

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
MIAMI-DADE DISTRICT OFFICE**

Josephine Cabrera	)	
	)	
Employee/Claimant,	)	
	)	
vs.	)	OJCC Case No. 11-25344 EDS
	)	
National Molding, LLC	)	Accident Date: September 17, 2010
	)	
Employer,	)	
	)	<b>JUDGE: E. Douglas Spangler</b>
and	)	
	)	
North River Insurance Company	)	
	)	
Carrier/Servicing Agent.	)	

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**FINAL COMPENSATION ORDER**

A Merit Hearing concerning pending petitions for benefits docketed on November 1, 2011; December 7, 2011; January 17, 2012; and, April 4, 2012 was conducted by the undersigned on July 23, 2012 by video teleconference. The undersigned presided over the proceedings from Fort Myers, Lee County, Florida. The claimant, her counsel, and counsel for the employer/carrier appeared in the video teleconference center at the Office of the Judges of Compensation Claims in Miami, Florida. Attorney Mark Touby represented the employee. Attorney Zal Linder represented the Employer/Carrier (E/C).

The claimant testified at the hearing. On July 20, 2012, in a telephonic pre-trial status conference, the parties requested that jurisdiction be reserved on the issue of permanent total disability. With the understanding that severing this issue from those other issues ripe for adjudication at the July 23, 2012 final hearing could result in any order rendered being a non-final order, the issues regarding a determination of the claimant's permanent total disability status were severed from the issues for trial and jurisdiction was reserved to adjudicate the permanent total disability claim at a later, yet to be determined, date. See *Hoffman v. Hall*, 817 So.2d 1057 (Fla. 1st DCA 2002). The

parties also stipulated, and it is a fact of this case, that the correct base average weekly wage is \$473.97 and the resulting compensation rates are: \$316.06, and 80/80 rate of \$303.34 respectively. The parties also stipulated that effective December 11, 2011 that the effective average weekly wage and compensation rate increased to \$546.27 and \$364.36 respectively. A complete list of the issues presented for hearing and the defenses being asserted are contained in Appendix I, attached to this order. A list of all documents and exhibits offered and/or admitted as evidence is contained in the Appendix II, attached to this Order.

After reviewing the testimony received at the Merits Hearing, the documentary evidence, and the written and oral arguments of counsel for the parties, I conclude that the claimant has not reached overall maximum medical improvement and that the E/C is responsible for providing joint replacement surgeries on the claimant's left hip and shoulder. The E/C is allowed to apportion 75% of the costs for future medical care due to the pre-existing underlying degenerative processes in the left hip and left shoulder. The E/C is not responsible for future care on the claimant's right knee. The claimant shall be allowed to return to authorized physician, Dr. Lang. The claimant is entitled to temporary partial disability benefits payable from November 12, 2010 to date as required by law. The E/C shall administratively calculate the amounts of TPD underpaid to the claimant to date considering that the E/C admitted to an underpayment of \$94.80, and the undersigned determined that the E/C improperly apportioned the amount of indemnity being paid to the claimant by reducing same by 20% from February 11, 2011 until September 21, 2011. However, the E/C shall be permitted to deduct the amounts overpaid to the claimant because the E/C erroneously utilized the incorrect compensation rate while making payments from February 11, 2011 to September 21, 2011; and, the E/C shall be permitted to offset amounts paid by the employer to the claimant in lump sum for vacation and sick leave. Finally, the E/C is responsible for the unpaid bill from IWP in the amount of \$1220.89. The claimant is entitled to prevailing party attorney's fees and costs.

The reasons for these conclusions follow:

## Background

1. Josephine Cabrera (claimant) is presently 63 years old and from 2002 until September, 17, 2010 was employed by National Molding, LLC (employer) as a machine operator. At approximately 7:55 a.m. on September 17, 2010, at the conclusion of her customary night shift, the claimant was injured as she walked toward the time clock and her (left) foot slipped on one of the small plastic molded pieces that lay on the floor. This caused her to lose her balance and fall hard to the floor onto her left side.
2. The claimant did not lose time from work or immediately report any injury from this fall. However, after a few days claimant reported increasing pain and difficulties; and, on October 4, 2010 she was evaluated at Concentra in Miami with chief complaints related to falling onto her right knee, left shoulder and, left hip. She was assessed as having a left shoulder strain; acromioclavicular (AC joint) strain; infraspinatus strain; left hip contusion; left hip strain; and, sprains in the hip and thigh. She was placed on restrictions.
3. The accident and injuries were accepted as compensable.
4. The claimant returned to this clinic every four to five days thereafter until November 5, 2010. By this date, the clinic's assessment had become left hip and shoulder contusions. The shoulder was evaluated as having an 80% improvement but only 40% improvement was noted in the hip and a referral to an orthopedic surgeon was initiated.
5. On November 9, 2010 the claimant was seen for the first time by Dr Elliot Lang, M.D., an orthopedic surgeon. He diagnosed left hip and shoulder strains and contusions. Claimant presented Dr. Lang with x-rays taken on October 18, 2010 which according to Dr. Lang showed degenerative changes in the left hip which he determined to be within normal limits and deformities in the humeral head (left shoulder) which were described as chronic and preexistent to the accident. Despite these findings, most of the claimant's complaints were emanating from the hip and a MRI of the left hip was ordered. Two weeks later, on November 23, 2010, claimant reported using a cane for ambulation and stated that she could no

longer do her work duties and was no longer working. Newly obtained x-rays revealed what was interpreted as “severe” arthritis in the left hip, and, the overall appearance of the hip was described as being somewhat worse than the x-rays taken in October. On December 7, 2010, the MRI was described as poor quality but, according to Dr. Lang, seemed to be consistent with the x-ray findings and, pain management for the left hip was recommended.

6. Dr. Andre Hobbs, M.D., a board certified pain management physician, assumed the care for the claimant on December 22, 2010. The chief complaints on that date were left shoulder and left hip discomfort. Based on the lengthy and thorough report of the evaluation conducted that date it is found that Dr. Hobbs noted that some of the MRI findings regarding the left hip to be secondary to trauma, and that there were degenerative findings. His working diagnoses were: Left hip synovitis; left greater and lesser trochanteric bursitis; myofascial pain syndrome; and, left shoulder pain/sprain. A diagnostic MRI for the left shoulder was ordered. Treatment in the form of medications: Oxaproxin with Omperazole, and, Skelaxin was provided. By January 25, 2011 the MRI on the left shoulder had been completed and Dr. Hobbs noted, based on the report from the radiologist, that degenerative changes in the humeral head were evident, and other findings were noted. His diagnoses expanded to include: left hip synovitis; left greater and lesser trochanteric bursitis; myofascial pain syndrome; left rotator cuff disease, left bicipital tendinitis; and left glenohumeral joint effusion. The same pain medications and physical therapy were continued. On April 20, 2011, Dr. Hobbs injected the claimant’s left hip with a solution containing various percentages of Lidocaine without epinephrine, Marcaine without epinephrine, and depomedrol. Three sets of these injections were done in the left hip. Similar injections, a set of two, were done in the shoulder. By July 20, 2011, Dr. Hobbs determined that some, but not complete, relief had been achieved in the shoulder and the hip. He noted that the shoulder was the most painful at that point in time. He attributed the hip pain to synovitis or bursitis, and continued the same diagnoses for the shoulder as previously indicated. He determined that the claimant had achieved maximum medical improvement (MMI) from a pain management perspective and

returned the claimant to Dr. Lang for further evaluation. He recommended a further follow up with him four weeks, or after the orthopedic evaluation. He continued the current regimen of pain medications, as listed above. After MMI, claimant was again seen, evaluated, and treated by Dr. Hobbs, for the last time on October 14, 2011. This was an authorized visit and was paid for by the E/C. No material changes occurred in the findings or opinions in this visit, but significantly Dr. Hobbs again refilled the ongoing regimen of the same pain medications.

7. Following this, Dr. Lang saw the claimant again in three office visits: August 23, 2011, September 14, 2011 and finally on November 9, 2011 when he declared the claimant to have achieved MMI and assigned a 5% permanent impairment rating based on the 1996 Florida Guidelines to the Evaluation of Permanent Impairment. By November 9, 2011, Dr. Lang's diagnosis notations changed from "synovitis in the left hip, and sprain/strain with respect to the left shoulder" (see the August 23, 2011 note); to "arthritis of the left hip and left shoulder...[with ] secondary diagnosis of exacerbation of preexistent osteoarthritis with, now, complaints of discomfort with respect to same" (see note dated September 14, 2011); and, finally, "aseptic necrosis and osteoarthritis with respect to the left hip and left shoulder region both preexistent from the date of the 9/17/2010", on November 9, 2011. In the concluding November 9 office note, Dr. Lang stated that the claimant was having discomfort with respect to the preexistent arthritis and needed "surgical intervention".
8. The claimant retained and was evaluated by Dr. Joseph Fernandez, M.D. a well qualified orthopedic surgeon for her IME which was completed on March 28, 2012. The evaluation involved assessment of the left shoulder, left hip and right knee. Based on this examination his assessment was, regarding the left shoulder: loss of range of motion with pain and weakness with findings of osteoarthritis, symptomatic subsequent to the industrial accident; and, regarding the left hip: osteoarthritis with pain subsequent to the accident; and, regarding the right knee: mild to moderate degenerative changes with pain since the industrial accident. He determined, based in part on the history provided to him by the claimant, that she

developed significant functional defects with accompanying pain after the accident which he attributed to the accident because, while there was evidence of pre-existing osteoarthritis in each of the affected joints, the claimant had exhibited no symptoms and had not received medical attention regarding that condition before that accident. He stated, "...the reason for [her] constant pain... is the accident of September 17, 2010." In deposition, while acknowledging the existence of significant osteoarthritis, especially in the left hip and left shoulder prior to the accident, he attributed the development and continuation of pain in the joints after the accident to "rebound pain". According to Dr. Fernandez "rebound pain" is a process where before the accident the claimant was active and in motion and able to cope with the arthritis; but, because of the fall inactivity, increased swelling, and discomfort resulted which became difficult to overcome. He stated that the claimant was not at maximum medical improvement, that she was incapable of any work activity, and in the future would require total joint replacements of all three joints he evaluated, although this recommendation was not necessarily a current recommendation. He opined that the major contributing cause of this need for future treatment, and her disability, was the pain resulting directly from the industrial accident. He testified that the underlying arthritic condition could be contributing from 10-30% of the need for the treatment he was recommending.

9. The Employer/Carrier retained Dr. Philip Lozman, M.D., a well qualified orthopedic surgeon, as an expert to perform an examination on the claimant. The examination occurred on June 14, 2012. After the examination and a review of pertinent medical records, Dr. Lozman's conclusion was that the claimant sustained contusions to the right knee, left hip and left shoulder in the industrial accident on September 17, 2010 and that maximum medical improvement was probably reached for those injuries within 60 days after the accident. It is Dr. Lozman's opinions that it is the pre-existing arthritic conditions involving the injured joints that have caused ongoing medical care to be provided to the injured areas, and that those preexisting conditions constitute the major contributing cause of the medical necessity for any further treatment, including joint

replacements. He considered joint replacements to be a reasonable future treatment option based on the degree of arthritic involvement in the joints. He stated that the injuries the claimant sustained in the industrial accident contributed at most 1% to the need for joint replacement surgery. However, Dr. Lozman also agreed that joint replacement surgery is intended to alleviate symptoms, the most prominent of which is pain and, he admitted in response to a hypothetical question that, if the claimant had presented to him with the degree of arthritic involvement now evident, but was not expressing any symptoms (which Dr. Lozman agreed was a medical possibility) then he would not recommend joint replacement surgery. From this testimony the undersigned finds that Dr. Lozman agrees that it is not the degree of the underlying pathology that determines the need for joint replacement surgery, but the degree of the symptoms arising from those conditions that determine the efficacy of joint replacement surgery.

10. When Dr. Lang provided his deposition on May 2, 2012 Dr. Lang also clarified that he defined the injuries received in the fall on September 17, 2010 as contusions and sprains, primarily to the left hip and left shoulder. He did not provide any treatment to the right knee. While his primary diagnosis was as stated above, he also added a secondary diagnosis of exacerbation of pre-existing arthritis with complaints of discomfort resulting from the accident. The major contributing cause of the treatment he provided to claimant's left hip and left shoulder was the combination of the injuries sustained by the claimant in the September 17, 2010 accident and the pre-existing underlying pathology. He recommended pain management to treat those complaints of discomfort. The E/C authorized the treatment he was providing and the pain management. After assigning MMI as of November 9, 2011, Dr. Lang clearly believed that greater than 51% of the need for further care and treatment for the left hip and shoulder is the underlying arthritic conditions. He stated that joint replacement surgeries in each joint affected was reasonable and apportioned 75% of the reason for the recommended surgeries to the pre-existing pathologies and the remaining 25% to the effects of the compensable accident. However, Dr. Lang found the arthritis progressively worsened after the accident. He concluded that joint replacements

primarily are the result of the pain and would eliminate the causes of the pain which is the primary reason for performing the surgery. He stated that if the claimant had the same degree of degenerative findings, but with no pain, then joint replacement surgeries would not be required.

11. Claimant was paid TPD by the carrier commencing November 12, 2010 until September 21, 2011 which the E/C stated was the MMI date based on Dr. Lang. The E/C on February 11, 2011 also began taking a 20% "offset" from the TPD payments based on an opinion allegedly from Dr. Lang that 20% of the medical condition causing need for treatment, and disability was related to the pre-existing arthritic condition. The E/C conceded that a portion of the amounts paid by the E/C were in error to the claimant's favor: \$90.18 for periods ending 10/24/2010 and 10/31/2010 and for \$.37/week for twelve weeks (\$4.44) when the amount paid was less than the correct amount or a total of 94.80.<sup>1</sup>

### **Discussion and Conclusions**

#### **Left Shoulder/Left Hip Replacement surgery**

The undersigned accepts the opinions and rationale of Dr. Lang and Dr. Fernandez which when combined provide competent medical evidence of the compensability of the joint replacement surgeries in the left hip and left shoulder. Dr. Lozman's opinions are inconsistent with the facts. While there is no dispute that the claimant had significant pre-existing degenerative pathology in her left hip and left shoulder before September 17, 2010, the claimant had no symptoms. Thereafter, she developed significant and debilitating pain. Dr. Lang also chronicles that the degree of

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<sup>1</sup> These facts and amounts are not contested and the circumstances are explained in the memoranda from the parties. The parties stipulated payroll records and E/C payment records into evidence, and no other testimony explaining the payments of indemnity made, or not made, was provided. The total amounts of indemnity paid to the claimant are challenged by the claimant primarily based on issues of law. The E/C demands a determination of entitlement to additional offsets based on an allegation that effective February 11, 2011 the E/C incorrectly overpaid the claimant based on an erroneous base compensation rate, and that the E/C paid indemnity to the claimant contemporaneous with when the claimant also received lump sum settlement of vacation and sick pay from the employer, again, primarily as a matter of law.

the underlying degenerative processes worsened after the accident. Dr. Fernandez' explanation of "rebound pain" presents a logical explanation of how the effects the injury sustained on September 17, 2010 affected the underlying pathology and why the two events, the accident and the exacerbation, combined to lead to the need for the replacement surgeries. Dr. Lozman's opinions are inconsistent with the actual facts in that they disregard the temporal relationship of pain in the hip and shoulder and the accident; and do not adequately deal with the development of and degree of pain the claimant has experienced since the accident in conjunction with the findings suggesting the pre-existing conditions were worsening.

#### Right Knee Replacement

Only Dr. Fernandez testified concerning the right knee replacement and his opinion on this point is inconsistent with the actual facts. He assumed, mistakenly, that the claimant had continuous and temporally related pain in the right knee from the date of accident until he evaluated the claimant, and that may well be what the claimant told him. However, this assertion is not corroborated by the actual medical evidence which reveals that the claimant did fall on her right knee, but before the claimant was referred from Concentra to Dr. Lang for orthopedic care in the first month or so following the accident, the complaints in the right knee abated sufficiently that there was no longer any recorded complaint or treatment being directed to the right knee. Neither Dr. Lang nor Dr. Hobbs evaluated or treated the right knee. It was on March 28, 2012 when, based on the history provided by the claimant, Dr. Fernandez stated that there was a temporal and continuous relationship of the September 17, 2010 accident and the pain complaints in claimant's right knee. As indicated, this is not corroborated in the medical records. The lack of competent medical documentation in the actual treatment records of continuous pain and treatment regarding the right knee from the date of accident until the IME evaluation indicates that Dr. Fernandez relied upon an erroneous assumption of fact when he stated that the accident on September 17, 2010 was the major contribution cause of the necessity for total knee replacement he was recommending. The undersigned rejects Dr. Fernandez' opinions regarding the right knee and finds that the claimant's right knee

condition is not presently causally related to the industrial accident.

#### Maximum Medical Improvement

The claimant is not at maximum medical improvement regarding the left hip and left shoulder. Because the claimant did not receive active on going treatment regarding the right knee after the initial first few office visits at Concentra, the right knee is deemed to be at Maximum Medical Improvement regarding any injury sustained to that knee in the September 17, 2010 accident.

#### Authorization of Dr. Lang

Based on the above disposition, the claimant should be allowed to return to Dr. Lang, the authorized treating orthopedic surgeon, for an evaluation and determination of his opinion on performing the replacement surgeries authorized by this order.

#### Apportionment of medical treatment

Pursuant to Section 440.15 (5)(b), Florida Statutes, medical benefits shall be paid apportioning out the percentage of the need for treatment attributable to the pre-existing condition. In this case, the undersigned relies on Dr. Lang's opinion, as the treating orthopedic surgeon, that 75% of the present need for the replacement surgeries is the result of the pre-existing conditions in both the left shoulder and the left hip over the opinions of the two experts retained by the parties. The undersigned accepts Dr. Lang's definition of the actual injury sustained in the accident as being contusions and sprains to the left hip and left shoulder, with a secondary diagnosis of exacerbation of the preexisting arthritis resulting from the accident, to be most consistent with the actual treatment provided to the claimant. The E/C is entitled to apportion 75% of medical care to the left hip and shoulder.

#### Temporary indemnity benefits

### Temporary Total

The claimant argued that Dr. Fernandez testified that the claimant was temporarily and totally disabled in the deposition he provided, and is entitled to TTD benefits from the date of the deposition forward. The undersigned disagrees. The question and answer (p. 14, L 7-9) is couched in vocational and not medical terms. The doctor stated, "I do not think she could be involved with any gainful employment". This is an opinion beyond the expertise of the physician without any sufficient factual predicate, is not competent, and is not a medical opinion.

### Temporary Partial

The particulars of the arguments surrounding this issue were not well developed by the parties: Claimant began receiving temporary partial benefits November 12, 2010 and that classification of benefits continued to be paid to the claimant through September 21, 2011, when the E/C determined MMI had been reached. The memorandum filed by the E/C alleges a letter or some documentation justifying that conclusion. However, there is nothing contained in the stipulated medical composite of records received from Dr. Lang that supports the conclusion that MMI was reached on that date. To the contrary, the records and the deposition from Dr. Lang support that MMI was reported as being reached by Dr. Lang on November 9, 2011.

Based on the conclusions reached by the undersigned regarding the medical issues, MMI has not, in fact, been reached and claimant is entitled to a continuation of TPD benefits (the classification she was receiving before suspension by the E/C) as required by law from September 22, 2011 forward.

As indicated above, the E/C has stipulated that a small adjustment in favor of the claimant totaling \$94.80 is due to the claimant for benefits paid already up to September 21, 2011. The claimant however is challenging the amounts paid after February 11, 2011 which the E/C admitted were reduced from the amount otherwise being utilized by the E/C by 20% to reflect an apportionment occasioned by an alleged determination made by Dr. Lang, expressed in a letter from Dr. Lang, to the effect that 20% of the claimant's condition was from the pre-existing arthritic conditions. Unfortunately for the E/C, the undersigned was unable to locate any such letter from Dr. Lang in either composite of Dr.

Lang's records stipulated by the parties into evidence. However, even if found, the letter is irrelevant. Section 440.15 (5)(b) applies when, as in this case, a compensable injury, disability, or need for medical care is the result of aggravation or acceleration of a preexisting condition, or a merger with a preexisting condition. In such cases the statute sets rules for how disability and medical benefits are to be paid by the E/C. The rules are different.<sup>2</sup> In the case of disability, disability attributable to the accident or injury shall be compensated apportioning out the preexisting condition **based on the anatomical impairment rating attributable to the preexisting condition**. Case law interpreting this section has been very clear in indicating that in order for the E/C to justify the apportionment of disability payable to the claimant, some competent evidence of the degree of impairment attributable to the preexisting condition must exist. If no such impairment existed before the compensable accident, there is no apportionment of disability benefits payable to the claimant. Such is the case here, where the evidence is clear that although the claimant had significant preexisting pathology, there is not any indication of disability or impairment before the accident. Therefore, the E/C had no justification for taking a 20% "offset" against the temporary partial benefits being paid to the claimant between February 11, 2011 and September 21, 2011. TPD during this period should have been paid at the correct rate, stipulated to be \$303.34

#### Determination of over payments

The E/C argued that between February 11, 2011 and September 21, 2011 the E/C erroneously made payment using as a basis the TTD rate and not the appropriate TPD rate. The E/C admits that during this period the E/C was also applying a 20% offset. The E/C contends that using the wrong base rate, resulted in an overpayment of benefits totaling \$323.52. The undersigned agrees that the E/C should be allowed to recapture the amounts over paid by it during the initial payment of these benefits because it inadvertently utilized the wrong base rate in making the payments.

The E/C also argued that the claimant received lump sum payments from the employer of both unused sick leave and vacation pay while she was receiving TPD

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<sup>2</sup> See section on apportionment of medical treatment section, supra, for application of the statute to medical benefits.

benefits. The E/C argues that these two payments were made to the claimant separately on January 2, 2011 and July 10, 2011 when the claimant was receiving TPD benefits and that the claimant therefore received in excess of 100% of her average weekly wage during these periods, and the E/C is entitled to an offset totaling \$471.21 for these two periods. The undersigned agrees that the E/C is allowed to offset the amounts paid by the employer as stated above. See specifically *McDade v. Palm Beach County School District, etc.*, 898 So.2d 126 (Fla. 1<sup>st</sup> DCA 2005).

Payment of IWP bill in amount of \$1,220.89

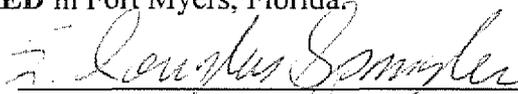
On October 14, 2011 the E/C authorized the claimant to return to Dr. Hobbs for the last time. During this visit Dr. Hobbs renewed the same medications he had been providing to the claimant and the claimant refilled those prescriptions with Injured Worker's Pharmacy (IWP) at a cost of 1, 220.89. The E/C has denied responsibility for these costs arguing that the claimant was at MMI. However, as stated in this order, Dr. Lang testified that MMI was reached according to him as of November 9, 2011 and for the reasons stated above the undersigned has found that overall MMI has not yet been achieved. In addition the pain management being provided by Dr. Hobbs was palliative. The E/C is responsible for these pharmacy charges notably because the E/C authorized and paid for Dr. Hobbs to evaluate and treat the claimant on October 14, 2011.

**WHEREFORE it is Ordered and Adjudged:**

1. The claimant has not reached overall Maximum Medical Improvement regarding the left hip and left shoulder.
2. Joint replacement surgery for the left shoulder and left hip shall be authorized.
3. Joint replacement surgery for the right knee is denied.
4. The E/C is entitled to apportion 75% of the treatment to the claimant's left shoulder and left hip.
5. Dr. Lang shall be authorized to evaluate and provide the treatment authorized by this Order.
6. The demand for temporary total disability benefits is denied.

7. Claimant is entitled to TPD benefits paid at the correct rate from November 12, 2010 to date, as required by law. The parties shall calculate the amounts to be paid to the claimant administratively, taking into consideration the holdings as stated above, to wit: The E/C shall include the amounts under paid to claimant from November 12, 2010 through September 21, 2011 per its stipulation (\$94.80), and resulting from erroneously taking a 20% offset from February 11, 2011 through September 21, 2011. The E/C is entitled to reduce the amounts by the overpayments made resulting from erroneously using the TTD rate between the dates of February 11, 2011 through September 21, 2011, and to take into consideration the lump sum payment made by the employer to the claimant for sick leave and vacation pay. Any amount calculated that constitutes a net underpayment to the claimant shall be paid to the claimant in lump sum together with appropriate penalties and interest.
8. The E/C is not entitled to apportion the indemnity payments made or to be made to the claimant.
9. The E/C shall pay the IWP bill in the amount of \$1,220.89.
10. The claimant is entitled to attorney's fees and prevailing party costs resulting from the award of benefits in this Order and jurisdiction is reserved by the undersigned for a determination of the appropriate amounts.

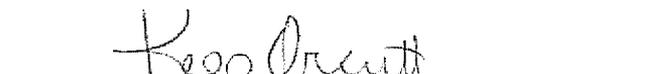
**DONE AND ENTERED** in Fort Myers, Florida.

  
E. Douglas Spangler, Jr.  
Judge of Compensation Claims



**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that the foregoing Order was entered and a true copy furnished to the parties and their counsel on the 5<sup>th</sup> day of September, 2012.

  
District Deputy Clerk

## APPENDIX I-Issues and Defenses

### ISSUES

1. Temporary total disability from the date of accident to date, as required by law.
2. Temporary partial disability from the date of accident to date, as required by law.
3. Authorization of joint replacement surgery to the right knee, left hip, and left shoulder.
4. Authorization of follow up care with Dr. Lang, M.D.
5. Payment of \$1220.89 to IWP for prescriptions authorized by Dr. Hobbs, M.D.
6. Penalties, interest, costs, and attorney's fees.

### DEFENSES

1. All indemnity paid to date, paid correctly.
2. No temporary disability benefits are due.
3. The major contributing cause of the claimant's present need for treatment is not the September 17, 2010 industrial accident.
4. The industrial accident is not the major contributing cause of the recommended joint replacement surgeries.
5. All authorized medical care has been provided.
6. The prescriptions provided by IWP were not authorized.
7. The temporary disability benefits are subject to apportionment.
8. The claimant has been overpaid disability payments in all payments made since February 11, 2011.
9. The E/C is entitled to offset temporary benefits due to the employer paying the claimant for vacation and sick leave in a lump sum while the claimant received temporary benefits.
10. All medical care should be apportioned consistent with the opinions of Dr. Lang and Dr. Lozman.
11. No penalties, interest, costs or attorney's fees will be due.

## APPENDIX II-List of Documents and Exhibits

### CLAIMANT'S EXHIBITS

1. Medical composite: records from Concentra Medical; Dr. Lang, M.D.; Dr. Hobbs, M.D.; and, Riveria diagnostic Center.
2. Deposition of Dr. Joseph Fernandez, M.D. dated May 2, 2012.
3. Composite: E/C payout records; employer payroll records; IWP reimbursement worksheet.

### EMPLOYER/CARRIER EXHIBITS

1. Deposition of Dr. Philip Lozman, M.D. dated July 12, 2012.
2. Deposition of Josephine Cabrera dated January 12, 2012.
3. DWC-19 exhibit, composite.

### JOINT EXHIBITS

1. Deposition of Dr. Elliot Lang, M.D. dated May 2, 2012.
2. Deposition of Dr. Andre Hobbs, M.D. dated April 20, 2012.

### JCC EXHIBITS

1. Composite: All pending petitions for benefits; Mediation reports; Pre-trial stipulations; Pre-Trial Order and Notice of Final Hearing.