SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JEFFREY H. PEARLMAN** **PART** **44M**

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner,

- v -

ECLIPSE MEDICAL IMAGING PC,

Respondent.

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INDEX NO. 654750/2025

MOTION DATE 08/10/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON PETITION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16
NYSCEF document numbers 1, 3, 4, 5, 6
were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Before the court is petitioner American Transit Insurance Company's ("Petitioner") petition to vacate the arbitration award of Arbitrator Michelle Murphy Louden, Esq. and Master Arbitrator A. Jeffrey Grob, Esq.'s decision affirming the award (NYSCEF Doc. No. 1). Respondent Eclipse Medical Imaging PC ("Respondent") answers the petition (NYSCEF Doc. No. 13) and brings a cross-petition to confirm the award and enter an award for attorney's fees (NYSCEF Doc. No. 12). For the reasons below, the court denies the petition and grants the cross-petition.

Petitioner issued the subject insurance claim to Antonine Ismael Huffman (Ms. Huffman). The policy was in effect on June 14, 2023, the date of Ms. Huffman's motor vehicle accident. Respondent performed MRIs on Ms. Huffman, and submitted claims to petitioner totaling $3,662.35 for these services. Petitioner states that it denied the claims because Ms. Huffman had worker's compensation benefits that were primary to the insurance claim.

After Petitioner declined payment, Respondent submitted its claims to the American Arbitration Association. Arbitrator Louden issued her award on March 10, 2025 (NYSCEF Doc. No. 3). She found that Petitioner received respondent's claim related to the left shoulder and left knee MRIs on September 14, 2023, requested copies of the MRI films on October 5, 2023, and November 8, 2023, and denied the claim on January 22, 2024. Further, Petitioner received respondent's claim for the cervical MRI on September 21, 2023, requested copies of the MRI film on October 5, 2023, and November 8, 2023, received the film on December 14, 2023, and denied Applicant's claim on January 22, 2024. Finally, with respect to the lumbar MRI, respondent submitted its on September 28, 2023. On October 27, 2023, and November 30, 2023, Petitioner requested copies of the MRI film. Petitioner received the film on December 14, 2023 and it denied the claim on January 24, 2024. The arbitrator determined that Petitioner received the film on December 14, 2023 based on the postmark dates on the envelope, as petitioner did not provide the information directly.

The arbitrator rejected Petitioner's defense concerning the primacy of workers' compensation coverage and granted the claim. In support, she cited *Westchester Medical Center v. Lincoln General Ins. Co.* (60 AD3d 1045 [2d Dept 2009]), among other cases, that hold the workers' compensation defense "is subject to preclusion in the face of an untimely denial" (NYSCEF Doc. No. 3, *3). As Petitioner had 30 days to deny the claims, therefore, the defense was untimely and subject to preclusion with respect to all the claims. In addition to the award itself, the arbitrator awarded interest pursuant to 11 NYCRR § 65-3.9 and attorney's fees according to 11 NYCRR §65-4.6(d).

On June 4, 2025, the master arbitrator found that Petitioner had not satisfied the "heavy burden" necessary to support vacatur (NYSCEF Doc. No. 4, *3-4, quoting *Scollar v Cece*, 28

AD3d 317, 317 [1st Dept 2006]). Instead, he found that "the Lower Arbitrator . . . articulated a compelling basis for rejecting the insurer's position" (NYSCEF Doc. No. 4, *4). Specifically, he agreed that the primacy of workers' compensation is not equivalent to a lack of coverage defense, and that it therefore must be raised within the mandated time frame, and thus rejected Petitioner's argument to the contrary. Moreover, he agreed that Petitioner's denials were untimely, and therefore "preclusion was properly invoked" (*id.*). Further, he emphasized that Petitioner did not suggest that it timely denied the claims and, in fact, did not address the issue of timeliness.

In its application, Petitioner reiterates its argument that the workers' compensation must be adjudicated before respondent's insurance claims are addressed (NYSCEF Doc. No. 1, ¶ 69, citing *A.B. Med. Servs. PLLC v American Tr. Ins. Co.*, 2005 NY Slip Op 50959 [U], *2 [Sup Ct, App T, 2d & 11th Depts 2005] [*A.B. Med.*]).[1] Petitioner states that it "has reason to believe that the claimant may have been in the course of his/her employment at the time of the motor vehicle accident" (NYSCEF Doc. No. 1, ¶ 56). Accordingly, it contends that the arbitrator and the master arbitrator applied the law incorrectly when they granted respondent's request for relief without considering the impact of the Ms. Huffman's possible workers' compensation benefits.

Petitioner further argues that it is not critical whether it denied the claim in a timely fashion. It relies on *Active Care Med. Supply Corp. v Hartford Ins. Co.* (2018 NY Slip Op 51591 [U], *1 [Sup Ct, App T, 2d & 11th Depts 2018] [*Active Care*]), in which the court rejected the timeliness argument where the insurance company "established that plaintiff had submitted claims for workers' compensation benefits and that the Workers' Compensation Board had awarded plaintiff's

[1] In *A.B. Med.*, the court found that the insurer had rejected the insurance claim in a timely fashion based on the claimant's right to obtain workers' compensation. However, it determined that the rejection was proper because the contention that the insured was injured in the course of his employment was speculative.

assignor workers' compensation benefits for injuries she had sustained in the accident at issue" (*id.*, *1-2). It states that the master arbitrator had the power to reverse the arbitrator's decision based on the latter's misapplication of the law and that his failure to do so also was arbitrary. Based on the above, Petitioner claims that its rights have been damaged by the decisions of the arbitrator and the affirmance of the master arbitrator.

Respondent's answer asserts that the lower arbitration award and master arbitration award both were rational and in conformance with the law (NYSCEF Doc. No. 13, ¶¶ 3, 4). In opposition to the petition and in support of its cross-petition, respondent cites *Matter of Rose Castle Redevelopment II, LLC v Franklin Realty Corp.* (184 AD3d 230, 234 [1st Dept 2020]) for the proposition that courts uphold arbitrators' determinations unless there is no colorable justification or plausible basis for the award. As for the master arbitrator's determination, respondent notes that their role is to decide whether the arbitrator's determination was rational or arbitrary, and that they cannot review the arbitrator's factual or procedural errors or their findings as to the credibility and weight of the evidence (NYSCEF Doc. No. 14, ¶¶ 6, 7). Applying this standard to the matter at hand, respondent concludes there is no basis to vacate the award.[2]

In its cross-petition, Respondent asks the court to affirm the award by way of judgment. Further, it seeks attorney's fees under 11 NYCRR 65-4.10(j)(4). The provision states that "The attorney's fee for services rendered in connection with . . . a court appeal from a master arbitration award . . . shall be fixed by the court adjudicating the matter." Respondent asserts that counsel's hourly rate is $500 and that counsel spent 1.7 hours in preparing the opposition to the petition, for

[2] Respondent contends that the arbitrator found that petitioner did not submit sufficient supporting evidence for its contention that the injury occurred during the course of the Ms. Huffman's employment. However, the court cannot find the quoted language and, in fact, that is not the basis for the denial of petitioner's claim.

a total of $850. It supports this with the affirmation of Alek Beynenson, who worked on the matter (NYSCEF Doc. No. 15). Finally, it seeks $40 in costs, interest as awarded by the arbitrator, and statutory attorney's fees of 20% of the principal award plus interest pursuant to NYCRR 65-4.6(d).

Petitioner's reply reiterates that the arbitration award is incorrect as a matter of law. It characterizes the injury as one the claimant sustained in the course of her employment (NYSCEF Doc. No. 16, ¶ 39). It cites *Zappone v Home Ins. Co.* (55 NY2d 131 [1982]), among other cases, in further support of its position that it is not precluded from denying the claim based on its untimeliness. Petitioner now asserts that its and respondent's papers establish that Ms. Huffman sought and received workers' compensation benefits.[3] Finally, Petitioner challenges Respondent's claim for attorney's fees as excessive, as 11 NYCRR § 65-4.6(d) sets forth the maximum hourly rate at $70-80 per hour, and it argues that Petitioner's counsel seeks recovery for an excessive amount of time.

Courts uphold compulsory arbitration awards "so long as [the] comport[] with CPLR 7511 and is not arbitrary and capricious" (*Matter of DTG Operations, Inc. v Travelers Indem. Co.*, 145 AD3d 646, 646-647 [1st Dept 2016]). This principle also applies to the determination of the master arbitrator (*see American Tr. Ins. Co. v Mark S. McMahon MD, P.C.*, 2022 NY Slip Op 50716 [U], *3 [Civ Ct, NY County 2022]). Here, the arbitration award rationally relied on the conclusion in *Westchester Med. Ctr. v Lincoln Gen. Ins. Co.* (60 AD3d 1045 [2d Dept 2009] [*Westchester Med.*]) and its progeny that a "defendant's possible entitlement to offset any no-fault benefits it pays by any recovery pursuant to a Workers' Compensation claim does not constitute a defense of lack of

[3] The petition merely asserts that petitioner had reason to believe the Ms. Huffman was injured in the course of her employment. The court notes that, though not in quotation marks, the conclusion that the evidence established that she received workers' compensation benefits is a direct quote from *Active Care* (2018 NY Slip Op 51591 [U], at *1) and not a statement about the evidence in the petition at hand.

coverage, which is not subject to the requirement that there be timely service of the disclaimer" (*see also American Tr. Ins. Co. v North Shore Family Chiropractic PC*, 2023 NY Slip Op 50208 [U], *9 [Sup Ct, Kings County 2023] [*North Shore*] [noting that, after *Westchester Med.*, "a court must defer to the Workers' Compensation Board if a course-of-employment defense is raised by the No-Fault insurer (*albeit timely*), so too should an arbitrator" [emphasis supplied]); *A.B. Med. Servs.*, 2009 NY Slip Op 51263 [U], at *2).

Further, the master arbitrator rationally concluded that the arbitrator relied on the applicable case law (*see Matter of Global Liberty Ins. Co. v Cambridge Med., P.C.*, 193 AD3d 573, 573 [1st Dept 2021]). Petitioner's reliance on *Active Care* is not persuasive, as – to the extent that it found that the workers' compensation defense was a lack-of-coverage defense – it is inconsistent with the determinations of *Westchester Med.*, *North Shore*, and *A.B. Med. Servs* (*accord Y.A.M. Med. Supply, Inc. v Global Liberty Ins. Co. of NY*, 2019 NY Slip Op 51801 [U], *1-2 [Sup Ct, App T, 2d, 11th & 13th Depts 2019]). As the court also notes, petitioner does not support its position that Ms. Huffman received workers' compensation benefits, and thus *Active Care* is further distinguishable.

However, the court agrees with Petitioner that Respondent seeks excessive attorney's fees for the expenses it incurred during this litigation. In another case involving this Petitioner, *American Tr. Ins. Co. v Brooklyn Med. Practice, PC* (2025 NY Slip Op 50897 [U], *2 [Sup Ct, NY County 2025][*Brooklyn Med.*]), the court rejected an identical affirmation regarding attorney's fees. The court stated:

> "[R]espondent has not shown that it is entitled to $850 in fees. Respondent's counsel's fee affirmation states only that $500 an hour is his usual hourly billing rate; and that the total billable time spent on this proceeding was 1.7 hours. . . . The affirmation does not offer any other information--such as the typical going rate for experienced no-fault attorneys, or what time was spent on which

> tasks. . . . This court concludes that respondent is entitled to $345 in fees, representing 1.15 hours of attorney time at $300 an hour."

This court adopts the reasoning in *Brooklyn Med.* and awards respondent $345 in legal fees. As for interest, the arbitrator awarded interest calculated (1) in accordance with 11 N.Y.C.R.R. §65-3.9(a) from the date on which its claims became overdue to the date on which the claims were denied, and (2) in accordance with 11 N.Y.C.R.R. §65-3.9(c) from the date on which Applicant's request for arbitration was received by AAA and the date of payment of this Award" (NYSCEF Doc. No. 3, *5). Thus, interest between January 13, 2024 and July 26, 2024 is 2% per month, accruing pro-rata based on a 30-day month; and continuing at the same rate thereafter.

For the above reasons, it is

ORDERED AND ADJUDGED that American Transit Insurance Company's petition to vacate the underlying arbitral award is denied, and the branch of Eclipse Medical Imaging PC's cross-petition to confirm the arbitral award is granted; and it is further

ORDERED AND ADJUDGED that the branch of Eclipse Medical Imaging PC's cross-petition for an award of attorney fees incurred in this proceeding is granted in part and denied in part; and it is further

ORDERED AND ADJUDGED that Eclipse Medical Imaging PC is awarded a judgment against American Transit Insurance Company for (i) the principal amount owed in first-party benefits of $3,662.35, with interest on that sum running at the statutory rate of 2% monthly simple interest, from January 13, 2024; plus (ii) the $40 arbitral filing fee; plus (iii) $732.47 in attorney fees awarded in the underlying arbitral proceeding, with interest on that sum running at the statutory rate of 2% monthly simple interest, from January 13, 2024; plus (iv) additional attorney fees incurred in this proceeding of $345; plus (v) costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that respondent serve a copy of this order with notice of its entry on petitioner and on the office of the County Clerk (using the NYSCEF filing event "Notice to the County Clerk – CPLR § 8019 [c]), which shall enter judgment accordingly.

HON. JEFFREY H. PEARLMAN J.S.C.

4/13/2026
DATE

JEFFREY H. PEARLMAN, J.S.C.

CHECK ONE:	X	CASE DISPOSED					NON-FINAL DISPOSITION	
		GRANTED		DENIED	X		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER					SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN					FIDUCIARY APPOINTMENT	REFERENCE