

**Camden County Insurance Commission
Settlement Authority Request**

Claimant: Dennis Endicott	Date : January 29 th .2015,
AH Number #: 630 112 615	Claim Type: Workers' Compensation
AH Handling Adjuster: Hugette S. Atherton	Date of Incident/Loss: 04/09/12-10:00AM
AH Adjuster Phone: 856-380-6539	Department: Public Work
	Litigation : Yes
	Defense Attorney: Christopher Saracino Pietras Saracino Smith Meeks
	Claimant/Plaintiff Attorney: Marci Jordan- Hill- Stark & Stark
	Policy Type: Workers' Compensation

Petitioner has filed CP2012-13726

DEFENSE COUNSEL RECOMMENDATIONS:

Per enclosed PAR of January 29,2015 and counsel's correspondence of January 26,2015 and email of January 29,2015 confirming that all parties have agreed to resolve this matter for 27 ½% of partial total or \$42,108.00 plus costs of \$ 8,422.00 for a total of \$50,530.00.

Seeking settlement authorization in the amount of \$50,530.00 as outlined above. Last payment authority received July 27,2012 was for \$ 54,952.00- We are now seeking payment authority up to \$76,628.00 , an increase of \$ 21,676.00

APPROVAL FROM CCIC : YES NO

Camden County Insurance Commission Payment Authority Request

Claimant: Dennis Endicott
Date of Birth: 10/04/1966
Date of Hire: 09/02/2008
AH File Number: 630-112-615
Adjuster- Huguette S. Atherton

AH Adjuster Phone: 856-380-6539

Excess Carrier: Meadowbrooks

Excess Notice Date:

Excess Handling Adjuster:

Excess Adjuster Phone:

Member Entity SIR: \$250,000.00

CIB: yes

Subrogation: Not applicable-Incident occurred as a result of job duties and no third party is involved

Status as of: January 29,2015
Claim Type: Indemnity
Date/Time of Loss: 04/09/2012-10:00AM
Location:

Department: Public Works

Litigation: Yes

Defense Attorney: Christopher Saracino
Pietras Saracino Smith Meeks

Claimant/Plaintiff Attorney: Marci Jordan-Hill

Claimant/Plaintiff Attorney Firm: Stark & Stark

Claimant/Plaintiff Attorney Phone:

Policy Type: Workers' Compensation

CEL-JIF Companion File#:

AWW-\$874.24-Comp.Rate-\$625.97

Summary of the Incident Facts:

Petitioner employer as a truck driver/laborer on 04/09/12 he was cutting down a tree using a saw the tree spun hit petitioner on the head, left shoulder, lost his balance and the saw hit his left thigh. He was taken by ambulance to ER at Cooper, left thigh required many sutures, given antibiotics discharged from care and referred to Dr Levy at Worknet.

Initial evaluation of 04/13/12, with Dr. Levy at Worknet-diagnosis- laceration/abrasion left thigh, (approximately 4 inches), wound redressed, continue with antibiotics, head injury with post-concussive symptoms, improving, cervical, left shoulder strain, left chest wall contusion, left forearm and elbow contusion, no complaints of headaches, cervical or shoulder discomfort, released to modified duty work on 04/29/12-per their contract, the County paid regular wages to the petitioner during disability period and WC will reimburse the County.

Follow-up evaluation of 06/07/12 with Dr .Levy petitioner complained of headaches, cervical discomfort left side, as well as left upper extremity pain, also reported nausea ,vomiting, visual changes and hearing loss Dr .Levy ordered MRI of the brain, negative result and MRI of the cervical, no herniated discs. Based on petitioner's ongoing complaints Dr .Levy recommended that petitioner be referred to spine specialist.

On 06/12/12, petitioner was evaluated by Dr .Kirshner, spine specialist, Dr. recommended an EMG/NCS for upper extremities and neurology evaluation for complaints related to the head.

On 06/27/12 petitioner was evaluated by Dr. Sharets, neurologist, Dr. reported

that petitioner should see a Ear, Nose, Throat specialist, as his symptoms are not something that Dr. would treat.

On 06/27/12, EMG /NCS was done- Impression: mild old right C7 radiculopathy chief complaint suggestive of low grade cervical radiculopathy, fairly non-revealing and this study was unremarkable with regard to radiculopathy. Nonetheless, the symptoms do suggest radiculopathy and he has an old radiculopathy at the C7 level on the right. This increases the chances that he may have a C7 radiculopathy on the left which was not apparent on testing.

Follow-up with Dr .Kirshner on 07/17/12, Dr. reviewed EMG/NCS. diagnosis-cervicalgia-treatment-continue PT sessions for two weeks, medications voltaren 75 mg., work status modified duty-with restrictions-avoid use of arms over head or below waist, no lifting over 25 lbs.

Evaluation with Dr. Aftab, Ear Nose Throat specialist on 08/01/12,Dr. reported it is difficult to assess whether this hearing loss is a direct result of the injury or not there is no history of skull fracture which would suggest this as a cause and pattern of the hearing loss.

Follow up evaluation of 08/28/12 with Dr. Kirshner, he returns with ongoing complaints, I cannot find any objective evidence to substantiate his subjective complaints. At this time,he still feels that he is unable to return to his regular job. I will order a functional capacity evaluation. Work status: modified duty with restrictions, avoid use of arms overhead or below waist and no lifting over 30lbs.

Follow up evaluation with Dr. Kirshner of 10/16/12, FCE of 10/03/12 reviewed he is now at maximum medical improvement with respect to the cervical spine-per FCE report he is capable of medium duty, he can lift up to 50-75 lbs.

Received CP2012-13726 referred to counsel to file a response to protect the County's interest.

Both sides have scheduled their permanency evaluations and the results are as follows:

Petitioner's expert, Dr. Cataldo provided estimates of disability, 35% of partial total for the for the sprain/sprain of the left shoulder,45% of partial total for residuals of severe laceration for the left thigh, 5% of partial total for the cosmetic residuals of disfiguring scare on the left thigh from laceration. Dr. Abrams provided an estimate of neurologic disability of 40% of partial total for multiple injuries including post-concussion syndrome and tinnitus.

Respondent's expert, Dr. Peacock provided estimates of 1% of the statutory leg, 1% partial total for the cervical spine, Dr. found no evidence of any disability related to the left shoulder, arm or head, scalp. Dr. Levin, neurologist found no evidence of any residual neurologic disability.

Counsel reported that this matter was listed for hearing on 01/06/15, petitioner's attorney provided a settlement demand of \$ 92,016.00 (reflecting stacked various % for various body parts) plus costs. Counsel informed petitioner's attorney that we would not consider any settlement that was over the hump, or 33 1/3% of partial total) counsel recommended that we resolve up to 27 1/2% of partial total of \$42,108.00 plus costs of \$8,422.00 for a total of \$ 50,530.00. Counsel has now reported all parties have agreed to resolving this case up to 27 1/2% of partial total.

Strategy/Action Plan: 1-Prepare updated PAR/SAR to be discussed at the next CCIC meeting for February/15 in order to obtain settlement authority,2-At next diary, pending on further developments will review and adjust the reserves to reflect potential case exposure

Financial Summary:	Indemnity	Medical	Legal	Other	Total
Paid:	\$1,699.00	\$10,099.00	\$3,736.00	\$6,677.00	\$22,211.00
Outstanding:	\$50,530.00	\$0.00	\$2,764.00	\$1,123.00	\$54,417.00
Total Incurred:	\$52,229.00	\$10,099.00	\$6,500.00	\$7,800.00	\$76,628.00

Reserve Rationale:

Indemnity reserve reflects TTD benefits from 04/10/12 through 04/28/12-2 5/7 wks. @ \$1,699.00

& 27 ½% of partial total or \$ 42,108.00 plus costs of \$8,422.00- \$ 50,530.00

Total Indemnity reserve-\$ 52,229.00

Medical reserve- \$10,099.00- reflects paid ER, Worknet, Ortho., Neuro. Visits, PT sessions, diagnostic tests medications, supplies

Expense reserve-\$6,677.00 reflects IME,FCE, medical costs

Legal-\$6,500.00 reflects ongoing litigation costs

Last committee meeting date and amount authorized: of 07/27/12- \$54,952.00

Payment authority requested up to: \$76,628.00 an increase of \$ 21,676.00

Prior Claims for this Claimant						
DOI	Body Part/Acc Desc	Claim Type	Status	Paid	Incurred	
2011-05-31	MULTIPLE BODY PARTS EE WAS WEED-WACKING AND TRIPPED AND FELL INTO HOLE,INJURY TO	I	C	\$40,392	\$42,752	
2010-07-26	LOWER LEGS EE WAS CUTTING GRASS AND BEES STARTED STINGING HIM	M	C	\$181	\$195	
2010-04-03	L BACK AREA(INC LUMB & LUMBO) THE ASPHALT FELL OFF THE BACK OF THE TRUCK ONTO THE GROUND	I	C	\$3,707	\$3,968	
2009-06-22	MULTIPLE BODY PARTS CROPWELL ROAD @ CHERRY HILL MULTIBPARTS/DERMATI	I	C	\$155	\$160	
2009-05-26	ELBOWS 2311 EGG HARBOR RD LINDENWOLD ELBOW/CONTUS/FALL L	I	C	\$797	\$842	
Claim Count: 5				45,232	47,916	



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January 26, 2015

Huguette Atherton
CompServices, Inc.
P.O. Box 817
Mt. Laurel, NJ 08054

VIA EMAIL ONLY

Re: Dennis Endicott v. Camden County
Our File No.: CAM005808
C.P. No.: 2012-13726
Claim No.: 630-112-615

Dear Huguette:

The above-captioned matter was listed before Judge Spevak in Camden, New Jersey on January 6, 2015 for a pre-trial conference. I appeared at that listing on your behalf and was able to discuss this matter with the petitioner's attorney, Marci Hill-Jordan, Esquire. Please note that this matter was ultimately adjourned by the court for a period of three (3) cycles for settlement negotiations. That means that the next listing should occur on **March 10, 2015**.

At this listing, Ms. Hill-Jordan provided me with a settlement demand for 20 percent of the right leg, plus 10 percent of partial total for the residuals of a concussion and tinnitus, and 15 percent of partial total for the cervical spine. At 2012 rates, the settlement demand amounts to 213 weeks of benefits payable at \$432.00 per week for a whopping \$92,016.00 plus the respondent's share of costs and fees.

I have advised Ms. Hill-Jordan that I would not consider any settlement demand that was over the "lump" or 180 weeks of benefits in this case since, in my opinion, the nature and extent of the petitioner's disability does not exceed 180 weeks. I am happy to report that after discussing this matter at length, I was able to convince her to significantly reduce her demand to 12 ½ percent of the statutory right leg, 7 ½ percent of partial total for the head, and 15 percent of partial total for the cervical spine, or 174.375 weeks of benefits payable at \$261.02 per week for a total of \$45,515.62. That figure is certainly much more realistic for the reasons set forth below.

By way of review, this file involves an admittedly compensable accident that occurred on April 9, 2012 when the petitioner, a 46-year old employee, sustained multiple injuries while using a chain saw to cut down a tree. The petitioner lost his balance and the tree struck him in the head and left shoulder, while the saw struck him in the left thigh. The petitioner was taken to Cooper University Hospital where he was examined in the emergency room and released. Follow-up treatment was authorized with WorkNet. The petitioner was out of work from April 10, 2012 to April 29, 2012 and returned to work on April 30, 2012. The petitioner received full wages and the County was reimbursed at the petitioner's temporary disability rate. The petitioner's average weekly wage is \$874.29 giving rise to a temporary disability rate of \$625.07 per week.

The medical records confirm that the petitioner was seen in the emergency room at Cooper on April 9, 2012 with a significant laceration to this thigh from a chainsaw. Thereafter, he was referred to Dr. Levy at Worknet who ordered a CT scan and MRI of the cervical spine. The MRI of the cervical spine was performed on June 2, 2012 and was read to show multi-level disc bulges at C3-C4, C4-C5, C5-C6, and C6-C7. An MRI of the brain also ordered by Dr. Levy was negative.

Thereafter, the petitioner was referred to Dr. Steven Kirshner, an orthopedic spine surgeon, on June 12, 2012. The petitioner told Dr. Kirshner that he was experiencing loss of hearing and ringing in his ears, as well as back, left groin, neck, and left arm pain. Dr. Kirshner diagnosed cervicalgia superimposed upon degenerative disc disease. An EMG dated June 27, 2012 documented low grade cervical radiculopathy.

On July 3, 2012, the petitioner was referred to a neurologist, Dr. Scott Sharetts. Dr. Sharetts did believe that the petitioner sustained a mild concussion without loss of consciousness as well as cervical and lumbar injuries without an obvious radicular component.

The petitioner returned to Dr. Kirshner on July 17, 2012 still having headaches, back pain, neck pain, and shoulder pain, as well as left arm pain and left leg and groin pain. The petitioner was advised to continue physical therapy.

On August 1, 2012, the petitioner was examined by Dr. Aftab at Advocare ENT Specialty Center. The petitioner's audiogram did confirm the presence of bilateral hearing loss. Dr. Aftab did discuss with the petitioner some strategies for dealing with the ringing in his ears (tinnitus).

The petitioner's attorney had the petitioner evaluated by Dr. Ralph G. Cataldo on February 25, 2013 and Dr. Russel Abrams, a neurologist, on September 10, 2014. I have attached copies of those reports for your file. As you can see, Dr. Cataldo has provided the petitioner with the following estimates of permanent disability:

- (1) 45 percent of partial total for the severe contusion to the head and scalp;
- (2) 45 percent of partial total for the orthopedic residuals of cervical disc bulges as noted on the MRI dated June 2, 2012;
- (3) 35 percent of partial total for a sprain and strain of the left shoulder;

- (4) 45 percent of the left leg for the residuals of a severe laceration of the left thigh; and
- (5) 5 percent of partial total for the cosmetic residuals of the disfiguring scar on the left thigh from the laceration

Dr. Russel Abrams provided the petitioner with the following estimate of neurologic disability:

- (1) 40 percent of partial total for multiple injuries including post-concussion syndrome and tinnitus.

As you know, we had the petitioner evaluated by Dr. Kenneth C. Peacock on September 19, 2013. Dr. Peacock provided us with an estimate of 1 percent of partial total for the cervical spine directly related to the work accident on April 9, 2012, as well as an estimate of 1 percent of the statutory left leg for the laceration directly related to the work accident on April 9, 2012. Dr. Peacock found no evidence of any disability with regard to the left shoulder, left arm, or head and scalp.

We also had the petitioner evaluated by Dr. I. Howard Levin, a neurologist, on September 11, 2014. Dr. Levin found no evidence of any residual neurologic disability.

Unfortunately, due to the concept of stacking each of the petitioner's injuries must be stacked (weeks are added from the same accident) in arriving at the petitioner's overall disability. In this case, I have been able to reduce the settlement demand significantly to 12 ½ percent of the statutory left leg, 7 ½ percent of partial total for the concussion and tinnitus, and 15 percent of partial total for the cervical spine. Due to the issue of stacking, however, the award amounts to 174.375 weeks of benefits payable at \$261.02 per week for a total of \$45,515.62. I have advised the petitioner's attorney that I would not consider paying anything for the contusion to the head and scalp and/or the sprain and strain of the left shoulder.

There is absolutely no question that the petitioner will receive an award of permanent disability benefits for both the cervical spine and left leg as even our expert, Dr. Peacock, did assign disability to both the cervical spine and left leg directly related to the accident on April 9, 2012. In light of the authorized MRI performed on June 2, 2012 which was read to show multi-level disc bulges at C3-C4, C4-C5, C5-C6, and C6-C7, I do believe that 15 percent of partial total is fair.

With regard to the laceration to the left leg, I did have the opportunity to view the petitioner's scar in court on July 1, 2014. There is no question that the accident did leave the petitioner with a significant scar as a result of being cut by the chainsaw. Again, since both experts have provided estimates of disability related to the accident on April 9, 2012, there is no question that the petitioner will receive an award for that injury as well. In my opinion, the negotiated value of 12 ½ percent of the leg is fair.

Finally, with regard to the claim for the concussion and tinnitus, the petitioner will be able to establish a diagnosis of a mild concussion based on the report from our authorized

January 26, 2015

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neurologist, Dr. Scott Sharets dated July 2, 2012, and a diagnosis of tinnitus based on the report from Dr. Aftab dated August 1, 2012. I have been able to negotiate this portion of the claim down to 7 ½ percent of partial total to include both the concussion and tinnitus.

I do not believe that the petitioner's attorney will accept anything less than an overall 27 ½ percent of partial total at 2012 rates, or 165 weeks of benefits payable at \$255.20 per week for a total of \$42,108.00. At 27 ½ percent of partial total, we would apportion the concussion and tinnitus to approximately 5 percent of partial total.

I do believe that this is the best that we will do short of a full trial. I have purposely not conferenced this case with Judge Spevak since I do believe that he will feel the present demand is reasonable and actually might place a higher value on this case especially if he is asked to view the petitioner's left leg scar.

Under the circumstances, my recommendation is to extend settlement authorization for 27 ½ percent of partial total apportioned approximately 12 ½ percent of the left leg, 15 percent of partial total for the cervical spine, and 5 percent for the concussion and tinnitus. We will pay nothing for the left shoulder and/or the alleged cosmetic disability to the head and scalp. You can be assured that I will attempt to further negotiate the value of this claim if possible but I am not optimistic that the petitioner's attorney will reduce her demand any further.

Of course, the other option is that we can proceed to trial and ask Judge Spevak to decide the nature and extent of permanent disability. As set forth above, I have avoided involving Judge Spevak due to the very real chance that his recommendation could be higher than the present demand.

Certainly, should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,
Pietras Saracino Smith & Meeks, LLP

Christopher J. Saracino

Christopher J. Saracino
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CJS/jdd

Enclosures

cc: Louis DiAngelo (via email)
Laura Paffenroth (via email)