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December 22, 2020

Thomas J.Chojnacki,Esq.
Ahmuty, Demers & McManus
199 Water Street, 16th Fl
New York, NY 10038

Re: ***Lopez v. 40-50 Brighton First Road Apartments Corp., TKR Property Services,Inc.,*** *et al.*
File No.: NWS 1119N19 TGC
D/L: 4/15/19

Dear Mr.Chojnacki:

Sandy Lopez was seen for neurologic examination on 12/22/20 joined by Mr.Purificati from IME Companion. Mr.Lopez is a 29 year-old, right-handed man who says that something fell onto his right shoulder, lower back and left ankle at work on 4/15/19. He was evaluated in the ER of a hospital in Brooklyn for pain in left ankle where a fracture was managed with immobilization, crutches and pain medication. He consulted an orthopedist and wore a cast or a boot for some time before he started physical therapy (PT) for his back, ankle and briefly his right shoulder. He had 2 lumbar epidural steroid injections (LESI) at a pain management (PM) office before undergoing lumbar spine surgery in May of this year with some symptomatic improvement. He had left ankle surgery in August of this year and is now treated in PT twice a week. His surgeon prescribes a muscle relaxer and a pain medication. He has not worked as construction carpenter since this incident.

He complains most of left ankle pain that is provoked by walking more than 10 minutes. He takes the muscle relaxer at bedtime and the other medication twice most days. Right lateral shoulder pain recurs without provocation. Left lower back (LBP) or hip pain recurs whether he is active or at rest. Shoulder and back pains are treated with the same medications He denies having similar problems before this incident.

He has had no other surgery. He takes an antihistamine at times for seasonal allergies. He vapes nicotine every 2 hours and drinks alcohol on occasion.

He says that he weighs 175 lbs. and stands 5'8". He is appropriately disrobed for examination. There is no disturbance of cognition. He walks in and out with a straight cane in right hand. He walks without the cane with an antalgic gait favoring left side. He gets up on heels and toes equally well bilaterally reporting left ankle pain when doing so. He flexes 40° at the waist while standing reporting LBP. Romberg's sign is absent. Range of motion (ROM) of the neck is full with report of a little right neck pain at the extremes of movement. Cranial nerves 2-12 are normal. There is no muscle atrophy with legs equal in circumference at 35.5cm. Muscle strength and tone are normal. Reflexes are active and equal. Plantar responses are flexor. Sensation is normal. Coordination is normal. Straight leg raising (SLR) is negative. He flexes fully at the waist when seated with legs extended reporting LBP. He is mildly tender in muscles of right neck, shoulder and bilateral lower back. There are no paraspinal spasms. A rounded scar in right lower lumbar area is consistent with minimally invasive or percutaneous disc surgery.

The following images have been provided on CD:

5/25/19 cervical and lumbosacral (LS) MRIs

The records provided are reviewed in detail. The bill of particulars of 11/7/19 lists injuries claimed including LS disc bulge, LS radiculopathy, LESI, left cuboid fracture, 3 partial tears of left ankle ligaments, right shoulder labral tears, partial tear of right rotator cuff (RC), cervical derangement, cervical radiculopathy and post-traumatic stress disorder. A supplement of 9/28/20 adds LS surgery (5/29/20) and left ankle arthroscopy (8/14/20) to the injuries claimed.

Records of Mount Sinai Brooklyn-Kings Highway on 4/15/19 note complaint of left lateral foot pain where a steel pole fell on it at work. He denies any other complaints or injuries. Specifically, there are no pains in neck, right shoulder or low back. Left lateral foot and ankle are tender with swelling. X-rays of foot and ankle are negative, but a CT shows an avulsion fracture of plantar lateral cuboid. An incidental finding of an old, chronic non-united fragment at

anterior calcaneus suggests previous left foot trauma. A posterior splint is applied and he is issued crutches.

Records of Dr.Sharma,DPM (5/4/19-8/14/20) lack a report of initial consultation, but left foot-ankle injury is the only complaint mentioned throughout his course here. MRIs of left foot and ankle on 5/4/19 are read by Dr.Kolb as showing a non-displaced trabecular fracture of posterior malleolus plus partial thickness tears of anterior inferior tibio-fibular, anterior talo-fibular and deltoid ligaments. There is no mention of cuboid or calcaneal fractures. Dr.Sharma makes no effort to correlate the MRI findings (at posterior ankle) with the symptoms and signs of trauma at lateral foot. An exam is first reported on 5/29/19 with findings of edema (somewhere) in left ankle and foot and decreased sensation on lateral left foot and ankle. The splint is replaced with a CAM walker and PT is ongoing. No fracture is seen on left ankle x-rays on 6/26/19 when surgery is first deemed medically necessary. Nothing changes in subsequent months while awaiting authorization for surgery through 1/8/20. Progress notes are all copied and pasted without modification through those months. There are no notes between January and the operative report of 8/14/20 that describes debridement and repair of collateral lateral ligament, but not the partially torn ligaments imaged in MRI.

Records of All-Boro Medical Rehabilitation's Drs.Karafin and Weiner (4/26/19-6/26/20) begin with novel history of being injured by a falling beam onto his lower back, left foot, right shoulder and neck. He has been referred here for PT that begins 5/7/19. Right shoulder MRI on 7/20/19 is read as showing labral (SLAP) tears and low grade, partial tear of RC. On 7/26/19 he is offered injection of the shoulder and referred to an orthopedist. The injection is deferred on 10/18/19 while anticipating surgery. He is still using the CAM walker as of 9/6/19. Dr.Weiner finds no neurologic deficit on exam on 11/22/19 before proposing electro-diagnostic studies (EDS) to rule-out nerve damage. On 1/3/20 he questions whether the LBP is related directly to his back or to his gait disorder and suggests that ankle surgery is needed to see if that helps with LBP. As of 5/13/20 he takes over-the-counter medication to treat his pain. EDS on 5/15/20 are completely normal except for slightly prolonged H-reflexes on the left more than right interpreted as evidence of left L5-S1 (sic) radiculopathy. As of 6/26/20, ankle surgery was authorized and then cancelled because of the pandemic. New right hip pain is associated with continued use of CAM walker.

Records of Total Orthopaedics and Sports Medicine (5/3/19-5/27/20) overlap with records from All-Boro Medical Rehabilitation. Dr.Drazic reports the history of trauma to left foot causing the patient to fall back injuring neck, low back and right shoulder. First impressions are limited to muscle strains and a contusion of right shoulder for which PT is recommended. Pains are worse by 5/17/19. LS MRI on 5/25/19 is read by Dr.Silvergleid as showing facet arthropathy (DJD) at L4-5 and L5-S1, disc bulge with no instability on flexion/extension. Cervical MRI is normal on the same date. Right shoulder is not even a current problem as of 6/19/19. On 9/16/19 Dr.Lerman, orthopaedic spine surgery, sees him and notes that 2 LESI have not helped. He finds weakness of left hamstrings, gastrocnemius, and extensor hallucis longus (EHL) in 4/5 range with symmetrically 1+ knee and ankle reflexes and normal sensation. Where Dr.Silvergleid saw disc bulge at L5-S1, he sees herniation (HNP) to the left for which he offers surgery. As of 2/10/20 PT has not yet started for LBP. Dr.Lerman then pastes the remainder of his previous note (including the erroneous report of "no epidural injections" without demonstrating any evidence that he re-examined the patient. As of 4/13/20 he persists in reporting lack of response to LESI and absent performance of LESI while marking time before surgery is approved. In the operative report of 5/19/20 he describes a midline incision and hemilaminectomies on the left where he performs foraminotomy and states that he finds compression of both left L5 and S1 nerve roots by an extruded L5-S1 disc fragment. As of 5/27/20 pain is managed with Percocet and Baclofen and is only slightly less than before surgery. Muscles that were 4/5 in strength before surgery are all now 4+/5 with no other change on exam. The surgical wound is not mentioned, even as the surgeon reports examination of skin.

Records of Dr.Kaisman,PM (7/23/19-1/27/20) concern LESI provided at L5-S1 on 7/23/19 and on 9/3/19. The patient is seen on referral from Dr.Avanesov, Dr.Lerman's associate.

Dr.Alvarez's orthopedic IME of 10/28/19 concludes that PT should continue and considers claimant to be a candidate for left ankle arthroscopy. In an addendum on 4/26/20, he reports reviewing additional records before concluding that ankle arthroscopy is appropriate and that LS laminectomy surgery should be authorized.

Dr.Morrison's orthopedic IME on 3/4/20 concludes that left ankle arthroscopy is appropriate.

This history and his normal neurologic exam are consistent with a tiny avulsion fracture of left cuboid and resolved muscle strains at most. There is no objective evidence of injury to any part of the nervous system or spine. The reported radiographic findings of facet DJD and L5-S1 bulge have not been the cause of any symptoms nor are they the effects of any specific trauma. The reported EDS finding of prolonged H-reflex does not correlate with clinical or radiographic findings and should be disregarded. It is disconcerting to find what appears to be a surgical scar in right lower back that is nowhere near where Dr.Lerman claims to have performed surgery and found herniated extruded disc on the left that was not clinically or radiographically apparent to other consultants. His operative report is therefore quite unbelievable. Still, there is no neurologic disability or need for further diagnostic testing or treatment including, but not limited to more MRIs, EDS, PT, LESI or invasive procedures of any kind.

Being a physician duly licensed to practice medicine in the State of New York, I certify and affirm that the foregoing is true to the best of my knowledge under penalty of perjury.

Sincerely,

Roger A. Bonomo,MD