

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

SMS Therapy Supply Inc.  
(Applicant)

- and -

LM General Insurance Company  
(Respondent)

AAA Case No. 17-24-1346-9797

Applicant's File No. LIP-36290

Insurer's Claim File No. 1574610

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 03/21/2025, 05/15/2025  
Declared closed by the arbitrator on 05/15/2025

Robin Grumet, Esq. from Law Offices of Ilya E Parnas 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, **\$5,575.00**, 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 32 year old EIP reported involvement in a motor vehicle accident on January 16, 2024; claimed related injury and received a SAM unit with patches provided by the applicant on February 14, 2024.

The applicant submitted a claim for this durable medical equipment (DME) , payment of which was denied by the respondent based on a lack of coverage involving intentional material misrepresentations at the EUO of EIP regarding this claim.

**The issue to be determined at the hearing is whether the respondent established that the denial is proper based on material misrepresentations by the EIP regarding his actions before, during and after the subject accident.**

#### 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 was denied based upon the EIP's failure to cooperate with the respondent's investigation and was based on his EUO testimony and failure to provide responses to post-EUO requests for documents/information.

The NF 10 states in pertinent part:

All No-Fault benefits for this claimant are denied. Liberty

Mutual's investigation has revealed false information submitted in support of this claimant's claim revealing misrepresentations of material facts. Per the policy, Fraud "We do not provide coverage for any insured ("insured") who has made fraudulent statements or engaged in fraudulent conduct in connection with any loss ("loss") or damage for which coverage is sought under this policy". Accordingly, the claim is denied in its entirety.

This claim was denied based upon the respondent's investigation of the subject incident, including a review of statements by the EIP made in support of the claim, the police report, witness statements, Medical reports.

Based on the foregoing, the investigation revealed that false information had been submitted which constituted fraud and material misrepresentations of material facts regarding the subject accident.

In support of its defense, the respondent submitted the SIU affidavit by Gina Lupo, an investigator employed by the respondent who attested to her

investigation of the subject accident involving an Uber driver and the EIP who was a passenger in the vehicle.

Ms. Lupo included her opinion based on dashboard camera video footage provided by the driver of the vehicle, which she determined raised suspicions regarding the incident.

In her opinion, this video established the following:

Prior to the impact the EIP was looking intently into the side-view mirror, seemingly expecting or bracing for impact.

The impact occurred within minutes of the beginning of the trip.

The adverse vehicle fled the scene.

The video depicted that the EIP was in extreme pain after the impact, appearing paralyzed.

The driver of the vehicle attempted to get the license plate number of the adverse vehicle, but the EIP insisted that he did not leave the scene.

A third vehicle appears to have blocked the driver's attempt to collect the license plate of the adverse vehicle.

By the time the third vehicle passed, the adverse vehicle had fled.

The EUO of the driver was conducted on April 1, 2024. Ms. Lupo summarized the driver's testimony as follows:

- i. He has been driving for Uber as a primary source of income for about seven years
- ii. The incident occurred at Ashley and Fenwood Drive in Valley Stream.
- iii. The impact occurred almost immediately, within approximately one minute of the beginning of the ride.
- iv. He confirmed what was depicted in the video footage and stated that his Uber vehicle was impacted and he pulled over to exchange information. He was struck again, and the right-side view mirror was taken off on the second impact. He needed to get the license plate number of the adverse vehicle, but the EIP was hesitant and did not want him to move the vehicle. However, the driver stated that he chose to attempt to get the license plate
- v. The EIP was adamant that he did not contact the police, but he chose to do so.

- vi. He was unable to find the adverse vehicle to obtain its license plate; he opened the back door to check on the EIP because he was expressing extreme pain.
- vii. The EIP wanted to return to the scene of the incident because he said that he dropped his ear pods out of the car. However, the driver stated that this was virtually impossible as the door was never opened at the scene of impact, and this was the EIP's attempt to avoid police presence.
- viii. He did not initially observe the adverse vehicle prior to the impact. However, he stated that the EIP was intently concentrating on the headlights behind him as if anticipating the impact.
- ix. He believed the adverse vehicle struck him twice on purpose.
- x. The EIP claimed that he was experiencing severe pain from a back injury caused by the impact. However, when the ambulance eventually arrived, the EIP refused medical attention, did not go with the ambulance, and claimed that he felt "fine" for now but was unsure how he would feel in the morning.
- xi. He provided all of his necessary information to the police; however, the EIP did not have any ID and provided the police with an incorrect name, which they were unable to locate in their system.
- xii. The police officer preparing the police report stated openly that he believed the EIP was participating in an insurance fraud scheme that targets livery drivers.
- xiii. Upon refusing to return to the scene of the impact and calling the police against the wishes of the EIP, the EIP stated, "I was going to help you out, but now you wait, wait and see what is going to happen now" as a threat to the driver.
- xiv. Further, the driver stated that the EIP gave him a 1-star review on the Uber App, in which he claimed that the driver was speeding and swerving.

According to the affidavit, the EIP appeared for EUO's on April 2, 2024 and May 14, 2024 but was unable to testify because he did not provide valid identification. However, on May 14, 2024, the EIP's attorney was able to confirm his identity and the EIP was conducted.

Ms. Lupo attested to the testimony of the EIP as follows:

He lived in Pennsylvania with his father for six months but did not remember where.

Prior to the incident, he was hanging out with a friend named Ashley, whom he had known for three to four years. He could not remember her last name and did not have her contact information.

He was sitting in the vehicle with his seatbelt on.

He was just looking down at his phone during the trip and denied making other movements or looking out windows. He also stated that he did not have headphones (Air Pods) at the time of the incident.

He was wearing a seatbelt over the shoulder and the lap.

After the impact, the adverse vehicle stopped for about a minute.

He did not have any overbearing pain while in the Uber vehicle.

He provided his name to the police upon their arrival, and the response was okay. He then stated that the police did detain him for about 20 minutes. He stated he did not recall what he was questioned about.

He did not receive any treatment from the ambulance that arrived on the scene.

In conclusion, Ms. Lupo stated that the video footage the driver provided portrayed the incident's circumstances, which differs from the EIP's testimony in every aspect. The EIP claimed he was utilizing his seatbelt; however, the video clearly shows he did not. The EIP also claimed that the adverse vehicle stopped after the impact, which does not. The EIP stated that he was only looking at his phone during the ride. Notably, the video shows that the EIP is intently looking out both windows and the side view mirror and bracing for impact. Upon the impact the EIP signifies that he was in extreme pain, so much that he did not want the driver to drive to obtain the license plate of the adverse vehicle. However, the EIP refused medical treatment from the ambulance on the scene and did not visit the hospital on the night of the incident.

Based on the totality of its investigation, Liberty Mutual formed a belief that the EIP was intentionally involved in a fraudulent scheme that targets unsuspecting livery drivers to obtain valuable medical services and monetary gain. The video footage and testimony provided by the driver are consistent and provide a clear image of the events of the subject incident. The footage of the subject incident,

the discrepancies in the EIP's testimony, and his refusal of medical attention the night of the incident further corroborate that the alleged incident of January 16, 2024, was an intentional and fraudulent incident in which no coverage exists.

The applicant's attorney provided the video footage and attempted to play it at the hearing. Some of the footage was clear, but it was difficult to see clearly an exact reenactment of the happening of the subject accident.

After a review of the SIU affidavit, EUO testimony of the driver and the EIP and the EIP's failure to remember almost any details of his actions prior to and after the happening of the accident, I find that the respondent has established its defense of intentional misrepresentation of the facts of the subject accident.

Under these circumstances, the respondent established its coverage defense.

**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.

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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.

06/09/2025

(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:**  
123536979f08f70b817c0102da95209e

### Electronically Signed

Your name: Anne Malone  
Signed on: 06/09/2025