

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Global Tech Diagnostic Inc
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-23-1290-5798

Applicant's File No. DK22-313705

Insurer's Claim File No. 111814101

NAIC No. 16616

ARBITRATION AWARD

I, Anne Malone, 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 10/04/2024
Declared closed by the arbitrator on 10/04/2024

Jennifer Raheb, Esq. from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Erisa Ahmedi, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,151.19**, 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 70 year old EIP reported involvement in a motor vehicle accident on August 17, 2022; reported injury and underwent ultrasound of the lumbar spine, bilateral knees, shoulders and left elbow provided by the applicant on October 25, 2022.

The applicant submitted a claim for these medical services, payment of which was timely denied by the respondent on the grounds that the injuries sustained ant the treatment provided to the EIP were not causally related to the subject accident based on the EUO testimony of the EIP and the biomechanical report of Zachary Merrill, Ph.D.

The issue to be determined at the hearing is whether the respondent established that the EIP's injuries and treatment were not causally related to the subject accident.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed from the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

The claim was timely denied by respondent based on the testimony of the examination under oath of the EIP and on the biomechanical analysis by Zachary Merrill, Ph.D.

Entire claim is denied based on examination under

oath conducted December 19, 2022 where it was found
that the claimant's treated condition and alleged injuries
were not causally related to alleged accident and based
on a lack of causation as opinion based on the biomechanical
science expert report of Zachary Merrill, P.H.D. dated
January 19, 2023.

The applicant has the burden to establish *prima facie* that the assignor's injuries and the medical treatment provided arose out of the use or operation of a motor vehicle. See Santo v. Government Employees Ins. Co., 31 A.D.3d 525, 819 N.Y.S. 279 (2d Dept. 2006); See also Insurance Law §5103[a][1.]

The applicant submitted the assignor's assignment of benefits form in which she states, under warning of the penalties of filing a false report with an insurance company, that she was injured as a result of a motor vehicle accident that occurred on August 17, 2022 and thereby assigns her rights to benefits to the applicant.

In addition, the applicant submitted the transcript of the EUO of the EIP, which details the happening of the accident and the injuries she claims resulted from the subject accident.

To support its denial based on a lack of causation between the subject accident and the injuries sustained and the treatment provided to her, the respondent relied upon the EUO testimony of the EIP and the biomechanical analysis of Zachary Merrill, Ph.D.

I have reviewed the transcript of the EIP's EUO testimony and find that it is insufficient to establish that the injuries she sustained and the treatment rendered to her were not causally related to the subject accident.

Dr. Merrill, discussed in detail the scientific details related to the biomechanical analysis of the subject accident and determined that any interaction between her left knee and the interior of the motor vehicle in which she was a passenger, would have been minimal and below the threshold to cause acute, traumatic injury.

Although he is not a medical professional Dr. Merrill opined that the EIP's left knee complaints are likely due to degeneration of her knee joint compatible with her age.

He concluded that within a reasonable degree of biomechanical certainty, with the exception of minor strains or sprains the mechanisms required to cause acute traumatic injuries were not present in the subject accident.

I find that this report is insufficient to establish that any injuries sustained by the EIP were not causally related to the subject accident.

Therefore, the respondent has not established that its denial based on the EUO testimony of the EIP and the report of Dr. Merrill was proper.

Accordingly, the applicant is awarded \$1,151.19 in disposition of this claim.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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
	Global Tech Diagnostic Inc	10/25/22 - 10/25/22	\$1,151.19	Awarded: \$1,151.19
Total			\$1,151.19	Awarded: \$1,151.19

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/14/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a *pro rata* basis using a 30 day month." See 11 NYCRR §64-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits" calculated pursuant to Insurance Department regulations. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See, 11 NYCRR §65-3.9(c.) The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. See 11 NYCRR §65-4.6(d.)

- 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 CT

SS :

County of Fairfield

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

10/08/2024

(Dated)

Anne Malone

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:
0280988074132101909b19c406a125a7

Electronically Signed

Your name: Anne Malone
Signed on: 10/08/2024