

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

American Medical Initiatives PC
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-24-1345-6971

Applicant's File No. SSA24-112477

Insurer's Claim File No. 054870868-02

NAIC No. 36447

ARBITRATION AWARD

I, Giovanna Tuttolomondo, 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 10/03/2024
Declared closed by the arbitrator on 10/03/2024

Steven Super, Esq. from Super Associates P.C. participated virtually for the Applicant

Elvira Messina, Esq. from Callinan & Smith LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,058.48**, 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 Assignor, MD, now a 35-year-old male, was involved in a motor vehicle accident on September 20, 2023. Thereafter, the Assignor sought medical attention for injuries sustained in the accident. At issue in this case are claims totaling \$ 1,058.48, representing an X-Ray of the knee and an MRI of the brain performed the Assignor on November 22, 2023. Centrally, Respondent raises a defense based on a lack of coverage/intentional accident/fraud. The issue presented is whether Respondent establishes this defense.

4. Findings, Conclusions, and Basis Therefor

The decision in this case is based upon the oral arguments of the parties' representative(s) at the video/Zoom hearing and upon my review of the submissions of the parties as contained in the Electronic Case Folder maintained by the American Arbitration Association. I have reviewed the documents in MODRIA as of the date of closing of this file and incorporate, and rely upon, said documents in making my decision.

"Coverage cannot be created where coverage does not exist. Presbyterian Hosp. in City of New York v. Empire. Ins. Co., 220 A.D.2d 733, 633 N.Y.S.2d 340 (2d Dept. 1995). Nor does the failure to disclaim coverage create coverage which the policy was not written to provide." Id. (citing Zappone v. Home Ins. Co., 55 N.Y.2d 131, 432 N.E.2d 783 (1982); Cent. Gen. Hosp. v. Chubb Group of Ins. Cos 90 N.Y.2d 195, 681 N.E.2d 413 (1997)).

As expressed in Black Bull Contracting, LLC v. Indian Harbor Ins. Co., 135 A.D.3d 401, 23 N.Y.S.3d 59 (1st Dept. 2016):

"Disclaimer pursuant to section 3420(d) [now § 3420(d)(2)] is unnecessary when a claim falls outside the scope of the policy's coverage portion. Under those circumstances, the insurance policy does not contemplate coverage in the first instance, and requiring payment of a claim upon failure to timely disclaim would create coverage where it never existed."

In an associated matter filed under AAA Case Number 17-24-1346-4128, involving the same Assignor and defense, I upheld the defense, in determining in pertinent part that:

"In support of its defense, in pertinent part, Respondent submits the Affidavit of Brian Sweet, a Complex Investigator who is tasked with investigating insurance fraud rings. Mr. Sweet describes various incidents/accidents linked to suspected fraud/fraud. These incidents/accidents also involve various insurance companies. Mr. Sweet relates that there are striking similarities between these various incidents/accidents and the herein accident [discussed beginning on paragraph 36 of his Affidavit, under "Incident 2"]. Among these similarities are the manner in which the accidents occurred [for instance, targeting a commercial truck, soda distribution truck or other truck and impacts stemming from stopping, distracting and/or sideswiping maneuvers]. Mr. Sweet also discusses the treatment sought in all incidents/accidents, advocating that the treatment is disproportionate in relation to the severity of the incident/accident impacts.

Having reviewed the totality of the evidence, I find that Mr. Sweet's extensive analysis, coupled with his training and his expertise in recognizing red flags, supports a finding that the herein accident was intentional/staged. There is no coverage afforded to either drivers or passengers where an accident is intentional/staged. Applicant does not present evidence to challenge Respondent's proof. I deny the claim."

I adhere to my determination above. The herein Assignor was an occupant of the same vehicle involved in the accident addressed in 17-24-1346-4128. There is no evidence to alter my determination. I deny the claims.

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

10/07/2024
(Dated)

Giovanna Tuttolomondo

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:
6767f2b5c0c6a872370b3fa5d84a415d

Electronically Signed

Your name: Giovanna Tuttolomondo
Signed on: 10/07/2024