

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Empire State Ambulatory Surgery Center
(Applicant)

- and -

Avis Budget Group
(Respondent)

AAA Case No. 17-24-1364-6123

Applicant's File No. A-510

Insurer's Claim File No. 238030962-001

NAIC No. Self-Insured

ARBITRATION AWARD

I, Nada Saxon, 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 02/04/2025
Declared closed by the arbitrator on 02/04/2025

John Faris from Law Offices of Solomon Aminov PC participated virtually for the Applicant

Joshua Shack from Gallo Vitucci Klar, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$16,667.88**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended its claim to \$6,723.43 in accordance with its interpretation of the applicable fee schedule.

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

3. Summary of Issues in Dispute

The Assignor (ERT) was a 31-year-old male passenger involved in an accident on 8/15/23.

Applicant seeks payment for left shoulder surgery on 5/20/24.

Respondent denied the claim asserting the subject loss was not a covered event. The issue is whether Respondent has established its coverage defense.

4. Findings, Conclusions, and Basis Therefor

This case was conducted using the documents submitted by the parties in the ADR Center and the oral arguments of the parties. No witnesses testified at this hearing. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not specifically raised at the time of the hearing.

Coverage

When a collision is an intentional act, not an accident, there is no coverage "regardless of whether the intentional collision was motivated by fraud or malice." Government Employees Ins. Co. v. Shaulskaya, 302 AD2d 522, 756 NYS2d 79 [2nd Dept. 2003]. A defense based upon the lack of coverage may be raised at any time and the timeliness of the denial is of no consequence, since an assertion of lack of coverage may always be raised. See Central Gen. Hospital v. Chubb Group of Ins. Co., 90 NY2d 195 (1997).

If an insurer has a "founded belief" that the alleged accident was not a true accident, it can deny the claim based on 11 NYCRR 65-3.8(e)(2). In V.S. Med. Servs. v. Allstate, 11 Misc. 3d 334, 342 (N.Y. Civ. Ct. 2006), the Court stated:

*While 'unsubstantiated hypotheses and suppositions' are not enough to make out a lack of coverage defense (see Amstel Chiropractic v. Omni Indem. Co., 2 Misc 3d 129 [A], 2004 NY Slip Op 50088[U], *1 [App Term, 2d 11th Jud Dists 2004]), an insurer's evidence of a purposeful collision will often be circumstantial. This is to be expected; in the absence of a mea culpa from one of the participants, the insurer - and ultimately the court - must examine the facts and circumstances of the incident to determine whether they give rise to an inference of lack of coverage. (See, e.g., A.B. Med. Servs., 7 Misc 3d 822.) Circumstantial evidence is sufficient if a party's conduct "may be reasonably inferred based upon logical inferences to be drawn from the evidence." (Benzaken v. Verizon Communications, Inc., 21 AD3d 864, 865 [2d Dept 2005].*

In American States Ins. Co. v Casado, 2011 NY Slip Op 31322(U) (N.Y. Sup. Ct. 2011), the Court provided guidance for the factors one should look when determining whether an alleged accident was actually an intentionally staged act:

Some guidance is offered by the trial courts, which have articulated several factors as indicia of fraud, including: (i) more than one collision within a short time of the policy's inception, (ii) cancellation of the policy shortly thereafter for non-payment of premiums, (iii) similarities among the collisions and interrelationships among the parties, and (iv) inconsistencies in testimony regarding the circumstances of the subject collision and the identities of the individuals involved. Such factors, in various combinations, have been held to

constitute a "compelling and persuasive body of circumstantial evidence that the underlying loss resulted from an intentional collision staged for the purpose of insurance fraud.

Respondent submits an affidavit dated 9/24/24 by claims handler, Ivanna Chiow, whose duties involve investigating potential fraudulent claims. Chiow specifically outlining the reasons leading to Respondent's denial of coverage, which include:

There is no police report or MV-104 for the loss;

[Assignor's] NF-2 indicates that the loss took place at 3:30 a.m. on August 15, 2023 on the Grand Central Parkway in Queens, New York. The NF-2 indicates that the collision involved an adverse vehicle that fled the scene ;

[JF/driver] was involved in two other collisions in Avis vehicles within a short period of time: one on July 4, 2023, and one on July 9, 2023.

The passengers in the Avis vehicles in the July 4 loss were unrelated to [JF] or each other, and the passenger in the Avis vehicle in the August 15 loss was unrelated to [JF];

The damages to the vehicles involved in the respective losses were minor, indicating low impact collisions;

There were indicators that [JF] and his passengers in the July 4, 2023 and August 15, 2023, losses did not know one another; and

The Company began receiving billing for excessive medical treatment allegedly provided to [JF] and his passengers, including [Assignor], from questionable providers in relation to the three losses.

The investigator also notes that JF failed to appear for an EUO. Respondent submits Assignor's 10/18/23 EUO transcript which supports the investigator's suspicions. Assignor's assertion JF is a childhood friend, yet he is unable to provide any meaningful knowledge about him is questionable. Assignor did not know JF's phone number and had not seen him since the accident. Assignor's testimony he just happened to see JF on the day of the accident, after not having seen him in years, and then proceeded to drive around with him for 4-5 hours while he made food deliveries is also questionable. Assignor's account of the accident is also questionable considering he testified the adverse vehicle was a taxi that struck them, pulled to the side, said he had to drop his passenger and then pulled off. When asked why they did not call the police, Assignor testified they tried to call the police, but they were following the vehicle as it tried to get away; yet did not want to follow it into the City. Assignor stated he had photos and a video of the other vehicle but was unable to retrieve them because his phone was broken, and he was waiting for "it to come in the mail" so he could log into his email on the phone. When asked if a police report was ever prepared, Assignor testified they went back to the area to go to the precinct, they provide him with a police report to fill out, and he gave it to his lawyer. However, as the investigator notes there is no police report for the collision.

The investigator also references prior accidents on 7/4/23 and 7/9/23 involving the same driver JF. Respondent's submits the EUO transcript of the passenger (SM) in the vehicle involved in the accident on 7/4/23. SM's testimony regarding how she knew JF was just as vague as Assignor's. SM also did not know JF's phone number and just happened to see him on the day of the collision and take a ride with him to a hotel to visit his friend. The 7/4/23 collision was between Respondent's rental vehicle and a parked vehicle. Both passengers provide similarly questionable testimony regarding the circumstances of the accidents that both occurred while JF was driving a rental vehicle. A negative inference is also drawn from the driver's failure to appear for an EUO as noted by the investigator.

Respondent also submits an award in its favor involving SM and the prior accident on 7/4/23. See Staywell Chiropractic PC v. Avis Budget Group, AAA: 17-24-1337-9589, 10/28/24. Reviewing similar evidence, as well as Assignor's EUO testimony referenced as [TR], Arbitrator Czuchman concluded:

[Sedgwick claims and litigation representative Jim Hill] attests that the claim was referred for EUOs because, in addition to the claim involving the 7/4/23 collision, JF was involved in two other collisions in Avis vehicles on 7/9/23 and 8/15/23. The patient was not involved in the other collisions. Mr. Hill attests that no injuries were noted in the police report of the 7/4/23 accident. He attests that the collision occurred in a hotel parking lot and that the parked vehicle struck by the Avis vehicle operated by JF was registered to a local address. Mr. Hill attests that TR, JF's passenger in the 8/15/23 collision, appeared for an EUO on 10/18/23, and his testimony led Sedgwick to believe that the 8/15/23 collision was not a covered incident. He attests that TR and the patient testified that they were unaware the Avis vehicles were rentals and took long rides with JF with multiple brief stops. He attests that Google searches of JF's name resulted in news articles reporting arrests of an individual with the same name and age range described by TR and the patient for drug trafficking. He attests that respondent has received excessive billing for medical treatment allegedly provided to JF, TR, and the patient. Mr. Hill attests that according to the patient's EUO transcript, she could not establish she had a meaningful relationship with JF, and her testimony regarding the circumstances surrounding the 7/4/23 incident was evasive, vague, and suspicious. He attests that she testified that she was asleep when the collision occurred and was texting on her phone during her testimony.

Having reviewed the EUO testimony, Respondent's characterization of the testimony as inconsistent and suspicious is accurate. The similarities between this incident and the prior incident on 7/4/23 are also questionable. I find the investigator's affidavit credible and supported by corroborating evidence. I disagree with Applicant's assertion Respondent's evidence is not sufficient to meet its burden. While some of these factors taken alone may not necessarily amount to a finding of fraud, taken together they form a compelling body of circumstantial evidence that the underlying loss resulted from an intentional staged collision. I find Respondent's evidence sufficient to shift the burden to Applicant. Applicant does not submit evidence rebutting Respondent's defense.

Accordingly, Applicant's claim is denied.

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 CA

SS :

County of San Diego

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

02/24/2025
(Dated)

Nada Saxon

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:

a144886cf72a72ae2ac4ff9c03a669c5

Electronically Signed

Your name: Nada Saxon
Signed on: 02/24/2025