

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Kolb Radiology, P.C.
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-24-1351-0353

Applicant's File No. 44524-578477

Insurer's Claim File No. 0557648520001

NAIC No. 36447

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 01/31/2025
Declared closed by the arbitrator on 01/31/2025

Joaquin Lopez, Esq. from Barshay, Rizzo & Lopez, PLLC. participated virtually for the Applicant

Melissa Coppola from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,937.44**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$2,695.52 to conform to the appropriate fee schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The 83 year old EIP reported involvement in a motor vehicle accident on December 25, 2023; claimed related injury and underwent MRI studies of the right wrist on January 12, 2024 and cervical and lumbar spine on February 23, 2024.

The applicant submitted a claim for these medical services, payment of which was timely denied by the respondent based on a material misrepresentation when the policy was issued.

The issue to be determined at the hearing is whether the respondent established that the denial is proper based on a material misrepresentation at the time that the policy was issued.

4. Findings, Conclusions, and Basis Therefor

This 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.

This claim involves a New York accident involving a policy issued in for a person who claimed to reside at 35 Staton Corner, Swan Lake, New York at a time that he resided at 1512 Townsend Ave., Bronx, New York.

The NF 10 states in pertinent part:

Based on our review of this claim, currently known facts and the terms of the Automobile Policy we have determined that the allegations of the claim do not create a potential of first-party coverage under the policy. As a result, we will not investigate, settle or otherwise handle this matter on behalf of [the EIP]. Our information indicates that you misrepresented the location of your residence and the location where the insured vehicle would be garaged at.

Accordingly, Liberty is disclaiming any claims for first-party coverage due to material misrepresentations on your policy application. While we have attempted to address all coverage considerations related to this matter, Liberty reserves all rights

under applicable law and the policy. This letter should in no way be construed as a waiver or estoppels of any possible coverage defenses afforded by the policy or applicable law.

The submissions included an affirmation by Nashod Hamilton, an SIU investigator employed by the respondent who attested to his findings including the fact the EIP actually resided in Bronx, NY at all times relevant to this claim and that he never resided in Swan Lake, NY.

Alsos included in the submissions was a transcript of the EUO testimony of the EIP, the policy application and an affirmation by Randall Lawrence-Hurt, an Underwriter employed by the respondent. Mr. Lawrence-Hurt reported that the premium for the policy of insurance issued to the EIP based on his policy application which stated that he lived in Swan Lake, NY would have increased by \$3,131.00 if the EIP actually lived in the Bronx, NY.

Based on the foregoing, the respondent has established that the applicant is not entitled to reimbursement for the claim at issue.

Accordingly, the claim is dismissed with 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 DENIED in its entirety

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.

02/01/2025

(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:
0ff892397959a09bbba8d6f2717481a6

Electronically Signed

Your name: Anne Malone
Signed on: 02/01/2025