

**American Tr. Ins. Co. v Horizon Anesthesia Group,
PC**

2021 NY Slip Op 32654(U)

December 14, 2021

Supreme Court, New York County

Docket Number: Index No. 154573/2020

Judge: Alexander M. Tisch

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ALEXANDER TISCH PART 18

Justice

-----X

AMERICAN TRANSIT INSURANCE COMPANY,
Plaintiff,

INDEX NO. 154573/2020

MOTION DATE 07/23/2021

MOTION SEQ. NO. 001

- v -

HORIZON ANESTHESIA GROUP, PC, NEW HORIZON
SURGICAL CENTER, LLC A/O JAMES MANFRE,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, plaintiff moves for leave to amend the summons and complaint to add a defendant-provider. Defendants Horizon Anesthesia Group, PC (Horizon) and New Horizon Surgical Center LLC (NHSC) oppose and cross move to dismiss the complaint.

Plaintiff commenced the instant action on June 23, 2020 seeking a de novo adjudication of three separate master arbitrator’s awards: an award in favor of Horizon in the amount of \$1,469.99 and two awards in favor of NHSC in the amounts of \$258.94 and \$16,234.97. Clearly the award in favor of Horizon does not meet the \$5,000 threshold, and plaintiff cannot combine awards to meet the same (*see American Tr. Ins. Co. v Health Plus Surgery Ctr., LLC*, 192 AD3d 497 [1st Dept 2021]). However, the Court denies that branch of the cross-motion seeking to dismiss the complaint insofar as asserted against co-defendant NHSC as at least one of the awards meets the threshold and there is no other reason why they should be separated (*see generally Am. Tr. Ins. Co. v Surgicore of Jersey City LLC*, 69 Misc 3d 1216[A], 2020 NY Slip Op 51398[U] [Sup Ct, NY County 2020] [Lebovits, J.] [“It is undisputed that the two claims for

reimbursement at issue here arose from treatments performed on one day on one patient-assignor by staff of one medical-provider assignee in connection with one operation . . . Separating these two monetary awards for § 5106 purposes, merely because Surgicore chose to assert its two claims for reimbursement in separate arbitrations, would exalt form over substance to no purpose. And Surgicore provides no reason *why* they should be separated--instead simply taking it as given that they are separate”]).

“Motions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit” (*Y.A. v Conair Corp.*, 154 AD3d 611, 612 [1st Dept 2017]). Here, the complaint seeks to add Passaic Orthopedic Group, PC asserting a similar claim seeking a de novo adjudication pursuant to Insurance Law § 5106 (c). Plaintiff was notified in February of 2021 of an award rendered in favor of the proposed defendant in the amount of \$8,565.49. As the award meets the statutory threshold, and no other argument has been raised as to the proposed pleading insofar as asserted against this newly proposed defendant, the motion is granted.

Accordingly, it is hereby ORDERED that the plaintiff’s motion to amend the summons and complaint is granted; and it is further

ORDERED that defendants’ cross-motion is granted in part and the complaint is dismissed insofar as asserted against defendant Horizon Anesthesia Group, PC (Horizon); and it is further

ORDERED that the branch of the cross-motion for attorneys’ fees pursuant to 11 NYCRR § 65-4.10 (j) (4) is granted, and counsel for defendant Horizon is awarded \$1,200 for its attorneys’ fee; and it is further

ORDERED that the amended complaint, in the form annexed to the moving papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended verified complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional party in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

INDEX NO.:

-against-

154573/2020

NEW HORIZON SURGICAL CENTER, LLC; and PASSAIC
ORTHOPEDIC GROUP, PC a/o JAMES MANFRE,

Defendants.

And it is further

ORDERED that counsel for the plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the dismissal of Horizon and the additional party being added as set forth herein; and it is further

ORDERED that service of this order upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (see section J);¹ and it is further

¹ The *Protocol* is accessible at the "E-Filing" page on the court's website: www.nycourts.gov/supctmanh.

ORDERED that the matter shall be scheduled for a preliminary conference on **March 16, 2022**, which will be held via Microsoft Teams.²

This constitutes the decision and order of the Court.



12/14/2021

DATE

ALEXANDER TISCH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

² Calendar invitation containing Teams link with preliminary conference form to be sent by Part 18 Clerk (SFC-Part18-Clerk@nycourts.gov).