

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

2025 NY Slip Op 33340(U)

August 22, 2025

Supreme Court, New York County

Docket Number: Index No. 651069/2025

Judge: Verna L. Saunders

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. VERNA L. SAUNDERS, JSC PART 36

Justice

-----X

INDEX NO. 651069/2025

AMERICAN TRANSIT INSURANCE COMPANY,
Petitioner,

MOTION SEQ. NO. 001

- v -

**DECISION + ORDER ON
MOTION**

ADVANCED ORTHOPAEDICS PLLC,
Respondent.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for VACATE AWARD.

Petitioner American Transit Insurance Company commenced this CPLR Article 75 proceeding by notice of petition, seeking an order and judgment vacating a no-fault insurance master arbitration award of Robyn D. Weisman, Esq., dated December 9, 2024, which affirmed the arbitration award of Donald MacKenzie, Esq., dated August 24, 2024, granting respondent Advanced Orthopaedics PLLC’s (hereinafter “Advanced”) claim for no-fault insurance compensation for medical treatment services rendered to Ana Gil De Pena at the total cost of \$3,594.99. Ana Gil De Pena was injured on June 9, 2023, after being involved in a motor vehicle accident. Ana Gil De Pena assigned her no-fault insurance benefits to Advanced in exchange for receiving medical treatment from Advanced for injuries sustained as a result of the motor accident. According to petitioner, it denied respondent’s claim of \$3,594.99 because the medical services Advanced rendered to Ana Gil De Pena were not medically necessary or causally related to the injuries she allegedly suffered as a result of the vehicular accident.

Petitioner contends that grounds for vacatur exist insofar as the Master Arbitrator Robyn D. Weisman, Esq. exceeded her authority in failing to follow well-settled law when affirming the arbitration award of Donald MacKenzie, Esq. It asserts that multiple medical expert opinions establish that the services respondent rendered were not medically necessary or causally related to the motor vehicle accident. Specifically, petitioner notes that the “intraoperative photos revealed minimal change that was degenerative in nature and no evidence of trauma” and that the photos reviewed by Dr. Matthew D. Skolnick and Dr. Nicolhas Delaney “confirmed that there was no tear that resulted from the accident requiring surgery.”

Petitioner also asserts that the prevailing law in New York State permits an insurer to establish the lack of medical necessity by submitting a medical professional report or medical peer reviewed report that sets forth a factual basis and medical rationale for the determination that there was a lack of medical necessity. Petitioner posits that in addition to failing to adequately rebut the peer review report submitted in support of the legal arguments and the conclusions set forth in therein, respondent does not attack the credibility of the independent medical doctors that produced the peer review report. Petitioner thus argues that the master arbitration award of Robyn D. Weisman, Esq. must be vacated because it was arbitrary and capricious, without rational basis and

incorrect as a matter of law, because the arbitrator ignored petitioner's evidence and/or well-settled legal precedent that the health service provider must submit expert opinion evidence which meaningfully refers to and either discusses or rebuts the conclusions of the insurer's expert witness (NYSCEF Doc. No. 1, *petition to vacate arbitration award*). In support of the application, petitioner submits a copy of the arbitration awards and medical peer review report (NYSCEF Doc. Nos. 3-6).

Respondent interposed an answer wherein it denied the allegations and urged the court to grant attorneys' fees in its favor (NYSCEF Doc. No. 12, *answer*).

Respondent opposes the motion and cross-moves for attorneys' fees pursuant to 11 NYCRR 65-4.10 (j) (4). Respondent rejects petitioner's contention that it did not submit a rebuttal that "meaningfully refers" to the peer review reports, arguing that such rebuttal and medical records were submitted and the arbitrator found in its favor notwithstanding the peer review report. According to respondent, the evidentiary standard requiring a rebuttal that "meaningfully refers" to the opinion of an insurer's expert exists only at the summary judgment stage and not at the trial stage, contrary to petitioner's assertion. Respondent thus posits that a no-fault arbitrator is not required to apply the case law requiring a rebuttal that "meaningfully refers" to the peer review.

Next, respondent argues that it is entitled to reasonable attorneys' fees for opposing the petition. Respondent notes that there is no cap on the hourly rate and attorneys' fees that could be charged as specified in 11 NYCRR § 65-4.10(j)(4). Respondent insists that since its counsel spent two (2) hours opposing the petition and anticipate two (2) more hours for appearance at oral argument, it should be awarded attorneys' fees in the amount of \$1,400.00 (NYSCEF Doc. No. 15, *opposition and cross-petition*). Respondent attaches a copy of the attorneys' fees invoice in support of the contentions (NYSCEF Doc. No. 16, *invoice*).

In reply, petitioner insists that Master Arbitrator Robyn D. Weisman, Esq. exceeded the powers of an arbitrator by failing to follow well-settled law in rendering the decision. Petitioner reiterates that respondent failed to rebut the claim that Ana Gil De Pena's alleged injury was degenerative in nature and, therefore, not causally related to the motor vehicle accident. Master Arbitrator Robyn D. Weisman, Esq. should have found that respondent's rebuttal was legally insufficient as a matter of law, claims petitioner. Insofar as there was no evidence to suggest that the medical services were necessary, petitioner contends that Master Robyn D. Weisman, Esq. should have reversed Arbitrator Donald MacKenzie's award.

Concerning the attorneys' fees, petitioner contends that respondent's request for additional fees is in excess of the usual and customary rate in the no-fault industry. Petitioner states that it is inconceivable that counsel for respondent spent two (2) hours opposing the petition (NYSCEF Doc. No. 20, *reply*).

"The role of the master arbitrator is to review the determination of the arbitrator to assure that the arbitrator reached his [or her] decision in a rational manner, that the decision was not arbitrary and capricious (11 NYCRR 65.17[a][1]), incorrect as a matter of law (11 NYCRR 65.17 [a] [4]), in excess of the policy limits (11 NYCRR 65.17[a][2], [3]) or in conflict with other designated no-fault arbitration proceedings (11 NYCRR 65.17[a][5], [6])" (*Matter of Petrofsky v Allstate Ins. Co.*, 54 NY2d 207, 212 [1981]).

The standard for Article 75 scrutiny of a master arbitrator's review of a hearing arbitrator's award in terms of whether there was an error of law is whether it is so irrational as to require vacatur (see *Matter of Smith v Firemen's Ins. Co.*, 55 NY2d 224, 232 [1982]).

CPLR 7511 provides that an arbitration award "shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced by: (i) corruption, fraud or misconduct in procuring the award; or (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or (iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made..."

Here, petitioner has failed to convince the court that Master Arbitrator Robyn D. Weisman, Esq's award was arbitrary and capricious, without rational basis, and incorrect as a matter of law. Master Arbitrator Robyn D. Weisman did not exceed her power when she affirmed the award of Arbitrator Donald MacKenzie (see 11 NYCRR 65-4.10[a][4]; cf. *Matter of Petrofsky v Allstate Ins. Co.*, 54 NY2d at 212). A review of the record demonstrates that Arbitrator Donald MacKenzie discussed the issue of medical necessity and causality in-depth, considering the proof submitted. In affirming the award, Master Arbitrator Robyn D. Weisman stated "[t]he arbitrator awarded the amount after a finding of medical necessity and discussed the fact that he reviewed the evidence and took into consideration the record and oral arguments on related cases. The arbitrator held after weighing the evidence submitted, the Appellee's evidence was more persuasive and awarded accordingly." Secondly, the court rejects petitioner's claim that respondent's rebuttal must "meaningfully refer" to the peer review offered by the insurance company. It has been held that "[w]hen determining an issue of medical necessity, a no-fault hearing arbitrator is not required to apply the well-settled case law holding that the health service provider must submit expert opinion evidence which meaningfully refers to and either discusses or rebuts the conclusions of the insurer's expert witness" (*Am. Transit Ins. Co. v All Boro Med. Rehab. PLLC*, 2025 NY Slip Op 32487(U), *4-5 [Sup Ct, NY County 2025], citing *American Tr. Ins. Co. v Right Choice Supply, Inc.*, 2023 NY Slip Op 23039 (U), *11 [Sup Ct, Kings County 2023]). As such, the award was detailed, well-reasoned, neither arbitrary nor capricious, and not in error as a matter of law.

Next, the court grants the cross-petition seeking reasonable attorneys' fees pursuant to 11 NYCRR 65-4.10 (j) (4) (see *Matter of Global Liberty Ins. Co. of N.Y. v North Shore Family Chiropractic, PC*, 178 AD3d 525, 526 [1st Dept 2019]; *Matter of Country-Wide Ins. Co. v Bay Needle Care Acupuncture, P.C.*, 162 AD3d 407, 408 [1st Dept 2018]). While respondent is entitled to attorney fees, an evidentiary hearing is warranted on the question of the reasonableness of billing rate and proof of the hours that respondent's counsel expended on the matter. All other arguments have been considered and are without merit. Accordingly, it is hereby

ORDERED that the petition is denied; and it is further

ORDERED that the cross-petition for attorney fees is granted, and shall be referred to a special referee to hear and determine; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for respondent shall serve a copy of this decision and order, with notice of entry,

upon petition, Special Referee Clerk as well as upon the Clerk of the Court, who shall enter judgment according; and it is further

ORDERED that service upon the Special Referee Clerk and the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this court.

August 22, 2025



HON. VERNA L. SAUNDERS, JSC

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: