

AMERICAN ARBITRATION ASSOCIATION
NEW YORK SUM ARBITRATION TRIBUNAL

In the Matter of Arbitration between

Michael Jackson
(Claimant)

AAA Case No.

43 200 S 02469 12

-and-

Insurer's Claim File No. 32V857927

State Farm Insurance Company - SUM

Applicant File No.

(Respondent)

Issues in Dispute : SUM Case, Proof of pre-existing condition, Credibility of medical evidence or witness, Significant limitation of use, 180-day standard

ARBITRATION AWARD

I, Edward Brozinsky, Esq., the undersigned **ARBITRATOR**, designated by the American Arbitration Association pursuant to the rules for New York Supplementary Uninsured Motorists Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties, make the following **AWARD**.

Claimant(s), in the above caption, hereinafter referred to as: Claimant

1. **Preliminary Conference Call** held on: 02/06/2013

No one participated for the Claimant(s).

Richard Halpern participated for the Respondent.

2. **Hearing(s) held on:**

05/07/13

and declared closed by the arbitrator on 5/7/2013.

Michael Slevin participated in person for the Claimant(s).

John Zanickrowsky participated in person for the Respondent.

3. **Witness(es) for the Claimant(s):**

Claimant

4. **Witness(es) for the Respondent:**

None

5. Exhibits submitted by the Claimant(s):

- Police accident report;
- Good Samaritan Hospital, emergency room record;
- Hunt City Chiropractic, chiropractic and physical therapy records, progress notes and dates of visits;
- Dr. Anand, physical medicine and rehabilitation records;
- Dr. Lim orthopedic records;
- Dr. Lattuga, new patient consultation, February 14, 2011; cervical epidural steroid injection procedure records, March 2, 2011;
- Islandia MRI Associates, MRI right shoulder and right wrist, December 30, 2010; MRI cervical and lumbar spine, December 20, 2010;
- Dr. Polavarapu, No-Fault orthopedic examination report, February 1, 2011;

6. Exhibits submitted by the Respondent:

- Dr. Russ, No-Fault physical medicine and rehabilitation examination report, February 1, 2011.

7. Identity of court reporter:

N/A

8. Identity of interpreter:

N/A

9. Summary of Issues in Dispute:

This is a Supplementary Underinsured Motorist Claim with available coverage of \$100,000 subject to a set off of \$25,000 paid by the underlying tortfeasor. Did the claimant sustain causally related serious injuries as defined by §5102 (d) of The Insurance Law of the State of New York? If serious injuries were sustained, what is the extent and value of said injuries?

10. Findings, conclusions and basis therefor:

On November 13, 2010 at approximately 9 PM the claimant was involved in an accident on Brooklyn Avenue at its intersection with S. 29th St., Babylon, NY. The claimant, who was then 25 years of age, testified that the offending vehicle passed the stop sign and in doing so caused the collision. The police report indicates the claimant was traveling westbound on Brooklyn Avenue and the offending vehicle was traveling southbound on S. 29th St. According to the police report the offending vehicle operator attempted to cross Brooklyn Avenue (which had a stop sign) and was struck by the claimant's vehicle. The offending vehicle operator was listed as the cause of the accident for failing to yield the right-of-way.

Claimant was removed from the scene of the accident by ambulance and transported to Good Samaritan Hospital where he had complaints of pain in his head right shoulder, right wrist and back. He was examined and was given a sling for his arm and discharged.

On November 15, 2010 Claimant presented to Dr. Buurma of Hunt City Chiropractic with complaints of back and neck pain with radiation into the arms and shoulders, bilateral shoulder and arm pain, wrist pain, knee and foot pain. Examination revealed significant limitation the range of motion in the cervical and lumbar spine as well as decreased sensation in the upper and lower extremities. He was prescribed a course of chiropractic treatment and physical therapy.

On November 19 Claimant saw Dr. Anand a physiatrist at the same location as Dr. Buurma. Following the first examination he was seen for follow-up examinations on four other occasions the last being August 3, 2011. Dr. Anand's final diagnosis included cervical myofascial derangement, cervical multiple herniated and bulging discs; thoracolumbar myofascial derangement, bulging lumbar discs; right wrist injury, ligament tear and ganglion cyst; left knee sprain, and right shoulder tear with impingement.

Claimant also sought a consultation with Dr. Lim, an orthopedist. Following an examination Dr. Lim's diagnosis was cervical and lumbosacral spine sprain with bilateral shoulder, wrist and knee sprains. Dr. Lim saw Claimant for follow-up visits on two occasions the last being on January 3, 2011. On the last visit he recommended the claimant see a hand surgeon.

Claimant came under the care of Dr. Lattuga, an orthopedist, with complaints of cervical and lumbar pain. There was a diagnosis of cervical radiculopathy and herniated discs and lumbar radiculopathy with herniated discs. The records indicate that the claimant underwent a cervical epidural steroid injection on March 2, 2011. Claimant testified that the needle into his neck was very painful and he feared further injections so he did not undergo any further epidural steroid injections.

While under the care of the physicians Claimant also underwent MRI examinations. An MRI of the right shoulder taken at Islandia MRI Associates on December 30, 2010 and revealed a partial thickness articular surface tear of the supraspinatus with arthroplathy beneath the AC joint, the latter is consistent with bony impingement and may be exacerbated during abduction. A right wrist study the same date revealed a chronic tear of the scapholunate ligament is suspected, a ganglion cyst was also suspected along the ventral aspect of the wrist. The cervical spine MRI dated December 20, 2010 revealed multileveled disc bulging with coexistent posterior disc herniations at C4/5 and 5/6 deforming the dural sac, in contact with the cord and resulting in marginal central spinal canal stenosis. On the same date an MRI of the lumbar spine found bulging discs from L2 through S1 and diffuse bilateral facet arthroplathy and includes transverse narrowing of the canal.

According to the testimony and the records presented the claimant began chiropractic treatment on November 20, 2010 and concluded treatment on June 23, 2012. Physical therapy was started on November 15, 2010 and continued through June 23, 2012. A review of the dates of visits indicates extensive physical therapy and chiropractic treatment. At no time following the

accident did Claimant take any prescription medications. All of his medication was over-the-counter.

At the time of the accident the claimant was looking for work. He has an 11th grade education and most of the prior work he did was manual labor. His last job before the accident was eight months earlier. Following the accident he did not find any work until about three months ago, He worked for three days and was laid off because he could not handle the physical work.. Claimant lives with his mother, girlfriend and two children ages four years and the youngest is five months old.

The claimant testified that there was some discussion of surgery but since he had a prior incident with anesthesia when he had root canal he would not consider any kind of surgery at this time.

The claimant underwent two No-Fault examinations of February 1, 2011 with interesting results. Dr. Russ a board certified physical medicine and rehabilitation physician, on examination found full range of motion of the cervical spine. There was a complaint of minimal tenderness on palpation but no muscle spasm noted. There was no complaint of tenderness on palpation of the thoracic spine. Lumbar spine had a complaint of minimal tenderness but no muscle spasm. Range of motion was full. Straight leg raise was negative. Examination of the right shoulder was normal. There was no complaint of tenderness to the right wrist and range of motion was full. The diagnosis was status post cervical, thoracic and lumbar sprain strain – resolved status post right shoulder and right wrist sprain – resolved left knee pain is lumbar enlargement. Dr. Russ found no disability and claimant was able to perform activities of daily living without restrictions

On the same date Claimant underwent an orthopedic examination with Dr. Polavarapu He reviewed the same records and performed his examination. With regard to the cervical spine there was a complaint of tenderness on palpation. Range of motion: flexion 35 degrees (45 degrees normal), extension 35 degrees (45 degrees normal), right rotation 45 degrees (70 degrees normal) left rotation 45 degrees (70 degrees normal), right and left lateral bending 35 degrees (45 degrees normal). Examination of the lumbar spine had a complaint of minimal tenderness on palpation without spasm. Range of motion: flexion 50 degrees (90 degrees normal) , extension 15 degrees (30 degrees normal), right and left lateral bending 15 degrees (30 degrees normal) straight leg raise was positive at 60 degrees. Examination of the right shoulder showed some minor limitation on range of motion. On the right wrist dorsiflexion 50 degrees (90 degrees normal) and volar flexion 50 degrees (90 degrees normal). There was also some minor limitation in range of motion of the left knee. Dr. Polavarapu's diagnosis was status post cervical and lumbar sprain/strain/contusion – resolving. Status post thoracic sprain/strain/contusion – resolved. Status post right shoulder and left knee sprain/contusion – resolved. Status post right wrist sprain/contusion- resolving. Dr. Polavarapu found that there was objective evidence of mild orthopedic disability. Claimant was able to perform activities of daily life and light duty work with restrictions of no heavy lifting pushing, pulling, bending and prolonged standing or walking. Dr. Polavarapu felt that physical therapy to the cervical and lumbar spine and right wrist should continue for six weeks and then reevaluation.

It appears that the treating doctors consistently found limitation range of motion much closer to the examination by Dr. Polavarapu than the examination of Dr. Russ. While I am somewhat

troubled by the extensive physical therapy and chiropractic treatment , I feel the claimant gave honest answers regarding his pain and limitations as well as the activities he is no longer able to participate in.

After carefully reviewing all of the medical evidence presented by both the claimant and the respondent this arbitrator finds that the claimant did suffer a significant limitation to the function of the cervical, thoracic, and lumbar spine as well as suffering injuries to his right shoulder, wrist and left knee. There is no evidence presented that shows that the injuries suffered permanent. There was also no evidence presented to show that he had any pre-existing conditions or injuries to the parts of his body he claimed that he injured in this accident and all of the treating doctors causally related his symptoms to the accident in question. The No-Fault examination by Dr. Polavarapu, extends the need for physical therapy through at least March 15, 2011, five months following the accident. Claimant's doctors continued to treat for almost two years. It appears that the claimant, with his limited education, would not be able to perform many non-physical jobs so his employment prospects are questionable with the injuries sustained

This arbitrator awards to the claimant the sum of \$100,000, this being the available coverage in this action.

ACCORDINGLY,

1. As to Claimant , claimant is awarded prior to set-off amounts \$100,000.00
minus \$0.00 for claimant's comparative negligence
minus a setoff amount of: \$25,000.00
AWARDED (net of set-off amounts and reductions for comparative negligence):
\$75,000.00

Filing Fee

In addition, Claimant(s) having been awarded the maximum available recovery, is also entitled to the return of the AAA filing fee, which Respondent is hereby directed to reimburse.

This decision is in full disposition of all SUM benefit claims submitted to this arbitrator.

STATE OF NEW YORK }
 } SS:
COUNTY OF Suffolk }

I, Edward Brozinsky, Esq., do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

A handwritten signature in black ink that reads "Edward Brozinsky". The signature is written in a cursive style with a prominent loop at the end of the last name.

Date: 05/21/2013

(Edward Brozinsky, Esq.)

For accidents covered under policies issued or renewed on or after October 1, 1993