

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

BSD OS LLC  
(Applicant)

- and -

LM General Insurance Company  
(Respondent)

AAA Case No. 17-23-1328-8836

Applicant's File No. DK23-384905

Insurer's Claim File No. 0532842100003

NAIC No. 36447

**ARBITRATION AWARD**

I, Debbie Thomas, 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 03/18/2025  
Declared closed by the arbitrator on 03/18/2025

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

Elvira Messina from Callinan & Smith LLP 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

Applicant seeks reimbursement in the amount of \$2,826.70 for a pneumatic compression device supplied on June 29, 2023 to Assignor, L.R., a 56-year-old male who was the front-seat passenger of a motor vehicle involved in an accident on April 17, 2023. Respondent denied the claim based on the July 25, 2023 peer review report of Stuart I. Springer, which concluded that the pneumatic compression device was not medically necessary. On December 5, 2023, Respondent also issued a global denial of benefits based on its investigation which determined that the loss was not a covered event due to discrepancies and misrepresentations of material facts concerning the loss.

4. Findings, Conclusions, and Basis Therefor

The within award is based upon this arbitrator's review of the record as well as oral argument at the time of the hearing of this matter.

Under Sec. 5102 of the New York Insurance Law (McKinney 1985), No-Fault first party benefits are reimbursement for all medically necessary expenses on account of personal injuries arising out of the use or operation of a motor vehicle.

Respondent denied the claim based on the July 25, 2023 peer review report of Stuart I. Springer, which concluded that the pneumatic compression device was not medically necessary. On December 5, 2023, Respondent also issued a global denial of benefits based on its investigation which determined that the loss was not a covered event due to discrepancies and misrepresentations of material facts concerning the loss.

Respondent's global denial provides the following explanation for its denial:

All No-Fault benefits for the above-mentioned injured party have been denied. Liberty Mutual's investigation of the above loss included, but was not limited to, a review of statements made in support of your claim, witness statements and doctor's reports. The investigation has revealed false information submitted in support of the above claimant's claim. According to Part F of the policy, General Provisions, Fraud. We may cancel this policy and deny coverage under this policy at any time, including after the occurrence of an accident or loss if you: Made incorrect statements or representations to us with regards to any material fact or circumstance; Concealed or misrepresented any material fact or circumstance; or Engaged in fraudulent conduct; at the time of application of at any time during the policy period, or in connections with the presentation or settlement of a claim. Accordingly, the claim is denied in its entirety.

Respondent submits the transcript of the EUO testimony of A.E., who is the policyholder and was the driver of the motor vehicle that Assignor was a passenger in; the transcript of Assignor's EUO testimony; and the affidavit of Brian Sweet, who is employed as a Complex Matters Investigator by Respondent in a Special Investigative Unit ("SIU").

Mr. Sweet's affidavit states, in relevant part:

1. On April 8, 2023, A.E. applied for an automobile policy to insure a 2005 Lexus ES 350.

2. A policy of insurance, effective April 9, 2023, through April 9, 2024, was issued based on the information provided and A.E.'s representations that it was accurate.

3. On April 17, 2023, the insured vehicle, operated by A.E., and containing passengers Assignor and K.R., Assignor's wife, was allegedly involved in a sideswipe type of collision with a commercial vehicle on Sunrise Highway

4. Upon notification of the claim, Respondent began an investigation due to the following suspicious factors:

a. The incident occurred only eight (8) days after the inception of the policy;

b. The incident involved a commercial vehicle.

c. The premium payment was flagged as a fraudulent transaction by the credit card issuer;

d. The credit card used for the premium payment was associated with Eldridge Smith and not A.E.;

e. The phone number provided by A.E. was reported as spam and associated with Levi Sicay Perez;

f. A.E. updated his phone number post the date of loss, on May 1, 2023.

g. A reverse internet provider (IP) search revealed that the policy application was electronically signed at the Lost Mined Brewing Company in Shamokin, Pennsylvania;

h. A DMV query revealed that the vehicle listed on the policy is owned by Bob Rayheem Hampton at 393 Miller Ave, #1R, Brooklyn, New York, and is registered to A.E. at 420 Halsey Street, Brooklyn, New York;

i. An ISO query of 393 Miller Ave, Brooklyn, New York revealed an NICB referral from October 18, 2017 with National General #3037824 for excessive treatment and staged/caused accident.

j. The associated party was Davine Smith at 393 Miller Ave, #1, Brooklyn, New York. Notably, this address is similar to that of vehicle owner Bob Rayheem, and the same last name as the one on the credit card associated with the payment on the policy.

5. Based on the foregoing, as part of the continuing investigation, Respondent conducted an Examination Under Oath of A.E., and Assignor, and K.R.

6. A.E. appeared for his EUO on September 6, 2023, and Assignor appeared for his EUO on November 16, 2023. K.R. failed to appear for her EUO on July 7, 2023, August 9, 2023, and November 16, 2023.

7. Based on the elicited testimony, Respondent noted the following discrepancies and "red flags":

i. A.E. testified that he is the owner of a 2005 Lexus ES 330 involved in the subject loss;

ii. A.E. also testified that Bob Rayheem Hampton was the last owner of the vehicle and is not listed on the title;

iii. However, a DMV query revealed that the owner of the 2005 Lexus ES 330 was Bob Rayheem Hampton at 393 Miller Ave, #1R, Brooklyn, New York;

iv. A.E. testified that he obtained his policy of insurance, in person, on Sutter Avenue, in East New York

v. However, the policy application was e-signed by A.E. on April 8, 2023, in Shamokin Pennsylvania;

vi. A.E. testified that he paid for the insurance policy in cash in the amount of \$250-300;

vii. However, the down payment on the policy was \$817.75;

viii. Further, A.E. made a credit card payment on the policy that was reported as fraudulent. The credit card was associated Eldridge Smith who resides at the same address as Bob Rayheem Hampton;

ix. A.E.'s initial phone numbers for the policy were 347-760-1474 and 929-766-1334;

x. However, A.E. testified that the number he used was his actual number, 164-500-2828, and that was the only number he put down. He also testified that he was not familiar with the number 929-766-1334;

xi. Notably, A.E. changed the numbers and e-mail address associated with the policy post April 17, 2023, the alleged date of loss;

xii. However, he testified he did not call and change the phone number or any information on the policy after he purchased the policy;

xiii. A.E. testified that at the time of the accident he was driving with passengers Assignor and K.R., close friends whom he has known for over twenty years;

xiv. However, Assignor testified that "Jabarry" was driving, and he did not know his last name but had known him for about three years. Further, the alleged date of loss was the first time K.R. met him;

xv. A.E. testified that Assignor and K.R. are married but they don't have children together;

xvi. Contrarily, Assignor testified that he and K.R. have five children over the age of 21;

xvii. A.E. testified on the date of the accident they were travelling to get something to eat, either Chick-fil-A or McDonalds and they had come from the Roosevelt mall where they all had gone shopping;

xviii. A.E. testified that on the day of the accident he had picked up Assignor and K.R. at their home and they had made the plan to get food after they left the mall;

xix. However, Assignor. testified that on the alleged date of loss, he ran into A.E. randomly in Far Rockaway, around the last stop on the A train and A.E. was in his car;

xx. Further, Assignor testified that he asked A.E. to drive him and his wife home and Assignor indicated it was on his way to his home.

xxi. Assignor resides in New York, New York;

xxii. Also, contrary to A.E.'s testimony, Assignor testified that after they got in the car, they went to get Popeyes in Nassau County;

xxiii. A.E. testified that he was using his GPS to get food but could not recall what the GPS was set to;

xxiv. Contrarily, Assignor testified that A.E. did not use GPS to get to Popeyes;

xxv. A.E. testified that the accident occurred while they were looking for food;

xxvi. However, Assignor testified that the accident occurred after they had gone to Popeyes;

xxvii. A.E. testified that the accident did not occur at an intersection; and

xxviii. Contrarily, Assignor testified that the accident occurred at an intersection.

Based on the totality of the investigation, Respondent formed a founded belief that the passengers made fraudulent material representations in the presentation of the claim inasmuch as the subject incident was the product of a staged fraudulent event for which no coverage exists.

Respondent's defense was previously addressed by Arbitrator Kathleen Sweeney in AAA Case No. 17-23-1328-9904 with regard to the driver of the motor vehicle, A.E. Arbitrator Sweeney's award states, in relevant part:

There is no coverage under an automobile policy if the incident in question was not fortuitous. "A deliberate collision caused in furtherance of an insurance fraud scheme is not a covered accident." *State Farm Mut. Auto. Ins. Co. v. Laguerre*, 305 A.D.2d 490 (2 Dept., 2003); See also *Allstate v. Massre*, 789 N.Y.S.2d. 206 (2 Dept. 2005); and *Geico v. Shaulskaya*, 302 A.D.2d 522 (2 Dept. 2003). A standard automobile liability policy and does not provide coverage for injuries intentionally inflicted by the insured. *State Farm Insurance Company v. Langan*, 55 A.D.3d 281 (2 Dept. 2008). An "accident" for insurance purposes is determined by looking through the "viewpoint of the insured." An event is only an accident if through the "viewpoint of the insured, the event was 'unexpected, unusual and unforeseen' and not brought about by the insured's own 'misconduct, provocation, or assault.'" *Id.* citing *Nallan v. Union Labor Life Ins. Co.*, 42 N.Y.2d 884 (1977).

When looking to determine if a loss is staged, the Supreme Court, Nassau County described the factors one should look at: 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. American States Ins. Co. v Casado, 2011 NY Slip Op 31322(U) (N.Y. Sup. Ct. Apr. 28, 2011) citing Matter of National Grange Mut. Ins. Co. v. Vitebskaya, 1 Misc.3d 774, 766 N.Y.S.2d 320; V.S. Medical Services, P.C. v. Allstate Ins. Co., 11 Misc.3d 334, 811 N.Y.S.2d 886; Matter of Progressive County Mut. Ins. Co. v. McNeil, 4 Misc. 3d 1022[A], 798 N.Y.S.2d 347, 2004 NY Slip Op 50998[U].

In fact, the SIU investigator indicated that Respondent had a founded belief of fraud in this matter because: 1) date of loss occurred shortly after the policy inception, 2) the policy payment was tagged as a fraud; 3) the parties had many inconsistencies in how they knew each other, where they met that day, where they were going, where they had been. Given the various inconsistencies and the affidavit of the SIU investigator, I find that Respondent had a founded belief that Applicant's claims are not from a covered accident. I find that Respondent established it had a founded belief that the IP made false statements with the intent to conceal or misrepresent material facts related to this loss and thus the collision was staged and not a covered event. Therefore, I find in favor of Respondent. Applicant's claim is denied in its entirety. This decision is in full disposition of all claims for No-fault benefits presently before this Arbitrator.

After reviewing the totality of the evidence, including the EUO transcripts of A.E. and Assignor, the affidavit of SIU Investigator Brian Sweet, and Arbitrator Sweeny's prior award involving the same motor vehicle accident and underlying evidence, I find that Respondent has established that the April 17, 2023 motor vehicle accident was not a covered event in that material misrepresentations were made in the presentation of the claim. Applicant has not come forward with any evidence to refute Respondent's showing that this not a covered incident, but rather, a staged loss. In that Respondent's defense of a lack of coverage is a non-precludable defense, the peer review report of Dr. Springer, which is the basis for Respondent's specific denial, need not be considered at this time. Accordingly, Applicant's claim for reimbursement is denied. *See also* AAA Case Nos. 17-24-1337-3998 and 17-24-1331-6772.

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 NY

SS :

County of Nassau

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

03/21/2025  
(Dated)

Debbie Thomas

#### **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:**  
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### **Electronically Signed**

Your name: Debbie Thomas  
Signed on: 03/21/2025