

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Conrad F Cean MD, PLLC  
(Applicant)

- and -

Hereford Insurance Company  
(Respondent)

AAA Case No. 17-24-1343-5095

Applicant's File No.

Insurer's Claim File No. CA3191641

NAIC No. 24309

**ARBITRATION AWARD**

I, Ioannis Gloumis, 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: EIP.

1. Hearing(s) held on 09/23/2024  
Declared closed by the arbitrator on 09/23/2024

Marc L. Schwartz, Esq. from Cean Owens Law Group PLLC participated virtually for the Applicant

Chris Fingerhut, Esq. from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$127.41**, 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 seeks No-Fault reimbursement for a follow-up medical evaluation that was performed on January 24, 2024, following a January 18, 2023 motor vehicle accident. Respondent defends the claims in dispute based upon the defenses that the EIP made material misrepresentations and omissions of material facts regarding the motor vehicle accident and the presentation of claim and that the reported injuries are not causally related to the motor vehicle accident. Respondent also stated that the underlying collision was not a covered event; there was no accident; and the incident was staged for the purpose of committing fraud.

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

I have reviewed the submissions contained in the American Arbitration Association's Electronic Case Folder in MODRIA, said submissions constituting the record in this case. This award is based upon the arguments that were presented by the parties during the arbitration hearing and the documentary evidence that has been submitted by the parties. There were no witnesses that testified during the arbitration hearing.

The EIP, then a 42-year-old male passenger, reported that he was injured in a motor vehicle accident on January 19, 2023. The EIP sought private medical attention for injuries to the neck, left shoulder, left knee, and lower back. The EIP underwent physical therapy and chiropractic care. The EIP came under the care of multiple providers, including Conrad Cean, M.D. Applicant performed medical evaluation services on January 24, 2024.

Applicant billed Respondent \$127.41 for the follow-up medical evaluation that was performed on January 24, 2024. Respondent acknowledged that it received the bill for the claim in dispute on February 28, 2024. Thus, Applicant has established its prima facie case. See *Amaze Med. Supply Inc. v. Allstate Ins. Co.*, 3 Misc 3d 133(A) (App Term, 2d & 11th Jud Dists 2004); *King's Med. Supply Inc. v. Country-Wide Ins. Co.*, 5 Misc 3d 767 (Civ Ct, NY County 2004); *Ultra Diagnostics Imaging v. Liberty Mutual Ins. Co.*, 9 Misc.3d 97 (App. Term 9th & 10th Dists. 2005).

Moreover, Respondent denied the claim in dispute based upon the defenses that the EIP made material misrepresentations and omissions of material facts regarding the motor vehicle accident and the presentation of claim and that the reported injuries are not causally related to the motor vehicle accident. Respondent conducted the examination Under Oath ("EUO") of the EIP on May 1, 2023 via Zoom videoconference. Respondent presented a copy of the EUO transcript.

In linked and related AAA *Case Number 17-23-1328-4733*, an arbitration between the same parties involving the very same defense, Respondent presented evidence in support of the same defenses. In AAA *Case Number 17-23-1328-4733*, this arbitrator held the following, in relevant part:

"...Following a complete review of the evidence presented, I find that Respondent has failed to present sufficient evidence to establish its defense of material misrepresentations and omissions of material facts in the presentation of claim, that the incident was a staged collision in furtherance of a scheme to

defraud the insurer, and that the reported injuries are not causally related to the motor vehicle accident. Respondent argued that the EIP's testimony is not credible with respect to the relationship between the EIP and the other passenger. I have reviewed the EIP's testimony from the EUO that was conducted on May 1, 2023. I am not persuaded that Respondent has presented sufficient evidence in this arbitration to establish its defenses.

While Respondent presented the transcript of the EIP's EUO testimony and arguments regarding the indicators of a staged collision, Respondent did not present an affidavit from an SIU Investigator or a Claims Representative providing the evidentiary findings of Respondent's investigation to establish that the motor vehicle accident was a staged collision or event. The EIP's testimony in the EUO transcript alone is insufficient to establish Respondent's defenses. The EIP testified with specific detail as to the events on the evening of the incident, the individuals who were involved, the intended destination, the accident itself, the strength of the impact, where he was seated in the insured motor vehicle at the time of the impact, that T.H. was in the insured vehicle with him, the details regarding the movement of his body within the insured vehicle at the time of the impact, the symptoms, the related injuries, and the treatment received following the accident. While the EIP was unable to provide the specific names of two of T.H.'s friends and the street names or the names and locations of the bars and lounges, the EIP's testimony is not contradictory within the EUO transcript.

Respondent has failed to provide sufficient evidence to establish that the reported incident was not a motor vehicle accident and that it was actually a staged collision or event, that the EIP's reported injuries are not causally related to the motor vehicle accident, or that the EIP did not actually have the reported injuries as described during the testimony. Respondent did not present an affidavit from an SIU investigator providing further explanation of the investigation, including any additional evidence that was discovered during the investigation, to establish Respondent's "founded belief" that the accident was a staged event. There is no evidence presented of additional testimony from other individuals who were involved in the accident, sworn statements from other individuals who were involved in the accident, medical evidence to establish that the reported injuries were not causally related or that they were fabricated and/or exaggerated, evidence of excessive treatments, or any other evidence to establish that the accident was a staged event or did not occur at all.

The police accident report documented damage to the rear left of the insured vehicle, which corresponds with the EIP's testimony that the impact occurred to the left rear of the insured vehicle. The EUO transcript alone is insufficient to establish Respondent's founded belief that the collision was staged or that the

EIP made material misrepresentations or omissions in the presentation of claim. Respondent has failed to establish its defenses. Therefore, Respondent's denial of the claims in dispute should not be upheld..."

In linked and related AAA *Case Number 17-23-1328-1061*, an arbitration between the same parties involving the very same defense, Respondent presented evidence in support of the same defenses. In AAA *Case Number 17-23-1328-1061*, this arbitrator held the following, in relevant part:

"...Following a complete review of the evidence presented, I find that Respondent has failed to present sufficient evidence to establish its defense of material misrepresentations and omissions of material facts in the presentation of claim, that the incident was a staged collision in furtherance of a scheme to defraud the insurer, and that the reported injuries are not causally related to the motor vehicle accident. Respondent argued that the EIP's testimony is not credible with respect to the relationship between the EIP and the other passenger. I have reviewed the EIP's testimony from the EUO that was conducted on May 1, 2023. I am not persuaded that Respondent has presented sufficient evidence in this arbitration to establish its defenses.

While Respondent presented the transcript of the EIP's EUO testimony and arguments regarding the indicators of a staged collision, Respondent did not present an affidavit from an SIU Investigator or a Claims Representative providing the evidentiary findings of Respondent's investigation to establish that the motor vehicle accident was a staged collision or event. The EIP's testimony in the EUO transcript alone is insufficient to establish Respondent's defenses. The EIP testified with specific detail as to the events on the evening of the incident, the individuals who were involved, the intended destination, the accident itself, the strength of the impact, where he was seated in the insured motor vehicle at the time of the impact, that T.H. was in the insured vehicle with him, the details regarding the movement of his body within the insured vehicle at the time of the impact, the symptoms, the related injuries, and the treatment received following the accident. While the EIP was unable to provide the specific names of two of T.H.'s friends and the street names or the names and locations of the bars and lounges, the EIP's testimony is not contradictory within the EUO transcript. Respondent has failed to present sufficient evidence to establish that the reported incident was not a motor vehicle accident and that it was actually a staged collision or event, that the EIP's reported injuries are not causally related to the motor vehicle accident, or that the EIP did not actually have the reported injuries as described during the testimony. Respondent did not present an affidavit from an SIU investigator providing further explanation of the investigation, including any additional evidence that was discovered during the investigation, to establish Respondent's "founded belief" that the accident was a staged event. There is no evidence presented of additional testimony from other

individuals who were involved in the accident, sworn statements from other individuals who were involved in the accident, medical evidence to establish that the reported injuries were not causally related or that they were fabricated and/or exaggerated, evidence of excessive treatments, or any other evidence to establish that the accident was a staged event or did not occur at all.

The police accident report documented damage to the rear left, which corresponds with the EIP's testimony that the impact occurred to the left rear of the insured vehicle. The EUO transcript alone is insufficient to establish Respondent's founded belief that the collision was staged or that the EIP made material misrepresentations or omissions in the presentation of claim. Respondent has failed to establish its defenses. Therefore, Respondent's denial of the claims in dispute should not be upheld..."

In this case, Respondent presented an affidavit by Joseph Simons, Respondent's Special Investigation Unit Manager. The affidavit was executed on January 5, 2024.

Applicant's attorney objected to the submission of the affidavit in this arbitration on July 29, 2024 on the basis that the late submission was prejudicial and argued that Respondent's defense should be precluded under the doctrine of Collateral Estoppel as there are two prior awards in favor of Applicant on the exact same issue; and the affidavit was executed before the prior arbitration hearings in linked and related AAA *Case Numbers 17-23-1328-1061* and *17-23-1328-4733* and was not presented by Respondent in those cases.

In *Paramount Pictures Corp. v. Allianz Risk Transfer AG*, 31 NY3d 64 (NY Ct. of Appeals 2018), the Court stated the following, in relevant part:

"...The preclusive effect of a judgment is determined by two related but distinct concepts - issue preclusion and claim preclusion - which collectively comprise the doctrine of "res judicata" (*see Taylor*, 553 US at 892). Issue preclusion, also known as collateral estoppel, bars the relitigation of "an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment" (*New Hampshire v Maine*, 532 US 742, 748-749 [2001]; *see also* Restatement [Second] of Judgments § 27 [1982]). As a result, the determination of an essential issue is binding in a subsequent action, even if it recurs in the context of a different claim (*Taylor*, 553 US at 892).

While issue preclusion applies only to issues *actually* litigated, claim preclusion (sometimes used interchangeably with "res judicata") more broadly bars the parties or their privies from relitigating issues that were or *could* have been raised in that action (*Cromwell v County of Sac*, 94 US 351, 352 [1976]). The doctrine "encompasses the law of merger and bar" - it precludes the relitigation of all claims falling within the scope of the judgment, regardless of whether or not those claims were in fact litigated (*Migra v Warren City School Dist. Bd. Of Educ.*, 465 US 75, 77 n 1 [1984]; *Monahan v New York City Dept of Corrections*, 214 F3d 275, 285 [2d Cir 2000]; Wright, 6 Fed Prac & Proc Juris § 1417). As such, claim preclusion serves to bar not only "every matter which was offered and received to sustain or defeat the claim or demand," but also "any other admissible matter which might have been offered for that purpose" (*Nevada v United States*, 463 US 110, 129-130 [1983], citing *Cromwell*, 94 US at 352). In other words, claim preclusion may "foreclos[e] litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit" (*Migra*, 465 US at 77 n 1).

Collectively, these doctrines serve to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication" (*Allen v McCurry*, 449 US 90, 94 [1980]). By promoting consolidation, res judicata shields litigants from undue harassment and protects against the substantial time and expense associated with needless and repetitive litigation (Taylor, 553 US at 892; *see also* Allan D. Vestal, *Res Judicata/Preclusion by Judgment: The Law Applied in Federal Courts*, 66 Mich L Rev 1723, 1723 [1967]). The reduction of duplicative proceedings similarly furthers the goals of convenience, efficiency and judicial economy - the same trial court presides over unified discovery, all relevant motions, and a single trial (*Allen*, 449 US at 94; Conway, 60 U Chi L Rev at 156). Res judicata also preserves the integrity of the courts by fostering finality and minimizing the risk of conflicting judgments, which serve only to undermine public confidence in the judicial process (see *Nevada*, 463 US at 128-129; Vestal, 66 Mich L Rev at 1723; Conway, 60 U Chi L Rev at 162) ..."

The doctrines of Res Judicata and Collateral Estoppel are applicable to arbitration awards, including those awards that have been issued in disputes over No-Fault benefits, and will bar relitigation of the same claims or issues. See *A.B. Medical Services PLLC v. New York Central Mutual Fire Ins. Co.*, 12 Misc.3d 500 (Civ. Ct. Kings Co. 2006), citing *Matter of Ranni*, 58 N.Y.2d 715 (1982); *Monroe v. Providence Washington Ins. Co.*, 126 A.D.2d 929 (3d Dept. 1987).

Moreover, in *City School Dist. of City of Tonawanda v. Tonawanda Educ. Ass'n*, 63 N.Y.2d 846 (1984), the Court held that "The effect, if any, to be given to an earlier arbitration award in subsequent arbitration proceedings is a matter for determination in

that forum. See *Board of Educ. v Patchogue-Medford Congress of Teachers*, 48 N.Y.2d 812, 813; *Matter of Country-Wide Ins. Co. [Barrios]*, 48 N.Y.2d 831, 832).

Additionally, two requirements must be met before the doctrine of Collateral Estoppel can be invoked: there must be an identity of issues which has been decided in the prior action and is decisive in the present action, and there must have been a full and fair opportunity to contest the decision now said to be controlling. See *Gilberg v. Barbieri*, 441 NYS2d 49 (1981).

I have considered the evidence and the arguments presented by the parties in this arbitration. The issues that were presented in linked and related AAA *Case Numbers 17-23-1328-1061* and *17-23-1328-4733* between the same parties are identical to the issues in this arbitration. Respondent had a full and fair opportunity during the prior arbitrations to contest the prior decisions that are now controlling in this arbitration. The affidavit was executed prior to the arbitration hearings in AAA *Case Numbers 17-23-1328-1061* and *17-23-1328-4733* and before this arbitration was commenced on April 10, 2024. Respondent did not provide any justification for failing to provide the affidavit of SIU Manager Simons in the prior arbitrations or as part of the original submissions in this arbitration. Consequently, the affidavit of SIU Manager Simons is hereby precluded. Furthermore, the doctrine of Collateral Estoppel precludes the arbitration of the very same issues in this case.

Accordingly, Applicant's claim is hereby granted in its entirety.

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            |
|---------|------------------------|---------------------|--------------|-------------------|
|         | Conrad F Cean MD, PLLC | 01/24/24 - 01/24/24 | \$127.41     | Awarded: \$127.41 |
| Total   |                        |                     | \$127.41     | Awarded: \$127.41 |

B. The insurer shall also compute and pay the applicant interest set forth below. 04/10/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay Applicant the amount of interest computed from the date of filing, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of *11 NYCRR 65-3.9(c)* (stay of interest).

C. Attorney's Fees

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

Respondent shall pay Applicant an attorney's fee in accordance with *11 NYCRR 4.6*.

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 Nassau

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



10/04/2024  
(Dated)

Ioannis Gloumis

### **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:**  
e9c7a79069c91da63830862de918f275

### **Electronically Signed**

Your name: Ioannis Gloumis  
Signed on: 10/04/2024