

**American Tr. Ins. Co. v Livingston Physical Medicine  
PC**

2026 NY Slip Op 30522(U)

February 10, 2026

Supreme Court, New York County

Docket Number: Index No. 654492/2025

Judge: Verna L. Saunders

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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. VERNA L. SAUNDERS, JSC PART 36

Justice

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INDEX NO. 654492/2025

AMERICAN TRANSIT INSURANCE COMPANY,
Petitioner,

MOTION SEQ. NO. 001

- v -

DECISION + ORDER ON
MOTION

LIVINGSTON PHYSICAL MEDICINE PC,
Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 12, 13, 14, 15, 16, 17

were read on this motion to/for VACATE AWARD

Petitioner commenced this special proceeding seeking to vacate arbitration awards of Arbitrator Dimitrios Stathopoulos, Esq. and/or Master Arbitrator Francisco Cruz, Esq., rendered in favor of respondent, Livingston Physical Medicine PC, in the amount of \$4,927.61, relating to medical services allegedly rendered to Angelique Vera as a result of a motor vehicle accident on October 16, 2017.

Petitioner denied respondent's claims based on an Independent Medical Examination ("IME") conducted by Dr. Raymond A. Shebairo on December 20, 2019. Following a physical examination of claimant, Dr. Shebairo opined that sprains/strains of the cervical spine, lumbar spine and right ankle were resolved and that no further orthopedic treatment, including surgery, was required. The arbitrator rejected the argument on the ground that it was foreclosed by collateral estoppel, given that the IME defense was adjudicated in a linked case to this matter styled Sedation Vacation Perioperative Medicine PLLC & American Transit Insurance Company, AAA Case # 172212504412 (3/7/23), where arbitrator Patricia Daugherty reviewed Dr. Shebairo's December 20, 2019 IME report and found Dr. Shebairo failed to set forth a factual basis and medical rationale that no further orthopedic treatment was medically necessary.

Additionally, petitioner denied the disputed ankle surgery rendered on February 8, 2022, based on a per review conducted by Dr. Thomas P. Nipper, an orthopedic surgeon, on April 18, 2022. Arbitrator Stathopoulos, in rejecting petitioner's argument with respect to the peer review of Dr. Nipper, reasoned the following:

"I find Dr. Nipper's peer review unpersuasive. Initially, with respect to the conclusory assertion that the Assignor's ankle injury, and treatment to the ankle, were not causally related to the motor vehicle accident, Dr. Nipper provides no basis or viable evidence to establish the Assignor did not sustain an ankle injury at the 10/16/17 automobile accident, and that the subsequent treatment to the right ankle, including the disputed surgery to the right ankle on 2/8/22, were not causally related to the automobile accident of 10/16/17. Indeed, the MRI of the assignor's right ankle on 12/23/17, approximately two months

after the automobile accident of 10/16/17, showed findings arguably related to the automobile accident of 10/16/17. Yet despite noting a review of this MRI report, Dr. Nipper fails to discuss the significance, or lack thereof, of the MRI findings. The omission of a meaningful discussion of the MRI findings of the right ankle, which suggest a traumatic injury (partial tear of the ATFL), diminish the viability of Dr. Nipper's opinion regarding causation. Moreover, with respect to the medical necessity argument, although Dr. Nipper does present a blurb regarding indications for ankle arthroscopy, he fails to reconcile this blurb with Assignor's clinical presentation. There is no discussion as to why the Assignor's documented ATFL tear, and persistent complaints of ankle pain, would not be amenable to the arthroscopic intervention in this clinical presentation. Respondent has failed to sustain their burden and cannot prevail on the peer review defense.”

In the instant application, petitioner contends that it proffered the opinion of a medical expert to establish that the services rendered were not medically necessary. At that point, argues petitioner, the burden shifted to respondent to prove that the services were in fact medically necessary. Petitioner further argues that the arbitrator failed to weigh the evidence when deciding whether the medical services were necessary because respondent failed to submit any rebuttal to the peer review and/or IME report. As such, it is petitioner's contention that the arbitrators had no basis for finding that the services were medically necessary and for rejecting said defenses, rendering the awards arbitrary and capricious.

Respondent opposes the petition and cross-moves for confirmation of the award, in addition to attorney's fees, pursuant to 11 NYCRR 65-4.10(j)(4) and costs pursuant to CPLR 8202. In opposition, respondent notes that petitioner makes no specific argument as to why the arbitrator's ruling based on collateral estoppel was arbitrary and capricious. Moreover, it argues that petitioner fails to rebut the arbitrator/master arbitrator's determination that petitioner failed to establish its *prima facie* burden of showing that the medical services rendered were not medically necessary. Respondent also seeks, pursuant to 11 NYCRR 65-4.10(j)(4), \$1,200.00 for the legal service rendered in connection with this proceeding.

In reply, petitioner argues that respondent's opposition and cross-petition are untimely and, thus, should not be considered. Should the court consider the opposition and cross-petition, it clarifies that the instant petition is requesting for the court to review the underlying record and conclude that there was no evidentiary support for the decision and that the arbitrator failed to follow well-settled law when rendering the decision. This, argues petitioner, would not be considered a *de novo* review. Petitioner also contends that the attorney's fees sought by respondent are excessive. It further reiterates additionally arguments raised in the initial petition.

“[J]udicial review of arbitration awards is extremely limited” (*Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471, 479 [2006]; see CPLR 7510, 7511). Moreover, it is well-settled that “an award ‘will not be overturned merely because the arbitrator committed an error of fact or of law’” (*Pincus v Motulsky*, 237 AD3d 624, 625 [1st Dept 2005]; *Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 [1996]). “[A] court may vacate an arbitration award only if it violates a strong public policy, is [totally] irrational, or

clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*Matter of Falzone* [New York Cent. Mut. Fire Ins. Co.], 15 NY3d 530, 534 [2010]).

Here, this court notes that no substantive arguments are made with respect to the IME report. The argument raised with respect to the peer review is equally unavailing. As the Master Arbitrator Cruz held in its decision affirming the arbitrators' award, "[a]ppellant does not address the arbitrator's determination that [r]espondent did not meet its burden of proof at least for the peer review. Appellant does not present a persuasive or compelling argument for finding the arbitrator's award was irrational or otherwise subject to vacatur." Similarly, the crux of petitioner's argument in this application with respect to the peer review is that respondent failed to refer to, or rebut, the conclusions set forth in the peer review. Importantly, however, petitioner raises no substantive arguments challenging the arbitrator's reasoning that petitioner's peer review failed to meet its *prima facie* burden of proof required to establish that the medical services were not medically necessary. The sole conclusory argument to this point, to wit, that "[t]he evidence offered by [p]etitioner clearly satisfied its burden", is without sufficient factual support to establish vacatur. Given the arbitrators' rational reasoning for rejecting petitioner's argument regarding medical necessity, there is no basis to disturb said determination. Therefore, petitioner fails to persuade this court that the arbitrator and master arbitrator improperly determined that the burden of proof never shifted to respondent to prove, by a preponderance of the evidence, that the services were reasonable and necessary.

As to the cross-petition seeking attorney's fees, "11 NYCRR § 65-4.10(j)(4) provides that "in a court appeal from a master arbitration award" the Court shall fix the attorney's fees for the work performed in the court appeal. CPLR Article 75 actions to confirm a master arbitration award constitute "a court appeal" under the regulation (*Matter of Geico Ins. Co.*, 148 AD3d at 705); thus, the Court may set attorney's fees incurred for the instant special proceeding." (*Am. Transit Ins. Co. v Provista Med. Inc. & Sanford Radiology PC*, 2025 NY Slip Op 34532(U), \*12 [Sup Ct, NY County 2025]). In determining what amount of attorney's fees is reasonable, the court must consider the "difficulty of the issues and the skill required to resolve them; the lawyers' experience, ability and reputation; the time and labor required; the amount involved and benefit resulting to the client from the services; the customary fee charged for similar services; the contingency or certainty of compensation; the results obtained and the responsibility involved" (*Bankers Fed. Sav. Bank v Off W. Broadway Devs.*, 224 AD2d 376 [1st Dept 1996]). Here, although petitioner submits an affidavit in support of attorney's fees, wherein counsel affirms to services rendered in the amount of \$1,200.00, the exhibit annexed to the affidavit, entitled "Hours", is bereft of any detail as to the hours expended and work performed; thus, it fails to provide the court with any corroborating proof to grant its application. Therefore, the cross-petition seeking attorney's fees is denied, with leave to renew upon proper papers. Accordingly, it is hereby

**ORDERED** that petitioner's application seeking to vacate the awards of Arbitrator Dimitrios Stathopoulos, Esq. and/or Master Arbitrator Francisco Cruz, Esq., dated January 23, 2025, and May 8, 2025, respectively, is denied; and it is further

**ORDERED and ADJUDGED** that the awards of Arbitrator Dimitrios Stathopoulos, Esq. and/or Master Arbitrator Francisco Cruz, Esq., dated January 23, 2025, and May 8, 2025,

are confirmed and the Clerk of the Court is hereby directed to enter judgment in favor of respondent LIVINGSTON PHYSICAL MEDICINE PC and as against petitioner AMERICAN TRANSIT INSURANCE COMPANY in the amount of \$4,927.61, with interest from August 29, 2024 at the rate of two (2%) percent per month; statutory attorney's fees (20% of interest, plus principle), pursuant to 11 NYCRR 65-4.6(b); arbitration filing fee of \$40.00 pursuant to 11 NYCRR 65-4.5(s)(1); attorney's fees of \$65.00 pursuant to 11 NYCRRR 65-4.10(j)(2)(i) as awarded by the master arbitrator, plus costs and disbursements; and it is further

**ORDERED** that the cross-petition seeking attorney's fees pursuant to 11 NYCRR § 65-4.10(j)(4) is denied, with leave to renew within fifteen days from the date of this decision and order; 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 petitioner, as well as the Clerk of the Court, who shall enter judgment accordingly; and it is further

**ORDERED** that, service upon 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](http://www.nycourts.gov/supctmanh)).

This constitutes the decision and order of this court.

February 10, 2026

  
HON. VERNA L. SAUNDERS, JSC

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| CHECK ONE:            | <input checked="" type="checkbox"/> | CASE DISPOSED              | <input type="checkbox"/> | DENIED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | <input type="checkbox"/> | OTHER     |
| APPLICATION:          | <input type="checkbox"/>            | GRANTED                    | <input type="checkbox"/> |        | <input type="checkbox"/>            | GRANTED IN PART       | <input type="checkbox"/> |           |
| CHECK IF APPROPRIATE: | <input type="checkbox"/>            | SETTLE ORDER               | <input type="checkbox"/> |        | <input type="checkbox"/>            | SUBMIT ORDER          | <input type="checkbox"/> |           |
|                       | <input type="checkbox"/>            | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> |        | <input type="checkbox"/>            | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |