

2015 WL 4546629
Supreme Court, Appellate Division, Second Department, New York.

In the **Matter of FIDUCIARY INSURANCE COMPANY**, appellant,
v.
AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA, respondent.

July 29, 2015.

Synopsis

Background: After an arbitrator determined that commercial liability insurer for a stables which housed a horse involved in accident with a taxicab was not a motor vehicle insurer subject to mandatory arbitration, taxicab's automobile insurer petitioned to vacate the arbitration award, and commercial liability insurer cross-petitioned to confirm the award. The Supreme Court, Queens County, [Jaime A. Rios, J.](#), denied the petition, and granted commercial liability insurer's cross petition to confirm the award. Automobile insurer appealed.

Holdings: The Supreme Court, Appellate Division, [Hinds–Radix, J.](#), held that:

[1] arbitrator had authority to rule on whether the dispute was subject to mandatory arbitration, and

[2] the arbitrator's determination that commercial liability insurer was not an insurer subject to No-Fault Law's mandatory arbitration provisions was supported by a reasonable hypothesis.

Affirmed.

West Headnotes (10)

[1]	Insurance Matters Subject to Arbitration
	Arbitrator had the authority to rule on the issue of whether the dispute between an automobile insurer and a commercial liability insurer over an accident involving a horse and a taxicab was subject to mandatory arbitration under the statutory requirements for motor vehicle insurers, even though commercial liability insurer elected not to participate in the arbitration; the question of whether the commercial liability insurer qualified as an insurer under motor vehicle insurance provisions was a threshold question in determining whether there was an agreement to arbitrate. McKinney's CPLR 7506(c) ; McKinney's Insurance Law § 5105 . Cases that cite this headnote

[2]	Alternative Dispute Resolution Nature and Extent of Authority
	An arbitrator's authority generally extends to only those issues that are actually presented by the parties. Cases that cite this headnote

[3]	Alternative Dispute Resolution Particular Issues or Questions
	An arbitrator is precluded from identifying and considering an affirmative defense that is not pleaded by a party to the arbitration. Cases that cite this headnote

[4]	Alternative Dispute Resolution Stay of Arbitration
	A party may not be bound to arbitrate a dispute by mere inaction. Cases that cite this headnote

[5]	Alternative Dispute Resolution Consistency and Reasonableness; Lack of Evidence
	To be upheld, an award in a compulsory arbitration proceeding must have evidentiary support and cannot be arbitrary and capricious. Cases that cite this headnote

[6]	Alternative Dispute Resolution Consistency and Reasonableness; Lack of Evidence
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	With respect to determinations of law, the applicable standard for judicial review of an arbitrator's decision in mandatory no-fault arbitrations is whether any reasonable hypothesis can be found to support the questioned interpretation. McKinney's Insurance Law § 5105. Cases that cite this headnote
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[7]	Automobiles Effect of No Fault Statutes Insurance No-Fault Coverage; Medical Payments
	The No-Fault Law is aimed at ensuring prompt compensation for losses incurred by accident victims without regard to fault or negligence, and alleviating unnecessary burdens on the courts by limiting litigation with respect to such claims. McKinney's Insurance Law § 5102(a). Cases that cite this headnote

[8]	Insurance Compulsory Arbitration
	Since, generally, where a vehicle for hire is involved in an underlying accident, mandatory arbitration is the sole remedy regarding disputes between insurers over responsibility for payment of first-party benefits, no action at law lies to adjudicate a dispute between insurers over liability for first-party no-fault benefits, or disputes over priority of payment of first-party benefits. McKinney's Insurance Law § 5105. Cases that cite this headnote

[9]	Insurance Compulsory Arbitration
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	Requirement that no-fault insurers submit all controversies to arbitration does not apply where New York’s no-fault insurance law does not prevent the tortfeasor from being held liable to pay damages in an action at law. McKinney’s Insurance Law § 5105(b) .
	Cases that cite this headnote

[10]	Insurance Compulsory Arbitration
	Arbitrator’s determination that a commercial liability insurer was not an insurer subject to the No-Fault Law’s mandatory arbitration provision was supported by a reasonable hypothesis, in a dispute arising from an accident between a taxicab and a horse, where the commercial insurer only insured the stables at which the horse was boarded, and not a person, vehicle, or animal involved in the underlying accident, and the commercial insurer could be held liable to pay damages in an action at law as a tortfeasor. McKinney’s Insurance Law § 5105 .
	Cases that cite this headnote

Attorneys and Law Firms

D’Amato & Lynch, LLP, New York, N.Y. ([Robert D. Lang](#), [David A. Boyar](#), and [Roy T. Caplinger](#) of counsel), for appellant.

Kral Clerkin Redmond Ryan Perry & Van Etten, LLP, Melville, N.Y. ([Leonard Porcelli](#) of counsel), for respondent.

[PETER B. SKELOS](#), J.P., [THOMAS A. DICKERSON](#), [ROBERT J. MILLER](#) and [SYLVIA O. HINDS–RADIX](#), JJ.

Opinion

[HINDS–RADIX](#), J.

***1** In the fall of 2006, a taxi insured by the petitioner was involved in a collision with a horse. The rider of the horse was seriously injured, and the petitioner paid him nearly \$60,000 in no-fault benefits. The petitioner then sought reimbursement of the no-fault benefits that it had paid to the rider by filing a demand for mandatory arbitration against the respondent, **American Bankers Insurance Company of Florida** (hereinafter **American Bankers**), the carrier that provided commercial liability coverage to the stables where the horse was boarded. The arbitrator denied the petitioner’s claim, finding, in essence, that the petitioner could not recoup payment from **American Bankers** because **American Bankers** was not a motor vehicle insurer subject to the mandatory arbitration provisions of [Insurance Law § 5105](#) and its implementing regulations. We conclude that the arbitrator had the authority to determine this threshold issue, and that the determination had a rational basis.

The facts underlying the commencement of this proceeding are not in dispute. On October 8, 2006, Jared Johnson was riding a horse named Romeo on a path alongside of North Conduit Avenue in Queens when Romeo suddenly bolted into the roadway, and collided with a taxi owned and operated by Parjit Singh. Johnson was thrown from the horse, and suffered serious injuries, including [skull fractures](#) and a [broken leg](#). On the date of the accident, Singh’s taxi was insured by the petitioner, **Fiduciary Insurance Company**. Johnson filed a claim with the petitioner seeking to recover first-party benefits,

more commonly known as “no-fault” benefits, under [Insurance Law § 5103](#). The petitioner ultimately paid Johnson a total of \$59,906.97 in no-fault benefits.

Romeo was owned by Julius Stanton, who had no insurance coverage in effect for the horse on the date of the accident. Stanton boarded Romeo at Cedar Lane Stables (hereinafter Cedar Lane), a facility owned by the City of New York, and licensed to the Federation of Black Cowboys, Inc. (hereinafter the Cowboys). Cedar Lane and the Cowboys (hereinafter together the insureds) were insured by **American Bankers** under a commercial liability policy that provided no-fault coverage only for accidents arising from the use of “mobile equipment,” a category that includes various types of machinery not generally used for travel on public roads. More specifically, the policy afforded supplemental coverage to the insureds for “all sums for which an insured is legally liable for bodily injury or property damages resulting” from its mobile equipment, including no-fault insurance coverage required by any insurance law. The subject accident, however, did not involve mobile equipment owned by the insureds, but, rather, a horse that the insureds merely boarded at their stables.

Following the accident, Johnson commenced an action to recover damages for personal injuries against several parties including the City, the Cowboys, and Singh. In an order dated November 30, 2009, the Supreme Court awarded summary judgment to the City, the Cowboys, and Singh dismissing the complaint insofar as asserted against them, based upon the doctrine of primary assumption of risk.

*2 On October 19, 2012, nearly two years after Johnson’s action was dismissed against the insureds, the petitioner sought reimbursement of the no-fault benefits that it had paid him by filing a demand for mandatory arbitration against **American Bankers** pursuant to [Insurance Law § 5105](#). That statute allows an insurer that has paid no-fault benefits to obtain mandatory arbitration to recoup its loss from the insurer of the party actually at fault for the accident*. In its arbitration demand, the petitioner asserted that its insured, Singh, was not at fault for the accident because he had done nothing to cause the horse to “attack” his taxi, and that the insureds had negligently created “an extremely hazardous situation” by permitting the horse to travel upon “a riding path so close to a roadway without any barricade.” **American Bankers** did not file a response to the demand or otherwise participate in the arbitration.

In an award dated December 12, 2012, the arbitrator ruled that the petitioner could not obtain reimbursement from **American Bankers** because it had “failed to provide substantiation that [**American Bankers**] is a motor vehicle insurer that could be held liable under [Section 5105 of Insurance Law](#).” The arbitrator added that, therefore, “[t]he proper forum would have been litigation.”

About three months later, on March 11, 2013, the petitioner commenced the instant proceeding pursuant to [CPLR 7511\(b\)](#) to vacate the arbitration award, contending that the arbitrator erred in sua sponte raising an affirmative defense on behalf of **American Bankers**, which had elected not to appear in the arbitration proceeding. The petitioner further argued that, in any event, **American Bankers** was an insurer subject to mandatory arbitration of claims against it arising from an accident involving a motor vehicle for hire.

In opposition to the petition, **American Bankers** asserted that the arbitrator’s determination had a rational basis, and cross-petitioned pursuant to [CPLR 7511\(e\)](#) to confirm the award.

In the order appealed from, the Supreme Court denied the petition to vacate the arbitration award, granted the cross petition, and confirmed the award. The court began its analysis by noting that

“[t]here are two types of no-fault disputes between insurers that are subject to mandatory arbitration: loss transfer and priority of payment (see [Insurance Law § 5105](#); [11 NYCRR 65–3.12](#); [11 NYCRR 65–4.11](#)). The arbitration procedures established pursuant to [section 5105 of the Insurance Law](#) apply to disputes over priority of payment among insurers who are liable for the payment of first-party benefits (see [Insurance Law § 5105\[a\]\[b\]](#); [11 NYCRR 3.12\[b\]](#)).”

The court then rejected the petitioner’s argument that the arbitrator had improperly raised and disposed of an affirmative defense by determining that **American Bankers** was not a motor vehicle insurer liable for the payment of no-fault benefits. Rather, the arbitrator’s determination was that the petitioner had failed to meet “a threshold part” of its “required showing as the applicant seeking reimbursement under [Insurance Law § 5102](#) and [11 NYCRR 3.12\(b\)](#)” that **American Bankers** was an “insurer” within the meaning of the applicable statute and regulations and, thus, subject to mandatory arbitration of another insurance carrier’s claims against it.

*3 [1] [2] [3] Contrary to the petitioner’s contention, the arbitrator had the authority to rule on the issue of whether the controversy was subject to mandatory arbitration under [Insurance Law § 5102](#) and its implementing regulations. An arbitrator’s authority generally “extends to only those issues that are actually presented by the parties” (*Matter of Joan Hansen & Co., Inc. v. Everlast World’s Boxing Headquarters Corp.*, 13 N.Y.3d 168, 173, 889 N.Y.S.2d 886, 918 N.E.2d 482). Therefore, an arbitrator is precluded from identifying and considering an affirmative defense that is not pleaded by a party to

the arbitration. Here, however, the issue before the arbitrator cannot be characterized as an affirmative defense, such as lack of coverage (see *New York Cent. Mut. Fire Ins. Co. v. Amica Mut. Ins. Co.*, 162 A.D.2d 1009, 557 N.Y.S.2d 801). Nor was the issue whether the petitioner satisfied a condition precedent to recovery in a loss-transfer proceeding (see *Matter of Allstate Ins. Co. v. New York Petroleum Assn. Compensation Trust*, 104 A.D.3d 682, 961 N.Y.S.2d 218). Rather, the issue before the arbitrator was the threshold issue of whether **American Bankers** was an “insurer” subject to the mandatory arbitration procedures of [Insurance Law § 5105](#), and 11 NYCRR 3.12(b) (see *Hunter v. OOIDA Risk Retention Group, Inc.*, 79 A.D.3d 1, 9, 909 N.Y.S.2d 88). Furthermore, the fact that **American Bankers** elected not to participate in the arbitration did not divest the arbitrator of the authority to determine, in the first instance, whether **American Bankers** was an “insurer” within the meaning of the subject statute and regulation. An arbitrator may hear and determine a controversy upon the evidence produced, notwithstanding the failure of a party to appear (see [CPLR 7506\[c\]](#); *Whale Securities Co., L.P. v. Godfrey*, 271 A.D.2d 226, 227, 705 N.Y.S.2d 358), and since **American Bankers** did not appear at the arbitration, it did not affirmatively waive the issue of whether it was an “insurer” subject to arbitration by participating in the arbitration and raising other issues to the exclusion of that issue (cf. *Matter of United Fed. of Teachers, Local 2, AFT, AFL–CIO v. Board of Educ. of City School Dist. of City of N.Y.*, 1 N.Y.3d 72, 78, 769 N.Y.S.2d 451, 801 N.E.2d 827; *Matter of Emerald Claims Mgt. for Ullico Cas. Ins. Co. v. A. Cent. Ins. Co.*, 121 A.D.3d 481, 482–483, 994 N.Y.S.2d 589; *Matter of Nelson v. Queens Surface Corp.*, 283 A.D.2d 577, 724 N.Y.S.2d 895).

[4] As noted by the Court of Appeals, a party may not be bound to arbitrate a dispute by mere inaction (see *Matter of Commerce & Indus. Ins. Co. v. Nester*, 90 N.Y.2d 255, 262, 660 N.Y.S.2d 366, 682 N.E.2d 967). Therefore, **American Bankers**’ failure to move to stay arbitration pursuant to [CPLR 7503](#) did not render this dispute arbitrable, where, as here, no agreement to arbitrate was ever made (see *id.*; *Matter of Matarasso [Continental Cas. Co.]*, 56 N.Y.2d 264, 267, 451 N.Y.S.2d 703, 436 N.E.2d 1305; *Matter of Allstate Ins. Co. v. Marke*, 121 A.D.3d 1107, 996 N.Y.S.2d 71), and where, as will be discussed, **American Bankers** was not an insurer subject to the statutory requirement to submit to mandatory arbitration.

[5] [6] Turning to the merits, in this proceeding pursuant to CPLR article 75 to vacate the arbitrator’s award, our judicial review is limited. Since the petitioner sought arbitration pursuant to the mandatory arbitration provision of [Insurance Law § 5105](#), the award may be considered to be one arising from a statutory obligation to arbitrate, notwithstanding the arbitrator’s ultimate determination that **American Bankers** was not subject to arbitration. Thus, we treat the award as one rendered after compulsory arbitration, and give the petitioner the benefit of affording “closer judicial scrutiny of the arbitrator’s determination under [CPLR 7511\(b\)](#)” than would be warranted in reviewing an award made after a consensual arbitration (*Matter of Motor Veh. Acc. Indem. Corp. v. Aetna Cas. & Sur. Co.*, 89 N.Y.2d 214, 223, 652 N.Y.S.2d 584, 674 N.E.2d 1349; see *Matter of Public Serv. Mut. Ins. Co. v. Fiduciary Ins. Co. of Am.*, 123 A.D.3d 933, 934, 999 N.Y.S.2d 135; *Matter of Philadelphia Ins. Co. [Utica Natl. Ins. Group]*, 97 A.D.3d 1153, 948 N.Y.S.2d 501). “To be upheld, an award in a compulsory arbitration proceeding must have evidentiary support and cannot be arbitrary and capricious” (*Matter of Motor Veh. Acc. Indem. Corp. v. Aetna Cas. & Sur. Co.*, 89 N.Y.2d at 223, 652 N.Y.S.2d 584, 674 N.E.2d 1349 [citations omitted]; see *Matter of Santer v. Board of Educ. of E. Meadow Union Free Sch. Dist.*, 23 N.Y.3d 251, 261, 990 N.Y.S.2d 442, 13 N.E.3d 1028; *Matter of Public Serv. Mut. Ins. Co. v. Fiduciary Ins. Co. of Am.*, 123 A.D.3d 933, 934, 999 N.Y.S.2d 135; *Matter of State Farm Mut. Auto. Ins. Co. v. City of Yonkers*, 21 A.D.3d 1110, 1111, 801 N.Y.S.2d 624). Moreover, with respect to determinations of law, the applicable standard in mandatory no-fault arbitrations is whether “any reasonable hypothesis can be found to support the questioned interpretation” (*Matter of Shand [Aetna Ins. Co.]*, 74 A.D.2d 442, 454, 428 N.Y.S.2d 462; see *Matter of Motor Veh. Acc. Indemn. Corp. v. Aetna Cas. & Sur. Co.*, 89 N.Y.2d at 224, 652 N.Y.S.2d 584, 674 N.E.2d 1349; *Matter of Scottsdale Ins. Co. v. Motor Veh. Acc. Indem. Corp.*, 107 A.D.3d 1003, 1003–1004, 966 N.Y.S.2d 896; *Matter of State Farm Mut. Auto. Ins. Co. v. Lumbermens Mut. Cas. Co.*, 18 A.D.3d 762, 763, 796 N.Y.S.2d 112; *Matter of Hanover Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 226 A.D.2d 533, 534, 641 N.Y.S.2d 547; *Matter of Empire Mut. Ins. Co. v. Jones*, 151 A.D.2d 754, 542 N.Y.S.2d 776; *Massapequa Gen. Hosp. v. Travelers Ins. Co.*, 104 A.D.2d 638, 640, 480 N.Y.S.2d 18). Keeping our limited scope of judicial review in mind, and upon an application of the relevant law, we conclude that the Supreme Court properly determined that the arbitrator’s award was supported by a “reasonable hypothesis” and was not arbitrary and capricious (see *Matter of Motor Veh. Acc. Indem. Corp. v. Aetna Cas. & Sur. Co.*, 89 N.Y.2d at 224, 652 N.Y.S.2d 584, 674 N.E.2d 1349; *Matter of Progressive N. Ins. Co. v. Sentry Ins. A Mut. Co.*, 51 A.D.3d 800, 802, 859 N.Y.S.2d 199; *Matter of State Farm Mut. Auto. Ins. Co. v. Lumbermens Mut. Cas. Co.*, 18 A.D.3d at 763, 796 N.Y.S.2d 112).

*4 [7] At issue here is the applicability to this controversy of certain provisions of the Comprehensive Automobile Insurance Reparations Act (see L. 1973, ch. 13), commonly known as the No-Fault Law. Pursuant to the No-Fault Law, every automobile owner must carry automobile insurance covering “basic economic loss” resulting from the use or operation of the vehicle in [New York State \(Insurance Law § 5102\[a\]\)](#); see *Pommells v. Perez*, 4 N.Y.3d 566, 570, 797 N.Y.S.2d 380, 830 N.E.2d 278). The No-Fault Law is “aimed at ensuring ‘prompt compensation for losses incurred by accident victims without regard to fault or negligence’ ” (*Viviane Etienne Medical Care, P.C. v. Country–Wide Ins. Co.*, 25 N.Y.3d 498, — N.Y.S.3d —, — N.E.3d —, 2015 N.Y. Slip Op. 04787, *5 [2015], quoting *Matter of Medical Socy. of State of N.Y. v. Serio*, 100 N.Y.2d 854, 860, 768 N.Y.S.2d 423, 800 N.E.2d 728), and alleviating unnecessary burdens on the courts by limiting litigation with respect to such claims (see *Pommells v. Perez*, 4 N.Y.3d at 570–571, 797 N.Y.S.2d 380, 830 N.E.2d 278).

As relevant to this appeal, in certain limited circumstances an insurance carrier that has paid first-party no-fault benefits to an

accident victim is afforded the remedy of mandatory inter-company arbitration to recoup those benefits, through a “loss transfer,” from the insurer of the party at fault for the accident (see [Insurance Law § 5105](#); *Matter of Emerald Claims Mgt. for Ullico Cas. Ins. Co. v. A. Cent. Ins. Co.*, 121 A.D.3d at 482, 994 N.Y.S.2d 589; *Matter of Progressive Northeastern Ins. Co. [New York State Ins. Fund]*, 56 A.D.3d 1111, 1112, 870 N.Y.S.2d 478; *Matter of State Farm Mut. Auto. Ins. Co. v. City of Yonkers*, 21 A.D.3d at 1111, 801 N.Y.S.2d 624). “The No-Fault Automobile Insurance Law defines ‘first party benefits’ as ‘payments to reimburse a person for basic economic loss on account of personal injury arising out of the use or operation of a motor vehicle’” (*Matter of Johnson v. Buffalo & Erie County Private Indus. Council*, 84 N.Y.2d 13, 18, 613 N.Y.S.2d 861, 636 N.E.2d 1394, quoting [Insurance Law § 5102\[b\]](#)). “Basic economic loss” includes necessary expenses incurred by an accident victim for medical treatment, and lost wages ([Insurance Law § 5102\[a\]\[1\]\[i\], \[2\]](#)).

[Insurance Law § 5105](#) states, in pertinent part:

“(a) Any insurer liable for the payment of first party benefits to or on behalf of a covered person and any compensation provider paying benefits in lieu of first party benefits ... has the right to recover the amount paid from the insurer of any other covered person to the extent that such other covered person would have been liable, but for the provisions of this article, to pay damages in an action at law. In any case, the right to recover exists only if at least one of the motor vehicles involved is a motor vehicle weighing more than six thousand five hundred pounds unloaded or is a motor vehicle used principally for the transportation of persons or property for hire ...”

“(b) The sole remedy of any insurer or compensation provider to recover on a claim arising pursuant to subsection (a) hereof, shall be the submission of the controversy to mandatory arbitration pursuant to procedures promulgated or approved by the superintendent.”

*5 In 1977, the statute was amended to its present form, which restricts recovery to accidents involving vehicles for hire or vehicles weighing more than 6,500 pounds (see *Hunter v. OOIDA Risk Retention Group, Inc.*, 79 A.D.3d at 8, 909 N.Y.S.2d 88). The scope of recovery was restricted by the 1977 amendment to address concerns that inter-company loss transfer arbitration proceedings “contribute to overhead costs and delays under the no-fault system and are inconsistent with the basic objective of the no-fault system, which is to eliminate costly investigations and factual determinations concerning fault” (Governor’s Program Bill Mem., Bill Jacket, L.1977, ch. 892, at 7–8; see *Hunter v. OOIDA Risk Retention Group, Inc.*, 79 A.D.3d at 8, 909 N.Y.S.2d 88).

[8] [Insurance Law § 5105](#) serves to mitigate the effect of placing the entire burden “of loss on the first-party insurer, even where its insured was not at fault” (*Hunter v. OOIDA Risk Retention Group, Inc.*, 79 A.D.3d at 9, 909 N.Y.S.2d 88), and allows insurers to recover from each other the first-party no-fault benefits paid to their insureds, allocated on the basis of their relative fault (see *id.*; *Matter of City of Syracuse v. Utica Mut. Ins. Co.*, 61 N.Y.2d 691, 693, 472 N.Y.S.2d 600, 460 N.E.2d 1085). Since, generally, where a vehicle for hire is involved in an underlying accident, “mandatory arbitration is the sole remedy regarding disputes between insurers over responsibility for payment of first-party benefits,” no action at law lies in such a situation to adjudicate a dispute between insurers over liability for first-party no-fault benefits (*State Farm Mut. Auto. Ins. Co. v. Nationwide Mut. Ins. Co.*, 150 A.D.2d 976, 977, 541 N.Y.S.2d 653; see *Matter of Philadelphia Ins. Co. [Utica Natl. Ins. Group]*, 97 A.D.3d 1153, 1157–1158, 948 N.Y.S.2d 501), or disputes over priority of payment of first-party benefits (see *Matter of Pacific Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 150 A.D.2d 455, 456, 541 N.Y.S.2d 65).

The term “insurer” is defined in Insurance Law article 51 as an “insurance company or self-insurer, as the case may be, which provides the financial security required by article six or eight of the vehicle and traffic law” ([Insurance Law § 5102\[g\]](#) [emphasis added]). In addition, the regulations implementing the No-Fault Law state that they apply to “mandatory arbitration of controversies between insurers, pursuant to the provisions of [section 5105 of the Insurance Law](#), and shall apply to insurers, self-insurers and compensation providers” ([11 NYCRR 65–4.11\[a\]\[1\]](#)). Insurers are defined in those regulations as both insurers and self-insurers “as those terms are defined in ... Part [65 of Title 11 of the NYCRR] and article 51 of the Insurance Law; the Motor Vehicle Accident Indemnification Corporation (MVAIC); any company providing insurance pursuant to [section 5103\(g\) of the Insurance Law](#); and compensation providers as defined in [section 5102\(1\) of the Insurance Law](#)” ([11 NYCRR 65–4.11\[a\]](#)).

[9] [Insurance Law § 5105\(b\)](#), which provides that the “sole remedy of any insurer or compensation provider to recover” first-party benefits on a no-fault claim “shall be the submission of the controversy to mandatory arbitration” (see *Eagle Ins. Co. v. ELRAC, Inc.*, 291 A.D.2d 272, 273, 737 N.Y.S.2d 603; *Matter of Pacific Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 150 A.D.2d at 456, 541 N.Y.S.2d 65), is binding only upon insurers or self-insurers, “as those terms are defined in ... Part [65 of Title 11 of the NYCRR] and article 51 of the Insurance Law” ([11 NYCRR 65–4.1](#); see [65–4.11\[a\]\[1\], \[5\]](#)), and not to insurance carriers which do not meet those definitions (see *Aetna Health Plans v. Hanover Ins. Co.*, 116 A.D.3d 538, 983 N.Y.S.2d 560, *lv. granted* 24 N.Y.3d 912, 2015 WL 94588). Thus, not all insurance carriers that insure those actually involved in an accident are subject to the mandatory arbitration provisions of [Insurance Law § 5105\(b\)](#) and its implementing regulations. Furthermore, these provisions do “not apply where New York’s no-fault insurance law does not prevent the tortfeasor from being held liable to pay damages in an action at law” (*Hunter v. OOIDA Risk Retention Group, Inc.*, 79 A.D.3d at 12, 909

N.Y.S.2d 88).

*6 [10] Here, the **American Bankers**’ policy did not provide no-fault insurance coverage for the type of accident underlying this dispute. Moreover, **American Bankers** did not insure a person, vehicle, or animal involved in the underlying accident, but only the stables at which the animal was boarded. Accordingly, **American Bankers** cannot be deemed to be an “insurer” as that term is defined by Insurance Law article 51 and the pertinent regulations.

Moreover, [Insurance Law § 5105](#) does not apply here because New York’s No-Fault Law would not preclude **American Bankers**’ insureds from being held liable to pay damages in an action at law. The decision of this Court in *Matter of Purex Indus. v. Nationwide Mut. Ins. Co.*, 110 A.D.2d 67, 493 N.Y.S.2d 176, does not support a contrary result. In that case, this Court ruled that the petitioner was “the self-insured owner of the vehicle involved in the accident” (*id.* at 69, 493 N.Y.S.2d 176) and, thus, satisfied the statutory definition of an “insurer” that is “subject to mandatory arbitration for adjusting the payment of no-fault benefits between insurers,” since, “[b]ut for the No-Fault Law, petitioner would be liable as an ‘insurer’ to [the respondent’s] insured in an action at law” (*id.* at 68, 493 N.Y.S.2d 176). Here, on the other hand, the No-Fault Law would not preclude **American Bankers**’ insureds from being held liable in an action at law (*see Hunter v. OOIDA Risk Retention Group, Inc.*, 79 A.D.3d at 12, 909 N.Y.S.2d 88).

Since **American Bankers** did not meet the definition of insurer or self-insurer under the No-Fault Law and the regulations promulgated thereunder (*see Matter of Purex Indus. v. Nationwide Mut. Ins. Co.*, 110 A.D.2d at 68–70, 493 N.Y.S.2d 176), the determination of the arbitrator that the claims against it were not subject to compulsory arbitration was supported by a reasonable hypothesis. Accordingly, the Supreme Court properly denied the petition to vacate the arbitrator’s award, and properly granted the cross petition to confirm the award.

The order is affirmed.

ORDERED that the order is affirmed, with costs.

[SKELOS](#), J.P., [DICKERSON](#) and [MILLER](#), JJ., concur.

All Citations

--- N.Y.S.3d ---, 2015 WL 4546629, 2015 N.Y. Slip Op. 06343

Footnotes

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However, Insurance Law § 5105 only permits recoupment of no-fault benefits for accidents involving vehicles for hire, such as the taxi insured by the petitioner in this case, or vehicles weighing more than 6,500 pounds, such as trucks.