

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

B. Soliman Chiropractic PC
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-22-1263-2713

Applicant's File No. N/A

Insurer's Claim File No. 048369290-08

NAIC No. 36447

ARBITRATION AWARD

I, Preeti Priya, 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 [SO]

1. Hearing(s) held on 06/07/2023
Declared closed by the arbitrator on 06/07/2023

Walter Pisary, Esq., from Law Offices of Hillary Blumenthal LLC (Hoboken)
participated virtually for the Applicant

Greg DeNezzo, Esq., from Callinan & Smith LLP participated virtually for the
Respondent

2. The amount claimed in the Arbitration Request, **\$963.89**, 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 disputes arise from the underlying automobile incident of January 10, 2022, in which the Assignor, then a 31-year-old female, was a passenger. The issues in this matter are:

Whether Applicant established entitlement to No-Fault compensation for fees associated with chiropractic services provided to Assignor;

Whether Respondent established that Applicant is not entitled to compensation due to Assignor's alleged breach of policy.

Whether Respondent established that "false information submitted in support of the above claimant's claim."

Whether Respondent submitted sufficient evidence to support its claim that the underlying automobile incident was a staged or caused event and therefore no-fault insurance coverage is not available to Assignor.

4. Findings, Conclusions, and Basis Therefor

At the hearing held virtually via Zoom, Applicant was represented by Walter Pisary, Esq., who presented oral arguments and relied upon documentary submission at the hearing. Greg DeNezzo, Esq., representing Respondent, presented oral arguments and relied upon documentary submissions. I have reviewed the submissions contained in the American Arbitration Association's ADR Center. These submissions are the record in this case.

Of relevance to this matter is that Assignor received chiropractic treatment, office visits and related services between January 14 and March 17, 2022. Applicant submitted the claims for the chiropractic services to Respondent; payment was denied.

After reviewing the record and evidence presented, I find that Applicant established a prima facie case of entitlement to reimbursement of its claim. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Respondent denied the claims based on "Liberty Mutual's investigation of the above loss included, but was not limited to, a review of statements made in support of your claim, a review of the police report, witness statements and doctor's reports. The investigation has revealed false information submitted in support of the above claimant's claim. According to Part F of the policy, "General Provisions...Fraud This policy was issued in reliance upon the information provided on your insurance application. We may cancel this policy and deny coverage under this policy at any time, including after the occurrence of an accident or loss if you: 1. Made incorrect statements or representations to us with regards to any material fact or circumstance; 2. Concealed or misrepresented any material fact or circumstance; or 3. Engaged in fraudulent conduct; at the time of application of at any time during the policy period, or in connections with the presentation or settlement of a claim."

Applicant's counsel noted that I rendered a decision in AAA case number 17-22-1251-4817 wherein the defense presented is the same as in this matter. I held in AAA case number 17-22-1251-4817, "there is nothing in the EUO or any other evidence to establish the defenses set forth in the denial. Without a brief, affidavit by an investigator, I cannot sustain the denial. I find that Respondent has not demonstrated fraud nor established its defense."

As the parties are different in this matter, I am not bound by the decision in AAA case number 17-22-1251-4817. See D'Arata v. New York Cent. Mut. Fire Ins. Co., 76 N.Y.2d 659 (1990). Further, the evidence submitted in this matter is also different.

In support of their defense Respondent submitted the EUO transcript of another passenger, police accident report and the underlying policy. Respondent also submitted a duly executed Affidavit by Brian Sweet, a Special Investigator with Liberty Mutual Group. He is "assigned to the unit that investigates suspect insurance fraud claims to determine if a specific incident was the product of a covered event." He is "fully familiar with the investigation into the underlying alleged incidents of January 10, 2022, March 2, 2022, and May 22, 2022" as he "was the SIU investigator assigned to investigate these matters." He stated "The subject investigation centers around three losses that Liberty Mutual has identified as being linked as part of an insurance fraud scheme. The nexus tying the claims is an address of 1141 East 229th Street. Thus, these claims are hereinafter referred to as the "1141 East 229th Street ring."

With regard to fraud, the general standard the insurer must assert for a lack of coverage or fraud defense is one "premised on the fact or founded belief that the alleged injury does not arise out of an insured incident" but was a deliberate event staged in furtherance of a scheme to defraud the insurer." See Central General Hospital v Chubb Group of Ins. Cos., 90 NY2d at 199 In V.S. Medical Services, P.C. v. Allstate Ins. Co., 11 Misc.3d 334, 811 N.Y.S. 2d 886 (Civ. Ct. Kings Co. 2006), aff'd. 25 Misc.3d 39, 889 N.Y.S.2d 360 (App. Term 2d, 11th & 13th Dists.2009) the court clearly stated that evidence supporting this defense does not require proof of fraud since, it is irrelevant whether the collision was staged in furtherance or an insurance fraud scheme or was deliberately caused under some other circumstances. The defense is that the occurrence was not an "accident" and therefore coverage does not arise since coverage is afforded only to injuries caused by an "accident". Proof of fraud is not a required element of the defense although the existence of fraud may often be demonstrated by the very same evidence and the nature of the circumstances underlying the happening of the incident. The court noted that evidence establishing proof of a "staged accident" is often circumstantial since it is the rare occasion when a participant in such an event actually admits that the collision was intentional. The court stated that circumstantial evidence of a staged accident submitted by the Respondent is sufficient "if a party's conduct may be reasonably inferred based upon logical inferences to be drawn from the evidence". A material misrepresentation by the Assignor would also preclude any recovery by the provider who accepts an assignment of the Assignor's No-Fault benefits. Golden Age Medical Supply, Inc. v. Clarendon National Ins. Co., 918 N.Y.S.2d 397 (Table), 2010 N.Y. Slip Op. 52010(U), 2010 WL 4751752 (App. Term 2d, 11th & 13th Dists. Nov. 19, 2010). In addition, the strength of inferences of fraud must be measured by common sense and the logic of common experience itself. A.B. Medical Services PLLC v. State Farm Mutual Automobile Ins. Co., 7 Misc.3d 822, 831, 795 N.Y.S.2d 843, 851 (Civ. Ct. Kings Co. 2005) (*citing*, Schneider v. Kings Highway Hospital Center, Inc., 67 N.Y.2d 743, 744-745 (1986).

"Although an insurer's 'founded belief' that a collision was 'staged' cannot be based upon 'unsubstantiated hypotheses and supposition', of necessity in most cases it will be established by circumstantial evidence." A.B. Medical, supra.

Applicant's counsel argued that Assignor was an innocent bystander and was not involved in the alleged fraud. He stated that Assignor was a passenger in the vehicle that was sideswiped. He also stated that the SIU investigator assumed that the passenger CLV in AAA case number 17-22-1255-0042 set up the alleged fraud.

After reviewing the evidence and hearing the oral arguments I find Respondent's defense is supported by facts necessary to establish a well-founded belief that the accident was an intentionally staged event. Respondent's counsel's brief is detailed, outlining the incidents happening at 1141 East 229th Street. The brief, citing to EUO testimonies in two other incidents as well as the incident in this matter, explains why they are not being covered under the insurance policy. I am not persuaded by Applicant's counsel's arguments especially as it is unsupported by a brief or evidence.

Based on the foregoing, Applicant's claims are denied." herein and deny Applicant's claim.

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 NY
SS :
County of New York

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

06/12/2023
(Dated)

Preeti Priya

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:
2e768872b903e4c8b858affe4aa9cd8f

Electronically Signed

Your name: Preeti Priya
Signed on: 06/12/2023