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WORKERS' COMPENSATION APPEALS BOARD

FOR THE STATE OF CALIFORNIA

Applicant,	Case No.:
v.	ARBITRATION BRIEF
CONTRACTING CO.; INSURANCE COMPANY,	Hearing Date: February 3, 2017 Time: 10:00 a.m. Arbitrator:
Defendants.	

Defendants, Contracting Company and Insurance Company, submit the following Arbitration Brief.

I

INTRODUCTION

The applicant worked for Contracting Co. from November 28, 1988 through May 19, 1991. On May 17, 1991, the applicant filed a DWC Claim Form with the employer.

On September 26, 2000, the applicant filed an Application for Adjudication of Claim for a cumulative trauma claim from May 19, 1990 to May 19, 1991 to the applicant's neck and upper extremities. On July 24, 2001, Insurance Company was joined by Judge

The applicant received a significant amount of treatment between May 1991 and March 2015. The treatment involved multiple surgeries to her neck, shoulder, and wrists over the years. The applicant was seen by an Agreed Medical Evaluator, Dr. on September 15, 1995, who found

industrial injuries to the neck, bilateral carpal tunnel syndrome, and right shoulder.

Subsequently, Dr. left the area and the parties chose a new Agreed Medical Evaluator, Dr. On February 17, 1998, Dr. found the applicant sustained industrial injuries to her neck, bilateral carpal tunnel syndrome, left shoulder, right shoulder, left elbow, and right elbow. Dr. evaluated the applicant numerous times over the years and produced 26 reports between 1998 and 2014.

On October 10, 2009, over eight years after being joined, the co-defendant, obtained a Qualified Medical Evaluation report from Dr. The report was produced without an evaluation of the applicant. On page 5 of his report, Dr. stated, "Causation of her disability in regards to the cervical spine and lumbar spine, bilateral shoulders, bilateral elbows, and bilateral hands and wrists would be apportioned between the period of continuing trauma and the preexisting spine injury...". On October 29, 2009, Dr. indicated he did not wish to further participate in this case, without any explanation.

In April 2015, the defendant, Insurance Company the applicant resolved the case-in-chief by Compromise and Release in the amount of $421,718.00.

Subsequently, on October 11, 2016, the co-defendant, obtained another Qualified Medical Evaluation report, this time with Dr. Due to the passing of the applicant prior to the appointment, Dr. did not examine her.

II

MAINTAINS THE MEDICAL RECORD FULLY SUPPORTS ALL OF THE INDUSTRIAL INJURIES FOUND BY THE AGREED MEDICAL EVALUATOR, DR.

maintains the medical record fully supports the industrial injuries found by the Agreed Medical Evaluator, Dr. On February 17, 1998, at his initial evaluation, Dr. found the applicant sustained industrial injuries to her neck, bilateral carpal tunnel syndrome, left shoulder, right shoulder, left elbow, and right elbow. The report provides a proper history of the applicant's medical treatment in support of his findings.

As noted by Dr. in his multiple opinions throughout the case, the following history of

medical treatment supports his opinions:

- In the Doctor's First Report by Dr. dated May 15, 1991, the applicant noted complaints of "pain extending down the forearm into her elbows and having stiffness in both shoulders." The report noted the applicant had difficulty removing her blouse for the examination.
- On May 23, 1991, the applicant was referred to Dr. for a second opinion regarding carpal tunnel surgery. At that time, Dr. noted the applicant "has had some history of cervical discomfort," which indicates cervical complaints from the beginning of the claim.
- On September 6, 1991, the applicant was evaluated by her primary treating physician, Dr. who noted bilateral carpal tunnel syndrome, as well as an issue with her ulnar nerve at the left elbow, which again shows a condition at the beginning of the claim. Further, despite negative EMG findings at the ulnar nerve, Dr. noted such findings are not unusual, and the condition should be treated on a clinical basis. On October 16, 1991, Dr. noted "positive Tinel's sign overlying the ulnar nerve at the wrist and at the elbow."
- On November 26, 1991, Dr. noted the applicant was not improving on the left side. Just as important, he noted the applicant developed right upper extremity symptoms that were becoming worse.
- On May 27, 1992, Dr. report indicated "[t]he patient has noted, for a long time, related to driving and the bouncing, etc., that she has had some cervical spine symptoms." Accordingly, Dr. suggested the possibility of a double crush syndrome. Dr. referred the applicant for further evaluation of this issue with a neurosurgeon, Dr.
- On June 24, 1992, Dr. noted the applicant developed reflex sympathetic dystrophy in the left upper extremity. In addition, he noted "reasonable range of motion of the cervical spine, but some tenderness there." Dr. ordered a cervical MRI. On July 1, 1992, Dr. noted the MRI was normal, but "I can reproduce some of her symptoms with abduction and elevation of her arm today." If a course of physical therapy did not resolve her symptoms,

a CT Myelogram would be ordered. On July 23, 1992, Dr. noted, "I think that it is still possible that she may have a cervical disc" so he ordered a CT Myelogram. On August 24, 1992, Dr. noted the CT Myelogram "does show a definite root encroachment on the left C6 nerve root." Further, the applicant noted pain into her index and middle fingers as well as being able to reproduce her pain with movement of her neck. In the end, Dr. recommended cervical surgery as a reasonable treatment option.

On October 19, 1992, at the suggestion of Dr. the applicant was seen by Dr. for a second opinion on her cervical spine condition and possible surgery. The history noted about eight years of "intermittent problems with numbness in her left hand and to some degree in the right hand associated with pain in the left neck. She has noticed that when she turns her head too sharply to the left which she does most of the time when functioning as a heavy-equipment operator that she will have pain and tingling in the left shoulder and down the left arm." Dr. noted the applicant underwent an MRI and CT myelogram due to the persistence of her symptoms. Dr. noted the CT myelogram showed a "rather significant anterior extradural defect at C5-6 on the left side with definite compression of the left C6 root." Accordingly, he noted the "probability is quite high that the compression of the left C6 root is causing her radicular symptoms." Dr. recommended an anterior cervical fusion at C5-6.

- Following cervical surgery on December 10, 1992 with Dr. the applicant returned to the primary treating physician, Dr. on March 2, 1993. At that time, Dr. noted the surgery "relieved her pain for about three weeks, but now she has some discomfort within her neck, again. She has not noticed any changes in her hands." Dr. noted the need for further workup to make some decisions about further care.
- On April 19, 1993, Dr. noted the applicant was permanent and stationary for her neck, but returned the applicant to Dr. for treatment of the carpal tunnel syndrome.
- On July 21, 1993, Dr. noted "[o]n the left side, she has problems that seem to be related to the ulnar nerve primarily at the elbow with some symptoms within the median nerve with heavier use." Following a decision to proceed with surgery on September 14, 1993, the

applicant underwent left wrist surgery on November 8, 1993.

- On January 17, 1994, the applicant returned for treatment of her cervical spine with Dr. following an MRI on January 10, 1994. The applicant was "extremely frustrated with her on-going headaches, neck pain, and left arm pain." On January 26, 1994, Dr. noted the applicant underwent a complete cervical myelogram and enhanced CAT scan, which disclosed "nerve root compression at C5-6 and some possible nerve root compression at C4-5." The applicant wished to proceed with further fusion surgery.
- On February 16, 1994, Dr. noted "physical examination today discloses that extension and rotation of the head and neck reproduced pain into the left shoulder and left upper arm." The applicant elected to proceed with the cervical spine surgery on February 21, 1994.
- On April 8, 1994, Dr. noted " [s]ince the surgery, itself, did not help her, I believe that we need new neurological electrodiagnostic studies to try to define if there is a particular area of problem."
- On July 22, 1994, Dr. noted, "at the present time, there is evidence of more distal nerve problems both at the left elbow as well as at the right carpal tunnel, perhaps at the right elbow as well."
- On September 15, 1994, Dr. found the applicant permanent and stationary for the neck condition. The applicant indicated continued complaints of pain to her left side of the head and neck with occasional pain to her left arm. Most importantly, under Apportionment, Dr. noted, "[n]ot felt to be applicable." Clearly, with Dr. knowledge of the workers' compensation system, his apportionment opinion confirms his finding of an industrial injury to the applicant's neck.
- On September 16, 1994, Dr. indicated the applicant complained "that her shoulder bothers her and her medial left elbow bothers her as well as her lateral elbow and she continues to have her right hand fall asleep each night." The physical examination confirmed her complaints to the right wrist, left wrist, and left elbow.
- On November 15, 1994, Dr. found the applicant "has problems with carpal tunnel sydrome [sic] on the right, ulnar nerve neuropathies at both elbows and now, as a result of

mechanical problems, limited motion within her right shoulder." Dr. recommended treatment to the shoulder and expected surgery for the elbows.

- As noted by Dr. on May 11, 1995, Dr. attempts to find the right shoulder impingement to be non-industrial, but does not provide a well-reasoned opinion. In fact, Dr. starts his report stating he is "loathed to consider all of this woman's complaints arising out of her employment," but "I don't find a history of a specific non-industrial injury." Further, Dr. noted the "fragmented treatment from several physicians, examiners, and observers" contributed to the difficulty in identifying her conditions.

Despite these opinions, he attempted to split hairs regarding the applicant's shoulder complaints without acknowledging the overcompensation issues as well as her rigorous job duties. Consequently, Dr. rightfully found Dr. opinion to carry much less weight than the treating physicians' opinions.

- On July 11, 1995, Dr. indicated the applicant "continues to have problems with nerve type symptoms in the C8-T1 distribution, but exactly where this is coming from is not clear. It may be from the neck, thoracic outlet, the elbow or a combination of these areas."
- On September 15, 1995, the applicant was seen by the first Agreed Medical Evaluator, Dr. mainly to address a dispute over the right shoulder. At that time, the applicant noted "initially all of the attention was given to her hands, although her symptoms were not only in her hands but also into her shoulders and neck. Because of the abnormal findings on the nerve tests and the findings for carpal tunnel syndrome, most evaluators concentrated on her elbows and then her neck, and not attention was given to her shoulders until recently."

Dr. found industrial injuries to the bilateral wrists, neck, and bilateral shoulders. Specifically, Dr. noted impingement syndrome and rotator cuff tendinitis are most commonly related to work or recreational activities. Further, Dr. noted, "[i]t is not unusual for patients with multiple complaints to address each one individually."

- On November 14, 1995, the applicant was seen by Dr. for evaluation and treatment of the right shoulder. In addition to industrial injuries to her neck and upper extremities, Dr. found the applicant "also developed as a result of her work activities a

tendinitis and/or impingement syndrome to her right shoulder."

- On February 6, 1996, following diagnostic testing and a second opinion from Dr. Dr. found the applicant was not a candidate for neck surgery. Accordingly, he referred the applicant back to Dr. for right shoulder surgery.
- On May 23, 1996, following her right shoulder surgery, Dr. noted "she is having some discomfort and pain in her left shoulder."
- On July 2, 1996, Dr. noted the applicant "using her left upper extremity more as a result of the problems in her right upper extremity and is having increasing symptoms there, as well." Further, he noted "[f]ollowing the patients right shoulder surgery she is worse." Dr. recommended treatment to the elbow and a second opinion on the shoulder.
- On October 2, 1996, the applicant was seen by Dr. as the new primary treating physician. Under Diagnosis, Dr. noted work related conditions to the right shoulder, bilateral carpal tunnel syndrome, and cervical spine. The treatment centered on the right shoulder at that time, including surgery with Dr. on January 15, 1997.
- On February 14, 1997, Dr. noted "elbow pain [secondary] use (ie) carrying purse." Over the next year, Dr. noted continued complaints to her left elbow, left upper extremity, and neck.
- On February 17, 1998, the Agreed Medical Evaluator, Dr. concluded the applicant's "musculoskeletal conditions affecting her neck, shoulders, elbows and wrists and hands, along with the associated bilateral cervical radiculopathies and carpal tunnel syndromes, are work related."
- On March 24, 1998, the applicant underwent left elbow lateral release and left carpal tunnel release with Dr. On April 28, 1998, Dr. noted left shoulder tendinitis. On March 29, 1999, Dr. noted increased complaints to the right elbow and right shoulder over the last year, which led to right shoulder surgery on May 12, 1999.
- On October 22, 1998, the applicant was returned to Dr. for evaluation of any further cervical treatment. After a review of the full history, Dr. maintained his opinion regarding the applicant's "current symptoms and disability to be causally related to the industrial

injury at issue."

- On April 27, 2000, following Dr. referral of the applicant to Dr. on March 14, 2000 for pain management treatment, including through the Sharp Pain Management Center, Dr. found this treatment to be reasonable and necessary until the applicant reached maximum medical improvement.
- On July 3, 2000, Dr. noted "a new problem with low back pain and left sciatica starting one week ago after she was exercising in the pool, as part of her physiotherapy in the pain clinic." By July 17, 2000, the low back pain subsided but was noted again on September 11, 2001.
- On February 15, 2001, following a CT myelogram, Dr. recommended a series of epidural steroid injections, which were not helpful and caused side effects including facial swelling and a rash. On May 15, 2001, Dr. referred the applicant to Dr. for a second opinion on further cervical surgery. On June 7, 2001, Dr. recommended further surgery, which she underwent in February 2002 with Dr.
- On July 19, 2002, Dr. returned the applicant to a permanent and stationary status for her cervical spine condition.
- On October 15, 2002, Dr. noted the neck and right elbow complaints continued. At this point, Dr. treatment focused on the right elbow complaints.
- On May 8, 2003, after full review of the medical treatment since his last visit, Dr. noted a permanent and stationary status would be addressed by Dr. and Dr.
- On December 15, 2003, Dr. recommended a return to Dr. to determine if right elbow surgery is appropriate. Further, he noted the headache complaints over the last year to be industrial, but did not direct any treatment to the condition other than through work restrictions.
- On May 24, 2004, the applicant underwent right elbow surgery with Dr.
- On December 28, 2004, Dr. indicated the applicant "has become more aware of a numb, tingling sensation in the medial aspect of the forearm and hand since she had the right

elbow surgery in May 2004." However, after further discussion, he found the symptoms of right ulnar neuropathy to be non-industrial. Due to radicular symptoms in her hands, Dr. recommended a return to Dr. and possibly Dr. to evaluate her cervical spine.

- On January 27, 2005, Dr. provided a supplemental report maintaining his opinion on the right ulnar neuropathy being non-industrial and agreeing with a "fresh" opinion on the applicant's cervical condition. On February 7, 2005, Dr. noted the MRI results indicated "moderate foraminal stenosis affecting the left C4 nerve root exiting just above the fusion." The recommendation was for a referral to a spine specialist. On August 15, 2005, the applicant underwent cervical surgery at C3-4 with Dr. As of January 23, 2006, Dr. still noted "constant left-sided neck pain and occasional suboccipital headache as well as painful pins and needles in her upper limbs."
- On February 10, 2006, Dr. indicated the applicant appeared to be plateauing in her recovery but recommended an MRI to ascertain any other reasonable treatment. On March 10, 2006, Dr. noted the applicant was "not doing well" with continued headache, pain in the neck, and pain in the left arm extending into the wrist and hand.
- On March 29, 2006, the applicant was evaluated by Dr. at the request of Dr. At that time, Dr. indicated the right ulnar neuropathy appears to be more likely thoracic outlet syndrome.
- On September 9, 2006, following his review of the interim history, Dr. agreed with the recommendation for Botox injections, and possibly additional cervical surgery. Further, Dr. agreed with Dr. diagnosis of thoracic outlet syndrome being industrially related.
- On December 14, 2006, Dr. noted the Botox injections were not helpful but recommended a return to Dr. for his opinion on additional injections. On February 5, 2007, Dr. noted no additional Botox injections were recommended by Dr. With the completion of the physical therapy for thoracic outlet syndrome, he recommended a return to Dr. to consider further cervical spine surgery. The surgery proceeded on June 25, 2007 with Dr.

- On May 1, 2008, after continued neck and headache complaints and further MRI and CT scans, Dr. did not find the applicant was a candidate for surgery. Rather, he supported Dr. recommendation for injections.
- On October 6, 2008, Dr. required the updated reports from Dr. and Dr. to consider further treatment recommendations. On December 22, 2008, following review of the medical records, Dr. recommended a discogram at C6-7 as suggested by Dr.
- On March 24, 2009, Dr. confirmed the discography found the C6-7 level was symptomatic. On April 14, 2009, Dr. agreed with Dr. recommendation for surgery at C6-7. The surgery proceeded on July 27, 2009.
- On September 28, 2009, Dr. requested a vestibular therapist to evaluate the applicant's complaints of vertigo. On December 15, 2009, Dr. noted the applicant reported daily headaches.
- On October 10, 2009, the applicant was seen by the co-defendant's Qualified Medical Evaluator, Dr. At that time, Dr. stated, "[c]ausation of her disability in regards to the cervical spine and lumbar spine, bilateral shoulders, bilateral elbows, and bilateral hands and wrists would be apportioned between the period of continuing trauma and the preexisting spine injury some four years prior to the industrial exposure of October 1989 and the period of continuing trauma." Essentially, Dr. found the conditions to be industrially related.
- On September 9, 2010, Dr. indicated the applicant was not a candidate for further surgery or injections. Dr. was to confer with Dr. and Dr. regarding treatment options. On October 17, 2010, following discussions with Dr. and Dr. found the applicant reached a permanent and stationary status as of September 21, 2010. On January 5, 2011, Dr. provided his full permanent and stationary report.
- On January 14, 2011, Dr. requested an orthopedic evaluation to determine if the Dupuytren's disease is a compensable consequence of her industrial carpal tunnel disease. On

April 11, 2011, Dr. found the applicant suffered from industrially related tendinitis, which he believed was the original cause of the carpal tunnel syndrome, but did not find the Dupuytren's disease to be industrial. Dr. did agree with the industrial finding of the thoracic outlet syndrome. The applicant treated with Dr. for her tendinitis condition, which included temporary total disability.

- On August 25, 2011, Dr. noted the applicant's complaints of headaches may be related to her thoracic outlet syndrome. Further, he noted "today's studies do indicate that the patient has a vascular problem in her upper limbs."
- On November 12, 2011, Dr. requested a referral for cognitive behavioral therapy to treat her chronic pain condition. The applicant continued to complain of neck pain, headaches, and triggering in her left thumb. On November 29, 2011, the applicant underwent thumb surgery with Dr.
- On January 17, 2012, Dr. re-evaluated the applicant noting complaints of neck pain; headaches; pain, numbness and tingling to the upper extremities; loss of mobility in the fingers; vertigo; and elbow pain. At that time, Dr. recommended non-operative treatment of the thoracic outlet syndrome. Dr. found Dupuytren's disease to be non-industrial, but confirmed the industrial nature of the tendinitis/trigger finger and thumb. Dr. indicated temporary total disability as of April 11, 2001 due to the triggering of her thumbs and fingers bilaterally.
- On August 24, 2012, Dr. noted the applicant remained temporarily totally disabled for her hands per Dr. Further, he recommended additional psychological treatment rather than Botox injections. Also, he suggested proceeding with noninvasive vascular studies.
- On November 1, 2012, Dr. found the applicant was permanent and stationary for her bilateral tenosynovitis/triggering digits effective October 31, 2012.

As noted above, a fair reading of the applicant's history of initial complaints, continuing complaints throughout her treatment, and opinions of various treating physicians fully supports the conclusions of Dr. Further, Dr. opinion is supported by the earlier findings of the

initial AME, Dr. on September 15, 1995.

More importantly, Dr. opinion was confirmed by own Qualified Medical Evaluator, Dr. , on October 10, 2009. Once again, on page 5 of his report, Dr. clearly stated, "Causation of her disability in regards to the cervical spine and lumbar spine, bilateral shoulders, bilateral elbows, and bilateral hands and wrists would be apportioned between the period of continuing trauma and the preexisting spine injury...".

Furthermore, as did not obtain a replacement Qualified Medical Evaluator for approximately seven years, this suggests, at the very least, an implicit agreement on the causation issue, but more likely, an acceptance of the industrial nature of all of the claimed body parts.

III

ASSERTS THE REPORT OF DR. IS INADMISSIBLE AS AN INAPPROPRIATE SECOND QUALIFIED MEDICAL EXAMINATION BASED UPON THE OCTOBER 10, 2009 QUALIFIED MEDICAL EVALUATOR REPORT OF DR.

asserts the report of Dr. inadmissible because it is an inappropriate second Qualified Medical Evaluation. The co-defendant previously obtained a Qualified Medical Examiner's report with Dr. dated October 10, 2009. As noted, this opinion supported industrial injuries to all body parts. Subsequently, on October 29, 2009, Dr. provided a brief, one-page report indicating he did not want to participate in the case any further.

However, has not shown any efforts to maintain Dr. as the Qualified Medical Evaluator. In response to counsel's request for correspondence with Dr. there were no letters requesting an explanation for not continuing as their expert. Conveniently, with an unfavorable opinion on the books, failed to pursue obtaining another opinion for nearly seven years.

maintains a party is not entitled to a new Qualified Medical Evaluator without any effort to maintain their selected physician, especially in light of the unfavorable opinion. Without more detail regarding Dr. withdrawal from the case, questions

s right to obtain Dr. opinion or "doctor shop".

IV

THE REPORT OF QUALIFIED MEDICAL EVALUATOR, DR. SHOULD NOT BE CONSIDERED SUBSTANTIAL MEDICAL EVIDENCE OR NOT GIVEN SUBSTANTIAL WEIGHT, DUE TO AN INADEQUATE HISTORY AND THE LACK OF A PHYSICAL EXAMINATION

The report by Qualified Medical Evaluator, Dr. was completed without an evaluation of the applicant. Under Hamilton v. WCAB, (2011) 76 Cal Comp. Cases 265 (writ denied), the Court of Appeal followed the WCJ's position that a party should not be prevented from obtaining a QME simply because the applicant was unavailable. Further, the Court pointed out the applicant was housebound and unavailable for medical evaluations and trial. Importantly, the Court noted the WCJ concluded a resolution of the issue would not require an actual examination of the applicant.

In the current case, there are several distinguishing factors affecting whether Dr. report should be considered substantial medical evidence. First, unlike in Hamilton, the applicant's unavailability was directly related to undue delay in obtaining a replacement opinion following Dr. self-removal from the case in October 2009. had approximately seven years to secure a Qualified Medical Evaluation if it did not wish to follow Dr. opinion.

Second, another important distinction from Hamilton is a resolution of the issue does require the examination of the applicant. Without examining the applicant, Dr. was unable to fully understand the applicant's history of complaints. Specifically, the basis for the treating physicians addressing additional body parts was the applicant's continued complaints. Without an examination of the applicant, which would include a personal discussion with the applicant regarding the time line of her complaints, Dr. cannot properly address this issue as it is set forth in the other physicians' reports.

On that note, Dr. report fails to address the applicant's deposition testimony regarding complaints to all body parts dating back to May 1991. Further, Dr. appears to

ignore this same history given to multiple physicians. Without addressing the applicant's deposition testimony, which was elicited by own counsel, as well as the history of complaints given to multiple prior physicians, Dr. s opinion should be considered to have an inadequate history of injury.

In fact, Dr. s only reference to the applicant's history of complaints was to indicate the applicant related her neck complaints to a prior 1989 date of injury. Strangely, Dr. takes the applicant's comment to mean it is not related to the current cumulative trauma claim. Yet, this comment would suggest the applicant's symptoms have been present for several years longer than the current cumulative trauma claim.

Third, without a physical examination, Dr. opinion on permanent disability cannot be considered substantial medical evidence.

Accordingly, unreasonable delay in obtaining a replacement Qualified Medical Evaluation prevented Dr. from performing a physical examination of the applicant, and especially discussing the time line for her complaints. The lack of a physical examination did not allow Dr. to substantially address the causation issue. Further, Dr. s failure to comment on the applicant's deposition testimony, and prior histories given to other physicians, leads to an inadequate history of injury. Furthermore, the lack of a physical examination prevents Dr. from providing a substantial opinion on permanent disability. Overall, even if Dr. opinion is found admissible, his opinion should not be given more weight than the opinions of 10 physicians who treated this applicant for over 20 years.

V
MAINTAINS THERE IS NO VIABLE ARGUMENT BY TO AVOID INJURIOUS EXPOSURE DURING THEIR COVERAGE PERIOD AS THERE IS NO EVIDENCE OF A CHANGE IN THE APPLICANT'S JOB DUTIES

maintains does not have a viable argument to avoid liability due to a lack of injurious exposure during their period of coverage. According to deposition of the applicant on April 26, 2002, the applicant testified to doing the identical work at all of her heavy equipment positions (P. 33-34, Lines 25-9).

Absent a change in the applicant's job duties, there is no evidence of a different, or lesser, injurious exposure during coverage.

VI

BASED UPON THE PERIODS OF COVERAGE, MAINTAINS HAS LIABILITY OF 87% OF THE CUMULATIVE TRAUMA CLAIM

maintains has 87% of the liability for the cumulative trauma claim. According to the WCIRB report, dated May 23, 2001, has coverage from April 1, 1990 to April 1, 1991 and has coverage from April 1, 1991 to April 1, 1992.

Therefore, based upon the periods of coverage, has 87% of the liability and has 13% of the liability.

VII

MAINTAINS IS LIABLE FOR CONTRIBUTION OF $1,270,074.84 FOR ITS PROPORTIONAL SHARE OF BENEFITS PAID BY FOR THE CUMULATIVE TRAUMA CLAIM

maintains is responsible for $1,270,074.84 in contribution for their proportionate share of liability for the benefits paid by for the cumulative trauma claim.

According to the benefit printout, paid a total of $512,920.18 for medical treatment. In addition, paid $536,628.76 in temporary disability and $11,577.70 in permanent disability advances to the applicant. Lastly, paid $421,718.00 for a Compromise and Release with the applicant.

Based upon liability for 87% of the cumulative trauma claim, breaks down the liability of as follows:

1.	Medical treatment	$512,920.18	X 87%	$446,240.56
2.	Temporary Disability	$536,628.76	X 87%	$466,867.02
3.	Permanent Disability	$11,577.70	X 87%	$ 10,072.60
3.	Compromise & Release	$421,718.00	X 87%	$366,894.66
Claim for Contribution owed by			**Insurance Company**	**$1,270,074.84**

CONCLUSION

The opinions of the Agreed Medical Evaluators, Dr. and Dr. as well as Insurance Company's first Qualified Medical Evaluator, Dr. fully support the industrial finding of injury to the neck, bilateral carpal tunnel syndrome, left shoulder, right shoulder, left elbow, and right elbow from the cumulative trauma.

Dr. 's opinions should not be considered substantial medical evidence based upon the lack of a physical examination, which was caused by unreasonable delay of approximately seven years. The lack of an examination prevented Dr. from obtaining an adequate history of the injury, which was also exacerbated by his failure to address the applicant's deposition testimony and the history of complaints to the other physicians.

Further, as there is no evidence the applicant's job duties changed during her employment, the period of injurious exposure leads to liability for of 87% for the cumulative trauma claim. Therefore, based upon the prior payments of owes reimbursement of $1,270,074.84.

DATE: January 16, 2018

Respectfully submitted,
DIETZ, GILMOR & CHAZEN

Devin J. Andriesen, Esq.
Attorney for Defendants
Insurance Company

CONTRACTING CO.

EAMS NO.:

DEFENDANTS' EXHIBIT LIST

Correspondence

1. Letter from dated September 8, 2017

AME Reports

1. M.D., AME dated 02/17/1998
2. M.D., AME dated 10/28/1999
3. M.D., AME dated 04/27/2000
4. M.D., AME dated 08/22/2000
5. M.D., AME dated 05/08/2003
6. M.D., AME dated 12/15/2003
7. M.D., AME dated 12/28/2004
8. M.D., AME dated 01/27/2005
9. M.D., AME dated 02/07/2005
10. M.D., AME dated 05/09/2006
11. M.D., AME dated 08/08/2006
12. M.D., AME dated 09/09/2006
13. M.D., AME dated 12/14/2006
14. M.D., AME dated 02/05/2007
15. M.D., AME dated 10/06/2008
16. M.D., AME dated 12/22/2008
17. M.D., AME dated 04/14/2009
18. M.D., AME dated 09/09/2010
19. M.D., AME dated 10/17/2010
20. M.D., AME dated 01/05/2011
21. M.D., AME dated 09/26/2011
22. M.D., AME dated 01/17/2012
23. M.D., AME dated 02/13/2012
24. M.D., AME dated 08/24/2012
25. M.D., AME dated 11/01/2012
26. M.D., AME dated 04/30/2014
27. M.D., AME dated 11/21/2013

Medical Reports

1. M.D., DFR dated 05/15/1991
2. M.D., Evaluation dated 05/23/1991
3. M.D., Report of Special Examination dated 09/06/1991
4. M.D., Supplemental Report dated 10/16/1991

RE CONTRACTING CO.

EAMS NO.:

DEFENDANTS' EXHIBIT LIST

5. M.D., Supplemental Report dated 11/26/1991
6. M.D., Supplemental Report dated 05/27/1992
7. M.D., Neurosurgical Evaluation dated 06/24/1992
8. M.D., Neurosurgical Evaluation dated 07/01/1992
9. M.D., Neurosurgical Evaluation dated 07/23/1992
10. M.D., Neurosurgical Evaluation dated 08/24/1992
11. M.D., Evaluation dated 10/19/1992
12. M.D., Supplemental Report dated 03/02/1993
13. M.D., Evaluation dated 04/19/1993
14. M.D., Supplemental Report dated 07/21/1993
15. M.D., Supplemental Report dated 09/14/1993
16. M.D., Report dated 01/17/1994
17. M.D., Report dated 01/26/1994
18. M.D., Report dated 02/16/1994
19. M.D., Supplemental Report dated 04/08/1994
20. M.D., Supplemental Report dated 07/22/1994
21. M.D., P&S Report dated 09/15/1994
22. M.D., Supplemental Report dated 09/16/1994
23. M.D., Supplemental Report dated 11/15/1994
24. M.D., Unsolicited Report dated 05/11/1995
25. M.D., Supplemental Report dated 07/11/1995
26. M.D., AME Report dated 09/15/1995
27. M.D., Orthopedic Evaluation dated 11/14/1995
28. Report dated 02/06/1996
29. M.D., Orthopedic Evaluation dated 05/23/1996
30. M.D., Supplemental Report dated 07/02/1996
31. M.D., Special Examination & Report dated 10/02/1996
32. M.D., PR-2 dated 04/14/1997
33. M.D., PR-2 dated 03/24/1998
34. M.D., PR-2 dated 04/28/1998
35. M.D., Orthopaedic Spinal Consultation dated 10/22/1998
36. M.D., Evaluation dated 07/03/2000
37. M.D., Initial Neurosurgical Consultation dated 06/07/2001
38. M.D., Evaluation dated 09/11/2001
39. M.D., P&S Report date 07/19/2002
40. M.D., PTP PR-2 dated10/15/2002
41. M.D., Evaluation dated 01/23/2006
42. M.D., Report dated 02/10/2006
43. M.D., Report dated 03/10/2006
44. M.D., Neurological Consultation dated 03/29/2006

RE:

EAMS NO.:

DEFENDANTS' EXHIBIT LIST

45. M.D., Report dated 05/01/2008
46. M.D., Report dated 03/24/2009
47. M.D., PTP Progress Report dated 09/28/2009
48. M.D., PTP Progress Report dated 12/15/2009
49. M.D., QME Evaluation dated 10/10/2009
50. M.D., PTP Progress Report dated 01/14/2011
51. M.D., Initial Upper Extremity/Hand Surgery Consultation dated 04/11/2011
52. M.D., PTP Report dated 08/25/2011
53. M.D., PTP Progress Report dated 11/21/2011
54. M.D., Operative Report dated 11/29/2011

Re:

EAMS CASE NO.:

DECLARATION OF SERVICE

I declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am employed in the County of San Diego, California, within which county the subject service occurred. My business address is 7071 Convoy Court, San Diego, California 92111. I served the following document(s):

ARBITRATION BRIEF

by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each respectively, faxed or emailed as follows:

SEE ATTACHED SERVICE LIST

☐ BY MAIL: This same day and at my business address shown above, I placed each for deposit in the United States Postal Service, by placing a true copy of each document served in a separate envelope addressed to each addressee, following ordinary business practices.

☐ BY PERSONAL SERVICE: I personally hand delivered to each addressee by leaving said envelope with either the addressee directly or another person at that address authorized to accept service on the addressee's behalf.

☐ BY FACSIMILE TRANSMISSION: In addition to service by mail, as set forth above, the counsel or interested party authorized to accept service, by whose name an asterisk (*) is placed, was also forwarded a copy of said document(s) by facsimile transmission at the telefax number corresponding with his/her name. The facsimile machine I used complied with CRC rule 2003(3) and no error was reported by the machine. Pursuant to CRC rule 2005(I), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

■ BY ELECTRONIC MAIL: In addition to service by mail, as set forth above, I transmitted the document listed below electronically to the email address listed below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: January 17, 2018

Re:

EAMS CASE NO.:

SERVICE LIST

ARBITRATOR

CO-DEFENDANT