

***Taxi & Limousine Comm'n ex rel. Hawthorne et al v.  
Jo Vin Hacking Corp.***

OATH Index No. 3396/09, mem. dec. (Oct. 21, 2009)\*

Evidence established that four claimant passengers in a taxicab whose license is owned by respondent, sustained personal injuries, the damages for which exceed the amount covered by respondent's insurance policy. ALJ determines that \$150,000 should be set aside in escrow to satisfy any excess claims.

\*subsequent history: by letter dated December 18, 2009, the attorney for the claimants informed the ALJ that the parties settled the matter, post-decision, and the claimants withdrew their objection to the sale of the medallions.

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**NEW YORK CITY OFFICE OF  
ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**TAXI AND LIMOUSINE COMMISSION**  
**EX REL.**  
**KEITH HAWTHORNE**  
**JESUS LUNA**  
**MARIA HERNANDEZ &**  
**ELIZABETH LA FONTAINE**  
*Petitioners*  
*- against -*  
**JO VIN HACKING CORP.**  
*Respondent*

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**MEMORANDUM DECISION**

**INGRID M. ADDISON**, *Administrative Law Judge*

Petitioner, the Taxi and Limousine Commission ("Commission"), referred to this tribunal this tort valuation claim proceeding against respondent, Jo Vin Hacking Corp., a licensee, pursuant to the Commission's rules, title 35 of the Rules of the City of New York (RCNY). *See* 35 RCNY § 1-81(c) (ii) (Lexis 2009).

Petitioners/claimants Keith Hawthorne, Jesus Luna, Maria Hernandez, and Elizabeth La Fontaine were passengers in respondent's taxicab which was involved in a motor vehicle accident on October 29, 2008. All passengers are alleged to have sustained injuries as a result.

Counsel for respondent, who owns the taxicab medallion, notified counsel for petitioners on April 3, 2009, that respondent: (1) intended to transfer its interest in two of its taxicab licenses to another party, (2) was aware of a possible claim arising from the accident, (3) did not believe that the asserted claim was an excess claim, and therefore (4) did not propose to establish an escrow amount to satisfy any excess claim (ALJ Ex. 1).<sup>1</sup>

Under section 19-512 of the Administrative Code, a taxicab license issued prior to July 16, 1971, and renewals thereof, are transferable, provided that the transferor has established a bond to cover all of its outstanding tort liabilities, in excess of the amount covered by a bond or insurance policy pursuant to the Vehicle and Traffic Law. Admin. Code § 19-512(a) (Lexis 2009). On April 9, 2009, petitioners' counsel notified respondent that he was placing a lien against medallion numbers 6K23 and 6K24, thereby objecting to respondent's rejection of an escrow amount (ALJ Ex. 1).

The Commission's rules provide that "if a claimant objects to the transferor's proposed escrow amount as to such claim," the Chairperson shall refer the matter to this tribunal for a determination of the amount of the claim to be included in the escrow amount. *See* 35 RCNY § 1-81(c) (ii). The Commission referred the matter to this tribunal on June 5, 2009, and a hearing was conducted on September 15, 2009.

On the hearing date, counsel for both sides appeared without their principals. I denied an adjournment request made by Mr. Kalra, petitioners' counsel, and the hearing proceeded. Mr. Kalra relied on documentary submissions only, and at the end of trial requested a 45-day continuance. He maintained that surgery was imminent for two of the claimants, but provided no details. Given the competing interests of petitioners, who need to be assured of sufficient monetary compensation for their damages, and respondent, who needs to avail itself of a financial opportunity through the transfer of its medallion, I agreed to continue the trial on October 8, 2009, for the claimants to testify. However, upon further consideration, I concluded that the nature of this proceeding did not require the kind of protracted litigation that may be required in state court in pursuit of any personal injury actions commenced by the claimants. Therefore, by e-mail dated September 16, 2009, I vacated the trial continuance date and directed

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<sup>1</sup> The Commission's rules require the transferor to "attempt to establish the amount of each claim that is a potential excess claim for purposes of determining the escrow amount." 35 RCNY § 1-81(c) (i). Even though respondent's notice to the claimants' counsel referenced a potential claim by Mr. Hawthorne, it was apparent that respondent had notice of the other claimants who were passengers in the taxicab with Mr. Hawthorne at the time of the accident. Respondent did not reference a potential claim by these passengers.

the parties to submit written closing summations by close of business on September 30, 2009. Upon receipt, I closed the record.

For the following reasons, I find that \$150,000 should be set aside in escrow to satisfy any excess claims.

## **ANALYSIS**

### **Introduction**

On October 29, 2008, petitioners/claimants Hawthorne, Luna, Hernandez, and La Fontaine were passengers in a taxicab which was involved in a motor vehicle accident. A police report of the accident revealed that a motor vehicle bearing license plate number 6K24C (respondent's taxicab license) rear-ended a Toyota Suburban driving northbound in the center lane of the FDR Drive (Pet. Ex. 1). According to the report, the taxicab driver stated that he attempted to stop when the driver of the vehicle in front of him decelerated, but instead, struck that vehicle. The report further asserted that the taxicab driver was travelling at an unsafe speed. Petitioners' counsel claimed that petitioners all sustained serious injuries as a result of the accident, and submitted medical reports for the individual claimants, of examinations conducted by their own doctors, and doctors for American Transit, respondent's insurer.

The purpose of this tort valuation claim proceeding is to determine whether respondent must retain in escrow, funds exceeding its insurance coverage, pending the outcome of any personal injury claims by petitioners. Such a proceeding seeks to protect the rights of individuals, injured through the negligence or other tortuous acts of a taxicab operator or owner, to recover damages arising therefrom. An assessment that excess funds be held in escrow prohibits the owner of a hack license from disposing of assets in order to frustrate recovery by injured claimants. Because of the narrow focus, neither a full-blown trial, nor an exhaustive inquiry into liability is appropriate before this tribunal. Nonetheless, petitioners bear the burden of establishing that their claims exceed the limits of respondent's insurance coverage. 35 RCNY § 1-81(c)(ii)(B). Under the Commission's rules, where a proceeding has been transferred to the Office of Administrative Trials and Hearings ("OATH") for a determination of the amount of the claim to be included in the escrow amount, OATH shall apply principles of tort law. 35 RCNY § 1-81(c)(ii)(A) (Lexis 2009).

Without quantifying the amount of damages sustained by the individual passengers, counsel asserted that damages exceeded the insurance coverage that respondent was required to provide under the Commission's rules. He initially requested that \$200,000 be held in escrow to satisfy any prospective personal injury damages award (Tr. 17). In his written closing statement, counsel modified his request to \$150,000, but offered no explanation for the downward modification (Pet. Ex. 11).

Respondent contended that the claimants failed to establish lost wages or the potential for lost wages. Respondent also argued that there was no proof of pain and suffering or the potential for future pain and suffering. Accordingly, respondent claimed that it maintains adequate insurance coverage to satisfy petitioners' potential claims for damages. Respondent further posited that because petitioners failed to quantify damages, their request for escrow funds should be rejected.

#### *Regulatory and Statutory Framework*

The Commission's rules provide that for each taxicab owned by him, an owner must maintain insurance coverage of: (1) not less than \$200,000 per person, for expenses incurred pursuant to paragraphs 1, 2 and 3 of section 5102(a) of the New York State Insurance Law, and (2) not less than \$100,000 minimum liability, and not less than \$300,00 maximum liability for bodily injury or death, pursuant to section 370(1) of the Vehicle and Traffic Law.<sup>2</sup> 35 RCNY §1-40(d).

The expenses incurred under section 5102(a), subsections (1), (2) and (3) of the Insurance Law, referred to as "basic economic loss," include, *inter alia*, expenses for all medical care and services required as a result of personal injuries sustained in a motor vehicle accident, loss of earnings from work, reasonable expenses which the injured party would have performed had he/she not been injured, plus the reasonable necessary expenses incurred in obtaining coverage for the performance of those services that the injured party would have performed for income. N.Y. Ins. Law §§ 5102(a)(1), (2) &(3) (Lexis 2009).

A determination of excess funds for non-economic loss, such as bodily injury, requires an assessment of the kind of damages award a particular injury might garner. To recover in a

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<sup>2</sup> Under section 370(1) of the Vehicle and Traffic Law, minimum and maximum liability refer to the minimum and maximum sums that the owner of a vehicle engaged in transporting passengers for hire must maintain, either in the form of a surety bond or insurance coverage, to satisfy a judgment or judgments for damages, including damages for care and loss of services, because of bodily injury, death, or destruction of property. VTL § 370(1) (Lexis 2009).

personal injury action, the injury must qualify as a “serious injury.” N.Y. Ins. Law § 5104(a). Section 5102(d) of the Insurance Law defines “serious injury” as “a personal injury which results in death; dismemberment; significant disfigurement, a fracture, loss of fetus, permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person’s usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment.” N.Y. Ins. Law § 5102(d).

An individual who asserts that he/she has sustained a significant limitation of use of a body function or system must provide objective evidence of the injuries. *See Toure v. Avis Rent A Car Systems, Inc.*, 98 N.Y.2d 345, 350 (2002). Such objective proof may be in the form of an expert’s assessment of injuries, which compares limitations to the normal function, purpose and use of the affected body part. Likewise, where a party claims “serious injuries” of a non-permanent nature, he must submit “competent medical evidence that the injuries [he] allegedly sustained in the subject accident rendered [him] unable to perform substantially all of [his] daily activities for not less than 90 days of the first 180 days subsequent to the subject accident.” *See Knox v. Lennihan*, 65 A.D.2d 615, 616 (2d Dep’t 2009).

#### *Individual Claims*

Mr. Kalra submitted medical evidence which included reports from petitioners’ examining physicians, chiropractors, and neurologists, and from American Transit’s doctors, as well as the results of magnetic resonance imaging (“MRI”) and computed tomography (“CT”) scans. The reports all indicated that immediately following the accident on October 29, 2008, petitioners were taken to New York Presbyterian Hospital, treated, and released. They also reflected comparative results of range of motion (“ROM”) tests done by the examining doctors, their diagnoses, and recommendations. The reports further revealed that petitioners Hawthorne, La Fontaine, and Hernandez were previously injured in accidents. Invariably, the diagnoses and/or prognoses of doctors for both sides conflicted. For instance, Mr. Hawthorne’s chiropractor concluded that Mr. Hawthorne was partially disabled, while the insurer’s doctor made no finding of a disability. Doctors for both sides concluded that Ms. Hernandez was totally disabled, but the insurer’s doctor found her disability to be pre-existing.

I found the MRIs and CT scans to be the most objective form of proof of injuries. They revealed the following: (1) a disc herniation, and two tears in Mr. Hawthorne's left shoulder; (2) multiple bulging discs at Mr. Luna's lumbar and cervical spine, and a disc protrusion; (3) a torn meniscus in Ms. La Fontaine's right knee; and (4) a fractured vertebra, and a disc bulge in Ms. Hernandez' lumbosacral spine. Some fluid was present in her right knee which was slightly swollen behind the joint (Pet. Exs. 2, 4, 6, 8, respectively).

Mr. Kalra further submitted unpaid medical bills in the sums of: \$874.69 for Mr. Hawthorne, \$7,390.84 for Mr. Luna, \$2,175.01 for Ms. La Fontaine, and \$7,223.83 for Ms. Hernandez, but did not clarify whether his excess claim incorporated economic loss by petitioners (Pet. Ex. 10).

Respondent argued that petitioners did not establish that their injuries were causally related to the accident on October 29, 2008. Respondent contended that Ms. La Fontaine's torn meniscus might have been a pre-existing condition, and further asserted that Ms. Hernandez had provided no proof that the accident had caused an exacerbation of her pre-existing injuries. These arguments are unavailing.

First, because the sole purpose of this proceeding is to preserve funds for any potential personal injury claims in excess of respondent's insurance coverage, the determination of causation is not appropriate before this tribunal unless it is so obvious that petitioners' injuries were not caused by respondent. However, I note that in rear-end collisions as occurred here, the driver of the approaching vehicle is generally held liable unless he comes forward with a convincing, non-negligent explanation for the collision.<sup>3</sup>

Second, pre-existing injuries do not preclude a claimant from damages. *See Stone v. Hidle*, 266 A.D.2d 705 (3d Dep't 1999); *Ventriglio v. Active Airport Serv.*, 234 A.D.2d 451 (2d Dep't 1996). Moreover, because this is not a full-blown trial, the absence of medical documentation of Ms. Hernandez' prior injuries in order to assess the degree of exacerbation caused by the accident on October 29, 2008 was not fatal.

### Keith Hawthorne

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<sup>3</sup> Section 1129 (a) of the Vehicle and Traffic Law imposes a duty on driver of an automobile that approaches another automobile from the rear, to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle. *See Chepel v. Meyers*, 306 A.D.2d 235, 236 (2d Dep't 2003); VTL § 1129(a) (Lexis 2009); *See Hurley v. Cavitolo*, 239 A.D.2d 559 (1st Dep't. 1997) (“[A] rear-end collision into a stopped vehicle creates a *prima facie* case of negligence to the operator of the moving vehicle, imposing a duty of explanation on its operator” ).

Mr. Hawthorne's medical documentation indicated that approximately one week after the accident, on November 7, 2008, he visited Dr. Mitchell Zeren, a chiropractor, whom he informed that he was previously involved in motor vehicle accidents in 1993, and 1995/1996. ROM tests on his cervical and lumbar spine revealed diminished motion in both areas. Dr. Zeren diagnosed Mr. Hawthorne with: sprain/strain of the cervical, thoracic lumbar spine, vertebral dislocation, post-traumatic headaches, muscle pain and swelling, and traumatic injury to the left shoulder, left hip, and bilateral knees and ankles, and indicated that Mr. Hawthorne's injuries appeared to be causally related to the accident. From November 2008, through February 2009, Mr. Hawthorne received chiropractic care and physical rehabilitation from at least three health care providers.

At the behest of American Transit, Dr. Robert E. Costello examined Mr. Hawthorne on February 19, 2009. Dr. Costello also diagnosed Mr. Hawthorne with cervical and lumbar spine sprain/strain, and recommended twice-weekly chiropractic care for four weeks (Pet. Ex. 3). He noted that his report addressed Mr. Hawthorne's spinal complaints only, not the symptoms of the left shoulder, which his examination revealed to be tender.

Mr. Hawthorne discontinued treatment at the end of February 2009.

#### Jesus Luna

On December 13, 2008, Mr. Luna, a fellow passenger of Mr. Hawthorne, visited Dr. Mitchell Kaphan, an orthopedic surgeon. Dr. Kaphan's examination of Mr. Luna's cervical spine, and thoracolumbar area revealed pain at the posterior muscles of his cervical spine, in his thoracolumbar area, and at his clavicle, with diminished motion in the cervical and lumbar spines. Dr. Kaphan diagnosed Mr. Luna with cervical and lumbar sprain/strain, and right shoulder internal derangement, which precluded him from lifting heavy objects, pushing or pulling (Pet. Ex. 4). Dr. Kaphan also saw Mr. Luna on January 10, February 21 and April 25, 2009. Simultaneously, Mr. Luna received physical therapy from Dr. David Weiss of Parkchester Medical Services ("Parkchester Medical").

Dr. Ronald Lanfranchi, American Transit's doctor, examined Mr. Luna on July 9, 2009. His ROM tests revealed a normal cervical spine, but diminished motion in his thoracic and lumbar spines, with low back pain (Pet. Ex. 5). Dr. Lanfranchi diagnosed Mr. Luna with lumbosacral sprain/strain, found no chiropractic disability, and recommended cessation of any further chiropractic treatment.

#### Elizabeth La Fontaine

Ms. La Fontaine, also a passenger in respondent's taxicab, sought medical attention from Dr. Mitchell Kaphan on December 13, 2008. Dr. Kaphan's examination revealed diminished motion in her cervical spine, and a minor limitation in her lumbar spine, with tenderness in her left shoulder clavicle, right knee joint, and right ankle joint. While noting that she had been involved in a prior accident in 2006, and had undergone surgery for a herniated disc in her neck, Dr. Kaphan diagnosed Ms. La Fontaine with cervical and lumbar spine sprain/strain, left shoulder internal derangement, contusion of the right tibia, and right ankle sprain, as a result of which she was totally constrained from heavy lifting, pushing or pulling. Ms. La Fontaine saw Dr. Kaphan again on January 10, February 21, and April 25, 2009, while simultaneously receiving physical therapy from Dr. Weiss at Parkchester Medical. On her February 21 visit, Dr. Kaphan removed some fluid from her right knee. His reports indicated that Ms. La Fontaine began complaining about pain in the left wrist from approximately January 10 visit (Pet. Ex. 6).

On April 30, 2009, Dr. Michael Russ, examined Ms. La Fontaine for the insurer. He reported that Ms. La Fontaine "complained of pain on superficial light touch throughout the examination," and exhibited mild tenderness in the cervical spine, and slight pain at the rear left shoulder. Likewise, there was mild tenderness of the lumbar spine muscles with slight limitations, and mild tenderness in the right knee. Contrary to Dr. Kaphan, Dr. Russ found no limitations. He concluded that Ms. La Fontaine's cervical and lumbar sprain/strain, left shoulder sprain/contusion, and right knee sprain/contusion had been resolved, and she had no disability (Pet. Ex. 7).

#### Maria Hernandez

On December 13, 2008, Maria Hernandez, another passenger in respondent's taxicab on the day of the accident, also visited Dr. Kaphan. She informed him that x-rays taken at New York Presbyterian Hospital after the accident revealed that metal rods which had been surgically inserted in her back after an accident in November 2000 remained in place (Pet. Ex. 9). Dr. Kaphan's examination of Ms. Hernandez revealed mild back pain and diminished motion in her lumbar spine which was tender at the spot where a brace worn by her pushed against her ribs. Her clavicle was also tender, but she could squat well, and ascend the single step to the examination table without effort. Her third finger and dorsum of the wrist were swollen. Dr. Kaphan diagnosed Ms. Hernandez with cervical spine sprain/strain, lumbar spine sprain/strain, contusion of the right ribs, right shoulder sprain, and right wrist sprain. He noted that Ms.

Hernandez had a chipped tooth, and pain in the left side of her face below the eye, and concluded that she was totally disabled. Ms. Hernandez also visited Dr. Kaphan on January 10, February 21, and April 25, 2009, at which times his diagnoses remained unchanged (Pet. Ex. 8). During December 2008 and April 2009, she also received physical therapy from Dr. David Weiss, at Parkchester Medical.

On January 22, 2009, Dr. Neil Morgenstern evaluated Ms. Hernandez, and recommended neurophysiologic testing. In February 2009, Dr. Peter Chiu, at the request of American Transit, reviewed Ms. Hernandez' medical reports (including Dr. Morgenstern's), and her MRIs, and determined that neurophysiologic testing was not medically necessary. Accordingly, American Transit denied Dr. Morgenstern's claim, which comprised a large portion of Ms. Hernandez' unpaid medical bills.

Dr. Russ, another of American Transit's doctors, examined Ms. Hernandez on April 30, 2009. According to his report of that visit, Ms. Hernandez told him that she had been disabled since 2000 (Pet. Ex. 9). Dr. Russ found no limitations of her cervical spine, but reported pain in Ms. Hernandez' shoulders with noted limitations, and confirmed Dr. Kaphan's findings of mild back pain, particularly in the lower back muscles, with limitations in the lumbar spine. Dr. Russ diagnosed Ms. Hernandez with: resolved cervical and lumbar sprain/strain; resolved bilateral shoulder sprains; and resolved left wrist sprain, and concluded that she has a disability stemming from her 2000 injuries, and ongoing pain from her 2003 lumbar spine surgery.

Respondent argued that Ms. Hernandez is a Medicaid recipient, and will have no out-of-pocket expenses, thus suggesting that a recipient of public assistance is precluded from a personal injury damages award for the cost for medical services. By this analysis, counsel erroneously infers that the public must assume the liability of the tortfeasor for medical expenses incurred as a result of his/her tortious acts. On the contrary, a plaintiff recipient of public assistance may pursue a tortfeasor for injuries, and any recovery for medical services as a result of those injuries which were paid for by Medicaid may be recouped by the State. *See Ruben N v. Dep't of Soc. Services*, 55 A.D.3d 257 (2d Dep't 2008). Accordingly, respondent's argument fails.

#### *Petitioners' Injuries vs. Petitioners' Escrow Demands*

Because counsel did not apportion his escrow demand per claimant, I am constrained to consider petitioners' injuries collectively. The objective medical evidence revealed injuries

which included bulging discs, disc herniation, shoulder tears, a torn meniscus, and a fractured vertebra. No proof of significant limitations, or permanent disabilities stemming from the October 29, 2008 accident was presented. In the case of Ms. Hernandez, there was some evidence of a permanent disability, but it was unclear whether her significant injuries revealed by the MRIs and CT scans were pre-existing, new injuries, or represented an exacerbation of pre-existing injuries. While similar injuries have failed to qualify as “serious injuries” absent a showing of some permanent limitation,<sup>4</sup> others have garnered a wide range of damages, either through pre-trial settlements, or jury awards.<sup>5</sup>

Counsel’s representation that surgery is contemplated for Ms. Hernandez, and Ms. La Fontaine, without supporting documentation, is insufficient for me to find that economic loss (which includes medical services), exceeded, or will exceed the \$200,000 per person insurance coverage provided under the Commission’s rules. Further, none of the bills for unpaid medical services exceeds that amount. Thus, I find that no additional funds need be set aside for economic loss. However, considering that large damage awards have resulted from personal injury claims involving injuries similar to those presented here, petitioners’ demand for a collective sum of \$150,000 to be held in escrow is appropriate to protect any potential claims for injuries.

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<sup>4</sup> See *Forte v. Vaccaro*, 175 A.D.2d 153 (2d Dep’t 1991) (restriction of motion by itself is not a “serious injury”); *Navedo v. Jaime*, 32 A.D.3d 788 (1st Dep’t 2006) (sprains, radiculopathy and herniated and bulging discs are not “serious injuries” without a showing of permanent disability resulting therefrom); *Kearse v. Transit Auth.*, 16 A.D.3d 45 (2d Dep’t 2005).

<sup>5</sup> See *Segal v. Potestio*, Case No. 05-5832, 3-19 Mealey’s Pers. Inj. Rep. 22 (2007) (rear-end collision on an expressway, where first plaintiff allegedly sustained neck and back injuries including disc herniation, and second plaintiff alleged neck and back injuries including cervical and lumbar disc herniation. Case settled for \$37,000, with \$18,500 to each plaintiff.); *Pizzuto v. Rosedale Dodge Hyundai*, Case No. 04-0929, Mealey’s Jury Verdicts & Settlements 4890 (June 2007) (passenger in car that was rear-ended, settled pre-trial for \$110,000, after allegedly sustaining a central herniating disc, some compression of the spinal cord, and lumbar disc herniation (prior MRI in 1992 reported bulging discs and lumbar)); EMGs following accident revealed lumbar radiculopathy; plaintiff was unable to work); *Stone v. Hidle*, 256 A.D.2d 705 (3d Dep’t 1999) (award of \$ 40,000 for past pain and suffering, and \$60,000 for future pain and suffering, against administrator of estate of automobile driver, where plaintiff sustained lumbosacral radiculopathy, muscle spasms, and cervical sprain, permanent injury to cervical spine, and aggravation of preexisting injury to lumbar spine that rendered her unable to perform normal activities for at least 90 of 180 days following accident); *Ventriglio v. Active Airport Serv.*, 234 A.D.2d 451 (2d Dep’t 1996) (award of \$ 10,000 for past pain and suffering, \$50,000 for lost earnings, and \$ 0 for future pain and suffering and future diminution of earnings upheld where plaintiff sustained recurrent bulging disk injuries that were permanent); *Urquhart v. Transit Auth.*, 221 A.D.2d 336 (2d Dep’t 1995) (award of \$384,000 less 10%, representing plaintiff’s share of fault, reduced to \$150,000 less 10%, for torn meniscus of left knee); See *Maisonaves v. Friedman*, 255 A.D.2d 494 (2nd Dep’t 1998) (jury award of \$176,000 and \$250,000 for past, and future pain and suffering, reduced to \$100,000 and \$75,000, where plaintiff taxi driver was rear-ended and sustained multiple bulging discs that impinged the thecal sac).

**ORDER**

Respondent is therefore ordered to set aside \$150,000 in escrow to satisfy petitioners' potential excess claims.

Ingrid M. Addison  
Administrative Law Judge

October 21, 2009

SUBMITTED TO:

**MATTHEW W. DAUS**  
*Commissioner*

APPEARANCES:

**NEIL KALRA, ESQ.**  
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**ROBERT W. PIKEN, ESQ.**  
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