



1 This action arises from an accident in which claimant fell at the facility in  
2 on November 12, 2012. Claimant was using a walker when she used the  
3 ladies' room on the 6<sup>th</sup> floor of a new hospital building. The hospital building was opened to the  
4 public in August 2012. The new hospital building is adjacent and connected to a medical office  
5 building in which her physician's office was located. As she was exiting the restroom, she fell  
6 and injured herself. She claims the fall caused injury to her right arm.

7  
8 Claimant contends that her fall was caused by negligent installation and  
9 maintenance of the door, and that she suffered a serious injury.

10  
11 disputes much of Ms. claim, and certainly that it was negligent in any way  
12 in connection with the door. disputes about events after the fall include the fact that  
13 Ms. initially complained about falling on her left side, and experiencing pain on that side  
14 of her body. Only some time after the fall on November 12, 2012, did she complain to  
15 about pain on her right side. Moreover, Ms. suffered a number of falls before and after the  
16 fall on November 12, 2012.

17  
18 It is not disputed that the treatment of her right arm was long and difficult. Prior to the  
19 fall she had suffered a small fracture of the large bone in her right arm, the ulna. That fracture  
20 appeared to be in the process of healing, from an x-ray taken a few days after her fall. However,  
21 a subsequent x-ray showed the bone to have moved out of alignment.

22  
23 Ms. at first was treated with a cast. Shortly thereafter she asked that the cast be  
24 removed and her arm was placed in a splint. Ms. underwent multiple unsuccessful  
25 surgeries in the effort to repair her radius bone. At a later point, in August 2015, Ms.  
26 suffered a fracture of the other major bone in her right arm, the ulna. Ms. contends this  
27 surgery was an indirect result of the fall in November 2012. Ms. ultimately had seven  
28 surgeries on her right arm. The last surgery removed all the metal implanted in her arm.

1 Following that surgery the arm appeared to heal.

2  
3           takes the position that at least some of the failures of surgery and need for  
4 additional surgery were due to Ms.           failure to cooperate in her treatment and failure to  
5 comply with medical advice. Most particularly,           points to her self-discharge, against  
6 medical advice, from a post-surgery facility in which she was being given intravenous  
7 administration of antibiotics. In the view of the           physicians, such administration was  
8 necessary for antibiotics to be effective against infections deep in bone tissue. In addition, the  
9 defense argues that, again against medical advice, she placed weight on her arm.

10  
11           Ms.           urges that           knew well that she would have difficulty fully complying  
12 with medical advice because her physicians knew that she had suffered serious permanent brain  
13 damage in a car accident in 1989.

14  
15           Finally, Ms.           contends that her damage goes far beyond the treatment of her  
16 injuries. She has virtually lost her independence. She now lives in an assisted living facility.  
17 She no longer drives or participates in outdoor activities.

18  
19 Functioning of the Door

20  
21           The exact mechanism of Ms.           fall is uncertain. She testified that she held her  
22 walker with her left hand and held onto the door handle with her right. This positioning seems  
23 unlikely. For one matter, Ms.           is left-handed. The walker would have had to have been  
24 placed to the right of the door to allow the door to open. It makes no sense for her to have  
25 crossed over her arm to open the door. Moreover, we know Ms.           account is inherently  
26 questionable because her memory is extremely poor and she suffered from serious permanent  
27 brain damage from a car accident several years earlier.

28

1 It appears to the arbitrator most likely that she held onto the walker with her right hand,  
2 and the door handle with her left hand. In this position it appears to the arbitrator that the force  
3 of the door closing, combined with her weakness, may have pulled her to the floor.  
4

#### 5 ADA Compliance 6

7 The parties are in dispute as to whether the door was in compliance with the requirements  
8 of the Americans With Disabilities Act ("ADA") and related requirements. That is, hospitals and  
9 medical facilities are required to meet a number of separate government and non-government  
10 standards and specifications. However, regarding door closures, such requirements are  
11 substantially the same as the ADA requirements.  
12

13 The ADA requirements are, in some instances, clear and easy to understand. For  
14 example, the force required to open a door should not exceed 8 pounds. In other circumstances  
15 the requirements are more vague, hard to understand, and difficult to apply. In this case, an  
16 applicable requirement falls in this category. Specifically, the question is the closing speed of the  
17 door. More precisely, the question is the closing speed of the door before the door reaches the  
18 "latching" phase of closing, and the point at which the latching phase commences. That is, in  
19 proper operation, when a door is released by a person entering or exiting, the door first closes at a  
20 closing speed until it reaches a point at which it switches to a latching speed sufficient to insure  
21 that the door will close and latch. The ADA requirement is that the time required to move the  
22 door from an open position of 90 degrees to a position of 12 degrees from the latch is 5 seconds  
23 minimum.  
24

25 The experts for the parties were in disagreement about virtually all elements of the ADA  
26 requirement. Claimant presented the expert opinion of respondent  
27 Both are well-qualified experts. They agreed upon the standard set by the ADA rules for the  
28 force to open and close the door. However, they were in disagreement about the proper method



1 of testing such forces, and whether the door met the ADA requirement when properly tested.  
2 The representative of the door installer agreed with expert about whether the door met  
3 this requirement. In the arbitrator's view, this aspect of the rule is of less significance in this  
4 case.

5  
6 The question of focus for the arbitrator is whether the door was closing too rapidly, and  
7 thereby exerting too much force on Ms. hand or leg as she was trying to leave the  
8 restroom. The exact mechanism of the fall is not clear, but, in the arbitrator's view, the most  
9 likely mechanism had to do with the speed and force of the closing door.

10  
11 Neither expert testified in terms of the number of degrees before the latching process  
12 kicked in. Rather, they testified in terms of inches from the door frame. In any event the experts  
13 testified in terms of the latching speed kicking in properly at perhaps 3.6 inches or so from the  
14 frame that the closing speed should have kicked in. However, the videos taken by both sides  
15 showed that the latching process kicked in when the door was more than one full tile width away  
16 from the frame, perhaps 10-12 inches.

17  
18 Claimant's expert expressed the opinion that setting or permitting the door to accelerate  
19 its closing speed at such a distance from the frame is a violation of ADA standards.  
20 expert disagreed. takes the position that the literal ADA rule is not applicable because  
21 Ms. testified she did not open the door a full 90 degrees, but opened it only a foot or two.

22  
23 On balance, the arbitrator is persuaded that the speed of the door at a point perhaps 12  
24 inches away from the frame was excessive and not compliant with ADA requirements. By using  
25 the legal standard of claimant's burden as proof by a preponderance of the evidence, the  
26 arbitrator concludes that claimant has shown that her fall was caused by improper functioning of  
27 the door.

1 Negligence

2

3 Was negligent? This question may be the most perplexing question in this  
4 arbitration. clearly took reasonable steps to cause all the doors at its facility with closers  
5 to operate safely. The facility had recently been constructed and opened to the public only a  
6 couple of months before Ms. accident. hired competent, experienced  
7 professionals, who followed protocols in testing the doors. It observed tests by a variety of  
8 public agencies on numerous aspects of the facility including the operation of the doors.  
9

10 On the other hand, knew that the restroom doors would be used by highly  
11 vulnerable individuals, people of advanced age, people with physical disabilities, weak muscles  
12 or limbs, and by definition people who were at because of some illness or injury that  
13 impaired their normal functioning. Most importantly, it is not at all clear that any of the  
14 evaluations of the door included measurements or observations of the door's closing speed 10  
15 inches from latching. The arbitrator's ultimate conclusion is that was negligent in  
16 evaluating this door's closing specifications. The question is, in the context of the vulnerability  
17 of the population using the facility, was performance sufficient.  
18

19 The arbitrator's answer is that is liable for the improper operation of the door.  
20

21 Surgical History

22

23 Ms. suffered a very complicated series of surgical procedures and complications.  
24

25 Her first surgery, on January 7, 2014, just over a year after her fall, was largely for  
26 debridement of the wound, resection of infected bone, placement of antibiotic beads, and external  
27 fixation of her broken bone.  
28

1 Two months later, on March 12, 2014, she had surgery for internal fixation of her bone.  
2 Following this surgery she had her first placement at the supervised nursing  
3 facility. A major reason for her placement at the facility was to permit her to  
4 receive a 6-week course of IV antibiotics. The administration of a long course of IV antibiotic  
5 treatment is to treat effectively bacterial infections deep in bone tissue. On February 19, 2014,  
6 she was discharged from after completing such a course.

7  
8 Unfortunately, on May 9, 2014, less than two months later, she underwent surgery due to  
9 breakage of hardware. She was again discharged to but this time she declined  
10 to stay for the course of IV antibiotic treatment. Against medical advice she left after only 13  
11 days.

12  
13 A few months later, around August 2014, she experienced the breakage of the other large  
14 bone in her arm, the ulna. She underwent surgery on her ulna in August 2014. Following that  
15 surgery she was discharged home.

16  
17 On September 24, 2014, she underwent surgery to remove hardware due to breakage of  
18 hardware.

19  
20 Several months went by without further surgeries.

21  
22 On May 20, 2015, she was again hospitalized for infection. On May 27, she was  
23 discharged after refusing skilled nursing facility placement for IV antibiotics.

24  
25 On August 31, 2015, she again underwent surgery for internal fixation of her ulna. On  
26 September 2, she was discharged home.

27  
28 Finally, on December 22, 2015, she underwent surgery for the removal of hardware.

1           Ultimately, it appears that her bones had successfully fused.

2  
3           This very complex and difficult chronology raises several important questions. First,  
4 most of the initial surgeries were necessary because the plates and screws placed in the preceding  
5 surgery had come loose. The obvious question is "Why?"           contends that the screws came  
6 loose because of non-compliant behavior on Ms.           part. In particular           contends that  
7 her internal fixations failed because the screws came loose, and, furthermore, that the screws  
8 came loose because of Ms.           failure to participate fully in antibiotic treatment and her  
9 continuing to use her injured arm to bear weight, primarily as she used her walker. Claimant  
10 contends that           has not shown any such causation. The issue may simply be that  
11 Ms.,           bones were, by the time of these surgeries, of poor quality. The question of the  
12 refusal of antibiotic treatment will be discussed below.

13  
14           The other major question is whether the breakage, a stress fracture of the ulna, the second  
15 large bone in her arm, was the result of the breakage of the first bone, the radius. Claimant  
16 contends that the breakage of the ulna occurred because it was required to bear alone the forces  
17 normally borne by both the ulna and the large radius for so many months.           contends that  
18 such stress fractures do not occur in the radius except under very different circumstances, usually  
19 involving athletes. Claimant contends that this subsequent break of a different bone is the  
20 consequence of the initial fall.           contends it is entirely unrelated.

21  
22           Turning to the issue of non-compliance by Ms.           there is no dispute that she left the  
23           facility against medical advice after completing only 13 days of the prescribed  
24 course of IV antibiotics. And, in addition, her medical record shows numerous instances of  
25 Ms.           cancelling or simply failing to appear for scheduled follow-up appointments with  
26 several treating physicians. In addition, the           records show that her mother and caregiver  
27 reported to           medical personnel that Ms.           was not being compliant regarding bearing  
28 weight on her arm.



1 Claimant's essential response to this issue is that there is no causal connection between  
2 her leaving the skilled nursing facility, or her failures to keep appointments, and her subsequent  
3 need for additional surgery. position is that the intravenous antibiotic treatment was  
4 necessary to combat bacteriological infections deep in bone tissue, and that her cutting off such  
5 treatment left her susceptible to infection. Moreover, contends, infection was the likely  
6 cause of the failures of the internal metal fixations of her arm. Ms. responds with several  
7 arguments. First, chronologically, she did undergo the full course of IV antibiotic treatment at  
8 after her first surgery but nonetheless experienced in short order a failure of  
9 the metal fixes. Next, in the surgery following her self-discharge from the skilled nursing  
10 facility, the surgeons found no evidence of infection. Finally, late in the chronology, the  
11 physicians allowed her to take antibiotic treatment at home, and no infection resulted. On this  
12 issue has not shown that her self-discharge from the facility and failure to undergo the  
13 entire course of IV antibiotic treatment was a causal factor in her subsequent need for surgeries,  
14

15 Without question the arbitrator is persuaded that Ms. was a poor patient. She  
16 repeatedly failed to make or keep follow-up appointments with various physicians. It is more  
17 likely than not that she was not scrupulous about never putting weight on her walker through her  
18 injured arm. However, there is simply not a persuasive showing that these events, or the sum of  
19 them, contributed materially to the repeated failures of her internal fixes. It is at least equally  
20 likely that her bone structure was weak and poor and that her poor condition led to the  
21 difficulties,  
22

23 Finally, we reach the issue of whether the break in her ulna was attributable to her fall at  
24 the restroom. Ms. contends that the break resulted from undue pressure being exerted for  
25 a long period of time on her ulna, as a result of the forces on her arm being borne solely by this  
26 small bone due to the break in her larger radius bone. contends that such a fracture,  
27 technically a stress fracture rather than a traumatic break, is known to happen only with athletes  
28 exerting large forces on this bone, medical expert, Dr, so testified,

1 Ms.            medical expert, Dr.            is of the opinion that the circumstances of this  
2 case are quite unusual, and that prolonged stress focused solely on the ulna is the cause of the  
3 break in that bone. The arbitrator is persuaded by claimant's expert.

4  
5            On balance, the arbitrator concludes that the extensive multiple surgeries, confinements  
6 in a skilled nursing facility and other treatment are consequences of the fall at the restroom door.

7  
8 Damages

9  
10            Finally, Ms.            contends that her damages go far beyond the treatment of her injuries.  
11 She has virtually lost her independence. She now lives in an assisted living facility.  
12 She no longer drives or participates in outdoor activities.

13  
14            Determining damages in this matter presents unusual difficulties. Special damages  
15 usually consist of the sum of the out-of-pocket medical and related expenses incurred by the  
16 injured party, together with other objective monetary losses, such as lost earnings. Such damages  
17 are often used as benchmarks against which to evaluate general damages.

18  
19            In this case, however, claimant has incurred literally no special damages. She received  
20 extensive medical treatment, including multiple surgeries and confinements in a skilled nursing  
21 facility, objectively worth an amount in six figures. However, Ms.            did not bear any of  
22 these expenses. Her            plan absorbed all the medical special damages, including funds paid  
23 to the            skilled nursing facility and any other third parties.

24  
25            Ms.            also did not lose any employment pay as a result of her injury or medical care.  
26 She was not employed at the time of her injury or thereafter.

1 The matter is further complicated because some or all of her medical treatment or  
2 expenses may have been borne by Medi-Cal. The problem is that Medi-Cal may have a lien  
3 against Ms. recovery in this case to help reimburse it for its payments.

4  
5 Claimant has shown to the arbitrator's satisfaction that recorded booking of costs  
6 for this matter, including payments to the skilled nursing facility, was  
7 \$451,630. In the arbitrator's view, this is a relatively modest number for Ms.  
8 hospitalizations, surgeries, skilled nursing facility stays, and other medical treatments.

9  
10 Ms. medical needs have been covered by Medi-Cal. The amount necessary to  
11 satisfy the Medi-Cal lien has been determined by the California Department of Health Care  
12 Services to be \$327,392.15.

13  
14 It is the intent of the arbitrator that Ms. neither gain nor lose on the award of  
15 special damages since she has not borne any of the expense. Conversely, if she were awarded no  
16 special damages and Medi-Cal were able to enforce its lien on her recovery, she would suffer  
17 unjustly from the Medi-Cal lien. Therefore, we will treat \$327,392.15 as her special damages.

18  
19 This brings us to the question of general damages.

20  
21 Perhaps the easiest place to begin consideration of Ms. general damages is with  
22 her contention as to her living circumstances. What claimant's summary contention ignores is  
23 that before moving to the assisted living facility she had been living in her mother's home. She  
24 definitely received some living assistance from her mother and others. She moved from that  
25 home after her mother died. Thereafter she moved to an assisted living facility. Moreover, the  
26 principal reason for her loss of mobility is an unrelated injury to her legs. Claimant can not  
27 attribute her current living circumstances to the fall in 2012.

1 Another consideration is the fact that she did contribute somewhat to her pain and  
2 suffering by her refusal to follow medical advice and failure to cooperate in her examinations and  
3 treatment.

4  
5 Nonetheless, she did experience seven surgeries, several long confinements in a skilled  
6 nursing facility, and had to undergo the difficulties of having her arm immobilized by a  
7 succession of fixation devices.

8  
9 Claimant claims on-going and future damages. The evidence does not support such  
10 claims. She will continue to live in an assisted living facility and suffer other difficulties. Such  
11 future matters have not been shown to be related to her fall in 2012. This matter appears to have  
12 reached its stable end point.


13  
14 There is no magic formula for determining the appropriate measure of general damages.  
15 Unfortunately, there is no better guide than the judgment of a jury or an experienced jurist. In  
16 this case, the arbitrator determines that the appropriate award of general damages is \$900,000.

17  
18 In sum, claimant is entitled to recover damages in the amount of \$1,227,392.15 subject to  
19 her Medi-Cal lien as discussed above.

20  
21 This Award is in full resolution of all claims in this matter.

22  
23 **Nothing in this arbitration decision prohibits or restricts the enrollee from**  
24 **discussing or reporting the underlying facts, results, terms and conditions of this decision**  
25 **to the Department of Managed Health Care.**

26  
27 Dated: June 9, 2017

28   
Hon. Eli Chernow (Ret.), Arbitrator