

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stanley-Sangwook Kim D.O. PC  
(Applicant)

- and -

American Transit Insurance Company  
(Respondent)

AAA Case No. 17-25-1390-1698

Applicant's File No. NF24-104414

Insurer's Claim File No. 1144291-01

NAIC No. 16616

### ARBITRATION AWARD

I, Alise Schor, 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 (GD)

1. Hearing(s) held on 10/28/2025  
Declared closed by the arbitrator on 10/28/2025

Alexander Mun, Esq. from Horn Wright, LLP participated virtually for the Applicant

Samara Halpern, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,234.93**, was AMENDED and permitted by the arbitrator at the oral hearing.

At the hearing, the amount in dispute was amended to **\$834.33** as Applicant withdrew their bills for Outcome Assessment Testing.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The issue is whether Respondent's denial of Applicant's claim for evaluations of Assignor (GD) between February 12, 2024 and July 2, 2024, in connection with injuries he sustained on February 9, 2024, as a bicyclist struck by a motor vehicle, based upon

Respondent's asserting a lack of causation as it has established the "fact or founded belief" that the claimant's treated condition was unrelated to the motor vehicle accident defense should be sustained?

The hearing was held via Zoom.

#### 4. Findings, Conclusions, and Basis Therefor

At the outset, I find that Applicant here has established its prima facie showing of entitlement to reimbursement by submitting evidentiary proof that it submitted a claim setting forth the fact and amount of the loss sustained, and that payment of no-fault benefits were overdue. See Mary Immaculate Hospital v. Allstate Insurance Co., 5 A.D.3d 742, (2d Dept., 2004). See Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co., 8 Misc 3d 1025 A (2005).

#### **Lack of Causation/Fraud Defense:**

It is well settled that the burden of proving the lack of a nexus between an accident and medical treatment falls upon the insurer seeking to deny payment. Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co., 61 A.D.3d 13, 19 (2nd Dept. 2009). See also, Mount Sinai Hosp. v. Triboro Coach Inc., 263 A.D.2d 11 (2nd Dept. 1999) (the insurer has the burden of coming forward with proof in an admissible form to establish the facts or evidentiary foundation for its belief that the patient's condition was unrelated to the motor vehicle accident). Moreover, the insurer must show that the injury was not related to the accident at all. It must show how, when and where the injury happened and that it was not aggravated or exacerbated by the accident. In this regard, the insurer's proof may not be vague, conclusory, inconsistent or unsupported by records. See, Mt. Sinai v. Triboro Coach, 699 N.Y.S.2d 77 (2nd Dept. 1999) (an expert's affirmation is needed to provide a factual foundation for an insurance carrier's good faith belief that an alleged injury did not arise out of an insured accident; speculation or wishful thinking does not suffice). Furthermore, in Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co., 61 A.D.3d 13, 21 (2nd Dept. 2009), the Court held that exacerbations of pre-existing conditions are covered by No-Fault, and that "causation is presumed."

#### **EUO Testimony:**

The Assignor appeared for an EUO on March 25, 2025. He testified with the assistance of a Spanish interpreter. He testified about the accident, his injuries and the treatment he has received.

#### **Findings:**

I find the denial is vague, without any specification of what in the examination under oath warranted denial of the entire claim. Respondent failed to adequately specify which portions of the EUO testimony led to its decision to assert a lack of causality defense. As noted in Unitrin Advantage Ins. Co. v. Advanced Orthopedics and Joint Preservation

P.C., 2018 N.Y. Slip Op. 33296(U) at 6-7 (Sup. Ct. New York Co., Carmen Victoria St. George, J., Dec. 20, 2018), "While plaintiff submits the transcripts of the claimants' EUOs, it does not cite to any line or page of the claimants' testimony to support such claims. The Court should not have to undertake the toilsome task of reading through pages and pages of testimony in order to ascertain which portions support plaintiff's suppose contentions that there exists a founded belief that the alleged injuries did not arise from a covered accident."

Recently, in American Transit Insurance Company vs Nexray Medical Imaging PC., \_Misc 3d\_(A), 2023 NY Slip Op 50506 (U) (Sup Ct, Kings County, Maslow, J., May 25, 2023, Judge Aaron Maslow was presented with this same denial of claim based upon Respondent's investigation and EUO testimony establishing their 'fact or founded belief' that that claimant's condition was unrelated to the motor vehicle accident. In the decision dated May 25, 2023, Judge Maslow stated that "ATIC merely relied on conclusory assertions of counsel which focused in large part on Assignor's EUO testimony. ATIC did not even submit a brief to the arbitrator summarizing what EUO testimony supported its position. In essence, it appears that ATIC expected the arbitrator himself to peruse the transcript to locate questionable responses by assignor which might be indicative that something was awry. This is not the role of the arbitrator.

This Arbitrator has however read through the transcript and did not find anything that would serve as a basis to deny this claim. Having reviewed the transcript upon which the denials are based, if Respondent is alleging fraud, the transcript does not indicate same. An insurer asserting a lack of coverage based upon a defense of fraud must come forward with "the facts" or a "foundation for its belief" that the incident was a deliberate, staged event in furtherance of a scheme. See Mount Sinai Hosp. v. Triboro Coach, 263 A.D. 2d 11, 19-20 (2nd Dept., 1999), citing Central General Hospital v. Chubb Group of Ins., Co.'s, 90 NY 2d 195, 199, 681 NE 2d 413, 659 NYS 2d 246. An insurer's "founded belief" cannot be based upon "unsubstantiated hypotheses and suppositions". A.B. Med Services PLLC v. Eagle Ins. Co., 3 Misc 3d 8, 9 (App. Term 2d Dept, 2003); and must be established by a preponderance of the evidence. V.S. Medical Services, P.C., v. Allstate, 25 Misc. 3d 39, 889 NYS 2d 360, (App Term 2nd Dept., 2009). Further, in determining the standard of proof required for an insurer to establish that it had a founded belief that the Injured Party's injuries did not arise out of a covered accident, the courts have determined that material discrepancies in EUO testimony may be taken into account in determining whether an insurer has come forward with evidence that a collision was staged. V.S. Medical Services, P.C. v. Allstate Ins. Co. supra. See also Manhattan Medical Imaging, P.C. v. State Farm Mut. Auto. Ins. Co. 20 Misc. 3d 1144 (A), 2008 WL 4200317 (Table, Text in WESTLAW), Unreported Disposition, 2008 N.Y. Slip Op. 51844 (U) (N.Y. City Civ. Ct., September 04, 2008). I find that counsel's argument does not point to evidence sufficient enough to establish fraud. I find Respondent's evidence and arguments weak.

Based upon the facts herein, I find that Respondent has not submitted sufficient evidence to substantiate its denial.

Accordingly, in light of the foregoing, based on the arguments of the parties' representatives and after thorough review and consideration of all submissions,

**Applicant's claim is awarded.** This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any additional issues raised in the hearing record are held to be moot and/or waived insofar as they were not raised at the time of the hearing.

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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	<b>Stanley-Sa ngwook Kim D.O. PC</b>	<b>02/12/24 - 02/12/24</b>	<b>\$604.81</b>	<b>\$324.69</b>	<b>Awarded: \$324.69</b>
	<b>Stanley-Sa ngwook Kim D.O. PC</b>	<b>03/05/24 - 03/05/24</b>	<b>\$407.53</b>	<b>\$127.41</b>	<b>Awarded: \$127.41</b>
	<b>Stanley-Sa ngwook Kim D.O. PC</b>	<b>04/29/24 - 04/29/24</b>	<b>\$407.53</b>	<b>\$127.41</b>	<b>Awarded: \$127.41</b>
	<b>Stanley-Sa ngwook Kim D.O. PC</b>	<b>06/04/24 - 06/04/24</b>	<b>\$407.53</b>	<b>\$127.41</b>	<b>Awarded: \$127.41</b>
	<b>Stanley-Sa ngwook Kim D.O. PC</b>	<b>07/02/24 - 07/02/24</b>	<b>\$407.53</b>	<b>\$127.41</b>	<b>Awarded: \$127.41</b>
<b>Total</b>			<b>\$2,234.93</b>		<b>Awarded: \$834.33</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 03/07/2025 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from 03/07/2025 until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty- day month.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

As the claim was filed subsequent to the Sixth Amendment to 11 NYCRR §65-4 (Insurance Regulation 68-D) which took effect on February 4, 2015, Attorney's Fees shall be calculated pursuant to the amended terms, as follows: 20 percent of the amount of first-party benefits, plus interest thereon, subject to a maximum fee of \$1,360. [11 NYCRR §65-4.6(d)]. There is no minimum fee.

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of SC  
SS :  
County of Beaufort

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

10/29/2025  
(Dated)

Alise Schor

#### **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:**  
5a0ddd57ab0002a4cf0cd2606f86aaf5

**Electronically Signed**

Your name: Alise Schor  
Signed on: 10/29/2025