

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Orthopedics & Joint Preservation PC (Applicant)	AAA Case No.	17-24-1343-4697
- and -	Applicant's File No.	SS-265223, SS-265224
LM General Insurance Company (Respondent)	Insurer's Claim File No.	0552264670001
	NAIC No.	36447

ARBITRATION AWARD

I, Stacey Charkey, 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 09/19/2024
Declared closed by the arbitrator on 09/19/2024

Gregory Itingen, Esq. from Samandarov & Associates, P.C. participated virtually for the Applicant

David Herscovici, Esq. from Callinan & Smith LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$7,553.43**, 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 Applicant is seeking reimbursement for medical services provided 01/30/2024, following a motor vehicle accident on 10/25/2023 involving Assignor KM, a then 42-year-old female. Respondent denied payment based on fraud defense, including misrepresentation, intentional act and staged event. The respondent maintains that the claim was denied on the grounds that the incident was part of an insurance fraud scheme. The issue is whether the insurer's proof demonstrated that it had a founded basis for believing that the collision was the result of a fraudulent scheme.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing held via Zoom.

In accordance with 11 NYCRR 65-4.5(o) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations.

The assignor is a then 42-year-old female who was involved in the subject loss on 10/25/2023. The at issue services were denied on the grounds that the incident was part of an insurance fraud scheme.

On 04/02/2024, a global denial was issued stating, POLICY CONDITIONS VIOLATED.

All No-Fault benefits for the above-mentioned injured party 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.

The Respondent submitted the SIU Investigator's Report by Brian Sweet to support its defense based upon the fact or founded belief that the claim arises out of a staged loss/scheme to defraud. SIU investigator Brian Sweet investigated the incidents that have been dubbed the "Pepsi Ring" due to their association with each other and sharing a pattern of organized ring activity.

The SIU investigator stated that the Pepsi Ring presently centers around 27 known losses that Liberty Mutual has identified as being linked as part of an insurance fraud scheme. The nexus tying the claims is the manner in which the collisions

occurred, which are characteristic of a "swoop and squat" insurance scheme that targets commercial vehicles by swooping (swerving) in front of the targeted vehicle and squatting (stopping) short to intentionally cause a rear-end collision. The within claim arises out of what respondent deems "Incident 6 " with a date of loss of 10/25/2023.

SIU Investigator Brian Sweet wrote in pertinent part, The "Pepsi Ring" presently centers around twenty-seven (27) known claims arising out of alleged incidents that Liberty Mutual has identified as being linked to an insurance fraud scheme. The nexus tying the claims is the manner in which the collisions occurred, which are characteristic of a "swoop and squat" insurance scheme that targets commercial vehicles by swooping (swerving) in front of the targeted vehicle and squatting (stopping) short to intentionally cause a rear-end collision.

The Investigator went on to explain:

101. Claim (055226467) for the alleged incident of October 25, 2023, was made under a second-year Liberty Mutual policy of automobile insurance renewed on October 4, 2023, with an assigned policy number of AOS-221-628191-40 issued to Assignor JQ to insure a 2008 GMC Acadia.

102. On October 25, 2023, at approximately 6 a.m., the insured GMC operated by JQ and containing passenger ASSIGNOR "KM" was involved in a rear-end collision with a commercial vehicle on the Eastbound Long Island Expressway.

103. JQ and ASSIGNOR "KM" are currently treating with New Arena PT, which has been linked to a disproportionate number of claims involving short stops for commercial motor vehicles.

104. An Accurint report of JQ indicates that he has resided at 2641 93rd Street, FL 2, East Elmhurst, New York, since July 2014.

105. An ISO search of 2641 93rd Street, FL 2, East Elmhurst, New York address, revealed a prior NICB referral from August 22, 2018, with Liberty Mutual claim 038192675 for inflated tow/ storage, faked/ exaggerated injury and prior loss/ damage. In the August 22, 2018, incident, JQ was involved in a rear-end collision while operating a vehicle containing four (4) passengers onboard. The four occupants were identified as Adrian Jara, 4264 Ketcham Street Elmhurst, New York; Joselyn Vivanco of 2641 93rd Street, East Elmhurst, New York; Jose Valdez and Domingo Valleta of 110140 160th Street, Jamaica, New York. The owner of the adverse vehicle was identified as Maribel Rivera of 64 Richmond Street, Brooklyn, New York, phone number 718-749- 8323.

106. An ISO query of 4264 Ketcham Street, Elmhurst, New York, located a Geico claim 8713833060000002 from May 31, 2023, where a vehicle owned by G.

Teran Navarette of 4264 Ketcham Street, Elmhurst, New York, was being driven by Allison Teran Lopez of 350 Soundview Avenue, B1 Bronx, New York, rear-ended another vehicle.

- 107. An ISO query of 350 Soundview Avenue, Bronx, New York, located Liberty Mutualclaim #050289509 from July 19, 2022, referred to NICB for a staged/ caused loss, organized group/ ring activity, and faked/ exaggerated injury. The analysis and accompanying dashcam footage are contained in INCIDENT 1 with reference to linked INCIDENT 4 of Affirmation 1.*
- 108. Based on the foregoing, Liberty Mutual assigned its counsel to schedule andconduct JQand ASSIGNOR "KM"'s EUO.*
- 109. On March 4, 2024, ASSIGNOR "KM" appeared for her EUO in the presence ofparalegals Jacob Bangiev and Emanuel Sadykov of Raytsin Law Firm, P.C.*
- 110. The following is the synopsis of ASSIGNOR "KM"'s testimony: i. ASSIGNOR "KM"presented a New York State driver's license displaying Katty Lucciola ASSIGNOR "KM" Vivanco's full legal name. ii. ASSIGNOR "KM" currently resides at 8842 81st Avenue, 2nd Floor, Glendale, New York. iii. ASSIGNOR "KM" previously resided at 2641 93rd Street in East Elmhurst. She lived there from 2006 to about seven years ago with her mother, grandmother, Renaldo Vivanco, Elian Emmanuel Vivanco, and Joselyn Vivanco. This is the same address as in ¶104. iv. ASSIGNOR "KM" stated that Joselyn Vivanco is her cousin. She has not had contact with this individual in many years. ASSIGNOR "KM" testified that neither she nor her husband had ever been involved in a car accident with Joselyn. v. The subject incident occurred on an expressway on Long Island. ASSIGNOR "KM" did not know the name of the expressway. It was a weekday around 6:00 a.m. The weather was cold, but there was no rain or snow. There were no other occupants in the vehicle. The two were traveling to Quituisaca's job, located at 3909 Utopia Parkway, Flushing. vi. ASSIGNOR "KM" testified that she would take her husband to work one to two times per week when the other car wasn't available, always taking the same route. vii. On the day of the incident, JQ had lent his car to his friend, Edgar Montedioca, for four or five days. ASSIGNOR "KM" claims that JQ had lent his vehicle to Montedioca before. ASSIGNOR "KM" is personally familiar with Montedioca, though he does not know where he lives. viii. ASSIGNOR "KM" described that JQ always works the same hours and has to be there during the same times, 7:00 a.m. to 4:00 p.m. ASSIGNOR "KM" made arrangements to drive her husband to work the night before the incident. They left home before 6:00 a.m., though ASSIGNOR "KM" did not know the exact time. They both entered the vehicle at their home. They did not make any stops from the time that they left their home until the time that the incident occurred. Aside from taking the Jackie Robinson Parkway, ASSIGNOR "KM" could not describe the route they took. She does not know how long they were in the vehicle at the time of the incident. ix. ASSIGNOR "KM" answered that she did not know how long they were on the expressway, whether JQ was entering or exiting the highway at the time of*

the incident, whether he was changing lanes, or whether any lanes were merging or reducing at the location where the incident occurred. At the time of the incident, ASSIGNOR "KM" was lying down and sleeping, seat belted in the front passenger seat. She does not know the direction they were headed, the number of lanes at the location where the incident occurred, or the number of vehicles involved. She could not describe the intensity of the traffic. She did not know which lane they were traveling in. She does not know anything about how the motor vehicle incident occurred, claiming she was sleeping. xi. She indicated that JQ had shared that he was driving normally, that traffic slowed, and as he slowed down, he was hit from behind. xii. She avoided answering the question. ASSIGNOR "KM" does not know if any videos show JQ slamming his brakes or if there were any witnesses to the incident. xiii. The police arrived, though ASSIGNOR "KM" cannot recall after how long. An ambulance and a firetruck were also arriving. She does not know how long it took for each of these respective vehicles to arrive.

111. On March 7, 2024, JQ appeared for his EUO in the presence of paralegal Emanuel Sadykov of Raytsin Law Firm.

112. The following is the synopsis of JQ's testimony: i. Sanchez has resided at 88-42 81st Avenue, 2nd Floor, Glendale, for the last seven years. ii. Previously, JQ resided at 26-46 93rd Street in Elmhurst. There, he lived with his wife, her mother, grandmother, and his wife's aunt, Glenda Moscoso. He indicated many others who came and went were living downstairs. He is familiar with Joselyn Vivanco, his wife's cousin. He thinks she may have lived at that home with her dad, Jorge Vivanco. Joselyn Vivanco is aged 25 to 26. Sanchez last saw her three to four years ago, indicating that the two never spoke. He does not know where she lives. He did not know that she was involved in a motor vehicle accident. iii. The subject incident occurred on October 25, 2023, as he and his wife were coming from home. They left their home between 5:30 and 5:45 a.m. They did not make any stops. They took Jackie Robinson Parkway to Van Wyck and the Northern State. They had been in the Northern State for approximately 10 minutes. This was the same route that Sanchez takes every day to work. Sanchez indicated that he was exiting the highway at the time of the incident near Exit 29. He then indicated that he was far from Exit 29 and had only passed Exit 28. He could not approximate how far he was from Exit 29 when the incident occurred. There were three lanes headed in the direction they were traveling. He does not know which lane they were traveling in but believes it was the middle. He does not know how long they traveled in the middle lane. He was not changing lanes at the time of the accident. He described traffic as intermediate. iv. Two vehicles were involved. At the time of the incident, the insured vehicle was moving between 45 and 50 miles per hour. He had reduced speed because there was traffic up ahead. He does not know how long before the motor vehicle incident occurred that he had reduced speed. He reduced speed by taking his foot off of the gas. He claimed that he did not use the brake the moment before the impact occurred, as traffic was moving.

113. Based on the preliminary investigation analysis linking ASSIGNOR "KM" and JQ with a family home address that had been the subject of an ultimate determination of a previous incident being a product of a fraudulent event, the facts and circumstances of the instant claim being consistent with an overall scheme of operation of the "Pepsi Ring," Liberty Mutual formed a founded belief that the instant claim is a result of an intentional incident and is part of an organized ring operation.

The SIU Investigator concluded that based upon a thorough investigation, the alleged 27 incidents combined to formulate a massive, calculated ring of fraud event.

This arbitrator finds that the insurer's proof, which the applicant failed to rebut, demonstrated that it had a founded basis for believing that the collision was the result of a fraudulent scheme. 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, 11 & 13 Dists. 2009).

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association and considering the arguments set forth by both sides, I am upholding the Respondent's denial.

Accordingly, the claim is denied.

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 Queens

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

09/20/2024
(Dated)

Stacey Charkey

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:
4fa28cac164f0b13ad31974a6549f80a

Electronically Signed

Your name: Stacey Charkey
Signed on: 09/20/2024