

American Tr. Ins. Co. v Ribeiro Pain Mgt. PLLC

2025 NY Slip Op 33314(U)

September 2, 2025

Supreme Court, Kings County

Docket Number: Index No. 501805/2023

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 2nd day of September 2025

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff(s),

-against-

RIBEIRO PAIN MANAGEMENT PLLC
A/A/O SCARLET ESTEVEZ D,

Defendant(s).

DECISION & ORDER

Index No.: 501805/2023

Calendar No.: 6 & 7

Motion Seq.: 012 & 013

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
012 Notice of Motion and Supporting Documents (NYSCEF 178-184).....	1, 2
Affirmation in Opposition and Supporting Documents (NYSCEF).....	3
Reply Affirmation and Supporting Documents (NYSCEF 203-204).....	4
013 Notice of Cross-Motion and Supporting Documents (NYSCEF 191-200).....	5, 6
Affirmation in Opposition and Supporting Documents (NYSCEF 203-204)	7
Reply Affirmation (NYSCEF 205).....	8

Upon the foregoing papers, the decision and order of the Court is as follows:

This de novo action was commenced per CPLR § 7511, Insurance Law § 5106 [c] and 11 NYCRR § 65-4.10 [h] [1] [ii] arising out of a no-fault arbitration award in the amount of \$5,182.34, exclusive of interest, attorneys’ fees and costs, that was upheld by a Master Arbitrator. The injured claimant, Scarlet Estevez Moreno, was involved in a motor vehicle accident on 02/13/2021.

Defendant has moved for summary judgment per CPLR § 3212 for an order (1) confirming the Master Arbitrator’s award affirming the lower arbitration award in the sum of

\$5,182.34 and awarding interest at the rate of 2% per month from 9/27/2021 through the entry of judgment, (2) awarding a statutory fee of \$1,360.00, together with the arbitration filing fee of \$40.00 and the master arbitration fee of \$162.50, and (3) awarding defendant an attorney fee per 11 NYCRR § 65-4.10 [j] [4], together with costs and disbursements as taxed by the Clerk of the Court. (MS 012).

Plaintiff has cross-moved (1) in opposition to defendant's motion and (2) for an order of summary judgment in plaintiff's favor based on the peer review conducted by Peter Chiu, M.D. dated 7/22/2021. Dr. Chiu opined that there was no medical necessity for the medical supplies, and shockwave therapy baseline and progress, and shockwave therapy of the injured claimant's cervical and lumbar spines, left knee and left ankle performed by defendant from 3/10/2021 through 4/22/2021. Based on this peer review, plaintiff argues that the arbitration award as confirmed by the master arbitrator is a nullity because the medical supplies and therapy were not medically necessary because the claimant's injuries were not causally related to the motor vehicle accident on 02/13/2021. Additionally, based on the affidavit of merit submitted by Cheryl Glaze, a No-Fault Claims Examiner employed by plaintiff, it has established that (1) the requests for verification of services were timely requested and (2) the no-fault denials based on the peer review were timely issued and mailed. (MS 013).

Plaintiff also argues that if the Court denies its motion for summary judgment, defendant's motion for summary judgment must also be denied because (1) the motion is procedurally defective as it is not supported by evidence in admissible form and an affidavit from a person with knowledge of the underlying facts, (2) the motion is premature as depositions have not been conducted and (3) if the Court denies plaintiff's motion, defendant's motion must also be denied because there are questions of fact concerning causation and medical necessity.

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). “A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a prima facie entitlement to summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution” (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v Prospect Hospital*, 68 NY2d 324). An attorney’s affirmation or an attorney verified pleading verified per CPLR 3020 [d] [3] is insufficient to establish the merits of an action or defense because the attorney has no personal knowledge of the facts of the case (*Juseinoski v. Bd. Of Educ.*, 15 AD3d 353, 356 [2d Dept 2005]).

The Court’s only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant’s version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of

the witnesses is in question (*see Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

Defendant failed to establish a prima facie entitlement to summary judgment through evidence in admissible form (*Ayotte v Gervasio*, 81 NY2d 1063, citing *Alvarez v Prospect Hospital*, 68 NY2d 324; *Juseinoski v. Bd. Of Educ.*, 15 AD3d 356). Here, defense counsel does not have personal knowledge of the medical services rendered to the injured claimant, the medical necessity of the treatment, or the causal link between the accident and the injuries claimed.

However, plaintiff's motion for summary judgment is granted. Plaintiff established a prima facie entitlement to summary judgment through Ms. Glaze's affidavit that requests for verifications concerning the medical treatment rendered by defendant were properly mailed and a response was received. Thereafter, no-fault denials were issued based on the sworn peer review of Dr. Chiu. (*Ayotte v Gervasio*, 81 NY2d 1063, citing *Alvarez v Prospect Hospital*, 68 NY2d 324). In opposition to the motion, defendant did not provide an affidavit or affirmation from defendant that the requests for verifications were untimely or otherwise defective, or that the no-fault denials were not timely mailed and received. (*Juseinoski v. Bd. Of Educ.*, 15 AD3d 356). Although depositions may be outstanding, defendant offered no explanation for the failure to provide an affidavit from a person with knowledge of the facts of this claim.¹

The Court has considered the parties' remaining arguments and finds same to be without merit.

¹ The Court takes judicial notice of the NYSCEF docket in this index number which demonstrates that there have been no less than seven discovery motions served by both parties in this action.

Accordingly, it is hereby

ORDERED that defendant's motion for summary judgment per CPLR § 3212 is denied

(MS 012), and it is further

ORDERED that plaintiff's cross-motion for summary per CPLR § 3212 is granted

(MS 013), and it is further

ORDERED that the arbitration award of Arbitrator Lisa Abrams, Esq. in the sum of \$5,182.34 and Maters Arbitration of Robert Trestman, Esq. upholding the lower arbitration award are unenforceable and nullified, and it is further

ORDERED that plaintiff shall settle on notice a proposed judgment, and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly.

This constitutes the decision and order of the Court.

ENTER:



Hon. Anne J. Swern, J.S.C.
Dated: 9/2/2025

For Clerks use only:
MG _____
MD _____
Motion seq. # _____