## A M E R I C A N A R B I T R A T I O N A S S O C I A T I O N NO-FAULT/ACCIDENT CLAIMS

In the Matter of the Arbitration between

(Claimant)

v. STATE FARM INSURANCE CO (Respondent) AAA CASE NO.: 18 Z 600 14168 02 INS. CO. CLAIMS NO.: 303185096 DRP NAME: Margaret Knuetter NATURE OF DISPUTE: Reasonable and

## AWARD OF DISPUTE RESOLUTION PROFESSIONAL

Necessary,

I, THE UNDERSIGNED DISPUTE RESOLUTION PROFESSIONAL (DRP), designated by the American Arbitration Association under the Rules for the Arbitration of No-Fault Disputes in the State of New Jersey, adopted pursuant to the 1998 New Jersey "Automobile Insurance Cost Reduction Act" as governed by N.J.S.A. 39:6A-5, et. seq., and, I have been duly sworn and have considered such proofs and allegations as were submitted by the Parties. The Award is **DETERMINED** as follows:

Injured Person(s) hereinafter referred to as: MS.

- 1. ORAL HEARING held on 3/5/03.
- 2. ALL PARTIES APPEARED at the oral hearing(s).

Claimant appeared telephonically.

3. Claims in the Demand for Arbitration were AMENDED and permitted by the DRP at the oral hearing (Amendments, if any, set forth below). STIPULATIONS were not made by the parties regarding the issues to be determined (Stipulations, if any, set forth below).

The bills for Dr. Bey-Yishay total \$26601.94 and the bills for Comprehensive Neurosurgical are \$22568.68

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

This matter pre-dates AICRA.

This is a claim for payment of bills incurred by MS as a result of an auto accident of 5/26/94.

Claimant submitted the following:

Conditional assignment of benefits to Dr. Ben Yishay

Bill from Ari Ben-Yishay, MD for DOS 4/30/02 to 7/30/02

Assignment to Comprehensive Neurosurgical

Bill from Comprehensive Neurosurgical for DOS 5/13/02

Operative report of Dr. Ben-Yishay, co-surgeon, dated 5/17/02. Pre-operative diagnosis is herniated disc L3-4, L4-5, L5-S1, moderate to severe spinal stenosis, L3-4 and left lateral recess I5-S1. Indications - 62 year old female who was involved in a motor vehicle accident in 1994 and has had ongoing treatment for intractable pain. She did well with epidural steroid injections but recently developed increasing severe right sided leg pain in the L5 distribution. She also has been having left buttock pain radiating to the anterolateral thigh left side primarily withstanding and walking. MRI demonstrates herniated discs at L3-4, L4-5 and L5-S1 most markedly at L4-5 on the right with underlying spinal stenosis. Disc heights were all severely degenerated and collapsed. Procedure - Bilateral L3-4 hemilaminectomy, medial facetectomy and nerve root decompressions; right L4-5 hemilaminectomy, medial facetectomy with discetomy; left L5-S1 hemilaminectomy, medial facetectomy medial facetectomy.

Note of Dr. Ben-Yishay, dated 7/30/02. Dr. Ben-Yishay states that MS is now 2 1/2 months status-post multi level decompression and discectomy. She has called the office complaining of pain that goes down the right leg first thing in the morning and lasts for a half hour and then seems to resolve. The pain then localizes in the right foot. He examined her and found non-specific pain in the right leg in the morning, with possible residual radiculitis, but without any focal objective exam findings at this time. He is recommending physical therapy. She is inquiring about an injection for her back with Dr. Kantha and he has no objection to her trying a right L5-S1 transforaminal injection under fluoro.

Note of Dr. Ben-Yishay, dated 10/1/02. Dr. Ben-Yishay states that MS is now 4 1/2 months status- post multi level decompression for lumbar disc herniations. She has complete relieve of low back pain and pain down the legs. About 2 months ago she noted the onset of severe pain in the mid thoracic area radiating into the sternum. He examined her and an x-ray of the thoracic spine demonstrates mild compression of the T11 vertebral body. He recommends an MRI of the thoracic spine to rule out T11 compression fracture versus herniated disc.

Report of Viswanathan Rajaraman, MD, dated 5/13/02. Dr. Rajaraman states that MS presented on that date with a chief complaint of constant back pain with bilateral leg pain, worse on the right. Her left leg symptoms started about one month ago. There is some numbness—tingling in the right thigh and buttocks. The symptoms are getting progressively worse. Dr. Ben-Yishay has recommended surgery and she has come for a second opinion. He examined her and reviewed her tests. His conclusion was that she had lumbar disc-osteophyte foraminal stenosis at L4-5 o the right; lumbar disc-osteophyte foraminal stenosis at L5-S1 level on the left; extraforaminal lumbar disc herniation at L3-4 on the left. His recommendation was lumbar decompressive laminectomy and foraminotomy at the L4-5 bilaterally and the L5-S1 level on the left.

Report of Dr. Rajamaran, co-surgeon, dated 2/3/03. Dr. Rajamaran states that he has reviewed Dr. Rosenblum's peer review (below) and states that it is clear based on his own assessment that the patient did have a central annular tear as well as a broad-based disc herniation at both L3-4 and L4-5 levels. It is also clear that the patient had multiple attempts at conservative treatment including physical therapy and injections, etc without any relief of her symptoms. She was seen by him in 2002 with follow up radiological examinations and these once again revealed a significant degree of stenosis and nerve

root compression caused by increasing disc herniations at the above levels. In view of the persistent symptoms and non relief of pain, surgical decompression was her last and final option. She underwent a successful surgical decompression. He states that Dr. Rosenblum's conclusions are incorrect. By his own analysis, the patient had a significant degree of annular tear and disc herniation causally and directly related to the accident and there is no doubt that there was further progression of her degenerative disc disease as well as progression of disc herniation leading to foraminal stenosis and her current symptoms. The chain of events followed the accident and the natural progression of her arthritis further aggravated her symptoms. This scenario is not uncommon and minor derangements and disc herniations can aggravate progression of a degenerative condition as well as worsening of neurological symptoms. It is also clear that the patient had had continuous treatment throughout the whole period without any lasting relief except following the final definitive surgical decompression.

Letter from Dr. Ben-Yishay in response to DR. Rosenblum's report (below). Dr. Ben-Yishay states that he first evaluated MS on 4/30/02. She did not bring her records and was not a good historian. She did report the pain with Dr. Kantha. When he first saw her she had resolution of her back pain until January 2002 when she began developing pain radiating down her leg. The epidurals of Dr. Kantha gave short term relief. He never saw the earlier films dating back to the 90's but found that Dr. Rosenblum's conclusion is clearly wrong as her earlier MRI showed a herniation at L4-5. He concludes that the surgery is directly related to the injuries sustained in the auto accident.

EOB's from several carriers showing payment for UCR charge for 63047-62 and 63048 and 63048-62

Respondent submitted the following:

PIP ledger showing payments made from 9/5/94 to 10/4/02 and totaling over \$216,000 EOB showing the fee schedule amount for 63047-62 and 63048-62

Denial letter from respondent dated 11/8/02 to MS for bill from Comprehensive Neurosurgical

Report of Francis DeLuca, MD, dated 10/5/94. Dr. DeLuca examined MS on that date and reviewed the MRI films. His impression was that she suffered a cervical and lumbar strain and that they were related to the accident. He notes that she has had on and off lob back pain for several years and treated periodically with therapy. He concluded that her injuries were soft tissue and did not involve any herniated disc or radiculopathy. He found that she had reached maximum medical improvement and needed no further therapy.

Report of Raritan Bay Medical Center, dated 5/26/04 re x-rays of skull and cervical and of 6/4/94 xrays of Tumbar spine

Thermogram study, dated 8/18/94

Report of William Zinn, MD dated 8/1/094 re MRI of lumbar spine with findings of minor degenerative disc and facet changes at L3-4 through L5-S1 with a superimposed small central annular tear at L3-4 and a small broad- based central HNP at L4-5

Report of Scott Schlessinger, MD, dated 9/23/94 re MRI of hips with normal findings Report of Dr. Schlessinger, dated 4/3/96 re MRI of lumbar spine with findings of diffuse tear of annulus fibrosis resulting in diffuse broad- based HNP causing effacement of the ventral surface of the thecal ac at L3-4; diffuse tearing of the annulus fibrosis, worse on the right and resulting in a diffuse broad based central, slightly right paracentral disc

herniation at L4-5 with effacement of the ventral surface of the thecal sac and degeneration of the intervertebral disc at L5-S1 with loss of height and desiccation of the disc. Report of MRI of the cervical spine for same date with findings of cervical spondylosis with no compression on the cord or nerve roots.

Report of Myron Levitt, MD, dated 6/2/98 re MRI of the lumbar spine with contrast with findings of mild to moderate central stenosis at L3-4 and mild central stenosis at L4-5.

Report of William Zinn, MD dated 6/5/98 re MRI of thoracic spine with findings of benign appearing compression fracture involving the superior end plate of T11; tiny central ridge at T7-8

Report of George Veliath,MD , dated 3/28/00 re MRI of lumbar spine with findings of multi level degenerative disc changes with spinal stenosis and bilateral foraminal compromise from L2 to L5-S1 region; no evidence of herniations but diffuse annular bulges are at L2 to L5-S1 levels

Report of Heidi Winchman, MD dated 8/24/00 re MRI of lumbar spine w & w/o contrast with findings of mild superior end-late compression deformities of the L4 and T11 vertebrae; degenerative disc disease L3-4 to L5-S1; grade I degenerative spondylolisthesis at L4-5 wit superimposed central to right HNP and resultant moderate to severe spinal stenosis; posterior spondylitic ridge and superimposed disc bulge at L3-4; bulge at L2-3 and ventral epidural defect toward the right at T9-10 which may represent posterior spondylitic ridging.

Report of Philip Lakritz, MD rearrerial doppler of lower extremity

Reports of Norman Sorkin,MD dated 3/21/02 re MRA of lower extremities and abdomen Report of Salim Samuel, MD, dated 4/1/02 re MRI of the lumbar spine wo/w contrast with findings of mild compression of the superior endplate of L4 anteriorly is unchanged. A Schmorl's node along the inferior endplate of L2 is stable. Minimal grade I degenerative spondylolisthesis at L4-5; moderate to large right paracentral disc herniation with associated cranial disc extrusion at this level which has significantly increased in size since prior exam; moderate central spinal stenosis unchanged; compromise of the right lateral recess slightly increased and there is potential for impingement of the right L5 nerve root sleeve; new moderate to large focal right foraminal disc herniation at L5-S1, likely compressing the right L5 nerve root sleeve and mild to moderate central spinal stenosis at L3-4

Physiotherapy notes, unsigned for DOS 6/6/94 to 6/15/95

Report of Maria Choy-Kwong, MD dated 7/21/94 re neurological exam with results of NCV studies with findings of right L5 radiculopathy.

Report of Richard Menashe, DO, dated 2/13/97

Report of Sri Kantha, MD, dated 12/23/96 re proposed laser assisted disc decompression at L3-4 and L4-5; lumbar facet capsule ablation and denervation on the left at L3-4, L4-5 and L5-S1; diagnostic right and left cervical facet joint capsule injections and if conclusive denervation by radiofrequency lesion.

Reports of Dr. Kantha, dated 1/27/98 re diagnostic right sided lumbar facet joint injection; dated 2/5/98 re right sided lumbar facet joint denervation by stereotactic thermocoagulation; 2/18/98 re laser assisted lumbar disc decompression at L4-5 and L3-4; 5/7/98 re right lumbar facet joint injection; epidurogram and epidural steroid injection; 6/18/98 re thoracic epidurogram and thoracic epidural steroid injection; 8/27/98 re lumbar epidurogram and lumbar epidural injection

Letter of medical necessity of Dr. Kantha to respondent dated 2/16/99

Report of Dr. Kantha dated 3/23/99 re right sided lumbar facet joint injection

Letter from Dr. Kantha to respondent dated 4/12/00 recommending lumbar discography at L3-4, L4-5 and L5-S1 levels.

Report of Dr. Kantha, dated 5/4/00 for provocation lumbar discography with steroids and isovue at L3-4 , L4-5 and L5-S1 levels; 7/13/00 re laser assisted lumbar disc decompression with holmium; 7/12/01 re right sided lumbar facet joint denervation at L3-4, L4-5 and L5-S1; lumbar epidurogram and epidural hydaluronidase; 8/22/01 re left sided lumbar facet joint denervation at L304, L4-5 and L5-S1; 9/6/01 re bilateral lumbar facet joint denervation at L1-2 and L2-3; 1/15/02 re lumbar epidurogram; 2/6/02 re lumbar epidurogram, right hip injection; 4/10/02 re lumbar epidurogram lumbar tender point injections; 4/18/02 re transforaminal lumbar epidurogram and epidural steroid injection; 9/11/02 re lumbar epidurogram and steroid injection

Report of Boston Martin, MD, dated 1/27/98 re neurological exam recommending laser assisted lumbar disc decompression

Office notes of Jeanne Weinstein, PT for 5/1/97 to 9/9/99

ER records from Raritan Bay Med. Ctr

Follow up report of Dr. Martin, dated 7/13/00 recommending lumbar disc decompression at L5-S1

Neurosurgical consultation of Neville Mirza, MD dated 4/10/02 recommending surgery and not endoscopic procedure

Records of Pascack Valley hospital for 5/17/02

Report of Bruce Rosenblum, MD, dated 9/1/02. Dr. Rosenblum reviewed records for respondent. He concluded that he believed that MS had suffered a lumbar sprain as result of the accident of 5/26/94. Subsequent treatment through June of 1995 was consistent with this injury. However, her pre-existing degenerative disease of the discs and spinal column progressed to become more significant and severe. The films of the initial MRI's reveal no significant occlusion of the spinal canal or neural foramen. Only in 1998 and beyond do progressive degenerative changes develop. He therefore concluded that treatment subsequent to 1998 is not related to the auto accident.

EOB showing payment recommended to Dr. Ben-Yishay and review of billing by Dr. Ben-Yishay performed by MedPath.

I have reviewed the submissions of the parties and heard the argument of counsel. I find that claimant has sustained the burden of proving that the surgery was medically necessary and causally related to the auto accident. There is a long history of attempts at conservative management of the chronic conditions in her lower spine. Although she may have had pre-existing occasional problems with her back, that were referred to by Dr. DeLuca, there is a well documented history of the gradual worsening of her condition over the 8 years that the conservative treatment was rendered and failed. I find the letter of Dr. Rajaraman to be persuasive that the combination of the accident followed by the natural progression of her underlying conditions aggravated her symptoms, requiring the final and definitive surgery. The demand will be allowed. I further find that claimants have sustained the burden of proving that the charges were their usual, customary and reasonable charges for their services. However, the award must be molded to reflect the fact that there are limited funds available since the payments made prior to this demand have been so large. The award is subject to reduction for the balance

between the total payments made on this claim to date and the statutory limit of \$250,000 as State Farm has already paid \$207,528.53

Interest has not been calculated and is deemed waived.

Amount Claimed

Attorney fees and costs are awarded.

## 5. MEDICAL EXPENSE BENEFITS:

## Awarded

Provider

| FIOVICE             | Amount Claimed     | Amount Awarded i                        | rayable to          |
|---------------------|--------------------|---|---------------------|
|                     |                    |   |                     |
| Dr. Ari Ben-Yishay, | \$26,601.94        | \$26,601.94                             | Claimant & attorney |
| Comprehensive       |                    | ,                                       | j                   |
| Spine Care          |                    |   |                     |
| Comprehensive       | \$22,568.68        | \$22,568.68                             | " "                 |
| Neurosurgcial       | <b>4</b> ==,000:00 | ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,, |                     |
| _                   |                    |   |                     |
|                     |                    |   |                     |
|                     |                    |   |                     |

Amount Awarded Pavable to

Explanations of the application of the medical fee schedule, deductibles, co-payments, or other particular calculations of Amounts Awarded, are set forth below.

Award subject to reduction to the balance left on the PIP claim due to prior payments of \$207,528.53 (or more if later payments have been made since the ledger submitted by respondent with the last payment of 9/4/03

- 6. INCOME CONTINUATION BENEFITS: Not In Issue
- 7. ESSENTIAL SERVICES BENEFITS: Not In Issue
- 8. DEATH BENEFITS: Not In Issue
- 9. FUNERAL EXPENSE BENEFITS: Not In Issue
- 10. I find that the CLAIMANT did prevail, and I award the following COSTS/ATTORNEYS FEES under N.J.S.A. 39:6A-5.2 and INTEREST under N.J.S.A. 39:6A-5h.
- (A) Other COSTS as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$325 filing fee

| (B) ATTORNEYS FEES as follow unless otherwise indicated): \$1250. | s: (payable to counsel of record for CLAIMANT     |
|---|---|
| (C) INTEREST is as follows: waive                                 | d per the Claimant                                |
| This Award is in <b>FULL SATISFAC</b>                             | TION of all Claims submitted to this arbitration. |
| <u>4/16/04</u><br>Date  | Margaret Knuetter, Esq.                           |