

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Uptown Healthcare Management Inc d/b/a  
ETM- ASC Ambulatory Surgery Center of  
East Tremont  
(Applicant)

- and -

LM General Insurance Company  
(Respondent)

AAA Case No.	17-23-1281-9063
Applicant's File No.	TLD22-1012667
Insurer's Claim File No.	0494189160002
NAIC No.	36447

**ARBITRATION AWARD**

I, Darren Sheehan, 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: Claimant

1. Hearing(s) held on 12/04/2023  
Declared closed by the arbitrator on 12/04/2023

Jodi-Ann Chambers from Thwaites, Lundgren & D'Arcy Esqs participated virtually for the Applicant

Elvira Messina from Callinan & Smith LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$13,979.76**, 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 submitted a bill in the amount of \$13,979.76 for date of service 7/10/2022. The bill relates to a facility fee associated with an arthroscopic knee surgery performed of the claimant, a 35-year-old male, involved in a motor vehicle accident on 4/29/2022.

4. Findings, Conclusions, and Basis Therefor

This issue has been previously determined in favor of respondent by Arbitrator O'Grady, see 17-22-1266-5879 and below:

The four claims considered together here were made by the assignors as assignees of two persons, JP and AC, their initials used to avoid including their full names in the Award. Additional persons alleged to have been part of the fraudulent scheme include Pedro Pablo de Marban Monzo a/k/a Pedro Rodriguez, Wilson Reyes Perez, Angelo Garcia Florentino, Fausto Reyes Rosario, Billy Santana Colon, Susy Aleman a/k/a Susy Aleman Fernandez, Flavia Aleman, Marixsa Fernandez Pineda, William Zapata, Yenny Pachon, Glenda Mancilla Portillo, Fernando Morales Eslin, Frederick W. Adams, M. Rambharose, David Alzate-Perez, Nicolas Guarachi, Edison Manuel Buestan-Jimenez (a.k.a "Manuel Buestan"), Gabriel Sanchez (a.k.a "Jonfran Sanchez-Villanueva"), Juan Sanchez Diaz, V D Reyes Desanchez, Edison Manuel Buestan-Jimenez, Jessica Lorenzi, Yenny Molina Pachon and Jose Dreu Valdez.

Respondent's defense relies in large part upon the affidavit of its employee, Brian Sweet, who attests that he is employed as a Special Investigator with the respondent. That affidavit was not submitted until the day before the hearing. Applicant objects to its consideration because of its late submission. The general rule of this arbitrator is that submissions made within 30 days of the date of the hearing will not be considered. A primary purpose of the rule is to prevent late submissions of documents and proof that would deprive the opposing party of sufficient time to offer an adequate response. The rule is subject to alteration depending on the circumstances and a demonstration as to why a submission should be allowed despite when it was submitted. Here, the subject matter of the affidavit concerns a significant and involved defense. Further, in related claims, including claims considered with this one, respondent specifically asserted this denial. Finally, applicant was afforded the opportunity and time to respond to the submission but declined to do so. Because of its significance in relation to respondent's fraud defense, the affidavit will be considered.

Respondent's proof, including documents submitted supported by Mr. Sweet affidavit, establishes that:

Respondent's concern was focused on incidents that occurred on. of February 18, 2022 (claim no.: 0486687109); March 18, 2022 (claim no.: 0489272930); March 11, 2022

(claim no. 048780810); March 30, 2022 (claim no.: 0491047280; and July 22, 2022

(claim no. 050269739), the preceding five incidents dubbed by the respondent as part of the "88 Glenmore Avenue Ring"; and incidents that occurred on January 30, 2022 (claim no.: 048429255); April 29, 2022 (claim no.: 049418916) and April 5, 2022 (claim no.: 049071870), the preceding three incidents dubbed by the respondent as part of the "715 Seneca Avenue Ring", the names given by the respondent to the Rings because of addresses associated with the grouped incidents.

The 88 Glenmore Avenue Ring and the 715 Seneca Avenue Ring originated as two separate investigations involving rear-end losses and commercial motor vehicles. However, respondent contends that there is a nexus between the two rings centering on an individual named Yenny Molina Pachon. Respondent's investigation centers around multiple losses that it has identified as being linked as part of an insurance fraud scheme. One nexus tying the claims is an address of 88 Glenmore Avenue in centralized of New York and the manner in which the collisions occurred which are characteristic of a "swoop and squat" insurance scheme which targets commercial vehicles by swooping (swerving) in front of the targeted vehicle and squatting (stopping) short to intentionally cause a rear-end collision. The other nexus is 715 Seneca Avenue in Brooklyn, New York and the manner in which the collisions occurred which typically involve undocumented aliens and are rear-end collisions with commercial motor vehicles traveling on parkways.

#### THE 88 GLENMORE AVENUE RING

For the alleged incident of February 18, 2022, Liberty Mutual issued a policy of automobile insurance under policy number K3847357 to Pedro Rodriguez de Marba covering a 2007 Chrysler. Pedro Rodriguez de Marba utilized the address of 88 Glenmore Avenue, Central Islip, New York 11722 in procuring the subject policy of insurance from Liberty Mutual. Upon receipt of the claim for the incident of February 18, 2022, Liberty Mutual assigned claim number 048668710.

In addition, this policy of insurance was involved in a subsequent loss on March 18, 2022, involving Pedro Pablo de Marban Monzo a/k/a Pedro Rodriguez (the driver) and Wilson Reyes Perez, Angelo Garcia Florentino, Fausto Reyes Rosario and Billy Santana Colon (the passengers). The incident of March 18, 2022, was assigned claim number 048927293. The subject incident of February 18, 2022, is reported to have occurred just near the Van Wyck Expressway.

Claim number 048780810 occurring on March 11, 2022, was linked to the incidents associated with this policy K3847357 (claim numbers 048927293 & 048668710) through policy quote number 144194874 on December 22, 2021, for Susy Aleman (a passenger within the policy vehicle) where she used the address of 88 Glenmore Ave Central Islip, New York. This is the same address associated with policy K3847357. The incident of March 11, 2022, claim number 048780810 was further linked to policy K3847357 through a Whooster query of the policyholder's phone number of

917-717-3241 used to obtain policy K3847357. The phone number of 917-717-3241 is associated to Flavia Aleman of 99-44 62nd Drive, Rego Park, New York, which is the same address associated with this policy K3894081 for policyholder Marixsa Fernandez Pineda. In the incident of March 11, 2022, the policy vehicle was traveling on the Van Wyck Expressway with 3 occupants when the claimant operator reported the insured vehicle came to a sudden stop, causing it to be rear ended by the commercial vehicle.

Further, as part of the investigation into claim number 048780810 occurring on March 11, 2022, Liberty Mutual determined that the policyholder Marixsa Fernandez Pineda does not have a driver's license and never drove or operated the insured vehicle. On the date of the March 11, 2022, it is alleged that the insured vehicle, a 2008 Saturn, was operated by Cindy Aleman a/k/a Cindy Aleman Fernandez with two passengers, Susy Aleman a/k/a Susy Aleman Fernandez and Marixsa Fernandez a/k/a Marixsa Fernandez Pineda present, when it was rear ended by a commercial vehicle, a freight truck, while travelling on the Van Wyck Expressway. The driver of the freight truck informed police that the 2008 Saturn came to a sudden stop causing him to collide into her vehicle.

Liberty Mutual claim number 048927293, a subsequent loss associated to policy K3847357 (Policy address 88 Glenmore Avenue, Central Islip, New York) from March 18, 2022, involves a rear-end impact where the claimant operator alleges the Liberty Mutual vehicle cut him off and short braked him resulting in a rear end impact. The Liberty Mutual vehicle had four occupants and the loss occurred on the Van Wyck Expressway with a commercial motor vehicle/truck. All four occupants failed to appear for their examinations under oath.

Liberty Mutual claim number 049104728, allegedly occurring on March 30, 2022, involves a rear-end loss on the Expressway where the Liberty Mutual insured vehicle has three occupants and was rear-ended by the claimant vehicle. Policyholder William

Zapata provided an address of 1028 Cypress Ave #2R Ridgewood, New York. This is the same address as utilized by Yenny Pachon Molina in the incident of February 18, 2022, claim number 048668710.

Liberty Mutual claim number 050269739, allegedly occurring on July 22, 2022, involves a commercial motor vehicle/truck rear-ending the Liberty Mutual insured vehicle while it was carrying three occupants. The claimant operator reported the Liberty Mutual vehicle cut in front of him and came to an abrupt stop, causing it to be rear-ended. This claim was linked to policy number K3847357 (048927293 & 048668710) through a Whooster query of respondent policyholder's phone number of 646-515-6067, which was reported to Glenda Mancilla. Glenda previously owned the policy vehicle (VIN# 2C3KA53G17H612178) involved in the subject incident of February 18, 2022, claim number 048668710, under policy # K3847357.

#### THE 715 SENECA AVENUE RING

Liberty Mutual claim number 048429255, allegedly occurring on January 30, 2022, involves a rear-end crash on the Van Wyck Expressway involving a commercial motor vehicle, a 2011 Hino White, owned by Walton Hauling and operated by Frederick W. Adams and the Liberty Mutual insured 2002 Lexus operated by AC which contained passengers Portillo Fernando Morales Eslin ("Fernando Portillo") and JP. Police never responded to the scene. The claim was reported to Liberty Mutual under a policy of insurance referenced as policy number AOS-221-661943-40 7 (hereinafter "Ramos Policy"), procured by AC to insure a 2002 Lexus RX3 bearing vehicle identification number JTJHF10U020261963 at a policy address of 715 Seneca Avenue, Floor 2, Ridgewood, New York 11385 for an annual policy effective on January 26, 2022.

Liberty Mutual requested AC, Fernando Portillo and JP appear for an examination under oath. Fernando Portillo and JP failed to appear. On June 2, 2022, AC appeared for his EUO and the testimony provided revealed several incredulous inconsistencies. An ISO database search of AC's policy address revealed a pattern of claims where the insured vehicle has multiple occupants while involved in rear-end collisions typically with commercial vehicles. These claims include Liberty Mutual claim no.: 049418916 (date of loss April 29, 2022; Liberty Mutual claim no.: 049071870 (date of loss April 5, 2022); Liberty Mutual claim no.: 047782986 (date of loss December 4, 2021), GEICO

claim no.: 052073368010101 (date of loss February 8, 2020), Geico claim no.: 0520733680101020 (date of loss December 24, 2019); and GEICO claim no.: 0497340810101048 (date of loss January 9, 2018).

Liberty Mutual claim number 049418916, allegedly occurring on April 29, 2022 is a subsequent loss on the AC policy of insurance and also involves a rear-end crash on the Van Wyck Expressway involving a commercial motor vehicle, a 2006 Freight Liner, owned by SRK Inc. and operated by M. Rambharose and the Liberty Mutual insured 2003 Saturn insured by AC which was operated by David Alzate-Perez ("David Alzate") and contained passenger, Claudia Munoz.

Liberty Mutual claim number 049071870, allegedly occurring on April 5, 2022, involves a rear-end crash on the Van Wyck Expressway involving a commercial motor vehicle, a 2020 Freightliner flat bed, owned by CRST Expedited Inc and operated by Freddie J. Mitchell, Jr. and the Liberty Mutual insured 2006 Honda insured by Juan Sanchez Diaz which was operated by Nicolas Guarachi and which contained passengers Edison Manuel Buestan-Jimenez (a.k.a "Manuel Buestan") and Gabriel Sanchez (a.k.a "Jonfran Sanchez-Villanueva").

The unlisted driver was cited by the police for unlicensed operation. The police report noted that the driver of the commercial vehicle indicated that the insured operator

"braked checked" him causing the incident. The claim was reported to Liberty Mutual under a policy of insurance referenced as policy number AOS-221-668852-40-2 3 procured by Juan Sanchez Diaz and V D Reyes Desanchez to insure 2006 Honda Odyssey bearing vehicle identification number 5FNRL38696B058076, as well as three other vehicles, at a policy address of 366 Central Avenue, 1, Brooklyn, New York 11221 for an annual policy effective on February 17, 2022.

The incident of April 5, 2022, connects to a loss said to have occurred on October 4, 2019, which was reported to NICB by GEICO (Geico claim no.: 0660818160000001) as a staged/caused accident involving Edison Manuel Buestan-Jimenez and Jessica Lorenzi (a relative of Henry Lorenzi who was involved in a Liberty Mutual claim said to have occurred on December 16, 2021, and which is referenced as claim no.: 047782986).

An ISO database search of the policy address, 366 Central Avenue, Brooklyn, New York, located a prior NICB referral by GEICO under their claim number

0511956800101053 for a date of loss said to have occurred on December 11, 2019, which revealed faked and/or exaggerated injury and previous loss/damage.

Based upon these and other factors, Liberty Mutual has investigated the claims at issue as to the alleged losses of January 30, 2022 (claim no.: 048429255); April 29, 2022

(claim no.: 049418916) and April 5, 2022 (claim no.: 049071870), and contends that it has a founded belief that the subject losses are not the product of a covered event and are connected to ring of losses referred to as "715 Seneca Avenue."

#### NEXUS BETWEEN 88 GLENMORE AVENUE AND 715 SENECA AVENUE

Although the 88 Glenmore Avenue Ring and 715 Seneca Avenue Ring initially developed as two separate investigations, through continued investigation, Mr. Sweet contends that he developed a nexus between both rings-through Yenny Molina Pachon. On Liberty Mutual claim number 047782986 (date of loss December 4, 2021) a passenger in the Liberty Mutual vehicle was alleged to have been an individual named Jose Dreu Valdez who resides at 715 Seneca Avenue, Ridgewood, New York. Jose Dreu Valdez was involved in a prior incident on December 9, 2019, with Geico claim number 0413982240101016, where he was a passenger inside a vehicle with Yenny Molina Pachon who was then utilizing the address of 677 Knickerbocker Avenue, Brooklyn, New York. The vehicle being operated by Yenny Molina Pachon was insured at the address of 88 Glenmore Avenue. Moreover, in the incident of February 18, 2022, Yenny Molina Pachon, utilized the address of 1028 Cypress Avenue, Ridgewood, New York. This address was also utilized in claim number 049104728 occurring on March 30, 2022.

In all, the proof is sufficient to establish, by a fair preponderance of the evidence, respondent's contention that it has a founded belief that the alleged injuries of the assignors and any subsequent No-Fault treatment were not the result of an accident for which the underlying insurance policy provides PIP coverage but were, instead, the result of a scheme to fraudulently create claims in an attempt to secure PIP benefits to which they are not entitled. Applicants, especially the assignors, provide no adequate response to respondent's contentions.

An insurer can premise its defense that a collision was not an accident without being required to prove that it was a product of fraud, which would require proof of all the

elements of fraud, including scienter; as such, the defense requires proof by a preponderance of the evidence, not by clear and convincing evidence. *V.S. Medical Services, P.C. v. Allstate Ins. Co.*, 25 Misc.3d 39 (App. Term 2d, 11th & 13th Dists. 2009), *aff'd*, 11 Misc.3d 334 (Civ. Ct. Kings Co. 2006). A review of the submitted proof, supported by the affidavit of Brian Sweet, demonstrate that the contentions by the respondent are accurate. In sum, they demonstrate that the assignors were involved in a large scheme to create "accidents" and bill the no-fault insurer for medical benefits. The proof is sufficient to establish by a preponderance of the evidence a founded belief that the event pursuant to which these claims are made was not a motor vehicle accident and therefore not subject to coverage by the underlying policy. No-fault insurance policies only cover vehicular accidents. An accident is, by definition, unintentional; a deliberate collision is not an accident. Therefore damages resulting from a deliberate collision are not covered by no-fault insurance. *V.S. Medical Services, P.C. v. Allstate Ins. Co.*, *supra*.

Respondent's defense is therefore sustained and the claim is denied.

Under the doctrine of collateral estoppel, a party is precluded from relitigating an issue which has been previously decided against it in a prior proceeding where it had a full and fair opportunity to litigate the issue. *D'Arata v. New York Cent. Mut. Fire Ins. Co.*, 76 N.Y. 2d 659 [1990]. The two elements that must be satisfied to invoke the doctrine of estoppel are that (1) the identical issue was decided in the prior action and is decisive in the present action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to contest the prior issue. *Kaufman v. Lilly Co.* 65 N.Y. 2d 449, 455 (1985).

Therefore, when new evidence is introduced (e.g., an updated affidavit), that evidence should be precluded. *Country-Wide Ins. Co. v. Epione Medical P.C.*, 2020 N.Y. Slip op. 32945 (U) (Sup. Ct. New York Co., Eileen A. Rakower, J. Sept. 8, 2020).

The doctrine of *res judicata* and collateral estoppel are designed to put an end to a matter once it is duly decided (see, *Siegel*, NY Practice §442, at 747 [4th ed]). *Res judicata* or claim preclusion, is invoked when a party, or those in privity with the party, seek to relitigate a disposition on the merits of claims or causes of action arising out of the same transaction or series of transactions which were raised or could have been raised in the prior litigation (see, *Schuylkill Fuel Corp. v. Nieberg Realty Corp.*, 250 NY 304,



306-307 [1929]).

In fact, it would be irrational for an arbitrator not to give res judicata effect to a court order or judgment on the very same claim. *New York City Transit Authority v. GEICO*, 46 Misc 3d 706 (Civ. Ct. New York Co. 2014).

Here, applicant raised no new argument or submitted no new evidence by its admission. Therefore, considering this prior award together with the evidence before me, I see no reason to deviate from Arbitrator's O'Grady's prior decision. Thus, I dismiss 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 Suffolk

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

12/07/2023  
(Dated)

Darren Sheehan

### **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:**  
fb7fa8827a45bc8c0d96bd9c7a32e2b7

### **Electronically Signed**

Your name: Darren Sheehan  
Signed on: 12/07/2023