

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

J Sports Medicine PC
(Applicant)

- and -

Liberty Mutual Insurance Company
(Respondent)

AAA Case No. 17-24-1362-3846

Applicant's File No. GM24-832480

Insurer's Claim File No. 941522710

NAIC No. 23035

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 02/10/2025
Declared closed by the arbitrator on 02/10/2025

John Fagan, Esq. from Law Offices of Gabriel & Moroff, 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, **\$203.76**, 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 23 year old EIP reported involvement in a motor vehicle accident on October 3, 2023; claimed related injury and underwent an initial evaluation provided by the applicant on April 22, 2024.

The applicant submitted a claim for these medical services, payment of which was initially denied based on the EIP's failure to attend an examination under oath.

The claim was later denied by the respondent on the grounds that there was no coverage for this claim/loss because the subject incident resulted from an intentional act.

The issues to be determined at the hearing are:

Whether the respondent established that the EIP violated a condition precedent to coverage by failing to appear for an IME.

Whether the respondent established its coverage defense based on fraud.

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.

No show IME

There were several denials related to this claim. The first denial was based on the EIP's failure to attend two scheduled independent medical examinations.

The denial states in pertinent part:

All Orthopedic Surgeon benefits for the above eligible injured person, [EIP] and [other passenger], have been denied effective 10/03/2023.

The eligible injured person has failed to appear for Independent Medical Examinations on 02/01/2024 & 02/29/2024 by Dr. Dorothy F. Scarpinato. Pursuant to Regulation 68, 65.12, Proof of Claim, "The eligible injured person shall submit to medical examination by physicians selected by, or acceptable to, the Company, when and as often as, the Company may

reasonably require." The New York automobile policy mentioned above states, DUTIES AFTER AN ACCIDENT OR LOSS, "We have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us: B. A person seeking any coverage must: 3. Submit as often as we reasonably require: a. To physical exams by physicians we select." The eligible injured person's failure to attend the above examinations has prejudiced the carrier's right and ability to verify the causal relationship of injuries and treatment rendered and the medical necessity of such treatment as well as the degree of disability.

Although the submissions include copies of the scheduling letters, they do not include proof of mailing or evidence to establish that the EIP failed to appear for either of the scheduled IMEs.

Coverage

Other denials were related to the fraud issue. Initially, general denials stated that: "[c]laim is denied due to fraud. Further denial details will follow under separate cover. Therefore, all No Fault benefits for the above applicant are denied effective 10/03/2023."

To support its denial based on fraud and material misrepresentation the respondent submitted the affirmation of Amanda Semmel, an SIU investigator employed by the respondent. The affirmation includes the following information obtained during the investigation of this claim:

- i The incident occurred within minutes of the initiation of the trip;
- ii The location of the incident is known by insurance companies as a "hotspot" for targeting livery vehicles; See Exhibit "2".
- iii The adverse vehicle fled the scene; See Exhibit "2".
- iv Both passengers in the insured vehicle sought extensive medical treatment from the same providers despite refusing medical attention at the scene; and

v The medical services incommensurable with the low-velocity collision and the vehicle's minor damage; see Exhibit "3"

As part of the investigation into the subject claim, Respondent sought both [EIP] and [other passenger] Examinations Under Oath.

The EUOs were held and a transcript of the testimony was submitted. The submissions also include a comprehensive affirmation by Ms. Semel which includes a detailed recitation of the testimony and her assessment of the contradictions and the truthfulness of both of the witnesses.

Ms. Semel concluded that:

[EIP] and [other passenger] provided contradictory testimonies.

Initially, [other passenger] indicated that he met up with [EIP] at

an unknown location in downtown Manhattan and they had

taken Uber to Valley Stream. In contrast, [EIP] testified that

they got together in the Valley Stream area. [EIP] and

[other passenger] provided differing testimony regarding the frequency

of meetups at the purported address the evening of the incident,

with [EIP] claiming [other passenger] had been there before and

[other passenger] denying that he had never been to the address previously. Further,

[other passenger] denied that there was any discussion about modifying

the trip, contrary to [EIP] testimony. Finally, [EIP] and [other passenger]

provided conflicting information regarding the timing of the incident,

as the incident occurred within moments of the Uber ride's beginning.

Notably, neither individual saw the impact, and both provided very

minimal descriptions of the location of the incident.

Based on the totality of its investigation, Liberty Mutual formed a founded belief that the

that the subject incident resulted from an intentional act consistent with an elaborate fraudulent scheme targeting livery drivers to obtain pecuniary gain at the expense of insurance companies and the public at large.

The respondent supported its position with relevant case law including the following:

The holding in Metro Medical Diagnostics v. Eagle, 293 A.D.2d 751, 752 (N.Y. App. Div. 2nd Dep't. 2002) which determined that "A deliberate collision caused in furtherance of an insurance fraud scheme is not a covered accident."

In addition, the courts in New York have consistently held that an automobile incident that is the product of a staged or cause-of-event is not a covered loss under the applicable policy of insurance. See Allstate v. Massre, 789 N.Y.S.2d. 206 (N.Y. App. Div. 2nd Dep't. 2005); State Farm v. Laguerre, 305 A.D.2d 490 (N.Y. App. Div. 2nd Dep't. 2003.)

In addition, the case law supports the fact that an insurance carrier is not precluded from raising, at any time, the fact that an automobile incident was not the product of a covered event, as "coverage" is a non-waivable matter. See Central General Hospital v. Chubb Group of Insurance Companies, 90 N.Y.2d 195 (N.Y. 1997); Zappone v. Home Insurance Company, 55 N.Y.2d 131 (N.Y. 1982.)

The applicant did not submit any evidence or caselaw to refute the evidence submitted by the respondent.

After a review of the EUO testimony and other submissions, based on the totality of the evidence submitted, I find that the respondent has established that there were material misrepresentations on the part of the EIP, that the accident was "staged" and the defense of fraud was supported by caselaw and the circumstances of the subject incident.

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.

02/12/2025

(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:
bb8c35b68c1de034ced085f1f13ed9ac

Electronically Signed

Your name: Anne Malone
Signed on: 02/12/2025