

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Comprehensive Diagnostics & Imaging PC
(Applicant)

- and -

American States Insurance Company
(Respondent)

AAA Case No. 17-23-1297-1314

Applicant's File No. DK23-333839

Insurer's Claim File No. 052006823-0001

NAIC No. 19704

ARBITRATION AWARD

I, Corinne Pascariu, 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 09/12/2024
Declared closed by the arbitrator on 09/12/2024

Evan Polansky, Esq. from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Jennifer Strong, Esq. from Callinan & Smith LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$469.99**, 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

Assignor is a male who was 39-years-old when he was injured as the result of a motor vehicle accident on December 26, 2022. He presented to Applicant for imaging on January 17, 2023. Respondent initially denied the claim on the ground that Applicant failed to appear at two examinations under oath (EUO). Respondent subsequently issued a general denial on the ground that the claim is not reimbursable because it was intentionally caused. In other words, that it is a "staged loss".

Issues

Whether the accident is a staged loss. If not, whether the treatment was medically necessary.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the parties as contained in the ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in the file for both parties and make my decision in reliance thereon.

To receive payment of a claim, Applicant "need only file a 'proof of claim' (11 NYCRR 65.11(k)(3)), and the insurers are obliged to honor it promptly or suffer the statutory penalties." Dermatossian v. New York City Transit Authority, 67 N.Y.2d 219, 224, 501 N.Y.S.2d 784, 787 (1986). Furthermore, the No-Fault law requires a carrier to either pay or deny a claim for No-Fault benefits within thirty (30) days from the date an applicant supplies proof of claim. See, Insurance Law §5106 (a) and 11 NYCRR 65-3.8.

Upon reviewing the evidence submitted by the Applicant, I find the Applicant submitted sufficient credible evidence to establish a prima facie case with the respect to the services that are the subject of this arbitration. Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 14 N.Y.S.3d 283 (2015).

Respondent initially denied the claim on the ground that Applicant failed to appear at two EUOs. Respondent subsequently issued a general denial on the ground that the claim is not reimbursable because it was intentionally caused. In other words, that it is a "staged loss".

Respondent's denial based on Applicant's failure to appear at two EUOs was timely issued. Respondent did not issue a claim specific denial based on intentional act. However, this defense is not precludable.

"The only exception to preclusion recognized by this Court arises where an insurer raises lack of coverage as a defense." Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 506, 14 N.Y.S.3d 283, 289 (2015). See also St. Vincent's Hospital & Medical Center v. Allstate Ins. Co., 69 A.D.3d 923, 893 N.Y.S.2d 589 (2d Dept. 2010) (A defense of lack of coverage is not precluded by the insurer's failure to pay or deny the subject No-Fault claim within the requisite 30-day period.).

"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., 6 Misc.3d 1031(A), 800 N.Y.S.2d 358 (Table), 2005 N.Y. Slip Op. 50267(U) at 2, 2005 WL 515601 (Civ. Ct. Kings Co., Bluth, J., Mar. 3, 2005).

In short, a collision caused in the furtherance of an insurance fraud scheme is not a covered accident under a policy of insurance. Matter of Eagle Ins. Co. v. Davis, 22 A.D.3d 846, 803 N.Y.S.2d 679 (2d Dept. 2005). A passenger who is injured when the driver intentionally causes the vehicle to go over an embankment is not entitled to No-Fault benefits from the vehicle insurer. Westchester Medical Center v. Travelers Property Casualty Ins. Co., 309 A.D.2d 927, 765 N.Y.S.2d 901 (2d Dept. 2003). As such, the timeliness of Respondent's denial is immaterial. Respondent's defense, although late, will be considered.

Intentional Accident

Respondent investigated assignor and the underlying accident and based upon its findings asserts that the accident was intentional. It argues that there is no coverage because the accident was staged, fraudulent and intentional. See Metro Medical Diagnostics v. Eagle, 293 A.D.2d 751, 752 (N.Y. App. Div. 2nd Dep't. 2002), A deliberate collision caused in furtherance of an insurance fraud scheme is not a covered accident under a policy of insurance. Matter of Eagle Ins. Co. v. Davis, 22 A.D.3d 846, 803 N.Y.S.2d 679 (2d Dept. 2005). A passenger who is injured when the driver intentionally causes the vehicle to go over an embankment is not entitled to No-Fault benefits from the vehicle insurer. Westchester Medical Center v. Travelers Property Casualty Ins. Co., 309 A.D.2d 927, 765 N.Y.S.2d 901 (2d Dept. 2003).

Respondent has the burden to prove that the underlying accident was caused intentionally. See New York Massage Therapy P.C. v. State Farm Mutual Ins. Co., 14 Misc.3d 1231(A), 836 N.Y.S.2d 494 (Table), 2006 N.Y. Slip Op. 52573(U), 2006 WL 4057169 (Civ. Ct., Kings Co., Sylvia G. Ash, J., Dec. 22, 2006). In New York Massage Therapy P.C., the court held that a claimant's prima facie showing establishes a presumption of coverage, and the burden of going forward on the issue of coverage falls upon the insurer; once the insurer comes forward with proof for its belief that the claimed loss was a staged accident, the burden shifts to the claimant to prove coverage by a preponderance of the evidence. However, unsubstantiated hypotheses and suppositions are insufficient to raise a triable issue of the assignor's fraud. Ocean Acupuncture, P.C. v. State Farm Mutual Automobile Ins. Co., 23 Misc.3d 1104(A), 885 N.Y.S.2d 712 (Table), 2009 N.Y. Slip Op. 50565(U), 2009 WL 884645 (Civ. Ct. New York Co., Manuel J. Mendez, J., Apr. 2, 2009).

Respondent specifically alleges that this accident was one of seventeen (17) accidents ranging from July 19, 2022 to April 22, 2023, that are part of an insurance fraud scheme where the participants targeted commercial vehicles by swooping (swerving) in front of

the targeted vehicles and squatting (stopping) short to intentionally cause a rear collision. Respondent asserts that this was accident number seven (7).

It issued a general denial on October 9, 2023, as follows:

All No-Fault benefits for the above-mentioned claimant have been denied. 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: Made incorrect statements or representations to us with regards to any material fact or circumstance; Concealed or misrepresented any material fact or circumstance; or 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. Accordingly, the claim is denied in its entirety.

Respondent, referencing an investigation conducted by its SIU investigator Brian Sweet and his affidavit dated February 8, 2024, and the EUO testimony of the vehicle occupants, explains why it believes the accident was staged.

Claim for the alleged incident of December 26, 2022, was made under Liberty Mutual policy of automobile insurance issued on September 30, 2022, with an assigned policy number of ##### to TET to insure a 2020 Hyundai Elantra.

It was reported to Liberty Mutual that a motor vehicle incident allegedly occurred on December 26, 2022, involving the insured 2020 Hyundai Elantra, which was operated by Liberty Mutual's insured, TET, and contained passengers JCAU and **WAIB (ASSIGNOR)**, when it was involved in a motor vehicle incident with a commercial 2022 Freightliner owned by Penske Truck Leasing and operated by Joseph Robert Costello while both vehicles were traveling westbound on the Cross Bronx Expressway. The insured vehicle came to an unexplained sudden stop and was rear-ended by the adverse truck. Upon receipt of the December 26, 2022, incident claim, Liberty Mutual assigned claim number #####.

Upon receipt of the claim, an investigation was opened due to the matter in which the loss occurred. Verification of the insured's vehicle's registration revealed it is registered to 402 Linden Street, #4, Brooklyn, New York; however, the policy address is 16715 65th Avenue, Fresh Meadows, New York.

TET had a prior Worker's Compensation claim reported to State Insurance (claim number #####) on June 23, 2022, at which time she reported an address of 5924 56th Street, Maspeth, New York. A Decision Net search revealed TET resided at the Maspeth address from December 2021 until December of 2022.

An ISO query of this address revealed a prior loss involving a commercial motor vehicle reported to Progressive (claim number ##### on March 5, 2021, with a vehicle registered to 5924 56th Street, #1L, Maspeth, New York, owned by Alyssa Moran, and which was occupied by three occupants when it was rear-ended by the commercial motor vehicle.

One of the occupants within said vehicle was identified as Wilfredo Santiago of 151 North Elliot Walk, #4E, Brooklyn, New York. This same address links to Julio Piza, Jefferson Piza Quimi, and Josue Piza (Incident Number 4). In addition, Alyssa Moran, along with her address of 5924 56th Street, Maspeth, New York, is related to two NICB cases from April 8, 2022, reported to Allstate (claim number #####) and on October 29, 2020, reported to Geico (claim number #####).

Ms. Moran was also involved in a loss on June 7, 2022, reported to State Farm (claim number #####) involving a short stop before a commercial vehicle with three vehicles in total involved.

One of the vehicles involved was operated by Rajan Mohan of 10325 105th Street, Ozone

Park, New York. Rajan Mohan was involved in a subsequent loss on December 19, 2022, which was reported to Progressive (claim number #####) and Geico (claim number

#####) and is the subject a NICB case for staged and/or caused loss involving ring

activity.

At the time of the loss, Rajan Mohan was operating a truck for Rose Logistics Inc. Rajan Mohan was also involved in a prior loss with Progressive (claim number #####) for a loss said to have occurred on August 6, 2021, which was referred to NICB for a staged and/or caused loss wherein Rajan Mohan was operating a truck for ASF Enterprise Inc that was involved in a collision with a vehicle containing three occupants, Liz Gomez, John Penafiel and Luis Bustamante.

Luis Bustamante was involved in a prior Liberty Mutual loss (claim number #####) on August 5, 2020, which was referred to NICB for a staged and/or caused loss. This loss involved Wilson Huiracocha of 18 Val Ray Boulevard, Central Islip, New York, who was involved in a prior loss on May 13, 2015 (Progressive claim number ##### /State Farm claim number #####). The State Farm vehicle in said loss was operated by Miguel Sanchez and contained passengers Jorge Huiracocha and Yoselin Alvarado Duran. The Progressive-insured vehicle was operated by Jefferson Piza and contained passenger Josue Piza Quima.

One of the involved parties, in said June 7, 2022, loss, had an address of 2717 McIntosh Street, #2F, East Elmhurst, New York. An ISO search of 2717 McIntosh Street, #2F, East Elmhurst address resulted in locating a Travelers claim (claim number #####), which was said to have occurred on August 22, 2022, involving a short stop before a commercial vehicle, and which is the subject of a NICB case associated with Mario Teran-Fiallos who resides at 4511 82nd Street, Apt. W2D, Elmhurst, New York, and Hernan Sinche of 5453 Place, Maspeth, New York.

Information gathered by Travelers Insurance was exchanged with Liberty Mutual, revealing connections between Hernan Sinche, Xavier Carrasco, Marlon Medieta Mejia, and Jefferson Piza Quimi. As of August 22, 2022, Hernan Sinche was friends on social media with Xavier Carrasco of 3130 103rd Street, East Elmhurst, New York. Xavier Carrasco reported a loss to Travelers (claim number FTY0162), which is said to have occurred on April 4, 2022, when the vehicle stopped short before a commercial motor vehicle. A passenger within the vehicle insured by Travelers, Marlon Mendieta of 4011 7th Avenue, #15, Brooklyn, New York, was also a passenger in a vehicle driven by Jefferson Piza Quimi, which was involved in a loss said to have occurred on November 11, 2017, involving a commercial motor vehicle and which was reported to Park Insurance (claim number #####).

Liberty Mutual then requested the EUOs of TET, JCAU and WAIB.

TET, JCAU, and WAIB appeared for their respective EUO and provided testimony that lacked credibility.

Several inconsistencies were noted from their testimony, which include, but are not limited to, the following:

- i. TET and JCAU testified they were taking WAIB to pick up presents, while WAIB testified he was dropping off presents;
- ii. JCAU testified that WAIB called him on the day of the incident to ask for a ride. To the contrary, WAIB testified they had made the plan a week before;
- iii. The claimants provided differing stories with regard to the events leading up to the incident. TET testified they did not make any stops from the time they picked up WAIB to the time that the incident occurred; JCAU testified they first stopped for coffee, then proceeded to pick up WAIB. WAIB testified the three stopped for coffee together before heading to the Bronx;
- iv. TET testified she was in the car for 2 hours before the incident occurred. JCAU testified they were in the car for 40 minutes to one hour. WAIB did not know how long they were in the car;
- v. TET, the driver of the vehicle, did not know what borough she was traveling to or in which borough the subject incident occurred. She nor JCAU could provide a scintilla of detail as to their final destination. They did not know the name of the person's home to which they were traveling;
- vi. None of the occupants could confirm whether they traveled over bridges, through tunnels, or incurred tolls. Meanwhile, they would have had to drive over a toll bridge in order to travel from Queens to the Bronx;
- vii. WAIB testified that TET did not exit until the ambulance arrived. TET testified they all exited right away. JCAU testified he and WAIB exited immediately;

viii. While JCAU and WAIB claim to have known each other for ten (10) years, neither knew where the other lives. Additionally, JCAU did not know WAIB's partner's name, and JCAU did not know whether TET and JCAU have children together;

ix. WAIB claims he is close with his sister, yet did not know the route to her home or that he would have to incur a toll on his travels; and

x. WAIB testified he left his home at 8:00 am to look for a job. He took along the presents, which he described as heavy. This story is not believable.

Note, for privacy reasons the names of the people involved in this accident are represented by their initials and the policy and claim numbers have been changed to "#". The names of people in other accidents have not been changed.

I find the evidence provided, including Brian Sweet's SIU affidavit, to be credible and sufficient to demonstrate that Respondent had a founded basis for believing that the collision was intentionally caused. See, V.S. Medical Services, PC v. Allstate Ins. Co., 11 Misc.3d 334 (Civ. Ct. Kings Co. 2006) aff'd 25 Misc.3d 39 (App. Term 2d, 11th & 13th Dists. 2009). Not only are there glaring inconsistencies in the EUO testimony, the connections between this accident and the 16 others are too many to simply be coincidental.

Applicant did not submit opposing evidence in rebuttal. Accordingly, I find in favor of Respondent and sustain the denial.

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 NJ
SS :
County of Bergen

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

09/12/2024
(Dated)

Corinne Pascariu

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:
52af492723f311e9a80b1d81cb8c7b44

Electronically Signed

Your name: Corinne Pascariu
Signed on: 09/12/2024