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8 Arbitrator

9 **IN THE MATTER OF THE BINDING ARBITRATION**

10 **BETWEEN**

11 **Claimant,**
12 **vs.**

13 **) AWARD OF ARBITRATOR**
14 **) Judicate West Case No. A191958-3**
15 **) No. 12403**

16 **and**

17 **Respondents.**

18
19 This arbitration came on for hearing on January 9, 2015 at the Office of Judicate West in Los
20 Angeles. The arbitrator was Robert M. Bennett, Esq. Esq. from represented
21 the Plaintiffs. Esq. of et al, represented Defendant. The arbitration
22 concluded after a second day of Defense witnesses and cross examination on January 12, 2015.

23 I commend the attorneys on the professionalism and succinct presentation of this case. After
24 reviewing the evidence and documents submitted I hereby render my decision.

25 This case arose from a fall incident at the Medical office on March 17,
26 2012 at approximately 10:15 AM.

27 Plaintiffs argue that the fault for the accident rest with the Defendant, and the Defendant asserts
28 that the fall was caused by Plaintiff's own negligence or inattention. The parties stipulated to the

1 admission of all evidentiary documents, including several sets of photographs depicting the scene, as
2 well as diagrams later provided by defense expert Mechanical Engineer.

3 **REGARDING LIABILITY:**

4 The law imposes a duty of due care to the owner and operator of a business entity, as well as the
5 duty to provide safe premises to employees and invitees. The evidence as presented and reviewed
6 demonstrated a higher duty to any business to prevent injury to invitees when there exists inclement
7 weather which could pose a hazard either inside, or in areas immediately adjacent to, the premises of the
8 business. Testimony offered by the Plaintiff and her witness, Mr. tended to support the existence
9 of heavy rain on the morning of the loss. Also Defendant's witness, the on duty nurse
10 testified it was raining "very hard" that morning since roughly her arrival at 7:30 AM.

11 Nurse also testified there were no cones, no warnings *and just one mat on the floor*,
12 which became an important point after the testimony of for the defense that two mats were
13 likely needed for walk off of the water. Expert also tended to limit the importance of run off from
14 rain coats and umbrellas inside the facility, point made by Nurse when discussing the
15 paramedic team and the cleanup efforts immediately after the fall. The overall evidence weighed more
16 heavily in favor of liability being found on the Defendant; testimony regarding the flooring by Mr.

17 was inadmissible. Regarding the issue of comparative negligence on the Plaintiff, there was
18 clearly testimony that Mrs. was not using the handrail and in fact she testified herself that she
19 "lost her balance" and reached for the railing unsuccessfully. Although evidence regarding her footwear
20 and the likely coefficient of friction was lacking, any slight amount of water could have caused a
21 slippery condition on the top step of the second flight of stairs and the lack of extra mats, mopping by
22 staff, or warning signs for a slippery condition places the majority of liability on

23 Significant studies have shown handrails, and their use, reduce slip or trip and fall injuries
24 significantly and was well within code requirements by using non skid flooring materials and
25 placing handrails on *both* sides of the stairs. In her line of work, Mrs. was likely trained in safety
26 procedures, and common sense would also require use of the railings. It is for this reason that Mrs.

1 is found 20% negligent for her loss. (Testimony from Nurse of new inclement weather
2 procedures since this incident were not considered in any analysis of liability)

3 **REGARDING DAMAGES:**

4 The testimony of Mrs. and the medical evidence and records, including X Rays
5 submitted, supported the existence of the injury which was a clean break mid shaft fracture of the left
6 humerus. The Plaintiffs did not sustain their burden of proof for future medicals, or future pain and
7 suffering related to this incident.

8 There was no Loss of Earnings Claim of . There were no outstanding Medical
9 Special Damages presented for recovery by . In closing argument Plaintiff's counsel
10 argued for an award of \$50,000 for the fracture and \$182, 000 for future pain and suffering. Defense
11 counsel argued that there was no liability on Defendant for this loss and for a zero award.

12 **AWARD:**

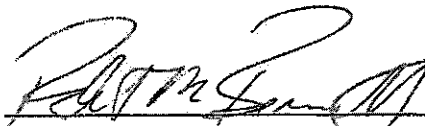
13
14 The total general damages for this injury based on 100% of the negligence assessed to the
15 Defendant would be \$90,000. Reduced by the comparative negligence of 20% assessed to Plaintiff for a
16 total award of \$72,000.00.

17 Each side shall bear its own costs and attorneys fees and ancillary expenses of litigation.

18
19 **Nothing in this arbitration award and decision prohibits or restricts the enrollee from discussing**
20 **or reporting the underlying facts, results, terms, and conditions of this decision to the Department**
21 **of Managed Health Care.**

22
23 Accordingly, Judgment rendered for the Plaintiffs as outlined above. All other issues are
24 rendered moot by the above finding

25
26 Dated: January 26, 2015

27 By: 
Robert M. Bennett, Esq.
Arbitrator