

**American Tr. Ins. Co. v Advanced Orthopaedics
PLLC**

2023 NY Slip Op 32448(U)

July 18, 2023

Supreme Court, New York County

Docket Number: Index No. 654262/2021

Judge: Frank P. Nervo

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. FRANK P. NERVO PART 04

Justice

-----X

AMERICAN TRANSIT INSURANCE COMPANY

Plaintiff,

- v -

ADVANCED ORTHOPAEDICS PLLC A/A/O AUBREY
PAUL,

Defendant.

-----X

INDEX NO. 654262/2021

MOTION DATE 05/27/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for MISCELLANEOUS.

In this de novo review of no-fault arbitration proceedings, defendant Advanced Orthopaedics moves to quash plaintiff insurer’s the notice of deposition. Plaintiff cross-moves to compel the deposition, seeking testimony regarding billing practices, the out-of-state location of surgery, and medical necessity of the procedure.

It is inimical to the hypothesis of due process and interest of justice to allow an insurer to stipulate that an arbiter is to decide denial of a insured’s claim upon only one basis and then, following an unfavorable arbitration decision, allow the insurer to bring a *de novo* action alleging denial predicated upon multiple bases not before the arbitrator. The insured relies upon the

insurer's denial and the denial must provide a high degree of specificity for the denial's basis (*Gen. Accident Ins. Group v. Cirucci*, 46 NY2d 512 [1979]).

Here, there can be no dispute that plaintiff denied the claim on the basis that the procedure was not medically necessary (NYSCEF Doc. No. 22). Plaintiff did not deny on the basis that the procedure's cost was inflated by the provider. Consequently, plaintiff is bound by its denial of claim form stating that the sole basis for denying the insured's claim was lack of medical necessity, as supported by its doctor's peer-review.

Accordingly, it is

ORDERED that the motions to quash the notice of deposition and cross-motion to compel deposition are granted to the extent of limiting defendant Advanced Orthopaedics' deposition to the medical necessity of the insured's shoulder surgery; and it is further

ORDERED that such deposition shall not exceed two hours in length; and it is further

ORDERED that defendant Advanced Orthopaedic's shall appear for deposition on October 27, 2023 at 10:00am at the office of its attorney, or via electronic means if all parties agree; and it is further

ORDERED that post-deposition demands shall be served within 20 days of completion of deposition; and it is further

ORDERED that responses to post-deposition demands shall be served within 20 days of receipt of demand; and it is further

ORDERED that the failure to timely take deposition testimony or serve post-deposition demands, as above, shall constitute waiver of same; and it is further

ORDERED that the failure to timely appear for deposition or respond to post-deposition demands, as above, shall result in sanctions, including but not limited to the striking of pleadings and imposition of sanctions against counsel and or parties; and it is further

ORDERED that all counsel shall confer and within 20 days of this decision and order shall file, via NYSCEF with courtesy copy to chambers in accordance

with the Part Rules, a single joint proposed conference order addressing all known outstanding discovery and, to the extent that agreement cannot be reached on same, counsel shall, contemporaneously with the proposed conference order, file, via NYSCEF with courtesy copy to chambers, a single joint letter outlining the disputed discovery and parties' positions; and it is further

ORDERED that the failure to timely file, with courtesy copy to chambers, a proposed joint conference order/letter may constitute waiver of discovery or issuance of a sua sponte discovery order.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

7/18/2023
DATE

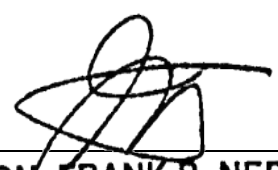
CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

APPLICATION:

CHECK IF APPROPRIATE:

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	J.S.C.
<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE



HON. FRANK P. NERVO