

American Tr. Ins. Co. v Passaic Orthopedic Group

2024 NY Slip Op 30643(U)

February 27, 2024

Supreme Court, Kings County

Docket Number: Index No. 506312/2022

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: CCP

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

Decision and order

- against -

Index No. 506312/2022

PASSAIC ORTHOPEDIC GROUP, A/A/O
CHRISTOPHER ALEXANDER,

Defendants,

February 27, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #3 & #4

According to the complaint on September 15, 2018 Christopher Alexander was involved in an automobile accident. Alexander was insured by the plaintiff, American Transit Insurance Company [hereinafter 'American Transit'] and notified American Transit of the accident. Alexander sought medical treatment in connection with injuries sustained and was treated by multiple providers including the defendant Passaic Orthopedic Group pursuant to the no-fault provisions of the insurance policy. American Transit refused to pay any of the no-fault bills submitted by Passaic on the grounds such medical treatment was not necessary and not causally related to the accident. The parties appeared for arbitration and the arbitrator awarded Passaic \$9,694.76. That award was sustained by a master arbitrator. The plaintiff has commenced this action pursuant to Insurance Law §5016(c) seeking de novo review of the no-fault claims sought in this case.

The defendant seeks all arbitration information related to any other arbitrations that took place between American Transit

and any other medical provider regarding Christopher Alexander. American Transit has cross-moved seeking a protective order concerning most of the items sought by the defendant. Thus, on May 5, 2022 the defendant served a discovery demand which requested "if any other action or arbitration has been filed by or on behalf of Defendant or EIP with respect to the accident underlying the within dispute, a copy of the pleadings in such court action(s) or, if arbitration was commenced, a copy of the arbitration request form(s) (AR-1) and of any letter scheduling conciliation filings and deadlines. Also provide copy of any Decision, Order, Stipulation, Arbitration Award, Consent Agreement, and/or any other determination, however named and whether final or non-final, issued in the court action or arbitration proceedings" (see, Demand for Discovery and Inspection, ¶2 [NYSCEF Doc. No. 7]). The plaintiff objected, essentially, on the grounds that the information sought is simply not relevant to the defense of this action. This motion seeks to compel American Transit to furnish all information pertaining any other arbitration with any medical provider regarding the injuries sustained by Alexander. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

Conclusions of Law

Insurance Law §5016(c) provides that where an arbitrator's award exceeds \$5,000 the insurer or the claimant may institute a action seeking de novo review to "adjudicate the dispute" (id). Thus, if the monetary threshold is satisfied then "the entire dispute is subject to a 'plenary judicial adjudication', something very different from judicial review of some other entity's determination" (see, Matter of Greenberg, 70 NY2d 573, 523 NYS2d 67 [1987]). This statutory authority is an exception to the general rule that arbitration awards are subject to res judicata effect (Progressive Insurance Company v. Strough, 55 AD3d 1402, 865 NYS2d 439 [4th Dept., 2008]). Thus, "a de novo review, by its very nature, is not a review of the arbitration proceeding itself or the arbitration award but a review of the underlying dispute, as if an arbitration proceeding never occurred, thus contemplating a full adjudication, on the merits, of the parties claims" (New York City Transit Authority v. Heights Medical Care P.C., 52 Misc3d 1214(A), 43 NYS3d 768 [Supreme Court New York County 2016]).

In support of its defense, which essentially seeks dismissal of this action which would then confirm the awards of the arbitrator and master arbitrator, the defendant seeks the file which consists of all information regarding any arbitrations that were conducted between the plaintiff and any medical provider

concerning Alexander and the subject accident. The defendant does not merely seek the result of any arbitration awards but, in addition, all documents that exist concerning those arbitrations.

The complaint alleges that this action "renders the underlying arbitration award unenforceable as the prior proceedings become a nullity" (see, Verified Complaint, ¶32 [NYSCEF Doc. No. 1]). While that is surely true, the prior arbitrations that involved the plaintiff are surely relevant when conducting discovery. Thus, it is well settled that when a party, usually a plaintiff, affirmatively places his or her medical condition in controversy through allegations an underlying accident caused injury then prior medical treatment is generally discoverable (see, Brito v. Gomez, 33 NY3d 1126, 107 NYS3d 797 [2019]). The unusual posture of this case where the plaintiff, the injured party's insurer, seeks a review that, essentially, the injured party suffered no injury and no payments need to be made, then any information that could rebut or challenge that contention is surely discoverable. Thus, in a standard lawsuit where a plaintiff places her physical and perhaps mental condition in controversy, she thereby waives any physician-client privilege and her past medical history is discoverable (Garland v. City of New York, 191 AD3d 770, 138 NYS3d 352 [2d Dept., 2021]). In Dillenbeck v. Hess, 73 NY2d 278, 539 NYS2d 707 [1989] the court explained the basic fairness of

this rule by noting that "a party should not be permitted to affirmatively assert a medical condition in seeking damages or in defending against liability while simultaneously relying on the confidential physician-patient relationship as a sword to thwart the opposition in its efforts to uncover facts critical to disputing the party's claim" (*id.*). Furthermore, this rule also comports with full and liberal disclosure "of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (see, Forman v. Henkin, 30 NY3d 656, 70 NYS3d 157 [2018]). The discovery rules and statutes "embodies the policy determination that liberal discovery encourages fair and effective resolution of disputes on the merits, minimizing the possibility for ambush and unfair surprise" (see, Spectrum Systems International Corporation v. Chemical Bank, 78 NY2d 371, 575 NYS2d 809 [1991]). The reach of discovery is commensurate with the breadth of the plaintiff's allegations (Kakharov v. Archer, 166 AD3d 746, 85 NYS3d 780 [2d Dept., 2018]).

In this lawsuit the plaintiff seeks a new and fresh determination whether the underlying plaintiff, Alexander Christopher, in fact sustained any injuries and may be entitled to no-fault insurance coverage. While, as noted, the posture is different, the discovery rules operate in the same broad manner. Although two independent arbitrators have already ruled on the

matter, the plaintiff is afforded this de novo review. Thus, in defending this action and seeking to establish that injuries were sustained and no-fault benefits should be paid, the defendant is entitled to robust and comprehensive discovery to defend the action. The defendant may surely seek to discover the nature of other arbitrations in which the plaintiff participated with other medical providers, what arguments were presented, what payments may have been made, what evidence was exchanged and how those arbitrations were resolved. This information is highly relevant and surely material and necessary to help the defendant form a defense to the action (*cf.*, Country-Wide Insurance Company v. Long Island Spine Specialists PC, 2021 WL 126342 [Supreme Court New York County 2021]). Indeed, the arguments the underlying information of other arbitrations is not relevant cannot withstand analysis and is contrary to the liberal discovery rules noted. It cannot seriously be disputed that the plaintiff's position, arguments and documents produced concerning one medical provider are pointedly relevant to the defendant provider in this case. It is striking that plaintiff declares irrelevant how it engaged with other medical providers when such information could surely inform the defendant provider of the strength of plaintiff's assertions.

Therefore, the information is highly relevant and thus the motion seeking the plaintiff to produce the entire "file" which

encompasses all information regarding all arbitrations concerning Christopher Alexander is granted.

Turning to the plaintiff's motion seeking a protective order, an order of confidentiality is appropriate pursuant to CPLR §3103 to protect "material confidential in nature, or information which is subject to abuse if widely disseminated" (McLaughlin v. G.D. Serle, Inc., 38 AD2d 810, 328 NYS2d 899 [1st Dept., 1972]). Preliminarily, the plaintiff has failed to comply with the requirements of CPLR §3122(b) which require a privilege log that contains the identity of "the type of document being withheld, the general subject matter of each document, and the date of the document" (see, Stephen v. State, 117 AD3d 820, 985 NYS3d 698 [2d Dept., 2014]). In any event, considering the substance of the request, a party waives any right to seek a protective order when they affirmatively place the matter in controversy. Thus, the plaintiff squarely filed this lawsuit seeking a determination that no-faults payments need not be made but seeks a protective order to shield the production of any information upon which it seeks to base that determination. Indeed, the affidavit of Cherly Glaze, a no-fault manager, in support of a protective order clearly demonstrates the necessity of such information. The affidavit states that "American Transit maintains a claims file relating to each claim for no-fault insurance coverage. These claims files contain nearly every

document relating to each claimant's application for insurance proceeds to cover medical treatment. For example, each claims file includes American Transit's evaluation of a claimant's request for no-fault benefits and reflects American Transit's proprietary evaluation of those submissions. The file necessarily includes documents reporting on the condition, assessment, and treatment of a claimant's alleged injury. Claims files also contain comprehensive documentation as to all no-fault payments made by American Transit relating to that claimant, including detailed information with respect to amounts paid and denied. For claims that are denied, the claims file contains information explaining the basis for that denial, including privileged material. The claims file also includes other documents such as explanation of benefits forms, detailed invoices, as well as medical peer reviews and independent medical exams whose purpose is to evaluate the merit of no-fault claims, again including privileged material" (see, Affidavit of Cheryl Glaze, ¶6 [NYSCEF Doc. No. 43]). The necessity of such information is thus readily obvious. Consequently, there can be no valid basis to deny the information to the defendant at all. However, upon the submission of a valid privilege log the plaintiff has presented sufficient evidence that a protective order should be granted to protect sensitive information from being disseminated to the public. Therefore, while all the information will be required to

be furnished to the defendant, all such documents will be subject to a protective order, upon the submission of a privilege log, and will not be permitted to be disseminated outside the parameters of this lawsuit.

So ordered.

ENTER:

DATED: February 27, 2024
Brooklyn, N.Y.



Hon. Leon Ruchelsman
JSC