AAA® INSURANCE REPORTER

2025 WINTER EDITION

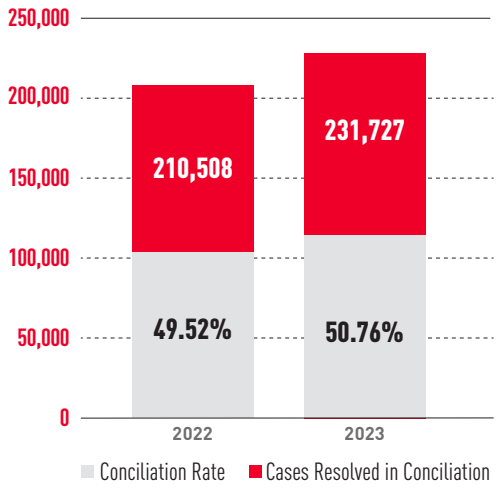
Celebrating Progress: A Look at the AAA's New York No-Fault Conciliation Program

The American Arbitration Association® (AAA) initially managed the entire New York No-Fault arbitration program, beginning in 1974. From 1977 to 1978, however, the Department of Financial Services (DFS) assumed responsibility for the program's conciliation phase. In 1999, the AAA resumed oversight of conciliation, reclaiming full management of the program and establishing the New York No-Fault Conciliation Center to streamline the resolution of no-fault insurance disputes.

Today, the program continues to emphasize collaboration, featuring a conciliation phase where parties work with a neutral conciliator to resolve conflicts before proceeding to arbitration. Since its inception, the New York No-Fault program has handled an impressive 4,412,887 cases, with over 1,688,681 cases successfully resolved during conciliation. We are proud to report that the settlement rate for conciliation has steadily improved over the years, achieving a current resolution rate of 52.13%. Building on this momentum, we project that, in 2024, nearly 250,000 cases will be resolved through conciliation, reaffirming our commitment to efficient and effective dispute resolution.

Thank you for your continued trust in the AAA as we strive to deliver equitable solutions in New York's no-fault insurance system.

Resolutions in Conciliation 2022 and 2023



The future may be uncertain, but one thing remains constant—the AAA's unwavering commitment to innovation and continuous improvement. We are dedicated to exploring new ideas and strategies to enhance case management and maximize efficient case resolution.

As we celebrate our accomplishments, we also look ahead with optimism and determination. Here's to the next 25 years of progress, collaboration and success!

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Embracing a New Era of Technology in New York State No-Fault

As New York State No-Fault enters its second half-century, the AAA is embracing an exciting technological evolution. While AAA has traditionally used technology to manage caseloads, provide basic case information and automate repetitive tasks, we are now adopting a new generation of intelligent systems. These advanced tools learn, adapt and anticipate needs, enabling us to deliver more proactive and personalized solutions than ever before.

Driving the Technology Transition

Artificial Intelligence (AI)

AI serves as the "brain" of our operations, enabling systems to mimic human intelligence, learn from data and make independent decisions. At AAA, we are exploring AI's potential to transform our processes. For example, we are experimenting with AI for document classification (indexing) and case filing. By integrating AI with automation and APIs, we aim to achieve smarter, faster and error-free processing — enhancing both efficiency and accuracy.

Analytics

Analytics serve as the "data interpreter," uncovering patterns and trends within vast data sets to inform better decision-making. At the AAA, data plays a pivotal role in managing cases and supporting our clients' internal operations. To meet this need, we offer data-driven solutions like the NYSI Case Statistics Dashboard Portal, providing secure and accurate insights to our customers.

Automation

Automation serves as the "workhorse," streamlining repetitive tasks with exceptional speed and precision. As our caseload continues to grow, we are expanding our automation capabilities. By integrating automation with AI and analytics, we aim to deliver bulk-processing solutions that maximize benefit to our clients while allowing our staff to focus on customer-centric activities.

Application Programming Interfaces (APIs)

APIs serve as the "connectors," enabling seamless communication between different systems. At the AAA, we envision APIs as bridges that connect technologies, allowing customers direct inter-system connectivity. This integration will facilitate a wide range of actions across the No-Fault case management process. We are actively collaborating with stakeholders to identify high-demand features and tailor solutions accordingly.

Looking Ahead

While still in the early stages, the AAA's technology transition is guiding us toward a more intelligent and automated future. AI, analytics, automation and APIs are poised to transform how we manage No-Fault cases, paving the way for personalized experiences and highly efficient systems.

Challenges will undoubtedly arise, but embracing these advancements will drive meaningful improvements across our No-Fault program.

If you have questions about the AAA's initiatives in these areas, please reach out to GregsonE@adr.org. Together, let's shape the future of No-Fault case management.

Exciting Updates from the AAA

1. "Introducing ClauseBuilder® AI (Beta) and API Innovations: Streamlining Arbitration and Mediation Clause-Drafting with Generative AI"

Explore how our ClauseBuilder AI (Beta) and advanced APIs simplify clause drafting and streamline case administration, enhancing efficiency and accuracy in ADR processes. Learn more about these tools and their transformative impact on arbitration and mediation.

Read the full article.

2. "Demystifying Alternative Dispute Resolution: Top Questions Law Firms Ask AAA-ICDR®"

Find answers to the most frequently asked questions about ADR, including arbitrator selection, mediation, costs and more. This post provides valuable guidance for law firms navigating the complexities of dispute resolution.

Read the full article.

3. "The Importance of AI Literacy and Responsible Upskilling at the AAA®"

Discover how the AAA is fostering AI literacy among its employees through targeted upskilling and data-first approaches. Learn how AI tools are empowering teams to work smarter and innovate responsibly.

Read the full article.

4. "AI in ADR: Preserving the Human Touch"

Explore the intricate relationship between technology and humanity in dispute resolution. This thought-provoking piece from the AAA-ICDR Institute examines how AI can enhance ADR while preserving the empathy and trust central to the process.

Read the full article.

Share Your Expertise

The AAA is always looking for insightful contributions from our community. Whether you have actionable tips, in-depth guides or thought-provoking perspectives, we'd love to hear from you. Please submit your ideas to GregsonE@adr.org for consideration.

DEVELOPMENTS IN NEW YORK NO-FAULT & SUM ARBITRATION

Recent Arbitration Awards

This section aims to present a cross section of recent, well-reasoned arbitration awards that are consistent with current New York precedent and address commonly raised issues in No-Fault and SUM arbitrations. The awards were objectively selected by an editorial board consisting of No-Fault and SUM arbitrators with a view toward promoting discussion and analysis of relevant issues.

List of Arbitrator Abstracts

MATERIAL MISREPRESENTATION – PRESERVATION IN A TIMELY DENIAL

- *American Medical Initiatives, PC & Progressive Cas. Ins. Co.*, AAA case no. 17-23-1308-1267 (03/28/24) (Kathleen Sweeney, Arb.)
- *First Class Medical, PC & State Farm Fire & Cas. Co.*, AAA case # 17-23-1286-5070 (08/01/24) (Rhonda Barry, Arb.)
- *AV Chemist, LLC & Allstate Fire & Cas. Ins. Co.*, AAA Case no: 17-23-1300-9566 (06/25/24) (Alina Shafranov, Arb.)
- *Monac Supply, Inc. & GEICO Ins. Co.*, AAA Case no. 17-23-1283-6735 (08/21/24) (Marianne C. Zack, Arb.)

BURKE PHYSICAL THERAPY, P.C. V. STATE FARM MUT. AUTO. INS. CO.

- *Titan Equipment, Inc. v. GEICO Ins. Co.*, AAA Case no. 17-23-1291-1024 (08/01/24) (Theresa Kelly, Arb.)
- *Tri-Borough NY Medical Practice, PC v. Liberty Mut. Ins. Co.*, AAA Case no. 17-24-1332-3453 (07/11/24) (Mitchell Kleinman, Arb.)
- *Medline Plus Pharmacy, Inc. & GEICO Ins. Co.*, AAA Case no. 17-24-1333-5085 (07/30/24) (Stacy Presser, Arb.)
- *eMed Pharmacy Corp. & GEICO Ins. Co.*, AAA Case no. 17-23-1306-8915 (07/29/24) (Corinne Pascariu, Arb.)

JURISDICTION & ISSUANCE OF A NEW YORK DENIAL OF CLAIM FORM

- *North Coast Physical Therapy & Rehab & GEICO Ins. Co.*, AAA Case no. 17-24-1338-1157 (08/17/24) (Eileen Casey, Arb.)
- *Wendy A. Keiser, DC & GEICO Ins. Co.*, AAA Case no. 17-24-1338-6580 (10/29/24) (Michael Resko, Arb.)
- *Hongik Acupuncture NY, PC & GEICO Ins. Co.*, AAA Case no. 17-23-1316-6493 (09/10/24) (Andrew Horn, Arb.)
- *Health East Ambulatory Surgical Center & Mercury Cas. Co.*, AAA Case no. 17-24-1341-8496 (08/21/24) (Alison Berdnik, Arb.)

VERIFICATION & 11 NYCRR 65-3.5(P)

- *OrthoMotion Rehab DME, Inc., LLC & GEICO Ins. Co.*, AAA Case no. 17-23-1323-7210 (06/25/24) (Shawn Kelleher, Arb.)
- *Debarim, Inc. & GEICO Ins. Co.*, AAA Case no. 17-23-1315-1101 (03/08/24) (Lisa Abrams, Arb.)
- *LR Medical, PLLC & Maya Assur. Co.*, AAA Case no. 17-23-1323-6844 (04/24/24) (Bryan Hiller, Arb.)
- *BibiMed, Inc & Avis Budget Group*, AAA Case no. 17-23-1295-3113 (09/10/24) (Andrew Horn, Arb.)
- *Jonathan Lewin MD, PC & GEICO Ins. Co.*, AAA Case no. 17-22-1245-8506 (05/08/23) (Robyn McAllister, Arb.)
- *Tri-Borough NY Medical Practice, PC & Empire Fire and Marine Ins. Co.*, AAA Case no. 17-23-1292-9527 (03/03/24) (Kihyun Kim, Arb.)

SUM TOPIC:

Biomechanical Analysis

- *Claimant & New York Central Mut. Fire Ins. Co.*, AAA Case no. 01-23-0000-9424 (10/09/24) (Emily Diamond, Arb)

MATERIAL MISREPRESENTATION – PRESERVATION IN A TIMELY DENIAL

American Medical Initiatives, PC & Progressive Cas. Ins. Co., AAA Case no. 17-23-1308-1267 (03/28/24) (Kathleen Sweeney, Arb.) The arbitrator addressed whether the respondent sustained its defense of material misrepresentation in the procurement of the subject insurance policy. The arbitrator noted that an aggrieved party establishes a prima facie case of fraud in the inducement by alleging that the other party made a material misrepresentation that was false and intended to induce the aggrieved party into entering a contractual relationship. Following a review of the evidence, the arbitrator determined that the eligible injured party had materially misrepresented the actual garaging address of the insured vehicle. The applicant argued that the respondent's defense could not be sustained as it was not preserved in a timely denial of claim. While the arbitrator acknowledged that the denial of claim was untimely, citing *Central General Hospital v. Chubb Group of Insurance Cos.,* 90 N.Y.2d 195 (1997), she found that the respondent was permitted to raise a coverage defense at any time. Therefore, the respondent did not require a timely denial to preserve a lack of coverage defense. Ultimately, the arbitrator concluded that the evidence presented by respondent was sufficient to support its defense and sustained the denial.

First Class Medical, PC & State Farm Fire & Cas. Co., AAA Case no. 17-23-1286-5070 (08/01/24) (Rhonda Barry, Arb.) The arbitrator addressed whether respondent sustained its defense of material misrepresentation in the procurement of the subject insurance policy. Specifically, the respondent asserted that the assignor misrepresented her state of residence when applying for the policy, arguing that no insurer would have issued the same contract under the stated circumstances. Citing *Westchester Medical Center v. GMAC Ins. Co. Online Inc.,* 80 A.D.3d 603 (2nd Dept. 2011), the arbitrator concluded that the defense of material misrepresentation in the procurement of an insurance policy must be preserved in a timely denial of claim. Although the arbitrator found that the respondent had timely preserved its defense, she ultimately determined that respondent failed to produce sufficient documentation to demonstrate that the insured's misrepresentation was material. As a result, the arbitrator overruled the respondent's denial and awarded the claim.

AV Chemist, LLC & Allstate Fire & Cas. Ins. Co., AAA Case no: 17-23-1300-9566 (06/25/24) (Alina Shafranov, Arb.) The respondent denied the applicant's claim on the basis of material misrepresentation in the procurement of the insurance policy. As a preliminary matter, the applicant argued that the denial was untimely and, therefore, precluded the respondent's defense, citing *Westchester Med. Ctr. v. GMAC Ins. Co. Online Inc.,* 80 A.D.3d 603, 915 N.Y.S.2d 115, 2011 N.Y. Slip Op. 00217 (January 11, 2011). The arbitrator found the applicant's position compelling. In rendering her decision, she noted that while a motor vehicle insurance policy cannot be retroactively revoked due to material misrepresentation in its procurement, such misrepresentation can be asserted as a defense if it is material. However, the arbitrator found this defense must be preserved in a timely denial as per the holding in Westchester Med Ctr., supra, which the respondent failed to do. Therefore, a decision was entered in applicant's favor.

Monac Supply, Inc. & GEICO Ins. Co., AAA Case no. 17-23-1283-6735 (08/21/24) (Marianne C. Zack, Arb.) Respondent denied the applicant's claim based on a material misrepresentation in the procurement of the insurance policy. The arbitrator noted that an insurance policy may be deemed void *ab initio* to the party seeking benefits who participated in fraudulent conduct to procure the contract. She found fraud in the inducement to be a "no coverage" matter and

analogous to providing false information on a credit application to induce a business relationship. Citing *Invacare Supply Group, Inc. v. Englander,* 19 Misc.3d 1114(A), 859 N.Y.S.2d 903 (N.Y. Sup. Ct. 2008), the arbitrator noted that the court's ruling was based on the principle of New York Law that fraud in the inducement invalidates a contract *in toto*. Therefore, the arbitrator determined that an insurance policy, which is a contract, must also be invalidated by fraud in the inducement because such a contract cannot be enforced, nor can a business relationship induced by fraud survive. Absent a contract, there is no coverage. Ultimately, the arbitrator found the respondent did not provide adequate evidence to support its defense and a decision was entered in favor of the applicant.

APPLICATION OF BURKE PHYSICAL THERAPY, P.C. V. STATE FARM MUT. AUTO INS. CO.

Titan Equipment, Inc. v. GEICO Ins. Co., AAA Case no. 17-23-1291-1024 (08/01/24) (Theresa Kelly, Arb.) The applicant sought to recover first-party benefits following submission of its bill for medical supplies provided to the claimant. On August 12, 2021, the respondent issued requests for additional verification, which included various document requests and a request for the applicant to attend an examination under oath (EUO). The applicant's EUO was held on March 17, 2022, after which the respondent issued written requests for documents. The applicant responded to the post-EUO demands; however, the respondent argued that the responses were incomplete and denied the claim on the grounds that the applicant failed to respond to its verification requests within 120 days, as required under 11 NYCRR 65-3.8(b)(3). Citing *Burke Physical Therapy, P.C. v. State Farm Mut. Auto Ins. Co.*, 2024 NY Slip Op. 24111 (App. Term 2nd Dept. 2024), the applicant argued that respondent's post-EUO requests were untimely, asserting that verification was deemed complete once the EUO was attended. The respondent countered that the facts of the case were distinguishable from those in Burke. Specifically, the respondent argued that the post-EUO demands sought the same documentation originally requested in the EUO notices and again during the EUO itself. As such, the respondent argued the post-EUO verification requests represented a continuation of its previous requests. After reviewing the evidence, the arbitrator agreed with respondent and determined that this case was indeed distinguishable from Burke. She reasoned that the requests for documentation were made prior to the EUO, providing the applicant ample time to respond, which it failed to do. The arbitrator further determined that applicant's written responses did not substantially comply with respondent's requests. Consequently, the arbitrator upheld the respondent's denial, concluding that the applicant failed to respond to its verification requests within the required 120 days.

Tri-Borough NY Medical Practice, PC v. Liberty Mut. Ins. Co., AAA Case no. 17-24-1332-3453 (07/11/24) (Mitchell Kleinman, Arb.) Following receipt of the applicant's claims, the respondent issued additional verification requests seeking various documents and requiring the applicant to attend an examination under oath. After the EUO, the respondent issued further requests for verification directed at both the claimant and the applicant, seeking additional documentation and information. The applicant responded to the requests; however, the respondent argued that the applicant's responses were incomplete and subsequently denied the claims, citing that applicant's failure to comply to the requests within 120 days, as required by 11 NYCRR 65- 3.8(b)(3) (the "120-day rule"). The applicant relying upon the court's decision in *Burke Physical Therapy, P.C. v. State Farm Mut. Auto Ins. Co.*, 2024 NY Slip Op. 24111 (App. Term 2nd Dept. 2024), argued that the respondent's requests failed to properly delay payment of the claims because verification was deemed complete on the date the EUO was conducted. However, the arbitrator noted that the court

in Burke failed to address several key points: whether requests for the verification in that case were made prior to the EUO and, if so, whether the applicant complied with those requests; whether the requests issued after the EUO sought the same information as those issued prior to the EUO; and whether the EUO notices in Burke required the applicant to produce documents at the EUO. Additionally, the arbitrator further noted that the court in Burke did not address whether a request made during an EUO constituted a new request for additional verification. After reviewing the evidence, the arbitrator determined that the post-EUO requests sought the same information as the requests made during the EUO and that the information in question had not yet been provided to deem the EUO complete. As a result, the arbitrator concluded that the post-EUO requests were not precluded simply because they were issued after the applicant's EUO. However, the arbitrator also determined, based on his review of the EUO transcript, that the information sought by the respondent either did not exist or was not in the applicant's possession. Consequently, the arbitrator found the respondent's post-EUO requests improper and concluded that the applicant was under no obligation to comply with the requests.

Medline Plus Pharmacy, Inc. & GEICO Ins. Co., AAA Case no. 17-24-1333-5085 (07/30/24) (Stacy Presser, Arb.) The respondent denied the applicant's claim for prescription medication on the grounds that the applicant failed to respond to verification requests within 120 days from the date of the original request. The respondent received the applicant's bill on September 12, 2022, and, by notice dated September 29, 2022, requested the applicant's attendance at an examination under oath. The EUO notice also included requests for various documents and information, such as proof of ownership, licenses and registrations, prescriptions and purchase invoices. The EUO was rescheduled multiple times, but none of the subsequent notices reiterated the document requests included in the initial EUO notice. After the EUO, the respondent issued new verification requests seeking additional items. However, the arbitrator determined that the respondent's post-EUO verification requests failed to properly toll the respondent's time to pay or deny the claim. First, the arbitrator found that respondent's failure to include its original document requests for documents in the subsequent EUO notices violated the requirements of 11 NYCRR 65-3.6(b). Additionally, the arbitrator concluded, pursuant to *Burke Physical Therapy, P.C. v. State Farm Mut. Auto. Ins. Co.*, 2024 NY Slip Op 24111 (App Term 2nd Dept. 2024), that the post-EUO verification requests failed to further delay respondent's time to act. The arbitrator noted that verification was deemed to have been received by respondent on the day the EUO was performed, rendering the respondent's denial untimely due to its failure to properly delay the claim.

eMed Pharmacy Corp. & GEICO Ins. Co., AAA Case no. 17-23-1306-8915 (07/29/24) (Corinne Pascariu, Arb.) The applicant submitted a claim for prescription medication on October 10, 2022, after which the respondent requested the applicant's attendance at an examination under oath. The EUO notice also requested that applicant produce various documents seven days prior to the EUO. Following the EUO, the respondent issued additional verification requests to which the applicant responded. Following the exchange of additional correspondence between the parties, the respondent issued a denial based on applicant's failure to provide the requested verification within 120 days from the date of the initial request. Citing *Burke Physical Therapy, P.C. v. State Farm Mut. Auto. Ins. Co.*, 2024 N.Y. Slip Op. 24111 (N.Y. App. Term 2024), the applicant argued that respondent's denial was late due to the fact that the post-EUO verification requests did not serve to further toll respondent's time to pay or deny the claim and that verification was deemed complete as of the date of the EUO. The respondent countered that the information

requested in the post-EUO requests mirrored the information originally requested in the EUO scheduling letters and, therefore, the applicant's bills were properly delayed pending receipt of this information. The arbitrator noted that the documentation sought for the purposes of conducting the EUO was not identical to the documentation requested after to the EUO. Relying upon 11 NYCRR 65-3.8(a), the arbitrator determined that verification was deemed received by the insurer on the day the EUO was performed and that the post-EUO verification requests failed to further delay respondent's time to pay or deny the claim. Consequently, the arbitrator concluded that the respondent had 30 days, or until December 15, 2022, to issue the denial, which it failed to do. As a result, the arbitrator found the respondent's denial untimely and precluded its defense based on the 120-day rule.

JURISDICTION & ISSUANCE OF A NEW YORK DENIAL OF CLAIM FORM

North Coast Physical Therapy & Rehab & GEICO Ins. Co., AAA Case no. 17-24-1338-1157 (08/17/24) (Eileen Casey, Arb.) The applicant sought reimbursement for physical therapy services. The respondent paid the claim in part and denied the disputed balance on the grounds that the fees charged exceeded the governing fee schedule. At the hearing, the respondent asserted that the American Arbitration Association (AAA) was not the proper forum for resolving the dispute, asserting that jurisdiction properly lies in New Jersey and that the matter should be heard in New Jersey's designated alternative dispute resolution forum, Forthright Solutions. The applicant contended that the issuance of a New York NF-10 Denial of Claim Form conferred jurisdiction on the AAA forum. The arbitrator rejected the applicant's argument, stating that the issuance of an NF-10 form does not constitute a waiver of jurisdictional defenses. The arbitrator conducted a conflict-of-law analysis and, relying primarily on the fact that the insurance policy was issued in New Jersey, dismissed the claim without prejudice, allowing the applicant to refile in the appropriate forum.

Wendy A. Keiser, DC & GEICO Ins. Co., AAA Case no. 17-24-1338-6580 (10/29/24) (Michael Resko, Arb.). The assignor, a New Jersey resident, was injured in an accident in New York. The vehicle was insured under a New Jersey automobile insurance policy. The respondent argued that the AAA lacked jurisdiction to hear disputes arising under New Jersey no-fault regulations. The applicant contended that jurisdiction was conferred when the respondent issued an NF-10 Denial of Claim Form, thereby placing jurisdiction properly with the AAA. In deciding for the applicant solely on the issue of jurisdiction, the arbitrator noted that the respondent processed the claim under New York no-fault rules and commissioned a peer review. The arbitrator reasoned that accepting the respondent's argument would leave the applicant without recourse, as the respondent had failed to comply with certain conditions precedent required under New Jersey no-fault regulations. The arbitrator held that respondent was obligated to inform the applicant of those requirements and failed to do so. Nevertheless, after addressing the merits of the case, the arbitrator dismissed the claim finding that the services lacked medical necessity.

Hongik Acupuncture NY, PC & GEICO Ins. Co., AAA Case no. 17-23-1316-6493 (09/10/24) (Andrew Horn, Arb.) The applicant sought reimbursement for no-fault benefits. The respondent argued that the AAA lacked jurisdiction because the insurance policy was procured in New Jersey and, under the terms of the policy, all disputes were required to be filed in the Forthright arbitration forum. The applicant argued that the respondent's issuance of a

New York NF-10 Denial of Claim Form constituted consent to the jurisdiction of the AAA. In ruling in favor of the applicant, the arbitrator determined that the issuance of the NF-10 invoked the jurisdiction of AAA. The arbitrator specifically noted that the NF-10 form instructed the applicant to submit its dispute for arbitration to the AAA and made no reference to New Jersey rules, procedures or forum. Accordingly, jurisdiction was conferred, and the matter was heard in the New York forum.

Health East Ambulatory Surgical Center & Mercury Cas. Co., AAA Case no. 17-24-1341-8496 (08/21/24) (Alison Berdnik, Arb.) The applicant sought reimbursement for a facility fee associated with right wrist surgery. The respondent denied the claim on the grounds that the applicant failed to submit the claim within 45 days from the date the service was rendered. However, the respondent subsequently partially paid the claim prior to the hearing in accordance with the New Jersey fee schedule. At the hearing, the respondent asserted that the AAA was not the proper forum for resolving the dispute. The respondent argued that the proper jurisdiction lies in New Jersey and that the matter should be heard in New Jersey's designated alternative dispute resolution forum, Forthright Solutions. The arbitrator noted that the underlying insurance policy includes a dispute resolution clause mandating that all claims be resolved in a dispute resolution organization located within the state of New Jersey. The applicant argued that the issuance of an NF-10 form imputes jurisdiction to the AAA. The arbitrator conducted a choice-of-law analysis and determined that New Jersey law governed the matter and that the case was more appropriately heard in the New Jersey forum. The arbitrator held that the issuance of an NF-10 form has no bearing on the jurisdiction of the AAA forum. While parties can waive personal jurisdiction, they cannot confer jurisdiction over the subject matter even by mutual consent. Therefore, the claim was dismissed without prejudice, allowing the applicant to renew the case in the proper forum.

VERIFICATION & 11 NYCRR 65-3.5(P)

OrthoMotion Rehab DME, Inc., LLC & GEICO Ins. Co., AAA Case no. 17-23-1323-7210 (06/25/24) (Shawn Kelleher, Arb.) The arbitrator was asked to address the applicant's claim for the rental of a sustained acoustic medicine (SAM) device, which was denied on the grounds that the applicant failed to appear at an EUO. The initial request scheduling the EUO for July 26, 2023, was timely in accordance with 11 NYCRR 65-3.5. However, the arbitrator agreed with applicant's argument that the second request mailed August 9, 2023, was untimely and, therefore, violated 11 NYCRR 65-3.6(b). The respondent argued that 11 NYCRR 65-3.5(p) still requires that the applicant appear for the EUO. The arbitrator analyzed various court decisions regarding the requirement for a party to appear for an EUO as a condition precedent to an insurer's liability. However, the arbitrator determined that the requests must strictly comply with the regulations, requiring the insurer to establish that the verification requests were timely pursuant to 11 NYCRR 65-3.5(b) and 11 NYCRR 65-3.6(b). The arbitrator found that the respondent's issuance of the late EUO request was a material and substantive defect, rendering the scheduling of the EUO untimely. The arbitrator noted that the courts have provided little interpretation of 11 NYCRR 3.5(p). While the Appellate Division has ruled "'one-day tardiness was a technical defect excusable under 11 NYCRR 65-3.5 (p)" (see *Kemper Independence Ins. Co. v. Cornerstone Chiropractic, PC,* 185 A.D.3d 468, 469 [1st Dept. 2020]), this matter involved a request that was four days late. Therefore, the arbitrator entered an award in favor of the applicant.

Debarim, Inc. & GEICO Ins. Co., AAA Case no. 17-23-1315-1101 (03/08/24) (Lisa Abrams, Arb.) The applicant sought reimbursement for various prescription medications dispensed to the claimant. The respondent argued that applicant's responses to respondent's demands following the applicant's EUO remained outstanding and, therefore, the applicant's claim should be dismissed without prejudice. The arbitrator noted that on June 23, 2023, the respondent received the applicant's most recent correspondence responding to the post-EUO demands. On July 7, 2023, the respondent corresponded with the applicant stating that proof of earnings for an employee remained outstanding. As a result, the respondent argued that the proceeding was filed prematurely and must be dismissed pending completion of the verification process. The applicant's counsel argued that the request for the employee's proof of earnings was unreasonable, and that the applicant had substantially complied with the remainder of respondent's verification requests. Additionally, with respect to one of the dates of service at issue, the applicant argued that the respondent's follow-up request was untimely by two days, and, therefore, failed to properly toll the claim. The respondent countered that the request for proof of earnings was reasonable and that, pursuant to 11 NYCRR 65-3.5(p), the applicant was still required to respond to the verification request. The respondent further argued that its failure to timely issue the follow-up verification request did not negate the applicant's obligation to comply with the request. The arbitrator determined that the follow-up request for verification, although two days late, was excusable under 11 NYCRR 65-3.5(p) and posed no possibility of confusion or prejudice to the provider as this was an ongoing situation between the same parties. After reviewing the underlying facts, as well as a related arbitration decision, the arbitrator determined that the respondent had a reasonable basis to request the information and that the applicant's failure to provide the information warranted a dismissal of the case without prejudice.

LR Medical, PLLC & Maya Assur. Co., AAA Case no. 17-23-1323-6844 (04/24/24) (Bryan Hiller, Arb.) The respondent denied the applicant's claim for a facility fee on the grounds that the injured party failed to appear for two independent medical examinations (IMEs). The applicant argued that the IME no-show defense was not timely preserved because the follow-up IME notice was issued more than ten days after the date of the initial IME, in violation of 11 NYCRR 65-3.6(b). Relying on *Z.M.S. & Y. Acupuncture v. GEICO Gen. Ins. Co.,* 56 Misc.3d 926 (Civil Court Kings Cty. 2017), the arbitrator found that respondent's delay in issuing the follow-up IME notice was an excusable technical defect that did not invalidate the otherwise timely denial of claim pursuant to 11 NYCRR 65-3.5(p). Accordingly, the arbitrator denied the claim.

BibiMed, Inc & Avis Budget Group, AAA Case no. 17-23-1295-3113 (09/10/24) (Andrew Horn, Arb.) The respondent denied the applicant's claim for medical supplies on the grounds that the applicant failed to submit requested verification of the claim within 120 days from its initial requests or provide reasonable justification for the failure to comply, in accordance with 11 NYCRR 65-3.8(b)(3). The applicant argued that the respondent's initial verification requests were nullities because they were issued more than fifteen days after receipt of the bills in violation of 11 NYCRR 65-3.5(b). The respondent contended that its failure to timely request verification was an excusable "non-substantive technical or immaterial defect" that did not invalidate the denials pursuant to 11 NYCRR 65-3.5(p). The arbitrator noted that in Matter of *Advanced Orthopaedics, PLLC v. Country-Wide Ins. Co.,* 204 A.D.3d 787 (2nd Dept. 2022), the Appellate Division held that where, as in this instance, the initial request for additional verification is sent more than thirty days after receipt of the claim, the request is a nullity, which is not excused by 11 NYCRR 65-3.5(p). Therefore, the arbitrator granted the claim.

Jonathan Lewin MD, PC & GEICO Ins. Co., AAA Case no. 17-22-1245-8506 (05/08/23) (Robyn McAllister, Arb.) The respondent denied the claim based on the assignor's failure to appear at two scheduled IMEs. The arbitrator reasoned that a request for an IME constituted a request for additional verification and, as such, is subject to the follow-up provisions of 11 NYCRR 65-3.6(b). In opposition, the applicant argued that that respondent's defense was without merit since the follow-up IME scheduling letter was issued one day late and in violation of statutorily prescribed timeframes. Citing *Kemper Independence Ins. Co. v. Cornerstone Chiropractic, P.C.,* 185 A.D.3d 468 (1st Dept. 2020), the arbitrator determined that the one-day delay in sending the follow-up scheduling letter was a technical defect excusable under 11 NYCRR 65-3.5(p). The arbitrator further concluded that the respondent submitted sufficient evidence to establish that the assignor violated a condition precedent to coverage. Accordingly, the arbitrator denied the applicant's claim in its entirety.

Tri-Borough NY Medical Practice, PC & Empire Fire and Marine Ins. Co., AAA Case no. 17-23-1292-9527 (03/03/24) (Kihyun Kim, Arb.) The arbitrator addressed whether the respondent established its policy violation defense based on the assignor's failure to attend an IME. In support of its defense, the respondent relied on its IME scheduling letters, an affidavit of mailing and affirmations by the healthcare providers scheduled to perform the IMEs attesting to the assignor's non-appearance. The applicant's counsel did not challenge the timeliness of the denials. Instead, the applicant asserted that the respondent failed to establish that the IME scheduling letters were properly mailed to the assignor. Specifically, the applicant's counsel argued that the follow-up IME scheduling letter failed to include the assignor's apartment number and identified the addressee as "Jeffery S." rather than "Jeffery R." The applicant's counsel contended that the incorrect last name was fatal to respondent's IME no-show defense. The respondent countered that the error was a typographical error and excusable under 11 NYCRR 65-3.5(p). After considering the evidence offered by each party, the arbitrator found in favor of the applicant. The arbitrator determined that it could not be automatically assumed that the reference to "Jeffery S." was a simple typographical error. The arbitrator noted that the respondent did not upload an affidavit to explain the error, or any other documentary evidence to demonstrate, even by inference, that "Jeffery S." and "Jeffery R." were one and the same, or that the error was merely a typographical or other inadvertent omission. The arbitrator also found that it could not be reasonably assumed that the scheduling letter, which omitted the apartment number and contained a different last name, would have been actually received by the assignor. The evidence in the record reflected that the street address included multiple units/apartments. Based on the foregoing, the arbitrator concluded that the errors were substantive and not the type of immaterial defect contemplated by 11 NYCRR 65-3.5(p).

SUM AWARD: BIOMECHANICAL ANALYSIS

Claimant & New York Central Mut. Fire Ins. Co., AAA Case no. 01-23-0000-9424 (10/09/24) (Emily Diamond Arb) At the time of the accident, the claimant, a 53-year-old female, was a passenger in a Chevrolet Silverado pickup truck parked in a parking lot facing Route 16. The owner/operator of the vehicle was inside a nearby store while the claimant was sitting in the front passenger seat applying makeup using the dropdown mirror. She was not wearing a seatbelt. She heard a crash, looked left and observed a blue SUV that was demolished, and saw headlights coming toward her, and then heard a "boom". According to her, the Silverado tipped from side-to-side multiple times, and the right side of her body struck the door. The owner of the Silverado testified that the vehicle sustained damage to the driver's

side between the front and rear doors at the rocker panel, and additional damage to the support behind the doors. He further testified that the truck "scooted over" ten to twelve inches, as evidenced by the black rubber marks, he observed on the pavement. The respondent submitted an incident severity analysis report that determined that the severity of the incident was consistent with a left lateral Delta-V of less than 10 mph and an average acceleration less than 4.6 G for the Silverado. According to the report, had the force been sufficient to initiate occupant motion, the claimant would have moved leftward relative to the interior of the Silverado, with the motion limited and well controlled by the available occupant restraints, including the seat back structure. In light of the low accelerations and the available restraint systems, respondent's expert opined that there was no reason to expect that the claimant was exposed to any significant mechanism of injury. The respondent also submitted an analysis by a biomechanical engineer. According to this report, the Silverado experienced a lateral Delta-V that was less than 6.8 mph, with an average acceleration level that was less than 2.4 G. The respondent's expert opined that, had the subject incident been sufficient to initiate occupant motion, the claimant would have moved leftward relative to the vehicle's interior and that any such motion would have been supported and controlled by the occupant protection system. However, the respondent's expert determined that the relevant forces experienced were within tolerable levels for the claimant and that there was no mechanism of injury sufficient to account for the acute onset, aggravation and/or exacerbation of the injuries alleged by the claimant. The claimant's accident crash analyst provided a different perspective, opining that the closing speed and crush calculations for the force experienced by the Silverado was between 19 mph and 25 mph and that the Delta-V experienced by the Silverado was between 14 mph and 19 mph. The claimant's expert also noted that the respondent's expert compared the force experienced by the Silverado with vehicles that had a different side structure and roof support structure. As such, the claimant's expert opined that the respondent's expert failed to utilize an accurate and reliable method of calculating speed. The arbitrator noted that the claimant testified that the vehicle rocked back and forth, throwing her side to side and tossing her about. Neither expert specifically addressed this issue or the effect of such movements upon the claimant's pre-existing neck injuries. Additionally, the arbitrator was not persuaded by the testimony of the Silverado's owner that the impact caused the truck to "scoot over" ten to twelve inches, as neither the claimant nor the claimant's crash data analyst mentioned any lateral movement of the vehicle or commented on skid marks. Taking into account the claimant's pre-existing conditions documented in the medical records and the absence of any comparative negligence on the part of the claimant, the arbitrator awarded the claimant $250,000.00, minus a setoff of $25,000.00.

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