American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

JL Medical PC
(Applicant)

- and -

New York Central Mutual Fire Insurance Company
(Respondent)

AAA Case No.	17-24-1342-0754
Applicant's File No.	NA
Insurer's Claim File No.	20233011933
NAIC No.	14834

ARBITRATION AWARD

I, Gregory Watford, 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 GC

1. Hearing(s) held on 08/07/2024
   Declared closed by the arbitrator on 08/07/2024

   Robin Grumet from Law Offices of Hillary Blumenthal LLC (Hoboken) participated virtually for the Applicant

   Tara Gutman from Goldberg, Miller and Rubin, P.C. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$420.56**, 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 alleged underlying automobile collision of December 2, 2023, in which the Assignor, then a 35-year-old male, was a passenger. As a result of the impact, he complained of multiple injuries. Thereafter, he sought private medical attention where he was recommended to begin receiving conservative care treatments and was referred for diagnostic testing.

   On January 11, 2024, Assignor underwent x-ray scans of the cervical spine, lumbar spine, thoracic spine and right shoulder. In dispute in the case are the fees for the radiology services provided to Assignor. Applicant timely submitted the bill to

Respondent for payment in an amount totaling $420.56. Respondent initially timely denied payment on the grounds that the services were not medically necessary, and that Applicant billed for services that were not actually provided by an employee of Applicant's facility. Respondent subsequently denied payment based upon the founded belief that Assignor's alleged injuries did not arise out of an insured event and/or are the results of an intentionally staged occurrence.

At the hearing, when asked, Respondent did not raise any fee schedule objections to the amounts billed by Applicant.
The issues to be decided in this case are:

Whether Applicant established entitlement to No-Fault compensation for radiology services provided to Assignor.

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.

Whether Respondent established that Applicant billed services not provided by an employee of Applicant's facility.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions and documents contained in the American Arbitration Association's ADR Center Electronic Case File (ECF). This matter was decided based upon the submissions of the parties as contained in the ECF, as well as upon the oral arguments of the parties at the time of the hearing. All documents contained in the ADR folder that were submitted at least 30 days prior to the hearing date are hereby incorporated into this hearing and were considered in reaching my findings. These submissions constitute the record in this case. Evidence relating to the issues of fraud, staged accidents, fee disputes, proof of paid claims, and policy exhaustion need not be submitted at least 30 days prior to the hearing date. There were no witnesses.

Pursuant to Insurance Law § 5106(a) and the Insurance regulations, an insurer must either pay or deny a claim for motor vehicle no-fault benefits, in whole or in part, within 30 days after an applicant's proof of claim is received (*see* Insurance Law § 5106[a]; 11 NYCRR 65-3.8[c]; *see also* 11 NYCRR 65-3.5). Infinity Health Products, Ltd. v. Eveready Ins. Co., 67 A.D.3d 862, 864, 890 N.Y.S.2d 545, 547 (2d Dept. 2009). A claimant's prima facie proof of claim for no-fault benefits must demonstrate that the prescribed claim forms were mailed to and received by the insurer and are overdue. Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 506, 14 N.Y.S.3d 283, 290 (2015). Applicant's proof is also in Respondent's denials, which acknowledged receipt of the bills.

After reviewing the record and evidence presented, I find that Applicant established a prima facie case of entitlement to reimbursement of its claim. Viviane Etienne Med Care, PC v. Countrywide Ins. Co., *Id*. Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense. See Citywide Social Work & Psych. Serv. P.L.L.C v. Travelers Indemnity Co., 3 Misc. 3d 608, 2004, NY Slip Op 24034 (Civ. Ct., Kings County 2004).

Staged Accident

Respondent's denial states:

This Company hereby formally denies your no-fault claim in its entirety effective 12/02/23. This is based upon our investigation, violations of policy and regulatory conditions, staged loss/planned occurrence, material misrepresentation, and no credible proof the alleged injuries are related to this motor vehicle accident. Please see attached original denial that is inclusive of all the detailed facts outlined therein.

By submitting the claim form, Applicant established a presumption that the accident was covered by the insurance policy.

In an action for first-party no-fault benefits, "a provider's proof of a properly completed claim makes out a prima facie case." see Amaze Med. Supply v. Eagle Ins. Co., 2 Misc. 3d 128[A],2003 NY Slip Op 51701 [U], [App Term, 2d & 11th Jud Dists]; see also A.B. Med. Servs. PLLC v Lumbermens Mut. Cas. Co., 4 Misc. 3d 86, 87 [App Term, 2d & 11th Jud Dists 2004]). To adopt Appellate Term's conception in the related area of medical necessity, there is a "presumption of [coverage] which attaches to the claim form." (See Stephen Fogel Psychological, P.C. v Progressive Cas. Ins. Co., 7 Misc. 3d 18, 22 [App Term, 2d & 11th Jud Dists 2004].)

As stated, the insurer bears the burden of coming forward with admissible evidence of "the fact" of lack of coverage or of the foundation for its belief that there is no coverage. (See Mount Sinai Hosp. v Triboro Coach, 263 A.D.2d 11, (2nd Dept 1999).

"A deliberate collision caused in furtherance of an insurance fraud scheme is not a covered accident.' 'Indeed, when a collision is 'an intentional act, not an accident, there is no coverage, 'regardless of whether the intentional collision was motivated by fraud or malice'." A.B. Medical Services, PLLC v. State Farm Insurance Company, 2005 WL 563311 (N.Y. Civ. Ct.) (internal citations omitted).

If the collision at issue was a deliberate event caused in the furtherance of an insurance fraud scheme, it would not be a covered accident, and the insurer is not precluded from asserting this defense in arbitration despite its untimely denial of the claim. Matter of Metro Medical Diagnostics, P.C. v. Eagle Ins. Co., 293 A.D.2d 751, 741 N.Y.S.2d 284 (2d Dept. 2002).

"An insurer may assert at any time that the accident arises from an insurance fraud scheme or that the alleged injury was not caused by an insured incident and is therefore

not covered under [the subject] policy." Vital Points Acupuncture, P.C. v. New York Central Mutual Fire Ins. Co., 6Misc.3d 1031(A), 800 N.Y.S.2d 358 (Table), 2005 N.Y. Slip Op. 50267(U), 2005 WL 515601 (Civ. Ct. Kings Co., Bluth, J., Mar. 3, 2005).

Respondent's defense is commonly known as the "staged accident" defense. 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."

It is the Respondent's burden to come forward with admissible evidence of the foundation for its belief that there is no coverage for a particular loss. See, Mount Sinai Hospital v. Triboro Coach Inc., 699 N.Y.S.2d 77, 84 (2d Dept. 1999). However, "The burden of persuasion stays with the plaintiff, and if the insurer carries its burden of coming forward, 'plaintiff must rebut it or succumb.' (See Baumann v Long Is. R.R.,110 A.D.2d 739, 741 [2d Dept 1985].)"

Respondent evidence consisted of the SIU Affidavit of Emilee Jaquay, Fraud Supervisor, employed by Respondent's company along with the police accident report. She attested that based upon the investigation, Assignor was a passenger with two other individuals MJ and MB. Respondent's insured MJ, operated the 2004 BMW involved in a sideswipe loss with a truck driven by M. Dhuman. The occupants of the insured vehicle later reported significant bodily injuries as a result of an accidental collision resulting in thousands of dollars of medical no-fault claims.

Pursuant to the investigation, Respondent's investigators learned that its insured MJ procured the policy listing a Rochester, N.Y. address but submitted the MV-104 listing a Brooklyn N.Y. residence. Ms. Jaquay noted that the investigation revealed that Assignor GC and Respondent's insured MJ were associated with prior suspected staged losses.

She further noted that there was an eyewitness to the 12/2/23 collision who observed Respondent's insured BMW swerve into the truck which was captured on video and turned over to Respondent's investigators. The investigators were also able to obtain a statement from the eyewitness stating the same.

Respondent also provided a copy of the sown statement of the eyewitness. He stated:

"I was heading S/W on Rockaway Turnpike in middle lane about to make a right onto S/B 878 the blue BMW in the left lane on Rockaway Turnpike made a right turn in front of me going onto 878 cutting me off. After I made the right turn, I observed the BMW turn its wheels 2 times striking a white box truck on the left side with the passenger side wheels of the blue BMW. The white box truck was also travelling on Rockaway Turnpike and had just turned onto Rt 878. At the point of impact, I believe Rt. 878 was a 2 lane highway which was about to widen to a 3 lane highway with a right turning lane. At least 3 males jumped out of the BMW after impact and none of them looked injured as they were moving around very well. I stopped and gave the driver of the white box truck my contact information, told him I saw witnessed what had happened and it was on my dash cam, and I went on my way. A few minutes later the driver of the box truck called me and said the police were at the scene and wanted to talk to me. I returned to the scene and told the police what I witnessed."

As a result of the above, examinations under oath (EUOs) were obtained from the occupants of the vehicle, Assignor GC, MJ and MB. Ms. Jaquay highlighted several discrepancies and inconsistencies from the EUO testimonies of the occupants.

Respondent's written submission note that all of the EUO testimonies of the occupants conflicted with the video footage. Respondent's evidence also detailed the discrepancies regarding how long the occupants have known each other, where they were going prior to the accident, who called the police to the scene and their denials regarding runners that approached and spoke with Assignor and MB.

Respondent argued that the totality of the circumstances related to the investigation support a finding of a staged loss and not an actual unintentional motor vehicle accident. Applicant's counsel argued that Respondents evidence is insufficient to satisfy its burden.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered. I note that an arbitrator need not adhere with strict conformity to the evidentiary rules set forth in CPLR 2016 see Auto One Ins. Co., v Hillside Chiropractic P.C., 126 A.D. 3d. 423 (1st Dept. 2015) citing 11 NYCRR 65-4.5 (o). The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations. Arbitrators sit in equity and have the powers to enforce the spirit and intent of the No-fault law and regulations. Bd. of Education, et. al. v. Bellmore-Merrick, 39 N.Y. 2d. 167 (1976).

An insurer's evidence of a purposeful collision will often be circumstantial. In the absence of a confession from one of the participants, the arbiter of the facts must examine the facts and circumstances of the incident to determine whether they give rise to an inference of a staged collision. Circumstantial evidence is sufficient if a party's conduct may be reasonably inferred based upon logical inferences to be drawn from the evidence. V.S. Medical Services, P.C. v. Allstate Ins. Co., *supra*

The insurer must demonstrate that it has a founded basis for believing that the collision was intentionally caused but the burden of persuasion remains on the claimant, who must prove its case by a fair preponderance of the credible evidence; if the evidence weighs against the claimant or it is so evenly balanced that it is impossible to determine the matter, then judgment must be given for the insurer. V.S. Medical Services, P.C.

v. Allstate Ins. Co., *supra.* ("defendant's proof, which plaintiff failed to rebut, established by a preponderance of the evidence its defense of lack of coverage").

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 (Civ. Ct. Kings Co. 2005) (citing Schneider v. Kings Highway Hospital Center, Inc., 67 N.Y.2d 743, 744-745 (1986)).

Comparing the relevant evidence and arguments presented by both parties against each other, I am persuaded by the Respondent's arguments and evidence regarding the staged accident. I find that Respondent has demonstrated that the collision was consistent with a known pattern of vehicles intentionally driving into commercial trucks. I find that the eyewitness statement and video also corroborate Respondent's founded belief that the collision in dispute was intentional and staged.

Although Applicant's counsel made several arguments related to the sufficiency of Respondent's case, Applicant did not direct this arbitrator to any evidence to rebut Respondent's allegations or evidence.

Based upon the foregoing, Applicant's claims claim is denied.

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, without merit, and/or waived insofar 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 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 Westchester

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

09/06/2024
(Dated)

Gregory Watford

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:
ec26a3f17f77a3c61c06294f3bc390db

Electronically Signed

Your name: Gregory Watford
Signed on: 09/06/2024