

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-24-1377-9083

Applicant's File No. AR24-26262

Insurer's Claim File No. 0435977990007

NAIC No. 36447

ARBITRATION AWARD

I, Glen Cacchioli, 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 04/30/2025
Declared closed by the arbitrator on 04/30/2025

Alek Beynenson, Esq. from The Beynenson Law Firm, PC participated virtually for the Applicant

Simran Narang, Esq. from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,303.80**, 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 Assignor, while allegedly operating an E-Bike, was involved in a motor vehicle accident on September 18, 2020. Following the accident Assignor underwent treatment at Applicant's PC. Applicant billed Respondent for the treatment in the amount of \$1303.80. Respondent denied reimbursement contending no-fault benefits are not available. As such, the issue presented for this hearing is whether Respondent established that the E-Bike Assignor was operating is a motorcycle and therefore is excluded from coverage for no-fault benefits.

4. Findings, Conclusions, and Basis Therefor

The hearing was conducted via Zoom and was decided on the documents contained in the ADR Center and the oral arguments of counsel/representative at the hearing. Only those arguments presented at the hearing are addressed in this decision and any other arguments not presented at the hearing are deemed waived. There were no witnesses.

On September 18, 2020, Assignor was involved in a motor vehicle accident.

Between September 25, 2020, and February 24, 2021, Assignor underwent treatment (physical therapy and examinations) at Applicant's PC.

Applicant billed Respondent \$1303.80 for the treatment. Respondent denied reimbursement contending there is no coverage for any person while occupying a motorcycle.

Applicant now seeks no-fault benefits afforded to the owner and operator of the motor vehicle involved in the accident with the E-Bike. Therefore, the issue for determination is whether the Assignor was operating a motorcycle and thereby excluded from no-fault benefits under this policy.

An insurer may assert at any time that the accident arises from an insurance fraud scheme or that the alleged injury was not caused by an insured incident and is therefore not covered under the policy. See *Vital Points Acupuncture, P.C. v. New York Central Mutual Fire Ins. Co.*, 6 Misc.3d 1031(A), 800 N.Y.S.2d 358 (Table), 2005 N.Y. Slip Op. 50267(U), 2005 WL 515601 (Civ. Ct. Kings Co., Bluth, J., Mar. 3, 2005). See also, *A.B. Medical Services PLLC v. State Farm Mutual Automobile Ins. Co.*, 4 Misc.3d 83, 781 N.Y.S.2d 822 (App. Term 9th & 10th Dists.) 2004.

It is Respondent's burden to come forward with proof in admissible form to establish "the fact" or evidentiary foundation for its belief that there is no coverage. See *Mount Sinai Hosp. v. Triboro Coach*, 263 A.D. 11 (2d Dept. 1999), quoting *Central Gen. Hosp. v. Chubb Group of Ins. Co.*, 90 N.Y.2d at 199. See also *Hospital for Joint Diseases v. Hertz Corp.*, 9 A.D.3d 392 (2d Dept 2004); *St. Luke's Roosevelt Hosp. v. Roosevelt Hosp. v. Allstate Ins. Co.*, 303 A.D.2d 743, 744 (2d Dept. 2003).

The VTL requires that standard motorcycles carry insurance. Article 48-A of the VTL carves out a small exception for certain "limited use motorcycles," or a motorcycle that cannot go faster than twenty miles per hour (a Class C limited use motorcycle). These vehicles would not qualify as "motorcycle[s]" under that statute and thus, the PIP exclusion would not apply. In sum, if a motor vehicle has a saddle as the driver's seat, rides on not more than 3 wheels, and has a top speed of more than 20 miles per hour, it will be considered a "motorcycle" under the No-Fault Regulations and the PIP exclusion applies.

Section 5102 of the New York State Insurance Law, at subsection (f), defines a "motor vehicle" and excludes a motorcycle from that definition. Therefore, no-fault personal injury protection (PIP) benefits, which are available to all drivers, passengers and pedestrians involved in a motor vehicle accident, are not available to the operator of a motorcycle.

In support of its defense Respondent submitted the following:

1. A copy of the policy which excludes coverage to any person who sustains personal injury while occupying a motorcycle
2. Photographs of the E bike involved in the accident. It is a Fly 9 e-bike (see police report), has two wheels, a 60 Volt E-Bike, and has a maximum speed of 40MPH. Respondent contends it even looks like a motorcycle as opposed to an electric bicycle.
3. A copy of the police report of the accident which demonstrates that the Assignor was operating an E bike at the time of the accident.

In reviewing all the evidence, I find that Respondent established that the Assignor was not eligible for no-fault benefits because the loss occurred while the Assignor was operating a motorcycle. The E-Bike Assignor was operating has a saddle for the driver, not more than three wheels, and it can move faster than 20 miles per hour (40 actually). As a result, I find this loss is excluded from coverage under the policy at issue and Respondent is under no duty to provide no-fault benefits whether Respondent timely denied the claim or not. Accordingly, Applicant's claim is denied.

DECISION: AWARD IN FAVOR OF THE RESPONDENT

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

05/06/2025

(Dated)

Glen Cacchioli

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: Glen Cacchioli
Signed on: 05/06/2025