

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Orthocare Supplies Inc.
(Applicant)

- and -

Progressive Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1358-6365

Applicant's File No. N/A

Insurer's Claim File No. 24-9552837

NAIC No. 14800

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 05/23/2025
Declared closed by the arbitrator on 05/23/2025

Marc Schwartz, Esq. from Marc L. Schwartz P.C. participated virtually for the Applicant

Mark Douglas, Esq. from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$333.36**, 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 45 year old EIP reported involvement in a motor vehicle accident on January 10, 2024; claimed related injury and received a wrist brace provided by the applicant on February 20, 2024.

The applicant submitted a claim for this durable medical equipment (DME), payment of which was denied by the respondent based on material misrepresentations regarding the policy at issue and the subject accident.

The issue to be determined at the hearing is whether the respondent established its coverage defense.

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 involves a New York accident involving a policy issued in New Jersey.

The NF 10 states in pertinent part:

The investigation to date has revealed that you concealed and/or made incorrect statements to us, at the time of application and/or during the policy term, regarding any and all drivers that should be listed on your policy. [YW

the driver] who is not listed on your policy, was operating your 2008 Volkswagen Passat at the time of loss. The investigation has confirmed that [YW] is a resident of your household and/or regular driver of your policy vehicle(s), and as such is required to be listed on your insurance policy. Additionally, the investigation to date revealed that there was determined to be fraudulent statements made within presentation of the claim. Based on the Misrepresentations listed above, all No Fault Benefits are denied.

The alleged driver (XC) reported involvement in a motor vehicle accident on January 10, 2024. The claim at issue was denied based on material misrepresentations at the time the policy of insurance was issued and included other arguments related to whether XC was not in the Progressive vehicle at the time of the subject accident and was therefore not involved in the accident, was

not injured as the result of this accident and therefore, did not meet the definition of eligible injured person under the policy.

To support its claim, the respondent submitted the police report, SIU affidavits, transcripts by the person alleged to be the driver of the Progressive vehicle, the person alleged to be a passenger in that vehicle and the driver of the other vehicle involved in this accident.

I have reviewed the documentation submitted to support the claims at issue here which include affidavits by Michael Goldman, employed by the respondent who is responsible for investigating its no fault claims who attested to testimony provided by each of the parties allegedly involved in the subject accident.

The affidavits submitted were related to the alleged passenger in the subject accident, the alleged driver of the Progressive vehicle and the driver of the other vehicle involved in the subject accident.

Mr. Goldman reported the following:

The NF2 indicates that XC a female, was the driver of the Progressive vehicle at the time of this loss. The claim submitted indicates that she was the also the owner. At her EUO she testified that she was a passenger in the rear of the vehicle at the time of the subject accident.

In his EUO testimony, a male YW claimed to be the driver of the Progressive vehicle. And that XC was sitting in the seat in rear right of the vehicle at the time of the subject accident.

The driver of the other vehicle involved in this accident stated in the police report that he had rear-ended the Progressive vehicle and exchanged information with the male driver who then left the scene. At his EUO this man stated that he went to the Progressive vehicle when they were exchanging information and that he did not see a passenger in the rear seat. He noted that the windows were not tinted and that he looked to be sure no one was injured.

The police report contained no information regarding the Progressive vehicle.

There were other questions and testimony regarding the residence of the various parties allegedly in the Progressive vehicle and whether they were listed on the subject policy and where they resided at the time the policy was issued and on the date of the subject accident.

There were no submissions by the applicant regarding this coverage issue.

After a thorough review of the documentation submitted, I have determined that the respondent established its coverage defense.

Accordingly, the claim is denied 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.

06/15/2025
(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:
909def3f95f2da0df858921eb1714564

Electronically Signed

Your name: Anne Malone
Signed on: 06/15/2025