

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Nexray Medical Imaging PC d/b/a Soul  
Radiology  
(Applicant)

- and -

American Transit Insurance Company  
(Respondent)

AAA Case No.	17-22-1280-1409
Applicant's File No.	RFA22-312007
Insurer's Claim File No.	1094042-01
NAIC No.	16616

### **ARBITRATION AWARD**

I, Tara Maher, 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 12/18/2023  
Declared closed by the arbitrator on 12/18/2023

Helen Feingersh, ESq. from The Russell Friedman Law Group LLP participated virtually for the Applicant

Patrice Soberano, ESq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,728.97**, 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 subject claim seeks reimbursement for a cervical and lumbar spine MRI provided to the assignor, JA, a 45-year-old male on 3/2/21 following his involvement in a motor vehicle accident on 2/10/21. Respondent denied the claim on the Workers Compensation is primary defense. In addition, respondent now argues for a stay based on a pending indictment. The issues presented are whether respondent has sustained its Workers' Compensation is primary defense and whether respondent is entitled to a stay of the proceedings.

#### 4. Findings, Conclusions, and Basis Therefor

I have reviewed the ADR case center record maintained by the American Arbitration Association. The findings below are based upon documents reviewed in the case record and the parties' respective positions at the hearing.

It is well settled that the health care provider establishes its prima facie entitlement to no-fault benefits under article 51 of the Insurance Law by offering proof that it submitted documentation setting forth the particulars of the claim to the insurer and that payment of same is overdue. See *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 AD3d 742(2 Dept. 2004); *Amaze Medical Supply v. Eagle Insurance*, 2 Misc. 3d 128A, 784 NYS2d 918, 2003 N.Y. Slip Op 5170IU (App. Term, 2d & 11th Jud. Dist.]. I find that applicant has met its prima facie burden.

#### Request for Stay:

As to the request for the stay I adopt the assessment and finding by Arbitrator Lisa Abrams in her reasoned award dated 7/5/23 in *Nexray Medical Imaging, PC d/b/a Soul Radiology and American Transit Insurance Company*, AAA Case No. 17-21-1221-2877. In her award Arbitrator Abrams noted: "At the outset, I note that Respondent submitted an undated document entitled "Sealed Indictment" from United States District Court, Southern District of New York. The case is styled *United States of America v. Bradley Pierre, Marvin Moy, William Weiner, Andrew Prime, and Arthur Bogoraz*, 22 Crim 019. The Grand Jury Charges include, among other things, claims that the defendants therein, which includes Applicant's principal, participated in a criminal scheme to exploit insurance programs designed to protect motor vehicle accident victims. The record does not state when the Sealed Indictment was generated, what has occurred in the criminal proceedings, and more importantly, the status of this matter (i.e., whether there are any actual convictions based upon this Sealed Indictment). Respondent requested that I stay this matter pending the outcome of the criminal proceedings. While the criminal proceedings have apparently been pending since 2022, there is no evidence that Respondent made a request to the District Court for a stay or if such request was made, whether it was granted or denied. While the allegations in the Sealed Indictment are quite serious, I find that the evidence presented here is insufficient to establish that Applicant is not eligible to recover No-Fault benefits. I further note that the indictment only contains allegations without any evidence to support the contentions asserted therein. Lastly, there are many other matters where Respondent has requested to stay arbitration based on the same Sealed Indictment which has been denied. See, e.g., AAA # 17-21-1221-7342, Arbitrator Nicole J. Simmons; AAA # 17-21-1221-6761, Arbitrator Jan Chow; AAA # 17-21-1207-2705, Arbitrator Diane Flood Taylor; and AAA # 17-20-1179-9914, Arbitrator Ioannis Gloumis. This issue also has been upheld by several Master Arbitrators. Therefore, I find Respondent's arguments to be insufficient to grant a stay of this proceeding." After a review of all of the documents and in consideration of the arguments made by the parties at the hearing, I find that the request for a stay of this matter must be denied as there is no evidence in the record that a stay was issued for any underlying matters in connection with the indictment. Moreover, as

noted by Master Arbitrator Victor Hershendorfer in the matter of Nexray Medical Imaging PC d/b/a Soul Radiology and American Transit Insurance Company, AAA Case No. 99-20-1157-6149: "An indictment in and of itself is not evidence. It consists of inadmissible hearsay."

Respondent's request for a stay of the arbitration is accordingly denied.

#### Workers Compensation is Primary Defense

In linked matter AAA#17-22-1269-3747, the undersigned addressed the validity of respondent's workers compensation defense, noting as follows" Respondent issued a general denial dated 6/3/21 denying future benefits predicated on the defense that Workers' Compensation is the primary source of coverage based upon the fact that JC was in the course of his employment at the time of the accident. Where the availability of workers' compensation benefits turns on the resolution of questions of fact or mixed questions of fact and law, the Legislature has placed primary jurisdiction to resolve such issues in the Workers' Compensation Board, O'Rourke v. Long, 41 N.Y.2d 219, 391 N.Y.S.2d 553, 359 N.E. 2d 1347; Arvatz v. Empire Mutual Ins. Co., 171 A.D.2d 262, 575 N.Y.S.2d 836. This matter was referred to The Workers' Compensation Board where a hearing on the issue was held. The evidentiary case record contains the 4/29/21 Workers Compensation NCEC 101 notice which states, "The Board has determined that it has no jurisdiction with regards to your claim from the accident of 02/10/2021 as the claimed injury does not meet the qualifying criteria for the Independent Livery Driver Benefit Fund as required by the Executive Law and outlined in §160-ddd 'Use- of the fund. This notice (Form NCEC-101) constitutes a decision by the Workers' Compensation Board that the claimant is ineligible for any Workers Compensation Benefits. "The case record contains a copy of a certified letter dated 6/25/21 from the personal injury attorney addressed to the respondent carrier enclosing a copy of the foregoing decision. I must defer to the decision of the Workers' Compensation Board as to whether Workers' Compensation is the primary source of coverage. Accordingly, and in light of the determination by the board, I find respondent's defense predicated on Workers Compensation insurance is primary defense cannot be sustained."

The bill in issue was received 3/18/21 and thereafter pended for the MRI films by way of verification requests dated 4/9/21 and 5/14/21. Respondent received the films on 7/1/21 (date stamped verification response is contained in case record). Respondent, thereafter, denied the claim timely on 7/27/21 on the Workers Compensation is primary defense. As noted above the Workers Compensation defense was vacated by the undersigned in the prior linked award based upon the final decision of the workers' compensation board NCEC 101 which was forwarded to the carrier via letter on 6/25/21.

With respect to the verification requests issued after the workers compensation denial for an EUO of the assignor and post EUO verification requests for photos taken at the scene of the accident, I find them untimely and a nullity. It well settled that a No-fault insurer is bound by the "four corners of the denial" and "must stand or fall upon the defense upon which it based its refusal to pay." *Todaro v. Geico General Insurance Company*, 46 A.D.3d 1086, 848 N.Y.S.2d 393 (3rd Dept. 2007). Respondent, upon receipt of the bill, made a choice to deny the claim based on the claimant's eligibility for

Workers' Compensation benefits. That is their chosen defense, and therefore, they "stand or fall" upon it. They cannot now change the basis of their denial, and choose to go down a different path, due to an unfavorable outcome. Even if Respondent could somehow "rescind" their prior NF-10s, the subsequent verification requests were untimely and improper.

This bill was not properly delayed. In *Neptune Medical Care, P.C. v. Ameriprise Auto & Home Insurance*, 48 Misc. 3d 139 (A), 2015 N.Y. Slip Op. 51220 (U) (App. Term 2nd, 11th and 13th Jud. Dists. 2015), the Court held that Pursuant to the No-Fault Regulations, "any additional verification required by the insurer to establish proof of claim shall be requested within 15 business days of receipt of the [NF-3]" (11 NYCRR 65-3.5 [b]). Moreover, verification requests issued more than 15 business days after receipt of a bill and also more than 30 calendar days after its receipt are nullities. I find that Respondent failed to properly delay this claim for verification, even if they could somehow rescind its prior timely denial.

Applicant is awarded the claim in the amount of \$1,728.97.

This decision is in full and final disposition of all claims presently pending before this arbitrator.

Any further issues raised in the hearing record are held to be moot and/or waived in so far as not raised at the time of the hearing.

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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	<b>Nexray Medical Imaging PC d/b/a Soul Radiology</b>	<b>03/02/21 - 03/02/21</b>	<b>\$1,728.97</b>	<b>Awarded: \$1,728.97</b>
<b>Total</b>			<b>\$1,728.97</b>	<b>Awarded: \$1,728.97</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/27/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is awarded from the date of filing for all timely denied claims and from the 30th day of presentment of the bill to the carrier for all claims not processed within the statutory 30-day time period. Interest on all awarded claims is to be paid at the rate of two percent per month, not compounded, on a pro-rata basis.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

Having been filed on or after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d)

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY  
SS :  
County of Suffolk

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

12/24/2023  
(Dated)

Tara Maher

### **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:**  
4bd0f7d959579a390eacf1b6511ca570

**Electronically Signed**

Your name: Tara Maher  
Signed on: 12/24/2023