

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RB OS Inc
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-24-1363-3928

Applicant's File No. DK24-444246

Insurer's Claim File No. 3260N649M

NAIC No. 25143

ARBITRATION AWARD

I, Kenneth Rybacki, 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 08/18/2025
Declared closed by the arbitrator on 08/18/2025

Artur Finkel, Esq. from Korsunskiy Legal Group, P.C. participated virtually for the Applicant

Ethan Krantz, Esq. from Gallo Vitucci Klar, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$756.03**, 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

Whether the underlying occurrence on 12/14/23 giving rise to the instant claim for an orthopedic positioning seat provided to T.M. on 1/16/24 was a covered incident under Respondent's policy of insurance.

4. Findings, Conclusions, and Basis Therefor

This matter was decided on the submissions of the parties as maintained by the American Arbitration Association ("AAA") in its ADR Center and oral argument. No submissions after 11/11/24 were admitted to the record, 11 NYCRR 65-4.2 (b); Matter of Mercury Casualty Co. v. Healthmakers Medical Group, P.C., 67 A.D.3d 1017, 888 N.Y.S.2d 762 (2d Dept. 2009). Arbitration procedure contained in the No-Fault regulations, specifically, 11 N.Y.C.R.R. 65-4.2 (b)(3)(iii), provides

(iii) The written record shall be closed upon receipt of the respondent's submission or the expiration of the period for receipt of the respondent's submission. Documents submitted by either party after the record is closed shall be marked "Late."

This action for the payment of a claim for an orthopedic position seat provided on 1/16/24 arises from a 12/14/23 occurrence. Respondent denied the claim on the ground that the Assignor was not an eligible injured person because the event giving rise to claimed injuries was not an accident within the meaning of Respondent's policy of insurance.

An insurer who attempts to show that an occurrence was "staged" and therefore, not an accident covered under its policy, necessarily must make this showing through circumstantial evidence absent an admission that there was a staged accident. However, an insurer's belief that an accident was staged cannot be based on unsubstantiated hypotheses and supposition, Mount Sinai Hosp. V. Triboro Coach, Inc., 263 A.D.2d, 699 N.Y.S.2d 77 (2d Dept. 1999); , A.B. Medical Services PLLC v. Eagle Insurance Company, 3 Misc.3d 8 (App. Term, 2d Dept. 2003). It is rarely the instance where a "smoking gun" will be produced when a defense of fraud is asserted. The defense is often proved by circumstantial evidence so that a reasonable inference of one's conduct may be logically drawn from the evidence, V.S. Medical Services, P.C. v. Allstate Insurance Co., 11 Misc.3d 334 (Civ. Ct. Kings Co. 2006), aff'd., 25 Misc.3d 39, (App. Term 2d, 11th & 13th Dists. 2009). The defense also does not have to be proved by clear and convincing evidence but rather, by the lesser standard of a preponderance of the evidence, V.S. Medical Services, P.C. v. Allstate Insurance Co., 25 Misc.3d 39 (App. Term 2d, 11th & 13th Dists. 2009), aff'g., 11 Misc.3d 334 (Civ. Ct. Kings Co. 2006). An insurer can meet its burden by showing enough inconsistencies in sworn testimony of those involved in an incident so that the insurer's belief rises above mere conjecture and supposition, Manhattan Medical Imaging, P.C. v. State Farm Mut. Auto. Ins. Co., 20 Misc.3d 1144(A).

A review of the police report in the subject matter indicates that the Assignor was a passenger in a 2008 Honda Odyssey operated by R.C. The Assignor's boyfriend, L.S., was also a passenger. The Honda came in contract with a tractor-trailer.

A policy of insurance was issued on 11/30/23 and was cancelled for non-payment of premium on 12/15/23. Respondent investigated the accident. An affidavit from Claims Specialist Shakeeta Fife indicates that one of the occupants, L.S., who is T.M.'s boyfriend, is a "serial claimant" with a prior April 2022 Workers' Compensation loss, a June 2022 car accident for which right shoulder surgery was claimed. T.M. claims left shoulder injuries in the subject accident. The driver, R.C., is averred to have been incarcerated from May 2021 to October 2023, just prior to his procurement of the

vehicle involved in the subject accident. Shakeeta Fife indicates that title to the vehicle was updated to R.C. on 12/12/23, just two days prior to the subject incident.

Respondent requested examinations under oath of the occupants of the insured vehicle. Copies of those transcripts are submitted to the record, except for the insured, R.C., who failed to appear for examinations.

T.M. testified that she was at work at a Brooklyn "tax company" when L.S. with whom she had lived with for three (3) years at the time of her examination on 3/21/24 visited her. She did not know R.C. prior to the day of the accident. R.C. was a friend of her boyfriend and she had not seen him since the accident and has no idea where he lives. R.C. came to pick her and her boyfriend up at her job in Brooklyn. Although L.S. testified they were hailing a taxi when R.C. appeared coincidentally, T.M. made no mention of this. R.C. and L.S. were going to see a friend in Valley Stream for a quick visit. She testified that there was no particular reason for them going and did not know this friend. T.S. was the only person at her place of employment and did not clear it with her boss to close and leave.

R.C. left the scene of the accident after talking with police without T.M. or L.S. She has not seen R.C. since the accident. The friend from Valley Stream picked her and L.S. up from the scene of the occurrence and drove them back to her place of employment.

L.S. testified that he received a call from Rich when he was at lunch with T.M. Rich wanted him to see a new house he had just bought in Valley Stream. He asked T.M. to go even though she was the only one at work. He did not tell her the reason for going. While waiting for a cab to take them from Brooklyn to Valley Stream, R.C. happened to drive by and offered to take them to Valley Stream as favor. After the accident, he called Rich to pick them up and take them back to Brooklyn. L.S. has not seen Rich or his house from the time of the accident until the day of his testimony on 3/21/24.

The claims history coupled with incredulous testimony and the fact that this vehicle was insured just days prior to the accident with the policy cancelled days later for nonpayment of premiums supports respondent's defense to the claims. I find it incredible that an individual would leave their place of employment without a reason being provided, or that the person who was to take them to the intended destination coincidentally passed by in Brooklyn, but failed to return them to Brooklyn after the accident. That shifted the burden to the applicant to prove coverage by a preponderance of the evidence, New York Massage Therapy P.C. v. State Farm Mutual Ins. Co., 14 Misc.3d 1-231(A). However, no further evidence was submitted in support of applicant's contention that the occurrence was a covered event under Respondent's policy of insurance.

Applicant's claim is denied in its entirety.

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 Suffolk

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

08/21/2025
(Dated)

Kenneth Rybacki

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:
65bd365776fda07e8d938c0311ae5392

Electronically Signed

Your name: Kenneth Rybacki
Signed on: 08/21/2025