

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

BSD OS LLC
(Applicant)

- and -

Enterprise Rent A Car
(Respondent)

AAA Case No. 17-24-1340-3999

Applicant's File No. DK23-402489

Insurer's Claim File No. 19433069

NAIC No. Self-Insured

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 12/23/2024
Declared closed by the arbitrator on 12/23/2024

Artur Finkel, Esq. from Korsunskiy Legal Group, P.C. participated virtually for the Applicant

Ayesha Syed, Esq. from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,826.70**, 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 77 year old EIP reported involvement in a motor vehicle accident on March 8, 2023; claimed related injury and received a pneumatic compression device provided by the applicant on August 2, 2023.

The applicant submitted a claim for this durable medical equipment, payment of which was denied based on a court order by Hon. R. Bruce Cozzens, Supreme Court Nassau County on default in favor of the respondent in this action.

The issue to be determined at the hearing is whether the respondent established that the applicant was not entitled to no-fault compensation for

the services at issue based on the order of Hon. R. Bruce Cozzens, Supreme Court, Nassau County.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in 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 applicant has the burden to establish *prima facie* that the assignor's injuries and the need for durable medical equipment at issue arose out of the use or operation of a motor vehicle on March 8, 2023. 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 the assignor 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 March 8, 2023 and thereby assigns her rights to benefits to the applicant.

Res Judicata- Collateral Estoppel

Res judicata and collateral estoppel are applicable to no-fault arbitration awards and bar relitigation of the same claim or issue. A.B. Medical Services PLLC v New York Central Mutual Fire Ins. Co., 12 Misc.3d 500, 820 N.Y.S.2d 422 (Civ. Ct. Kings Co. 2006), citing Matter of Ranni, 58 N.Y.2d 715, 458 N.Y.S.2d 910 (1982.)

A determination of the *res judicata* effect of a prior arbitration proceeding is for the arbitrator in a subsequent arbitration proceeding. City School Dist. Of City of Tonawanda v. Tonawanda Educ. Ass'n., 63 N.Y.S.2d 846, 482 N.Y.S.2d 258 (1984.)

It is well settled that any judgment, even judgments entered on default have *res judicata* or collateral estoppel effect. See Eagle Surgical Supply, Inc. v. AIG Indem. Ins. Co., 40 Misc. 3d 139(A) (App. Term 2013) Further, the Appellate Term has held that "[t]he declaratory judgment is a conclusive final determination, notwithstanding that it was entered on default...." Ava Acupuncture, P.C. v NY Central Mut. Fire Ins. Co., 34 Misc. 3d 149(A) (App. Term 2012.)

The submissions include a copy of the order Index no. 618614/2023 dated December 11, 2024 by Justice R. Bruce Cozzens, Supreme Court, Nassau

County declaring that the plaintiff (respondent in the instant matter) seeks a Declaratory Judgment on six causes of action against the defendant (applicant in the instant matter):

First Cause of Action plaintiffs have no obligation to pay any present or future no-fault claims against all defaulting defendants

Second Cause of Action based on fraud and/or material misrepresentation

Third Cause of Action based on unjust enrichment

Fourth Cause of Action based on fraudulent concealment

Fifth Cause of Action based on negligent misrepresentation

Sixth Cause of Action based on common law fraud

I find that Justice Cozzen's prior order is *res judicata* on the issues fraud, material misrepresentation, and the determination that the respondent has no obligation to pay this and any other no-fault claims related to the subject accident.

There is no new or different evidence in the record in the case at issue which would lead to a contrary finding and conclusion.

Under these circumstances, the respondent has established that the applicant is not entitled to reimbursement for the claim at issue.

The applicant requested that this claim be dismissed without prejudice to permit it to move to vacate the order of Justice Cozzens. I consented to this request.

Accordingly, the claim is dismissed without prejudice.

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 claim is DISMISSED without prejudice

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.

01/19/2025

(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:
34884bbc5ad3c0282b6fb3f3aafd8d7f

Electronically Signed

Your name: Anne Malone
Signed on: 01/19/2025