

AMERICAN ARBITRATION ASSOCIATION
NEW YORK SUM ARBITRATOR TRIBUNAL

In the Matter of Arbitration between

Philip W Sack(Deceased) the administrator
of the
(Claimant)

-and-

AAA Case No.

01-25-0002-9710

Insurer's Claim File No.

20236086100

Applicant File No.

New York Central Mutual Fire Ins. Co. - SUM
(Respondent)

Issues in Dispute : Burden of proof

Cause of injuries

Credibility of medical evidence or witness

Damages for aggravation of pre-existing condition

Death

Economic loss

Fatality

SUM case

Use or operation of automobile

ARBITRATION AWARD

I, Jonathan M. Rivera, the undersigned **ARBITRATOR**, designated by the American Arbitration Association pursuant to the rules for New York Supplementary Uninsured Motorists Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Department of Financial Services, having been duly sworn, and having heard the proofs and allegations of the parties, make the following **AWARD**.

Claimant(s), in the above caption, hereinafter referred to as: TK, as the administrator and executor of PS's estate

1. Preliminary Conference Call held on: 09/15/2025

Tobin Injury Law by Darren Tobin, Esq., participated for the Claimant(s).

Schnitter Ciccarelli Mills PLLC by Joseph Schnitter, Esq., participated for the Respondent.

2. Hearing(s) held on:

01/30/2026

and declared closed by the arbitrator on 02/02/2026.

Darren Tobin, Esq., participated for the Claimant(s).

Joseph Schnitter, Esq., participated for the Respondent.

3. Witness(es) for the Claimant(s):

TK

4. Witness(es) for the Respondent:

None.

5. Exhibits submitted by the Claimant(s):

Arbitration Submission, Arbitration Cover Letter, Statement and Exhibits:

Exhibit A: NYCM UM/SUM Policy;

Exhibit B: Claimant TK Affidavit of no Umbrella or Excess insurance;

Exhibit C: Motor Vehicle Accident Report (Candler County, Georgia);

Exhibit D: Photographs of claimant's vehicle;

Exhibit E: Traffic Citation and Final Disposition (offending vehicle), Georgia, Candler County;

Exhibit F: EMS records;

Exhibit G: Medical records, East Georgia Regional Med. Ctr., Burke Health Hospital, ER records, Friends & Family Chiro, Summersville Regional Medical Center (West Virginia);

Exhibit H: Medical Expenses, Itemized bills and list of expenses;

Exhibit I: Death Certificate;

Exhibit J: Letters of Testamentary, Surrogate's Court, Erie County, Funeral Services Bill;

Exhibit K; Notice of Intent to Make Claim;

Exhibit L: Application for NF benefits.

6. Exhibits submitted by the Respondent:

Arbitration Cover Letter, Index of Exhibits, Statement of the Case, and Exhibits:

Exhibit A: Police Accident Report;

Exhibit B: Photographs of Claimant's motor vehicle;

Exhibit C: EMS records;

Exhibit D: East Georgia Regional Medical Center;

Exhibit E: Friends and Family Chiropractic;

Exhibit F: Burke County Hospital;

Exhibit G: Summersville Regional Medical Center;

Exhibit H: Death Certificate;

Exhibit I: General Physicians, Dr. Jeffrey Neu;

Exhibit J: Dr. Robert Molinari, Ortho, IME/Peer Review Report/CV;

Exhibit K: Dr. Mark Utell, IME/Peer Review Report/CV, pulmonologist;

Exhibit L: Claimant TK EUO Transcript.

7. Identity of court reporter:

N/A

8. Identity of interpreter:

N/A

9. Summary of Issues in Dispute:

Causation is disputed.

This Uninsured Motorist (UM) claim arises from a two-vehicle T-bone collision at a stop-sign-controlled intersection in Candler County, Georgia, on March 28, 2023. The claimant, TK, as administrator and executor of her father PS's estate, alleges the accident caused PS serious injuries, including death, and seeks recovery of the full UM/SUM policy limits, along with a no-fault death benefit and unreimbursed medical expenses.

The matter was heard remotely via Zoom to determine the extent of recoverable UM/SUM benefits under a policy providing \$100,000 in coverage, subject to a \$25,000 offset. T.K., as Administrator/Executor of the Estate of her father, claimant P.S., was sworn and testified on direct, cross and redirect examination. The exhibits identified were admitted into evidence, and the parties were afforded the opportunity to present opening and closing statements and to submit supplemental materials before the record was administratively closed.

10. Findings, conclusions and basis therefor:

Liability:

This matter arises from a two-vehicle intersection collision that occurred on March 28, 2023, in Candler County, Georgia. The claimant, an innocent, restrained front-seat passenger in his own vehicle, was being driven by his sister and proceeding with the right of way when their vehicle was struck in a T-bone collision on the driver's side by another vehicle traveling on the cross street. Although the other driver reportedly stopped at the stop sign, he failed to yield the right of way and was cited for failure to yield after stopping at a stop sign.

Liability for the collision is not disputed.

It is alleged that the claimant PS sustained serious personal injuries, including death, as a result of the accident. The respondent disputes causation, arguing that there is no medical evidence establishing that the claimant's wrongful death was causally related to the collision.

Accordingly, with liability conceded, the issues to be determined are whether the claimant's injuries and death were causally related to the accident and, if so, the reasonable value of the resulting damages.

Damages:

On March 28, 2023, P.S., a 72-year-old retired company manager and business owner from Buffalo, New York, was traveling from New York to Florida when he was involved in a

motor vehicle accident in Candler County, Georgia. According to the police report, another vehicle struck the driver's side of the Chevrolet Malibu in which P.S. was a restrained front-seat passenger. The impact caused the vehicle to rotate counterclockwise and travel approximately 82 feet before coming to a controlled stop. The offending vehicle came to rest near the point of impact. Four individuals, including P.S., were reported injured. Photographs depict substantial driver-side damage and deployment of the side airbags.

EMS personnel found P.S. in the front passenger seat complaining of chest pain from the seatbelt. He had a visible seatbelt mark across his chest and rated his pain 4/10. He was transported by ambulance to East Georgia Regional Medical Center. He did not require emergency interventions. In the emergency department, he reported that the airbag pushed his Life Alert device into his sternum, causing sharp chest pain rated 1/10. He denied shortness of breath. Examination revealed only slight tenderness over the sternum. He was diagnosed with a chest wall contusion, prescribed medication, and discharged the same day in stable condition with instructions to follow up. He was ambulatory at discharge.

On April 3, 2023, P.S. sought chiropractic care, reporting chest, neck, and back pain, which he rated 10/10. He stated his symptoms had worsened since the accident. He continued chiropractic treatment on seven occasions through April 15, 2023, consistently reporting neck, back, and chest pain with reduced cervical and lumbar range of motion. On April 4, 2023, he presented to Burke County Hospital complaining of increasing shortness of breath since the accident, mid-chest pain, and a productive cough with green phlegm. A chest x-ray revealed small bilateral pleural effusions, and he was discharged with instructions for conservative care. On April 17, 2023, he returned to Burke Health with complaints of vomiting and abdominal pain.

On April 18, 2023, while traveling back toward New York, P.S. became acutely ill in West Virginia and presented to Summersville Regional Medical Center with altered mental status and hypotension. He was initially evaluated for a possible stroke. Further workup revealed right lower lobe pneumonia and sepsis, along with exacerbation of COPD. He appeared ill and lethargic, with abnormal vital signs. Despite treatment, his condition deteriorated, and he passed away in the hospital on April 20, 2023. The death certificate lists pneumonia as the cause of death, characterized as natural in origin.

Prior Medical History:

Medical records from Dr. Jeffrey Neu, a pulmonologist in Buffalo, New York, reflect treatment of the claimant from May 18, 2018, through April 4, 2023. The records document a longstanding history of chronic obstructive pulmonary disease (COPD), persistent breathing difficulties, long-term tobacco use, and the need for supplemental oxygen therapy. The claimant was treated for chronic bronchitis and emphysema and was evaluated for and participated in pulmonary rehabilitation.

Respondent's IME/Peer Review Reports:

Dr. Robert Molinari:

Dr. Molinari, an orthopedic surgeon, performed a records review concerning P.S.'s March 28, 2023 motor vehicle accident. The records show that P.S. was a restrained front-seat

passenger in a vehicle struck on the driver's side. He reported mild chest discomfort after the airbag deployed and pushed his Life Alert device into his sternum. EMS documented stable vital signs and a Glasgow Coma Score of 15. In the emergency department, he rated his chest pain at 1/10, denied shortness of breath, and had normal cardiac, pulmonary, neurologic, spinal, and extremity examinations. The only finding was slight sternal tenderness, and he was diagnosed with a very minor chest wall contusion. No imaging was performed due to the absence of clinical signs of significant trauma.

Dr. Molinari further notes that subsequent records reveal no objective evidence of traumatic injury related to the accident. On April 4, 2023, P.S. presented with shortness of breath; examination findings were normal, and although a chest x-ray showed pleural effusion, he was treated conservatively and discharged. The records document a history of COPD, oxygen dependence, and significant tobacco use. Chiropractic diagnoses of cervical, thoracic, and lumbar sprains were noted; however, Dr. Molinari opined there was no objective evidence of major traumatic spinal injury.

On April 18, 2023, P.S. was hospitalized with right lower lobe pneumonia, sepsis, acute hypoxia, renal dysfunction, and multiple serious preexisting conditions, including COPD, alcohol dependence, hypertension, and nicotine dependence. His condition deteriorated in the ICU, and he later died.

Dr. Molinari concludes, within a reasonable degree of medical certainty, that P.S. did not sustain a significant or serious traumatic injury as a result of the March 28, 2023 accident, and that the medical documentation supports only a minor chest wall contusion without evidence of significant orthopedic or spinal trauma.

Dr. Mark Utell:

Dr. Utell, a pulmonologist, opines, to a reasonable degree of medical certainty, that P.S. sustained only a mild chest wall contusion from the March 28, 2023 motor vehicle accident. He notes there was no passenger-side impact, P.S.'s pain quickly decreased from 4/10 to 1/10, he denied shortness of breath, oxygen saturation remained at baseline, and no imaging or clinical findings indicated lung or other significant traumatic injury. Dr. Utell concludes there was no structural lung damage or meaningful trauma caused by the accident.

He emphasizes that before the accident, P.S. had advanced, end-stage pulmonary disease, including severe oxygen-dependent COPD/emphysema with markedly reduced lung function, longstanding tobacco abuse, and fibrotic lung changes. He also had multiple serious comorbidities, including a prior stroke and significant alcohol dependence. Imaging shortly before death revealed previously undiagnosed cirrhosis with moderate to severe ascites, further compromising respiratory function.

Regarding the events leading to death, Dr. Utell concludes that P.S.'s clinical decline was due to progression from compensated to decompensated cirrhosis, which caused nausea and vomiting, likely leading to aspiration pneumonia. Combined with severe underlying COPD, this resulted in worsening hypoxia, respiratory failure, and ultimately death. He states that the small pleural effusions observed earlier were likely related to cirrhosis rather than trauma.

Dr. Utell explicitly disagrees with the chiropractor and treating pulmonologist, concluding the accident did not cause or significantly worsen PS's condition. He concludes that the motor vehicle accident was not a cause of death and that the fatal outcome resulted from longstanding chronic disease—specifically acute and chronic respiratory failure due to severe COPD, aspiration pneumonia, and cirrhosis—rather than the minor trauma from the accident.

EUO:

TK, age 49, testified at an Examination Under Oath ("EUO") on June 16, 2025. A former pastry chef, current registered nurse and Florida resident, she described her father's work and medical history, their relationship, and his activities. TK had difficulty recalling many details of her father's life but remembered that he performed some volunteer work. She was not very familiar with his medical history, though she acknowledged that he had COPD and was a long-term smoker. She noted that her aunt (her father's sister) was married to chiropractor Dr. Tew, who treated her father after the accident.

TK testified that she spoke with her father by phone a few times between the accident and his death. During those calls, he reported being sore in the chest and experiencing general discomfort but stated he was "okay" and planned to be checked out. She recalled that before the accident, her father generally said he was feeling well. TK noted that he enjoyed bowling and socializing with friends. She did not receive financial support from him, aside from occasional Christmas gifts.

Hearing Testimony:

On direct examination, claimant TK testified that in March 2023 her father planned a vacation from Buffalo, New York, to visit his sister in Georgia for a few days, after which they intended to travel together to her new home in Florida. She stated he was considering relocating south and possibly becoming a "snowbird." TK testified that he drove alone from Buffalo to Georgia over two days, stopping overnight, and was in sufficiently good health to make the trip independently, reporting no chest pain or breathing problems during the drive.

TK stated that on the day of the accident her father called to report the crash, noting chest pain but assuring her not to worry as they were being checked. She described that after the accident he experienced soreness, difficulty taking deep breaths, and worsening respiratory issues. She characterized his breathing as a "180-degree turn," explaining that before the accident he could carry on full conversations, but afterward repeatedly said he could not catch his breath. She testified that he was later transported to a hospital in Virginia due to severe breathing difficulties and passed away on April 20, 2023.

TK described her father's prior activities, including bowling, volunteering with his local fire company at community events, weekly socializing with friends, mowing his lawn, and helping care for her children. She acknowledged that he had COPD and was a chronic smoker but did not recall him ever having pneumonia or receiving treatment for it.

On cross-examination, TK confirmed that her parents divorced when she was young, that she primarily lived with her mother, and that after moving to Florida in 2021 she primarily

communicated with her father by phone and had not seen him in person since. She acknowledged her limited knowledge of his medical history, although she was aware of his COPD and smoking. She testified that prior to the accident they spoke daily or every other day, that she is his only daughter, and that neither she nor her children were financially dependent on him.

The Claimant's Contentions:

The claimant's counsel argues that PS was at increased risk of injury, that his pneumonia developed as a result of trauma from the accident, and that the timeline and medical evidence support causation for the chest injury, subsequent pneumonia, and resulting death. The claimant seeks the full \$100,000 UM/SUM policy limit, plus a \$2,000 no-fault death benefit and \$5,000 in unreimbursed medical expenses.

The Respondent's Contentions:

The respondent disputes the claim, asserting that the alleged injuries are not causally related to the accident. They argue that because the claimant's death did not result from the use or operation of a motor vehicle, UM/SUM coverage is not triggered, and no recovery is available under the policy. The respondent further maintains that any recovery is limited to the \$100,000 UM/SUM policy limit.

Findings, Conclusions and Analysis:

Under New York law, a claimant must prove their case by a preponderance of credible evidence. While UM/SUM claims in New York generally require proof of "serious injury" under Insurance Law § 5102(d) (McCulluch v. New York Cent. Mut. Ins. Co., 175 AD3d 912 [2019]; Raffellini v. State Farm Mut. Auto. Ins., 9 NY3d 196 [2007]), that threshold does not apply to accidents occurring outside the state (Ofori v. Green, 74 AD3d 474 [1st Dept 2010]). Causation in New York may be established either by the "substantial factor" test, where the defendant's conduct is a substantial factor in producing the injury, or by "proximate/legal cause", where the injury is a reasonably foreseeable result of the conduct (Derdiarian v. Felix Contr. Corp., 51 NY2d 308 [1980]). Conflicting expert opinions do not remove causation from the fact finder's province, and a jury may rely on common sense and circumstantial evidence to infer causation (Cassano v. Hagstrom, 5 NY2d 643 [1959]; Linton v. Nawaz, 14 NY3d 821 [2010]; Gayle v. City of New York, 92 NY2d 936 [1998]). While expert testimony may assist a jury, it cannot replace the jury's role in determining the facts.

The claimant, PS, a 72-year-old retiree from Buffalo, New York, undertook a road trip from New York to Florida in March 2023. PS stopped in Georgia to visit his sister before planning to continue to Florida, demonstrating that he was healthy enough to travel despite a history of COPD, tobacco use, and other comorbidities. His daughter, TK, administrator of his estate, testified that he had no indication of being medically unfit for the trip and that prior to the accident he reported feeling well.

On March 28, 2023, PS was involved in a T-bone collision in Georgia while riding as a front-seat passenger. His vehicle sustained significant driver-side damage, and his chest was impacted by his seat belt and Life Alert device. EMS documented stable vital signs

and Glasgow Coma Score of 15. He reported mild chest pain (1–4/10) with no shortness of breath. He was transported to the ER, where he was diagnosed with a minor chest wall contusion and discharged in stable condition. There was no imaging or other objective evidence of significant trauma.

Following the accident, PS experienced worsening symptoms. On April 4, 2023, he returned to the ER with shortness of breath and chest discomfort. A chest x-ray revealed pleural effusions, and he was treated conservatively for COPD exacerbation. On April 7–15, PS had multiple chiropractic visits for neck, back, and chest pain, with limited range of motion documented, but no objective evidence of severe spinal or orthopedic injury.

On April 18, 2023, while returning to New York, PS became acutely ill in West Virginia with disorientation, hypoxia, vomiting, and GI distress. He was hospitalized with sepsis, right lower lobe pneumonia, and acute exacerbation of COPD. Despite treatment, he rapidly declined and passed away on April 20, 2023. The death certificate lists "unknown pneumonia" as the immediate cause and "unknown natural" as the subsequent cause, with COPD, hypertension, and CVA as contributing factors.

Respondent experts, Drs. Utell and Molinari, opined that PS sustained only mild chest trauma from the accident and that his death was primarily due to underlying end-stage COPD, cirrhosis, chronic tobacco and alcohol use, and other comorbidities. They concluded that the accident did not cause structural lung damage or significant traumatic injury. The respondent contends that the impact was to the driver's side and that PS's symptoms were minimal and unrelated to the fatal outcome.

Claimant counsel, however, argues that PS's chest trauma from the accident was a substantial factor in precipitating pneumonia and his subsequent death, applying the "eggshell plaintiff" principle. The close timing between the accident and the onset of symptoms, along with the claimant's vulnerability from pre-existing conditions, supports a reasonable inference that the collision contributed to the fatal pneumonia, despite Drs. Molinari and Utell identifying non-traumatic factors as the primary causes of the pneumonia and subsequent death. Expert opinions do not preclude causation, and fact finders may reasonably infer a causal link from the accident to PS's rapid decline and death.

Based on the full record, including TK's credible testimony, medical records, and the sequence of events post-accident, I find that the chest injury from the March 28, 2023 collision was a substantial factor in the development of pneumonia and PS's death. Under New York law and the UM/SUM policy provisions, proximate causation does not require exclusive causation. The accident reasonably set in motion the chain of events leading to his fatal outcome. SUM/UM coverage is therefore triggered.

The claimant seeks the \$100,000 UM/SUM policy limit, a \$2,000 no-fault death benefit, and \$5,000 in unreimbursed medical expenses. As the UM/SUM policy limit has been exhausted by this award, no additional sums are recoverable under the policy. The \$2,000 no-fault death benefit is separate and recoverable, while the claim for unreimbursed medical expenses is moot given exhaustion of policy limits.

Accordingly, I find that TK has proven, by a preponderance of the credible evidence, that PS sustained injuries and death causally related to the March 28, 2023, motor vehicle

accident, entitling the claimant to UM/SUM benefits.

AWARD:

After reviewing the parties' statements, testimony, mitigation factors, and the credibility and weight of the evidence, claimant TK, as administrator and executor of the estate of PS, is awarded \$100,000 for all accident-related injuries and damages, subject to a \$25,000 offset for prior bodily injury recovery.

ACCORDINGLY,

1. As to TK, admin. & exec. of PS, claimant is awarded prior to set-off amounts \$100,000.00
minus \$0.00 for claimant's comparative negligence
minus a setoff amount of : \$25,000.00
AWARDED(net of set-off amounts and reductions for comparative negligence):
\$75,000.00

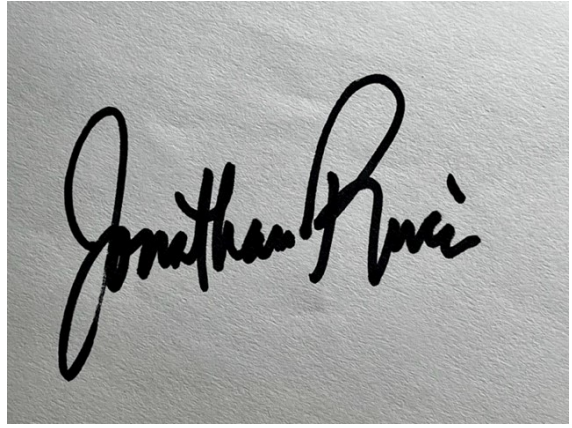
Filing Fee

In addition, Claimant(s) having been awarded the maximum available recovery, is also entitled to the return of the AAA filing fee, which Respondent is hereby directed to reimburse.

This decision is in full disposition of all SUM benefit claims submitted to this arbitrator.

STATE OF NEW YORK }
 } SS:
COUNTY OF QUEENS }

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

A black and white photograph of a handwritten signature in cursive script. The signature reads "Jonathan M. Rivera". The ink is dark and the background is a light, textured surface.

(Jonathan M. Rivera)

Date: 03/03/2026

For accidents covered under policies issued or renewed on or after October 1, 1993