

Infinity Std. Ins. Co. v Triborough ASC, LLC

2025 NY Slip Op 30333(U)

January 28, 2025

Supreme Court, New York County

Docket Number: Index No. 156313/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

INFINITY STANDARD INSURANCE COMPANY

Plaintiff,

- v -

TRIBOROUGH ASC, LLC,

Defendant.

-----X

INDEX NO. 156313/2024

MOTION DATE 09/03/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendant’s motion to dismiss is granted.¹

Background

Factual Background

Infinity Standard Insurance Company (“Plaintiff”) is an insurance company that has affiliated companies that insure New York State automobiles. Triborough ASC, LLC (“Defendant”) is a New York limited liability company and assignee of non-parties Jefferson Humberto Flores-Barrera (“Flores-Barrera”) and Noreivi Suleyma Serrano-Ramirez (“Serrano-Ramirez”, collectively with Flores-Barrera the “Claimants”). On October 5, 2022, the Claimants were involved in an automobile accident. Infinity insured the automobile at the time of the accident. Defendant submitted a claim for the right shoulder surgery medical treatment that Serrano-Ramirez received on March 11, 2023, in the amount of \$4,544.92. Defendant also submitted a claim of \$4,544.92 for medical treatment that was provided to Flores-Barrera on

¹ The Court would like to thank Emily Sheehy and Mingyue Deng for their assistance in this matter.

March 25, 2023, in the form of right knee surgery. Plaintiff subsequently denied all coverage for Defendant's bills, on the grounds that that the injuries were not related to the automobile accident among other reasons.

The Arbitrations and Arbitration Reviews

On October 20, 2023, Defendant filed two separate arbitrations for AAA Cases 99-23-1321-8486 and 99-23-1318-5557. On February 24, 2024, the parties appeared before Arbitrator Ben Feder, and he awarded Defendant \$4,544.92 for the medical services provided to Flores-Barrera. Plaintiff then filed for Master Arbitration Review and Master Arbitrator Henry Sawits affirmed the lower arbitration award on June 12, 2024. In Defendant's separate arbitration proceeding to recover for medical services provided to Serrano-Ramirez, Arbitrator Feder awarded in payment \$4,544.92 to defendant, and Master Arbitrator Sawits affirmed the lower arbitration award of payment to Defendant on June 12, 2024.

Procedural History

In the present action, plaintiff seeks a single de novo review of the two separate arbitration awards granted to Defendant, pursuant to Insurance Law §5106(c) and CPLR §7511 of American Arbitration Association. Defendant requests that the Court grant the motion to dismiss Plaintiff's complaint in its entirety.

Discussion

Defendant argues that the Court should not grant de novo review of the underlying issues related to coverage of the accident because the suit is procedurally defective. Defendant's position is that Plaintiff has inappropriately aggregated the amounts in these claims in order to obtain a de novo review of arbitration awards. If such claims have been improperly aggregated,

they further argue that this Court lacks jurisdiction over this controversy and the motion to dismiss should be granted.

Plaintiff argues that it has issued identical denials to both of Defendant's claims because the two claims are identical in facts and involve identical questions of law as they all involve Plaintiff's defenses based on lack of coverage, material misrepresentation in the procurement of the policy, and the belief that the alleged injuries are not related to the underlying accident. Plaintiff seeks a denial of the motion to dismiss, and request that this Court continue with de novo review of their request for a coverage denial judgment.

De Novo Review of a Dispute Pursuant to Insurance Law Requires an Award of \$5,000 or More

Under Insurance Law § 5106(c), when a master arbitrator has made an award that is "five thousand dollars or greater", either the insurer or the claimant may "institute a court action to adjudicate the dispute de novo." When there are separately issued master arbitrator's awards that are all below the \$5,000 threshold, dismissal of the complaint that seeks de novo review is proper. *Imperium Ins. Co. v. Innovative Chiropractic Servs., P.C.*, 43 Misc. 3d 137(A), *137(A) (App. Term. 1st. Dept. 2014). As neither of the awards in this matter reached \$5,000, the issue then becomes whether Plaintiff can aggregate two claims for two different surgeries on two different people when the injuries both resulted from the same accident and Plaintiff has similar defenses in both instances.

Defendant cites to *American Transit* in support of their contention. There, the First Department held that there was no entitlement to de novo review because "[t]he medical services provided to plaintiff's insured were separate and distinct from each other, were billed separately and should not be combined to meet the \$5,000 threshold." *American Tr. Ins. Co. v. Health Plus Serugery Ctr., LLC*, 192 A.D.3d 497, 497-98 (1st Dept. 2021). Plaintiff seeks to distinguish

American Transit by pointing out that the two awards were from unrelated medical entities. But just as awards from two unrelated medical entities would not be proper (in that case) for aggregation, here there are awards for two different surgeries on two different individuals. While if there had been two separate suits pursuing de novo review, consolidation may have been a wise nod to judicial efficiency given the similar set of facts for each person’s claim, aggregating two different procedures on two different individuals in order to trigger the Insurance Law § 5106(c) threshold would not be proper. Because neither award that Plaintiff seeks to vacate reached \$5,000, de novo review is not authorized, and this Court has no subject matter jurisdiction in this matter. Accordingly, it is hereby

ADJUDGED that defendant’s motion to dismiss the complaint is granted; and it is further

ORDERED that the Clerk of the Court shall enter judgment of dismissal of this matter in its entirety.

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1/28/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: