STATE OF NEW YORK
COURT OF APPEALS

JOSEPH D. LIUNI,
Claimant-Appellant

v.

GANDER MOUNTAIN,
Employer-Respondent

NEW HAMPSHIRE INSURANCE CO.,
Carrier-Respondent

and

WORKERS' COMPENSATION BOARD,
Respondent

NOTICE OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

Workers' Compensation Board No.: G091 9639
Supreme Court, App. Div. Third Dept. #531142

To:

Clerk of the Court of Appeals
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Donya Fernandez, Esq.
Office of New York Attorney General
28 Liberty Street
New York, New York 10005

Mariah W. Dolce, Esq.
Walsh & Hacker
18 Corporate Woods Blvd.
Albany, New York 12211

PLEASE TAKE NOTICE, that upon the annexed affirmation pursuant to Rules 500.21 and 500.22 of the Court of Appeals Rules of Practice, signed on the 1st day of December, 2020, by Justin S. Teff, Esq., submitted as attorney for Claimant-Appellant Joseph D. Liuni, a motion will be made before this Court, at the Court of

Appeals Hall, 20 Eagle Street, Albany, New York on the 21st day of December, 2020 for an order pursuant to CPLR §5602 granting appellant leave to appeal to this Court from the Memorandum and Order of the Supreme Court, Appellate Division, Third Department, dated November 12, 2020.

Answering papers, if any, must be served and filed in the Court of Appeals with proof of service on or before the return date of this motion.

This is no oral argument of motions and no personal appearances are permitted.

Dated: December 1, 2020

Justin S. Teff, Esq.
Attorney for Claimant-Appellant
10 Westbrook Lane
Kingston, New York 12401
[T] 845.338.4477
[F] 845.338.2892
E-mail: justinteff@kirkandteff.com

STATE OF NEW YORK
COURT OF APPEALS

JOSEPH D. LIUNI,
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v.

GANDER MOUNTAIN,
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and

WORKERS' COMPENSATION BOARD,
Respondent

Teff Affirmation
In Support of Motion
For Leave to Appeal to
the Court of Appeals

Workers' Compensation Board No.: G091 9639
Supreme Court, App. Div. Third Dept. #531142

Justin S. Teff, Esq., an attorney at law, states under penalty of perjury and pursuant to CPLR §2106 as follows:

1. I am counsel for appellant, Joseph D. Luini. This affirmation is submitted in support of a motion:

A] for an order pursuant to CPLR §5602 granting Claimant-Appellant leave to appeal to this Court from the Memorandum and Order of the Supreme Court, Appellate Division, Third Department, dated November 12, 2020.

2. This is a direct application to the Court of Appeals for leave to appeal. No prior application has been made to the Appellate Division for permission to appeal.

DOCUMENTS SUBMITTED AS PART OF THE MOTION

3. As part of the motion, Claimant-Appellant submits the following:

Exhibit A is the Memorandum and Order of the Appellate Division, Third Department dated November 12, 2020.

Exhibit B is the Memorandum of Board Panel Decision filed January 30, 2020, by the New York State Workers' Compensation Board.

Exhibit C is the Notice of Entry that was served on Claimant-Appellant by counsel for the Employer-Respondent, by first class U.S. Mail, on November 25, 2020.

4. Once the Court has assigned this matter a case identification, the following documents will be electronically filed using the Companion Filing Upload Portal:

1. Claimant-Appellant's brief to the Appellate Division, Third Department, dated March 11, 2020.

2. Employer-Respondent's brief to the Appellate Division, Third Department, dated June 16, 2020.

3. Record on Appeal.

PROCEDURAL HISTORY AND TIMELINESS

5. The issue on appeal was initially decided by a Workers' Compensation Law Judge (WCLJ) at a hearing held September 26, 2019, memorialized in a Notice of Decision filed October 1, 2019. The WCLJ decision was reversed by a three-member panel of the Workers' Compensation Board by Memorandum of Board Panel Decision filed January 30, 2020. The Board Panel decision was affirmed by the Appellate Division, Third Department by Memorandum and Order dated November 12, 2020.

This motion for leave to appeal to the Court of Appeals is timely. The Claimant-Appellant was served by counsel for the Employer-Respondent with a Notice of Entry, sent by first class U.S. Mail, on November 25, 2020, relative to the Memorandum and Order of the Appellate Division, Third Department dated November 12, 2020.

JURISDICTION OF THE COURT OF APPEALS

6. The Court of Appeals has jurisdiction of this matter under CPLR §5602[a][1][i]-Final Order Jurisdiction. The Memorandum and Order of the Appellate Division, Third Department dated November 12, 2020 is a final determination. The Workers' Compensation Board ruled against the Claimant-

Appellant in its Memorandum of Board Panel Decision filed January 30, 2020. The Appellate Division affirmed the Workers' Compensation Board's decision.

QUESTION PRESENTED

7. The WCLJ ruled that the Claimant-Appellant had an overall 50% schedule loss of use of his left arm, based upon separate and distinct injuries, the first resulting in a 22.5% loss of use referrable to permanent defects at his left elbow joint, and the second resulting in a 27.5% loss of use referrable to permanent defects at his left shoulder joint. The Workers' Compensation Board reversed this finding and awarded the claimant only a five percent schedule loss of use of the left arm, subsuming one loss of use percentage within the other pursuant to the Third Department's decision in Matter of Genduso v. New York City Dept. of Education (164 AD3d 1509 [3d Dept. 2018]) and its progeny (this Court has previously granted leave regarding this issue in Matter of Johnson v. City of New York, 180 AD3d 1134 [3d Dept. 2020], lv. granted, ___ NY3d ___ [October 20, 2020]).

Question: Whether the decision of the Workers' Compensation Board that the claimant has only a five percent schedule loss of use of his left arm payable from his September 2, 2014 injury was supported by substantial evidence?

Answer: No. The decision was not supported by substantial evidence, and furthermore, was erroneous as a matter of law.

This issue warrants review by the Court of Appeals as it is a matter of substantial and statewide public importance that is continuously affecting a great many of New York's injured workers. Moreover, the decisions of the lower courts appear to conflict with a previous decision of this Court.

REFERENCE TO THE RECORD SHOWING THE QUESTION SOUGHT TO BE REVIEWED WAS RAISED AND PRESERVED

8. The entire record deals with the question of whether the Claimant-Appellant should be entitled to separate schedule loss of use awards for distinct injuries to the various joints in his left upper extremity, versus whether one loss of use percentage must be subsumed within the other. The Memorandum of Board Panel Decision filed January 30, 2020, and the Memorandum and Order of the Appellate Division, Third Department dated November 12, 2020, both address this precise question.

The entire record and the determinations of the lower courts demonstrate that the issue has been properly raised and preserved for this Court's review.

THE DECISION OF THE THIRD DEPARTMENT DISREGARDS THE PLAIN LANGUAGE OF THE STATUTE AND A PRIOR DECISION OF THIS COURT

9. Since its inception, the Workers' Compensation Law has provided that: "The fact that an employee has suffered previous disability or received compensation therefor shall not preclude him from compensation for a later injury nor preclude compensation for death resulting therefrom; but in determining compensation for the later injury or death his average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later injury." (L. 1913, ch. 816 [then § 15(6)]).

The section was quickly amended to add the language: "…provided, however, that an employee who is suffering from a previous disability shall not receive compensation for a later injury in excess of the compensation allowed for such injury when considered by itself and not in conjunction with the previous disability." (L. 1915, ch. 615). The modern version adds only: "…except as hereinafter provided in subdivision eight of this section." (WCL § 15[7]).

This Court has not only eschewed a restrictive reading of the schedule loss of use paragraphs, such as has been imposed by the Board and Appellate Division in the instant and similar cases, but rather has read this section – and the words "arm" and "leg" – so expansively as to permit separate and distinct injuries to various joints or parts of a single appendage to yield summed awards in excess of

the statutorily enumerated 312 and 288 weeks. In Matter of Zimmerman v. Akron Falls Park-Erie County (29 NY2d 815 [1971]), the Court reversed a decision of the Appellate Division (35 AD2d 1030 [3d Dept. 1970]) that forbade the claimant from receiving separate SLU awards for a left forearm amputation and a left shoulder injury totaling 130 percent of his arm. In so holding, the Appellate Division opined that, "the Legislature had no intention to compound awards as the board has done here" (see id., at 1030). In reversing, this court held (29 NY2d, at 817):

> There was substantial medical evidence that the claimant suffered a 50% loss of use of his arm attributable solely to the 1967 accident, and this the board properly found, 'in view of the restricted motion of the left shoulder and in spite of the prior left forearm amputation.' Thus, as the dissenters at the Appellate Division correctly concluded: 'The record clearly indicates that the award made to claimant was limited only to the injury caused by the 1967 accident. Claimant's 1924 accident did not affect his left shoulder which was injured in the 1967 accident causing the 50% loss of use of the left arm' (See Workmen's [sic] Compensation Law § 15, subd. 7).

THE BOARD AND COURT'S HOLDING SERVES TO MAGNIFY, RATHER THAN MINIMIZE, DISPARITIES BETWEEN SCHEDULE LOSS OF USE AND NON-SCHEDULE AWARDS

10. Adherence to the decisions of the Board and Third Department relative to this principle would also magnify, rather than minimize, disparities between schedule loss of use awards and nonschedule awards, the latter being a goal sought

by the Legislature in connection with the 2007 statutory amendments (see Matter of Mancini v. Office of Children & Family Servs., 32 NY3d 521 [2018]; Matter of Green v. Dutchess County Boces, 183 AD3d 23 [3d Dept. 2020]). In cases involving multiple injuries to the spine, for example, a finding of a permanent loss of wage-earning capacity under WCL § 15(3)(w) based upon one part of the spine (e.g. lumbar, thoracic, cervical) is considered in addition to any other such finding based upon a different spinal segment – whether the situation involves a single or multiple accidents – and one is not subsumed within the other, subject to the statutory cap on weekly benefits viz. the overall loss of wage earning capacity percentage (see e.g., Matter of Garratt-Chant v. Gentiva Health Servs., 179 AD3d 1421 [3d Dept. 2020]). Analogous to the Third Department's observation in Green, there appears "no basis to distinguish SLU and nonscheduled awards where the plain language" (Green, at 28) of WCL § 15(7) applies to all awards.

THE BOARD'S DECISION IS CONTRARY TO THE HUMANITARIAN INTENT OF THE STATUTE AND IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

11. This Court has held, time and again, it is a "fundamental principle that the Workers' Compensation Law is to be liberally construed to accomplish the economic and humanitarian objects of the act." Matter of Smith v. Tompkins County Courthouse (60 NY2d 939, 941 [1983]; see also, Matter of Johannesen v.

New York City Dept. of Hous. Preserv. & Dev. (84 NY2d 129 [1994]). The Genduso principle, now ubiquitously utilized by the Board to proscribe separate joint injuries in a single extremity from producing two separate schedule percentages, seems contrary to sound reason and logic, as well as the fundamental humanitarian purpose of our state's Workers' Compensation Law. It is fair to observe the vast majority of those who must access the compensation system engage in physical and labor-type employments, vocations prone to multiple injuries over the course of a decades-long career. To limit the compensation of such a worker viz. each useful bodily extremity to the most severe joint injury that occurs, which is the net effect of arbitrarily subsuming an SLU award for one joint of an extremity within that made for a separate injury to a different joint, serves only to harm those the law was primarily intended to protect.

Furthermore, the Third Department in this case affirmatively acknowledged the Board's reliance on the medical evidence from the claimant's attending physician of an overall 50% loss of use of the left arm, but permitted utilization of the Genduso rule to arbitrarily subsume the previously awarded 22.5% loss of use (December 14, 2007 injury) referable to the claimant's left elbow within the 27.5% awarded in this September 2, 2014 injury referable to the claimant's left shoulder, and award the claimant only a five percent loss of use in this claim. As in this Court's decision in Matter of Zimmerman, *supra*, the Board's decision is simply

not supported by substantial evidence and should be reversed, together with the Third Department's affirmation of the same.

WHEREFORE, Claimant-Appellant respectfully moves that the Court grant leave to appeal the pending matter to the Court of Appeals.

Dated: December 1, 2020.

Justin S. Teff, Esq.
Attorney for Claimant-Appellant
10 Westbrook Lane
Kingston, New York 12401
[T] 845.338.4477
[F] 845.338.2892
E-mail: justinteff@kirkandteff.com

Exhibit A

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: November 12, 2020 531142

In the Matter of the Claim of
JOSEPH D. LIUNI,
Appellant,
v
MEMORANDUM AND ORDER
GANDER MOUNTAIN et al.,
Respondents.

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: October 13, 2020

Before: Egan Jr., J.P., Mulvey, Aarons, Pritzker and Reynolds Fitzgerald, JJ.

Kirk & Teff, LLP, Kingston (Justin S. Teff of counsel), for appellant.

Walsh and Hacker, Albany (Mariah W. Dolce of counsel), for Gander Mountain and another, respondents.

Aarons, J.

Appeal from a decision of the Workers' Compensation Board, filed January 30, 2020, which ruled that claimant was entitled to a 5% schedule loss of use of his left arm.

In 2007, claimant ruptured his left distal bicep tendon while working and was granted a 22.5% schedule loss of use (hereinafter SLU) award for the left arm. In 2014, claimant

established a workers' compensation claim for his right shoulder that was later amended in 2016 to include a consequential injury to his left shoulder. Based upon his examination of claimant's left shoulder pursuant to the New York State Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity (2018), claimant's physician opined that claimant sustained a 27.5% SLU of the left arm. Acknowledging the previous 22.5% SLU award for the left arm, the physician found that claimant had an overall 50% SLU of that arm. A Workers' Compensation Law Judge (hereinafter WCLJ) credited the finding of claimant's physician and determined that claimant had an overall 50% SLU of the left arm. Taking into account the prior 22.5% SLU award, the WCLJ found that claimant was entitled to a 27.5% SLU award for the left arm. On review, the Workers' Compensation Board modified the WCLJ's determination, finding that claimant's injuries to his left bicep and shoulder are not eligible for separate SLU awards because they are both encompassed by SLU awards for the left arm. Accordingly, the Board found that claimant's 27.5% SLU for the impairment of the left arm must be reduced by the prior 22.5% SLU for that body member, resulting in a 5% SLU award for the left arm. Claimant appeals.

We affirm. "Workers' Compensation Law § 15 (3) sets forth SLU awards that the Board may make resulting from permanent injuries to certain body parts, losses of hearing or vision and facial disfigurements" (Matter of Genduso v New York City Dept. of Educ., 164 AD3d 1509, 1510 [2018]; see Workers' Compensation Law § 15 [3] [a]-[t]). "An SLU award is compensation for 'the residual permanent physical and functional impairments' of an extremity, not for the particular injury itself" (Matter of Blair v SUNY Syracuse Hosp., 184 AD3d 941, 942 [2020], quoting New York State Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity § 1.5 at 8 [2018]; see Matter of Johnson v City of New York, 180 AD3d 1134, 1136 [2020], lv granted ___ NY3d ___ [Oct. 20, 2020]). "Although more than one SLU award may be given for a 'loss of use of more than one member or parts of one member,' the SLU award is limited to the statutory-enumerated members set forth in Workers' Compensation Law § 15 (3)" (Matter of Kleban v Central NY Psychiatric Ctr.,

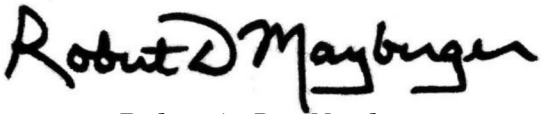
185 AD3d 1342, 1343 [2020], quoting Workers' Compensation Law § 15 [3] [u]; see Matter of Bell v Glens Falls Ready Mix Co., Inc., 169 AD3d 1145, 1146 n 1 [2019]). "In this regard, to authorize separate SLU awards for a body member's subparts is not authorized by statute or the guidelines and would amount to a monetary windfall for a claimant that would compensate him or her beyond the degree of impairment actually sustained to the statutorily-enumerated body member" (Matter of Johnson v City of New York, 180 AD3d at 1136-1137 [citation omitted]).

Insofar as the 22.5% SLU award for claimant's 2007 bicep tendon rupture and the 27.5% SLU award for the 2016 left shoulder injury are both encompassed by awards for the loss of use of the left arm, it was proper for the Board to deduct the 2007 SLU award from the 2016 SLU award, resulting in a 5% SLU award (see Matter of Blair v SUNY Syracuse Hosp., 184 AD3d at 943; Matter of Johnson v City of New York, 180 AD3d at 1137; Matter of Bell v Glens Falls Ready Mix Co., Inc., 169 AD3d at 1148; Matter of Genduso v New York City Dept. of Educ., 164 AD3d at 1510). Claimant's remaining contentions, to the extent that they are properly before us, have been considered and found to be without merit.

Egan Jr., J.P., Mulvey, Pritzker and Reynolds Fitzgerald, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court

Exhibit B

Clarissa M. Rodriguez
Chair

ADMINISTRATIVE REVIEW DIVISION
WORKERS' COMPENSATION BOARD
PO BOX 5205
BINGHAMTON, NY 13902
www.wcb.ny.gov

State of New York - Workers' Compensation Board

In regard to JOSEPH D LIUNI, WCB Case #G091 9639

MEMORANDUM OF BOARD PANEL DECISION

keep for your records

Opinion By: Steven A. Crain
Arelis Tavares
Ellen O. Paprocki

The carrier requests review of the Workers' Compensation Law Judge's (WCLJ) decision filed on October 1, 2019. The claimant has filed a rebuttal.

ISSUE

The issue presented for administrative review is whether the medical evidence in the record supports the finding that the claimant has an overall 50% schedule loss of use (SLU) of the left arm.

FACTS

This case is established for work related injuries involving the right shoulder and consequential left shoulder, which the claimant sustained on September 2, 2014.

The claimant has previously been awarded a 22.5% SLU to the left arm in WCB #50802880 involving a December 14, 2007 injury.

Dr. Petroski, the carrier's consultant, testified via deposition on May 28, 2019. He assessed the claimant for SLU on January 4, 2019 and opined that he has a 20% SLU for each arm based on

*** *Continued on next page* ***

Claimant -	JOSEPH D LIUNI	Employer -	GANDER MOUNTAIN
Social Security No. -		Carrier -	New Hampshire Insurance Co
WCB Case No. -	G091 9639	Carrier ID No. -	W154009
Date of Accident -	09/02/2014	Carrier Case No. -	186838040001
District Office -	Albany	Date of Filing of this Decision–	01/30/2020

ATENCION:
Puede llamar a la oficina de la Junta de Compensacion Obrera, en su area correspondiente, cuyo numero de telefono aparece al principio de la pagina y pida informacion acerca de su reclamacion(caso).

defects of flexion (135 degrees for both arms) and abduction(135 degrees for both arms). He confirmed that he used a goniometer and measured each range of motion three times.

Dr. Saunders, the claimant's consulting physician, testified via deposition on August 27, 2019. He assessed the claimant for SLU on September 27, 2018 and opined that he has a 20% SLU of the right arm and an overall 50% SLU of the left arm; 22.5% for a prior SLU of the left arm and 27.5% for the current injury. He noted that the claimant's prior SLU award pertained to the left elbow and the current award pertained to the left shoulder. He explained that his opinion of 27.5% for the current injury was based on 20% for mild loss of flexion (145 degrees) and 7.5% for loss of posterior extension (50 degrees).

In a decision filed on October 1, 2019, the WCLJ found that the claimant has a 20% SLU of the right arm and an increase of 27.5% SLU of the left arm for an overall 50% SLU of the left arm.

LEGAL ANALYSIS

In an application for review, the carrier argues that the claimant's prior left arm SLU should have been taken into account when calculating the claimant's SLU award. It also contends that the SLU opinion of Dr. Petroski was more credible and should have been implemented by the WCLJ.

In rebuttal, the claimant argues that the decision should be affirmed. He contends that the prior SLU award pertained to the left elbow, while his current SLU pertains to the left shoulder.

In evaluating the medical evidence presented, the Board is not bound to accept the testimony or reports of any one expert, either in whole or in part, but is free to choose those it credits and reject those it does not credit (*see Matter of Morrell v Onondaga County*, 238 AD2d 805 [1997], *lv denied* 90 NY2d 808 [1997]; *Matter of Wood v Leaseway Transp. Corp.*, 195 AD2d 622 [1993]). Thus, questions of credibility, reasonableness, and relative weight to be accorded to conflicting evidence are questions of fact that come within the exclusive province of the Board (*see Matter of Berkley v Irving Trust Co.*, 15 AD3d 750 [2005]).

It is well settled that contrary medical opinions on the issue of SLU percentages offered by opposing experts merely present a factual dispute for resolution by the Board (*Matter of Raffiani v Allied Sys., Ltd.*, 27 AD3d 983 [2006]; *Matter of Cullen v City of White Plains*, 45 AD3d 1167 [2007]; *Matter of Robinson v New Venture Gear*, 9 AD3d 571 [2004]).

In *Matter of Genduso v New York City Dept. of Educ.*, 164 AD3d 1509 (2018), the claimant

*** Continued on next page ***

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had injuries to his right ankle and right knee that occurred in 1997, and he was awarded a 20% schedule loss of use (SLU) of the right leg. The claimant reinjured his right knee in 1999 and was awarded a 12.5% SLU of the right leg. In 2013, the claimant injured his right knee again and was found to have a 40% SLU of the right leg but the Board found that the SLU award that was attributable to the 2013 injury should be reduced by the prior SLU awards of 20% and 12.5% such that the claimant was entitled to receive only a 7.5% SLU award. The claimant appealed to the Appellate Division and argued that the entire 20% of the prior SLU award for the 1997 injury should not have been deducted because the award included an 8.5% loss of use of the right ankle, and therefore only the 11.5% SLU award (for the 1997 right knee injury) and the 12.5% SLU award (for the 1999 right knee injury) should have been deducted from the SLU award given for the 2013 injury to the right knee. The Court rejected the claimant's argument and affirmed the Board's decision to reduce the SLU award for the 2013 injury by the entire amount awarded for the prior injuries in 1997 and 1999. The Court explained that "neither the statute nor the Board's guidelines lists the ankle or the knee as body parts lending themselves to separate SLU awards. Rather, impairments to these extremities are encompassed by awards for the loss of use of the leg (see Workers' Compensation Law § 15 [3] [b]; New York State Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity § 8, at 43 [2012])" (*Genduso*, 164 AD3d 1509 [2018]).

The Board Panel find that *Matter of Genduso* applies to the instant case. Claimant was previously awarded a 22.5% SLU of the left arm for a prior injury to the left elbow. The claimant has a consequential left shoulder injury in this case. However, neither the statute nor the Board's guidelines lists the elbow or the shoulder as body parts lending themselves to separate SLU awards. Rather, impairments to these extremities are encompassed by awards for the loss of use of the arm. Accordingly, the claimant's prior SLU award for the 2007 injury to the left arm. Furthermore, the Board Panel does not find that the 2018 Impairment Guidelines create a distinction to warrant a departure from the Appellate Division finding in *Genduso*. (*see* Matter of Central New York Psychiatric Center, 2019 NY Wrk Comp G1850110).

The 2018 New York State Guidelines for Determining Permanent Impairment (2018 Impairment Guidelines), Chapter 5.4, addresses calculating loss of use to the shoulder. The normal range of motion for adduction is to 30 degrees. The normal range of motion for extension is to 60 degrees. Table 5.4(a) indicates that the normal range of motion for flexion/abduction is 0 degrees to 180 degrees and that the greater deficit should be used when both flexion and abduction deficits are found. A mild deficit has a range of motion of up to 135 degrees and would be assessed a maximum of 20% loss of use and a moderate deficit has a range of motion of up to 90 degrees and would be assessed a maximum of 40% loss of use. If moderate or higher deficits for flexion and abduction are recorded within 10 degrees of each other, then up to

*** *Continued on next page* ***

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10% may be added to the overall SLU. Table 5.4(a) advises to not add mild deficits of internal and external rotation to avoid cumulative values and that mild deficits of posterior extension equal 7.5 to 10% loss of use of an arm. Table 5.4(b), addressing internal and external rotation only, notes that the values in the table are only considered where no other range of motion deficits exists.

Here, a review of the record shows that Dr. Petroski opined that the claimant has a 20% SLU of the left arm based on defects of flexion (135 degrees) and abduction (135 degrees). Dr. Saunders opined that the claimant has a 27.5% SLU for his current injury based on 20% for mild loss of flexion (145 degrees) and 7.5% for loss of posterior extension (50 degrees). Accordingly, the Board Panel finds that the claimant has a 27.5% SLU of the left arm and since he has previously been awarded a 22.5% SLU of the left arm, the Board Panel finds that the claimant is now entitled to a 5% increase in his SLU.

Therefore, the Board Panel finds, based upon review of the record and a preponderance of the evidence, that the claimant has a 5% SLU of the left arm, for an overall left arm SLU of 27.5%.

CONCLUSION

ACCORDINGLY, the WCLJ's decision filed on October 1, 2019 is MODIFIED to find that the claimant has a 5% SLU of the left arm, for an overall left arm SLU of 27.5%. No further action is planned at this time.

All concur.

Steven A. Crain

Arelis Tavares

Ellen O. Paprocki

Claimant -	JOSEPH D LIUNI	Employer -	GANDER MOUNTAIN
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Exhibit C

STATE OF NEW YORK
SUPREME COURT

APPELLATE DIVISION
THIRD DEPARTMENT

JOSEPH D. LIUNI,

Claimant-Appellant,

-against-

GANDER MOUNTAIN,

Employer-Respondent,

-and-

NEW HAMPSHIRE INSURANCE CO.,

Carrier-Respondent,

-and-

THE WORKERS' COMPENSATION BOARD,

Respondent.

NOTICE OF ENTRY

WCB No.: G091 9639
Index No.: 531142

PLEASE TAKE NOTICE that the attached is a true copy of a Memorandum and Order of the Supreme Court, Appellate Division, Third Department decided by the Court and entered by the Clerk, Robert D. Mayberger, on November 12, 2020.

DATED: November 25, 2020

Mariah W. Dolce
WALSH AND HACKER
Attorneys for Respondents
18 Corporate Woods Blvd.
Albany, New York 12211
(518) 463-1269

TO:

Office of the Secretary
NYS Workers' Compensation Board
328 State Street
Schenectady, New York 12305

Attorney General of the State of New York
Department of Law, Labor Bureau
28 Liberty Street, 15th Floor
New York, New York 10005

Broadspire, a Crawford Company
PO Box 14343
Lexington, Kentucky 40512-4343
Attention: Kenneth Wasserman

Kirk & Teff, LLP
10 Westbrook Lane, PO Box 4466
Kingston, New York 12402