

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-25-1432-0899

Applicant's File No. AR25-28519

Insurer's Claim File No. 1134714

NAIC No. 16616

ARBITRATION AWARD

I, Joanne Andreotta, 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: Patient

1. Hearing(s) held on 09/15/2026
Declared closed by the arbitrator on 09/15/2026

Jeffrey M. Kramer from Law Office of Jeffrey M. Kramer participated virtually for the Applicant

Fontini Lambrianidis from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,617.33**, 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 issue in dispute is whether the Respondent properly denied this claim for services rendered from 8/25/23 through 3/5/24 based upon a Workers' Compensation defense.

The case involves treatment rendered to the patient, a 58-year-old male after an automobile accident on 8/11/23. The Respondent denied the claim by stating that the patient was in the course of his employment at the time of the accident and that therefore the Workers' Compensation Board has primary jurisdiction over this matter.

4. Findings, Conclusions, and Basis Therefor

An Arbitrator "shall be the judge of the relevance and the materiality of the evidence offered, strict conformity to the rules of evidence shall not be necessary. The arbitrator may question or examine any witness or party and independently raise any issue that arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 NYCRR 65-45(0)(1). Additionally, as the trier of the facts and the law, an Arbitrator is authorized to review and take judicial notice of any rule, law, medical document or periodical or any other document which may impact and aid in making a decision, as long as it conforms with the Insurance Laws and the New York State Insurance Department Regulations. **Matter of Medical Society v. Serio**, 100 N.Y.2d 854, 768 N.Y.S.2d 423 (2003).

Workers' Compensation Defense - Dates of Service of 11/1/23 through 11/28/23

For these two dates, the Respondent has submitted timely denials preserving the Workers' Compensation defense.

In support of this denial, Respondent has submitted the following: a copy of the police report of the incident noting the license plate number T741793C and the Respondent has submitted the affidavit of Michael Duignan, a Director for Underwriting for Respondent noting that the policy of insurance is a livery policy issued to the Assignor as a "for hire" vehicle bearing New York State issued Taxi and Limousine Commission.

The law in New York is clear on this issue. The No-Fault carrier is obligated to pay first-party benefits only if the workers compensation carrier denied liability for payment of benefits in whole or in part. **Arvatz v. Empire Mutual Ins. Co.**, 171 A.D.2d 262, 575 N.Y.S.2d 836 (1st Dept. 1991). The Workers' Compensation Board has primary jurisdiction to determine factual issues concerning coverage under the Workers' Compensation Law. **AR Medical Rehabilitation, P.C. v. American Transit Ins. Co.**, 27 Misc.3d 133(A), 910 N.Y.S.2d 403 (Table), 2010 N.Y. Slip Op. 50708(U), 2010 WL 1630124 (App. Term 2d, 11th & 13th Dists. Apr. 13, 2010).

Where an insurer raises a defense that the insured was injured in the course of employment, primary jurisdiction over the claim lies with the Workers Compensation Board. **Arvatz v. Empire Mutual Ins. Co.**, 171 A.D.2d 262, 575 N.Y.S.2d 836 (1st Dept. 1991).

Additionally, the Appellate Courts have held that the burden of proof is quite low in determining whether workers' compensation is primary. In **Parkway Mgmt., PLLC v. American Transit Ins. Co.**, 39 Misc.3d 133 (App. Term 2 Dept. 2013), the Court held, "we find that defendant's proof, including the police accident report, was sufficient to raise a question of fact as to whether plaintiff's assignor had been acting as an employee at the time of the accident, which issue must be resolved by the Workers' Compensation Board."

It has also been held that where a person is injured while driving a for-hire vehicle with "TC" plates which is owned by a livery company and insured under a livery policy, the

insurer has met its burden of raising a question of fact as to whether the injured person was injured in the course of employment, a question best suited for determination by the Workers' Compensation Board. **RX Warehouse Pharmacy, Inc. v. American Transit Ins. Co.**, Index No. 51265/13 (Civ. Ct. Kings Co., Richard J. Montelione, J., Nov. 13, 2015). Further, it is not incumbent on the Respondent to prove that the Claimant was actually working. Respondent need only establish that there is potential merit to the claim that the Claimant may have been working on the date of loss. **Lenox Hill Radiology, PC v. American Transit**, 18 Misc.3d 1136 (A) (Civ. Ct. NY 2008).

Here, there is clearly sufficient evidence to raise a factual question as to whether the patient was acting as an employee at the time of the accident. Thus, the issue must be resolved in the first instance by the Workers' Compensation Board.

Since I have found that this matter should be determined by the Workers' Compensation Board, I need not address the Respondent's IME no show defense.

This case portion of the claim is dismissed without prejudice to renew.

Although the Applicant argued that there was insufficient evidence here since the patient/EIP stated that he was not working at the time of the accident, I do not find that sufficient to defeat the proof of the Respondent.

Remaining Dates of Service - No Denials

The parties agreed that there are no denials for the remaining 6 dates of service. The Applicant correctly points out that the Workers' Compensation defense is precludable. I agree with the Applicant.

In AAA Case No. 17-14-9051-8424 Arbitrator Lester Hill, Esq. held that the defense of Workers Compensation is a precludable defense and that the Respondent failed to raise that defense in a timely denial. An argument of workers' compensation being primary is not deemed to be a lack of coverage defense, but rather, a statutory offset subject to preclusion if not timely raised. **Corona Comprehensive Medical Care, P.C. v. Global Liberty Ins. Co. of New York**, 24 Misc.3d 1212(A), 890 N.Y.S.2d 368 (Table), 2009 N.Y. Slip Op. 51432(U), 2009 WL 1929097 (Civ. Ct. Queens Co., Cheree A. Buggs, J., July 6, 2009).

Moreover, where an insurer fails to raise the defense that an injured person is eligible for Workers' Compensation or that Workers' Compensation is primary in a timely denial, the defense is precluded. **Lenox Hill Radiology & MIA, P.C. v. Global Liberty Ins. Co.** of N.Y., 24 Misc.3d 1225(A), 897 N.Y.S.2d 670 (Table), 2009 N.Y. Slip Op. 51620(U), 2009 WL 2232035 (Civ. Ct. Richmond Co., Katherine A. Levine, J., July 6, 2009); see also Arbitrator Ioannis Gloumis, 17-15-1024-5015; Arbitrator Matthew Summa, 17-15-1015-4350; Arbitrator Victor Moritz, 17-15-1011-4528.

Finally, as stated recently by Arbitrator Chow, **Glenmore Medical PC v. American Transit**, 17-22-1244-0070:

The evidence sufficiently proves that the subject denial was untimely. The fact that Respondent failed to establish timely denials is dispositive since there is no evidence of a final determination from the Workers' Compensation Board. Active Care Med. Supply Corp. v. Hartford Ins. Co., 61 Misc. 3d 139 (A) (App Term 2 Dept., 2018). Without no proof that Respondent issued timely denials, or there being a determination from the Workers' Compensation Board, I am constrained by the caselaw noted above to find Respondent's defense precluded.'

In this case, there was no proof of a final determination by the Workers' Compensation Board (which would be non-precludable) and the Respondent has not issued a timely denial to this defendant preserving that defense, this defense cannot be sustained.

Since there were no denials for these dates of service, the Respondent has preserved no defense to the claim, and this portion of the claim is granted.

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	Status
	Brooklyn			

	Medical Practice, PC	08/25/23 - 03/05/24	\$2,617.33	Awarded: \$1,817.24
Total			\$2,617.33	Awarded: \$1,817.24

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/05/2025 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Respondent shall compute and pay the Applicant the amount of interest computed from the date set forth above at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

The Applicant's attorney is entitled to one attorney fee in accordance with 11 NYCRR 65-4.6.

- 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 NY

SS :

County of Suffolk

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

09/19/2026
(Dated)

Joanne Andreotta

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:
014178f39eacc40b8ac34bfcea33d21f

Electronically Signed

Your name: Joanne Andreotta
Signed on: 09/19/2026