extent, the Respondent argues that a New York forum is not an appropriate one for determining the defense of material misrepresentation, reasoning that this defense should be subject to adjudications under the laws of Connecticut. In its post-hearing brief, the Respondent maintains the following position:

> This case involves a vehicle insured under a Progressive Connecticut auto policy. The vehicle was involved in the subject accident which occurred in Connecticut. Claimant [D.B.] is a New York resident. Respondent maintains that there is no jurisdiction for this case to be heard in New York. Applicant has the burden of establishing that the claimant is a covered person covered under New York law. See Lenox Hill Radiology v. Government Employees Ins. Co., 28 Misc.3d 14(A), 2010 NY Slip Op 51638(U) (App. Term 1st Dept. Sept. 21, 2010).
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> A "covered person" is defined in Insurance Law § 5102(j) as: [A]ny pedestrian injured through the use or operation of, or any owner, operator or occupant of, a motor vehicle which has in effect the financial security required by article six or eight of the vehicle and traffic law or which is referred to in subdivision two of section three hundred twenty-one of

such law; or any other person entitled to first party benefits. New York law provides first-party no-fault benefits to a New York resident involved in an out-of-state accident if the person is (1) a named insured on a New York auto policy, (2) a household member of a Named Insured on a New York auto policy or (3) injured by a vehicle insured under a New York policy. *See Insurance Law § 5103(a)*.

Insurance carriers authorized to transact or transacting business within New York are also required to provide first-party benefits when an auto insured under an out-of-state policy is operated in New York. Claimant does not fall under any of the categories providing first-party benefits under New York.

Claimant was injured in an auto accident that occurred in Connecticut while a passenger in a Connecticut insured vehicle. Therefore, New York law does not apply and AAA does not have jurisdiction over this matter. Respondent relies on the attached underwriting affidavit confirming that there is no Progressive policy that would provide no-fault benefits to [D.B.] for the 12/04/2021 Connecticut accident. Respondent highlights that the applicable Connecticut auto policy does not provide nofault benefits. The policy does provide Med Pay benefits. However, benefits were disclaimed due to a material misrepresentation made at the policy inception. Respondent maintains that AAA does not have jurisdiction to rule on a material misrepresentation investigation and denial with regard to a Connecticut policy. The vehicle that Claimant was occupying when the accident occurred in Connecticut was insured under a Connecticut policy. Progressive is not liable for no-fault benefits under the Connecticut policy or New York law. Therefore, AAA does not have jurisdiction over this claim. Additionally, the claim involves a material misrepresentation investigation and denial on a Connecticut policy and requires application of Connecticut law. Based on the above, Respondent Progressive respectfully requests that the claim be dismissed due to lack of jurisdiction.

In response, the Applicant's post-hearing brief sets forth the following position:

Applicant argues Jurisdiction is proper within the State of New York, and specifically herein, as assignor, is a New York resident and where Applicant/Provider, is a New York registered No-Fault medical provider, with a main location and providing treatment to the assignor herein within the State of New York. Furthermore, carrier is registered, designated and does in fact transact and complete business within the State of New York, and as such jurisdiction is proper and should be extended to Applicant and assignor herein.

Respondent argues that Jurisdiction is improper in this venue, as the host-vehicle assignor[D.B.], was a passenger in was insured under a Progressive Connecticut auto policy and that the accident occurred in Connecticut, implying Connecticut would be the appropriate venue

herein. Here, Respondent/Carrier, Progressive Insurance Company, does business in the State of New York, is Registered to do business within the State of New York, further, their insured motor vehicle injured a New York resident, whom sought treatment with a New York No-Fault provider, as such New York is the proper venue herein, and thus the jurisdiction of the American Arbitration Association herein, should be confirmed to be proper herein. Additionally, Respondent, PROGRESSIVE DIRECT INSURANCE COMPANY, the underwriter of the policy at issue herein, is registered to and does transact business within the state of New York. Finally, herein Respondent, per denial, is applying and utilizing NYS no-Fault Fee Schedule to calculate the proper reimbursement of the within claim, and where Respondent never objected to this forum, prior to hearing, where post hearing submission is the first moment any proof to support this argument was present, as such the venue herein is not only the proper venue and but where this claim should be adjudicated on the merits.

Regardless of the presence or lack of any contractual agreement to arbitrate, New York statutes and regulations oblige PROGRESSIVE INSURANCE COMPANY to afford an applicant for New York No-Fault benefits an option to submit any dispute to an arbitration forum under the supervision and oversight of the New York State superintendent. This requirement does not derive from or depend upon any contractual agreement. However, specifically here, the claim has multiple connections to the State of New York, herein will provide statutory proof and caselaw that supports applicants' contention, and, specifically; 1) Assignor is a NY RESIDENT; 2) Assignee, Provider, is located in the State of New York, and treatment was specifically provided within the state, specifically within Nassau County, New York; 3) Respondent, per EOB is utilizing and attempting to calculate proper reimbursement on the submitted claim by applying the NYS NO-FAULT FEE SCHEDULE, See EOB attached hereto.

Where Applicant is billing NYS NO-Fault CPT codes, at a rate provided in the NYS No-Fault Fee Schedule, and where Respondent is utilizing same to calculate reimbursement, this venue is accordingly not only proper, but superior to other venues as NY No-Fault Arbitrators are best suited to evaluate NY law, Statute and Regulations of the State of New York, and further; 4) Respondent never objected to this venue, specifically Respondent within twenty (20) Days of Applicant's AR-1 arbitration filing, may decline to accept Applicant's AR-1 filing and/or request the matter be withdrawn as improper venue, however this never occurred, and the hearing was the first time Respondent raised this argument in regards to jurisdiction, and further; 5) The proof submitted by Respondent in support of the jurisdiction argument is an affidavit from a "litigation underwriter", Janeen Copic, it is unclear what her duties are, unclear how she received the information included within the affidavit, nor provides the basis of her knowledge, she does not provide any documents she reviewed nor any other information to support the facts

asserted within her affidavit. As such Applicant continues to assert the within forum is not only proper, but the superior forum in comparison with any others, to adjudicate this matter on the merits.

The applicable statutes and regulations New York law imposes upon vehicles within its borders are as follows: Ins Law 5106(b) (b) Every insurer shall provide a claimant with the option of submitting any dispute involving the insurer's liability to pay first party benefits, or additional first party benefits, the amount thereof or any other matter which may arise pursuant to subsection (a) of this section to arbitration pursuant to simplified procedures to be promulgated or approved by the superintendent. Ins Law 5107(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. 11 NYCRR 65-4(a)(3) All optional arbitrations pursuant to section 5106(b) of the Insurance Law will be administered by an organization designated by the superintendent. 11 NYCRR 65-4(a)(3)(5) Oversight. The superintendent shall oversee the operation procedures of the designated organization with respect to the administration of the optional arbitration process. Such oversight shall include, but not be limited to, access to all systems, databases, and records related to the optional arbitration process. In addition, the designated organization shall make reports to the superintendent in whatever form the superintendent shall prescribe.

The Court of Appeals has long-established that "the obligation to arbitrate is not found in the policy but is imposed upon that agreement by article XVIII1 of the Insurance Law…not only upon New York policies but also upon policies written for nonresidents when their automobiles are operated in this State and the insurer is authorized to transact business here (Insurance Law, § 676)" and "the article grants every claimant the option of submitting to arbitration 'any dispute involving the insurer's liability to pay first party benefits.'" Ohio Cas. Group v. Avellini 54 AD2d 632 [App Div., 1st Dep., 1976] (emphasis added, affirmed in Ohio Casualty Group v. Avellini, 43 N.Y.2d 701 [Ct. of Appeals of NY, 1977.] The ruling was upheld in Matter of National Grange Mut. Ins. Co. v. Louie, 39 A.D.3d 293 [App. Div., 1st Dep., 2007.]

Applicant submitted claims under New York No Fault CPT Codes, billing the rates under the NY No-Fault Fee Schedule. Respondent, PROGRESSIVE INSURANCE COMPANY issued denials through the Explanation of Benefit forms. Respondent relies and uses the NYS FEE SCHEDULE to compute proper reimbursement on this claim. The use of

the substantive law and fee schedule confirm further that NY is the proper venue and has jurisdiction herein. Specifically, Respondent NF-10 indicated, "Fee Schedule: Pursuant to NYS Insurance law 5108, no provider of health services may demand or request any payment exceeding the amount permissible under the Workers Compensation Fee Schedule or any other schedules deemed applicable to No-Fault by the Superintendent of the Department of Insurance. Any billed charges exceeding the allowable scheduled charges for No-Fault service are not compensable and are denied." (See, Denial herein) Here the use of New York's Statutory law and NYS Fee schedule, confirms NY is the appropriate venue herein. NY Arbitrators are fully versed in NY Fee Schedule, further to apply NYS Fee Schedule to a claim for a NY resident, provided by NY - No Fault provider, further confirms the connection to this state and that this venue is proper herein. As such Applicant confers that this is the appropriate venue, and NY definitely has a larger connection to this state and is in the best position to adjudicate this claim versus the state of CT or any other jurisdiction.

Herein, PROGRESSIVE INSURANCE COMPANY is an insurer that writes policies in New York. Respondent, PROGRESSIVE DIRECT INSURANCE COMPANY, is authorized to and does transact business within the state of New York. (See, Exhibit B: showing NYS DOH Registered Insurance companies, listing Respondent therein. Further, he vehicle Respondent insured injured a New York resident whom received New York No-Fault benefits under NY Law, under this policy. Moreover, upon processing the claim, Respondent, PROGRESSIVE INSURANCE COMPANY processed the claim under No-fault New York law, applies NYS WCB Fee Schedule to compute proper fee schedule reimbursement and as such NY is the proper venue herein.

PROGRESSIVE INSURANCE COMPANY misuses the term "jurisdiction" by asserting that AAA has no jurisdiction over the matter. The Appellate Division clarified that "while personal jurisdiction is required for the exercise of the state's judicial power over a party, arbitration is a form of dispute resolution almost wholly independent of the court system." American Ind. Ins. Co. v Art of Healing Medicine, P.C ., 104 A.D.3d 761 [App. Div., 2nd Dep., 2013.] Thus, "the issue is not whether New York courts have jurisdiction over AIIC2, but whether the arbitrator has authority under the terms of the insurance contract to award no-fault benefits to the appellants." Id. The Court cited American Ind. Ins. v. Gerard Ave. Med. P.C., 12 Misc. 3d 1176(A), holding that under the circumstances of that case an "arbitrator has authority under the terms of the insurance contract to award no-fault benefits to the [applicant.]" Id. Obtaining "personal jurisdiction," as correctly defined, is only relevant post-arbitration where it "must first be obtained over a party before judgment may be entered upon an arbitration award." Id. The Appellate Division concluded that despite the Court finding that New York State might not have personal jurisdiction over the insurer, that does not necessarily preclude the right of an applicant to arbitrate the claims

pursuant to the New York No-Fault statute. Insurance Law § 5106 (b) mandates every insurer to provide a claimant with the option to arbitrate disputes concerning first-party benefits. The Second Department distinguished between applications for arbitration of uninsured or supplemental underinsured motorist benefits and applications for first-party benefits. American Independent Ins. Co. v. Nova Acupuncture, P.C., 137 A.D.3d 1270 [App. Div., 2nd Dep., 2016.] Regarding the latter, the court reiterated their earlier position that "'[a] party will not be compelled to arbitrate absent evidence affirmatively establishing that the parties expressly agreed to arbitrate their disputes'" however, regarding the former, "because Insurance Law § 5106 (b) mandates every insurer to provide a claimant with the option to arbitrate disputes concerning first-party benefits... indeed, the obligation to arbitrate is not found in the policies but is imposed upon the policies by the No-Fault Law.'" Id. (Quoting Ohio Cas. Group v. Avellini (54 AD2d 632.) Thus, insurers licensed to conduct business in New York, whose "policies may be deemed to satisfy New York's financial security requirements and to provide for the payment of first-party benefits,[] necessarily includes affording claimants the option to arbitrate disputes involving first-party benefits (see Insurance Law §5106 [b])." American Independent Ins. Co. v. Nova Acupuncture, P.C., 137 A.D.3d 1270 [App. Div., 2nd Dep., 2016.]

The Bronx Supreme Court provided a detailed analysis of why New York's arbitration forum is imposed upon insurers of vehicles that operate within New York State borders: Since even a non-resident owner of a vehicle travelling in New York must comply with New York law, making the owner liable for the vehicle's negligent operation, VTL § 388(1) and (3), a non-resident owner's failure to maintain the required financial security subjects the owner to penalties… If the vehicle involved here was owned by a New York resident or registered in New York, so that petitioner in fact transacted business here, requiring petitioner's policy covering the vehicle to meet VTL § 311(4)(a)'s requirements, NY Ins. Law § 5107, or petitioner's policy otherwise met them, petitioner would be an "insurer" subject to New York's claims settlement procedures. NY Ins. Law §§ 5102(g), 5106(b). Those procedures in turn require insurers to provide the option of arbitration by the New York No-Fault Arbitration Panel for claimants seeking benefits. Id.; Hospital for Joint Diseases v. Allstate Ins. Co., 5 A.D.3d 441, 442, 773 N.Y.S.2d 427 (2d Dep't 2004)… If the vehicle was registered in a state other than New York, then to be an "insurer" subject to New York's arbitration procedures, NY Ins. Law §§ 5102(g), 5106(b); 11 N.Y.C.R.R. § 65.18(a)(1), petitioner, "an unauthorized insurer" in New York, but "authorized to transact business in another state," must have filed a consent to service and a declaration that petitioner's policy be considered in compliance with VTL § 311. VTL § 311(4)(c). See VTL § 344(a); 11 N.Y.C.R.R. § 65.18(c);

Marshall v. Nationwide Mut. Ins. Co., 166 A.D.2d at 853; Property Cas American Ind. Ins. v. Gerard Ave. Med. P.C., 12 Misc. 3d 1176(A) [Sup. Ct., Bronx County, 2005] (emphasis added.)

The settled and binding law, imposed on PROGRESSIVE INSURANCE COMPANY via their operation of business within the State and through their insured vehicle injuring a NYS Resident, receiving treatment by a NY No-Fault provider, within the state of New York, permits Applicant the right to arbitrate the dispute pursuant to "the simplified procedures to be promulgated or approved by the superintendent." Ins Law 5106(b).

Factual basis for Jurisdiction to apply: Specifically herein the policy was underwritten by PROGRESSIVE DIRECT INSURANCE COMPANY, (SEE, POLICY PROVISION CONFIRMING SAME), and Further, the attached EXHIBIT B, confirms that Progressive Direct Insurance Company is registered and does business within the State of New York. The fact that this carrier does business within the state, is applying NYS fee Schedule law, and further that the assignor is a New York State resident, where Applicant/Assignee, is New York registered business, and main location and specifically where treatment was rendered to this assignor was in the State of New York. Upon a judicial review of arbitration awards, the Supreme Court cited American Ind. Ins. Co. v Art of Healing Medicine, P.C., 104 A.D.3d 761, in agreement with the lower and master arbitrator , and rejected an insurer's argument that AAA could not hear the case because New York had no "jurisdiction." Cure (Citizens United Reciprocal Exch.) v. Mian, Index # 652816/2018 [Sup. Ct., New York County, 2018], aff'd by Cure (citizens United Reciprocal Exch.) v. Mian 195 A.D.3d 564 [App. Div., 1st Dep., 2021.] The Appellate Division concluded that even if prior arbitration awards held that New York State lacked personal jurisdiction over the out-ofstate insurer, such "evidence did not eliminate an issue of fact as to whether plaintiff is an insurer 'controlling or controlled by or under common control by or with' an 'insurer authorized to transact or transacting business in this state.'" Id. By operation of law, such conduct subjects the insurer to the laws and statutes of New York when one of their insured vehicles enters New York State.

The Applicant further argues that:

Applicant properly submitted their request for arbitration through AAA. Applicant's AR1 contained the mandatory disclaimer in CPLR 7503(c): upon service of a demand for arbitration requires the recipient to move to stay such arbitration within 20 days if they object or be precluded from doing so. Specifically, the AR-1 stated, "unless Respondent applies to stay the arbitration within 20 days after service with the AR-1 Respondent shall be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bars of a limitation of time." See Ameriprise Insurance Company v. Sandy, 158 A.D.3d 623 [App. Div., 2nd Dep., 2018.] Where a contract

> contains an allowance for arbitration albeit, arbitration not necessarily with AAA, upon a demand for arbitration through AAA, the insurer still must move to stay within 20 days or must be subject to "arbitration under the terms demanded by its policyholder." Matter of Aetna Cas. & Sur. Co. v Jones, 188 A.D.2d 597 [App. Div., 2nd Dep., 1992.] Participating in an arbitration proceeding also waives objections. The Appellate Division held that "had [the insurer] argued the merits, it would have indicated an intention to submit to the court's jurisdiction (see Taveras v City of New York, 108 AD3d 614, 617 [2013]; Rubino v City of New York, 145 AD2d 285, 288 [1989])." American Ind. Ins. Co. v Art of Healing Medicine, P.C., 104 A.D.3d 761. This law was cited within Cure (Citizens United Reciprocal Exch.) v. Mian AAA#: 99/17-16-1047-3737.
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> Waiver-through-participation was upheld where the insurer brought an Article 75 petition alleging that the service provider "has no right to arbitrate because of the proper rescission of the subject policy ab initio", i.e., that "rescission of the subject policy voids the arbitration clause contained therein." Matter of Infinity Ins. Co. v Daily Med. Equip. Distrib. Ctr., Inc., 39 Misc.3d 582 [Sup. Ct., Kings County, 2013.] The Court cited the rule that "CPLR 7503 (b) entitles only a party who has not participated in the arbitration to apply to stay arbitration on the ground that a valid agreement was not made." Id. Therefore, "once they have taken part in the arbitration proceeding by serving and filing an answer to an arbitration demand and participated in selecting the arbitrator, they no longer are entitled to stay further progress of the arbitration proceeding, even if they are not subject to any arbitration agreement." Id. Respondent has waived their ability to object to by failing to so in a timely and proper manner.

Next, Applicant argues that a choice of law analysis is an incorrect manner for determining whether there is jurisdiction over this claim, stating:

> A "CHOICE OF LAW" ANALYSIS IS NOT THE CORRECT WAY TO DETERMINE IF AN ARBITRATOR HAS THE POWER TO AWARD BENEFITS TO AN APPLICANT This matter cannot be dismissed as a result of a 'choice of law' analysis because such 'center of gravity' or 'grouping of contacts' analysis resolves conflicts of law "with respect to the procedure involving the submission of claims." A.B. Med. Servs., PLLC v PROGRESSIVE INSURANCE COMPANY Cas. Ins. Co., 27 Misc. 3d 52 [App. Term, 2nd Dep., 2010.]6 Once the forum of New York Arbitration is imposed by law, "with respect to matters of procedural law, it is the law of the forum that is invariably applied, regardless of the 'center of gravity' or governmental interest in question." Able Cycle Engines, Inc. v. Allstate Ins. Co., 84 A.D.2d 140 [App. Div., 2nd Dep., 1981.] The Court opined that "perhaps this is because the forum jurisdiction is deemed, by definition, to have a compelling governmental interest in applying its own procedural principles, in order to assure orderly and uniform practice in its courts." This rationale fits precisely

> with the Legislative intent behind NY Ins. Law §5107 which "requires any policy covering such a vehicle to be construed as embodying this coverage even in the absence of an express provision" as "the legislature anticipated exactly this type of circumstance: where an out of-state resident is involved in an accident in New York." East 19 Med. Supply Corp. v. Metropolitan GRP Prop & Cas Ins. Co., 2020 NY Slip Op 51069(U) [NYC Civ. Ct., Kings County, 2020.]
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> Herein a New York resident was injured as a result of this accident, receiving NYS NoFault benefits within the state where applicant herein is a New York no-Fault Provider, billing under NYS No-Fault Fee Schedule and where Respondent is utilizing NYS No-Fault Fee Schedule to calculate the proper fee on the claim at issue. Further, the Respondent whom transacts business in the state and is registered within the State affords this jurisdiction as proper. New York has not only sufficient connection to the underlying accident to extend jurisdiction, but is the most appropriate under the circumstances.

FINDINGS

The Respondent argues that there is no jurisdiction over the Respondent for this claim, based on the facts that: the claim is being made under a Connecticut policy of insurance which and that the subject accident occurred in the state of Connecticut. It is not contested that the Respondent provides, writes, and sells insurance in New York State. Likewise, there is no dispute as to whether this assignor was a New York resident who sought treatment for their injuries in New York State.

Where an out-of-state insurer contends that it does no business in New York, the claimant is obligated to come forth with definitive evidentiary facts to support jurisdiction over the out-of-state insurer. Flatlands Medical, P.C. v. AAA Ins., 43 Misc.3d 49, 984 N.Y.S.2d 793 (App. Term 2d, 11th & 13th Dists. 2014), and the burden of proving jurisdiction is on the party asserting it. Furthermore, New York cannot compel the respondent to arbitrate, and surrender the right to litigate a dispute in court, without evidence that the parties expressly agreed to arbitrate their disputes, or unless they are bound by New York law requiring an arbitration option under Insurance Law §5106 (b). State Farm Mutual Automobile Insurance Company v. Torcivia, 277 A.D. 2d 321, 715 N.Y. S. 2d 75 (2d Dept. 2000).

With concern to the preliminary issue of whether the Applicant has presented sufficient facts to demonstrate jurisdiction over the Respondent, I find that they have. Particularly, the Respondent, Progressive Insurance Company, does business in the State of New

York, is Registered to do business within the State of New York, and their insured motor vehicle injured a New York resident, who received medical treatment in the state of New York.

In the matter of the arbitration between Yellowstone Medical Rehab. PC and Geico Insurance Company, AAA Case No. 17-20-1171-5613 (Gaspari, 11/17/2022), when faced with the question of whether there was jurisdiction in this forum where that insurer provides, writes, and sells insurance in New York State, I held that jurisdiction was inappropriate in this venue, based solely on the facts presented, which in that instance, included the terms of the underlying policy, which explicitly subjected it to the jurisdiction of the county in which the insured lives, which per the underlying policy of insurance and evidence presented, is governed by the laws of and subject to the jurisdiction of the State of Virginia. In so holding, I found that based on the underlying policy of insurance provisions, which in that case contained an Arbitration provision stating: "Unless both parties agree otherwise, arbitration will take place in the county in which the insured lives. Local rules of law as to procedure and evidence will apply", that the terms of the underlying policy, which explicitly provided a jurisdiction and choice of law provision, was sufficient to demonstrate that the claim was governed by and subject to the jurisdiction of the State of Virginia. My findings in the matter AAA Case No. 17-20-1171-5613 were based on a fact specific finding. Subsequently, I find that questions relating to jurisdiction are fact specific, and absent a clear provision relating to the venue or jurisdiction arising from accidents under a policy, are distinguishable to my holding in Yellowstone Medical Rehab. PC and Geico Insurance Company, AAA Case No. 17-20-1171-5613 (Gaspari, 11/17/2022).

In AAA Case No. 17-20-1171-5613, I noted that my findings were informed and persuaded by the analysis set forth in the Matter of the Arbitration between: Bayside Physical Therapy, Chiropractic & Acupuncture PLLC and Geico Insurance Company, AAA Case No. 17-20-1170-9714 (Charkey, 06/09/2021), wherein arbitrator Charkey held that in the case of the out of state policy presented, where it contained a specific agreement on how to arbitrate disputes and which sets forth a choice of venue and law, and where there is unequivocal language in the policy as to where and how these disputes should be arbitrated, that jurisdiction is subject to the specific and articulated terms contained within the policy of insurance. However, I further noted within the body of my decision, that Arbitrator Charkey had also correctly noted that:

> a choice of law dispute is not the same as a lack of jurisdiction and/or improper venue dispute. Jurisdiction and venue can be proper, while still finding that the law of another state should be applied. There is a distinction between jurisdictional issues and choice of law issues. Jurisdiction refers to where a dispute will be resolved; where choice of law relates to which state's law will be used to decide the dispute. Thus, a New York Forum may have jurisdiction to hear a matter but may decide to apply another state's law to decide the matter.

Likewise, the specific policy provisions were cited as a basis for determining whether there is jurisdiction in this forum in the matter of the arbitration between Preferred Medical PC and Mercury Casualty Company, AAA Case No. 17-18-1112-0449 (Tuttolomondo, 03/09/2020), wherein Arbitrator Tuttolomondo reasoned that while a Respondent may be subject to the jurisdiction of New York, it does not automatically equate to a determination that the Arbitrator has jurisdiction over a particular claim.

To the extent that the Respondent argues that it is not subject to the jurisdiction of this forum for the subject claim, I have made my findings based on the facts of the loss, the nature of the contacts with the State of New York, and have also reviewed the underlying Connecticut Automobile Insurance Policy of insurance, to determine whether the underlying policy contains terms which explicitly provided a jurisdiction provision, which would support the defense that this claim is governed by and subject to the jurisdiction of the State of Connecticut. Having reviewed the underlying policy of insurance, I do not find that there is a clear or unambiguous provision within the underlying policy which would disprove the Applicant's position that there is jurisdiction in this forum.

Still, even if the insurer is subject to the jurisdiction of this forum, there is the question as to whether this venue is an appropriate one for the purposes of resolving the issues presented. Applicant maintains that this venue is the appropriate venue, arguing that New York State has a larger connection to this claim and is in the best position to adjudicate this claim versus the state of Connecticut. In contrast, the Respondent argues that their defenses to this claim include the defense of misrepresentation under the subject Connecticut policy. Particularly, as contained within their submissions is a correspondence to the assignor and their counsel, which is dated February 16, 2022, which interposes the following defense:

> Unfortunately, after investigating all available information, I was unable to find valid coverage for this incident and won't be able to pay your

> claim. Specifically, due to misrepresentation at application, there is no coverage available for this loss. If you have your own Insurance carrier, you may want to check with them to see if you have coverage under that policy.

With concern to which law should apply, the Court of Appeals has adopted a "center of gravity" or "grouping of contacts" approach, which gives controlling effect to the law of the state that has "the most significant relationship to the transaction and the parties." Auten v. Auten, 308 NY 155, 161 (1954). Place of contracting should be given "heavy weight," but other factors such as the place of negotiation, performance, the location of the subject matter of the contract, and the domicile or place of business of the contracting parties should also be considered. Careplus Medical Supply, Inc. v. Selective Ins. Co. of America, 25 Misc.3d 488, 90 N.Y.S.2d 258 (App Term 9 and 10 Jud Dist. 2009). Having considered the evidence, in balancing the "center of gravity", I have considered the fact that this claim involves a Connecticut accident and policy, as well as defenses deriving from the portions of the policy relating to "Fraud or Misrepresentation". While there is the competing factor that the assignor resides in New York and that treatment took place in New York, and while defense sounding in the New York State Workers Compensation Fee Schedule have been preserved, the Respondent's defenses also derive from the terms of the Connecticut policy. Accordingly, I find that the center of gravity and the state with the greatest nexus to this loss is Connecticut, and that it is Connecticut law which should apply to this action. I further find that Connecticut is the state with the greater interest in this matter, as there are defenses sounding in misrepresentation which derive from the policy of insurance written in Connecticut, and for which its laws apply.

Accordingly, while the Applicant has presented a sufficient basis for alleging jurisdiction in this forum, considering the balancing factors, and having held that this defense is subject to the laws of Connecticut, I hold that while the Respondent may be subject to the jurisdiction of this forum, that with concern to the specific claim and defense which is presented, that the appropriate venue for the adjudication of this claim lies with the State of Connecticut. Accordingly, this claim is dismissed without prejudice, so that the Applicant may pursue its claim in the most appropriate venue, which I hold, for the purposes of this claim, is Connecticut.

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 NY
SS :
County of Orange

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

05/11/2023
(Dated)

Eva Gaspari

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:
7cd229d5b0255008ee2c6c6b511ca320

Electronically Signed

Your name: Eva Gaspari
Signed on: 05/11/2023