

**BETWEEN:**

**VAN THANH TRUONG**

**Applicant**

**and**

**LUMBERMENS MUTUAL CASUALTY COMPANY / KEMPER CANADA**

**Insurer**

**REASONS FOR DECISION**

**Before:** William J. Renahan

**Heard:** November 4, 5 and 6, 2002, at the offices of the  
Financial Services Commission of Ontario in Toronto.

**Appearances:** Harvey S. Consky for Mr. Truong  
Derek E. Wilson for Lumbermens Mutual Casualty Company / Kemper  
Canada

**Issues:**

The Applicant, Van Thanh Truong, was injured in a motor vehicle accident on August 12, 1999. He applied for and received statutory accident benefits from Lumbermens Mutual Casualty Company/Kemper Canada ("Lumbermens"), payable under the *Schedule*.<sup>1</sup> Lumbermens terminated weekly income replacement benefits on June 1, 2000. The parties were unable to resolve their disputes through mediation, and Mr. Truong applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

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<sup>1</sup>The *Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996*, Ontario Regulation 403/96, as amended by Ontario Regulations 462/96, 505/96, 551/96, 303/98, 114/00 and 482/01.

The issues in this hearing are:

1. Is Mr. Truong entitled to income replacement benefits pursuant to section 4 of the *Schedule* after June 1, 2000?
2. Is Mr. Truong entitled to medical expenses of \$11,764.40 for chiropractic treatment provided by Dr. Navraj Gill pursuant to section 14 of the *Schedule*?
3. Is Mr. Truong entitled to medical expenses of \$2,700 for psychological treatment provided by Dr. Roy Raghunan pursuant to section 14 of the *Schedule*?
4. Is Mr. Truong entitled to medical expenses of \$923 for services provided by Dr. Miriam Grushka, oral surgeon, pursuant to section 14 of the *Schedule*?
5. Is Mr. Truong entitled to housekeeping expenses from June 9, 2000 to August 12, 2001 in the amount of \$100 per week?
6. Is Lumbermens entitled to a repayment pursuant to section 47 of the *Schedule* on the grounds that disability benefits were available to Mr. Truong from Clarica Insurance Company and should have been deducted from the income replacement benefit?
7. Is Mr. Truong entitled to the following cost of examinations pursuant to section 24 of the *Schedule*:  
Dr. A.K. Soon, \$80 for a disability certificate; Dr. Roy Raghunan, \$360 and \$540 for OCF 21 forms and \$3,800 for a report; Dr. M. Mamelak, \$5,300 for a report; Dr. John Gilman \$2,800, for a report; and, Dr. Pierre Kirwin, \$900 for a report, as well as \$2,070 for interpretation services.
8. Is either party entitled to expenses of the arbitration proceeding?

**Result:**

1. Mr. Truong is not entitled to income replacement benefits pursuant to section 4 of the *Schedule* after June 1, 2000.
2. Mr. Truong is not entitled to medical expenses of \$11,764.40 for chiropractic treatment provided by Dr. Navraj Gill.

3. Mr. Truong is not entitled to medical expenses of \$2,700 for psychological treatment provided by Dr. Roy Raghunan.
4. Mr. Truong is not entitled to medical expenses of \$923 for services provided by Dr. Miriam Grushka.
5. Mr. Truong is not entitled to housekeeping expenses from June 9, 2000 to August 12, 2001 in the amount of \$100 per week.
6. Lumbermens is not entitled to a repayment pursuant to section 47 of the *Schedule*.
7. Mr. Truong is not entitled to the cost of examinations by Dr. A.K. Soon, Dr. Roy Raghunan, Dr. M. Mamelak, Dr. John Gilman and Dr. Pierre Kirwin nor for interpretation services.

## **EVIDENCE AND ANALYSIS:**

### **Overview:**

Mr. Truong was injured when his vehicle was struck from the rear. Prior to the motor vehicle accident Mr. Truong supported his wife and two children from steady employment in a factory. Despite extensive physical and psychological treatment, Mr. Truong has not worked in the three and a half years since the motor vehicle accident. Lumbermens claims that Mr. Truong is a malingerer. Mr. Truong claims that he has no reason to jeopardize his work and family life for any accident benefits he might receive as a result of this decision.

### **Background:**

Mr. Truong was born in Vietnam in 1961. His father owned and operated a rice mill and after the equivalent of a grade 11 education, Mr. Truong worked in his father's mill. At the age of 21 he caught and broke his right arm in a machine at work. Subsequent examiners describe extensive scarring on the right forearm, thumb and wrist and decreased muscle bulk.

Although the Vietnam war did not affect his family, Mr. Truong's family was concerned about the future in a communist country and encouraged Mr. Truong to leave. Like many others, Mr. Truong paid to flee Vietnam by boat in about 1982. The boat took the fleeing passengers to an oil tanker where they were rescued by another boat which took them to a refugee camp in Malaysia.

Mr. Truong enjoyed the three years he spent in the refugee camp. The camp was a self-contained village of 5,000 people with schools, churches and libraries. Mr. Truong helped build temporary shelter and studied English and TV repair. Later he taught English. He met his future wife in the camp.

In 1986, at the age of 25, Mr. Truong was accepted for immigration to Canada. Within one month of his arrival in Cambridge, Ontario, he found employment as a shipping clerk at Federal Mogul Company, an auto parts distributor. His job was to fill orders by collecting the parts from inventory. The next year he married and the following year he and his wife had their first of two children.

Mr. Truong testified that in about 1992 he missed about three months of work to recover from an operation to remove bone fragments from his right forearm. An assessor at a disability assessment at a Designated Assessment Centre ("DAC") described it as surgery to remove his ulnar styloid.

Two years prior to the motor vehicle accident, Federal Mogul promoted Mr. Truong to a machine operator position described as a "wheelabrator."

***Motor vehicle accident:***

Mr. Truong was the driver of his Nissan Sentra automobile when it was struck from the rear and pushed into the vehicle in front. He was 37 years old at the time. The force of the collision pushed the Sentra trunk nearly flat against the back seat. The front fenders were pushed back to the level of the radiator. The Sentra was a write-off. I heard no evidence that Mr. Truong struck any part of his body against his vehicle.

Mr. Truong was taken to hospital by ambulance where he was diagnosed with cervical and lumbar sprain and urinary retention. After 24 hours he could pass urine and was released from the hospital on a Friday.

The next Monday, Mr. Truong saw his family doctor, Dr. William Wong. I had difficulty reading Dr. Wong's notes. He referred to "posterior head, neck, upper back, lower back, leg OK, numb along left forearm - ulnar distribution."

Mr. Truong has a multitude of complaints of pain according to his testimony and that recorded by others. Mr. Truong's testimony concerning his complaints was complex and not as clear as his complaints as recorded by others. He testified that he was only dizzy and a little sore in the back immediately after the accident and that his neck did not start to bother him until after three months and that his main concerns are his neck and headaches. He testified that his neck pain started on the right side and moved to the left. He testified that his headaches are sometimes on one side and sometimes on the other and that they are very bad and that they are getting better and that he has them almost every day. He testified that when he finished physiotherapy in February 2000 his body was healthy and he felt great except that something was wrong with the left side of his neck. He testified that if the Insurer has video showing him acting normally, it is the only day he felt better. He testified that he has pain in the neck all the time and that it has not improved and that some days he feels very good. He testified that he has two ribs which pull at the back, a problem with his arm, tingling in the last two fingers of the left hand and weakness and numbness in his left leg. When asked about his tempo mandibular joint ("TMJ") pain he replied that it was the same and that the pain is relieved with two Tylenols.

***Entitlement to income replacement benefits:***

Lumbermens terminated weekly income replacement benefits of about \$370 per week on June 1, 2000 on the basis of opinions from Mr. Truong's physiotherapist, a medical DAC and a disability DAC. Under section 4 of the *Schedule*, Mr. Truong is entitled to income replacement benefits if he suffered as

a result of the motor vehicle accident a “substantial inability to perform the essential tasks of [his] employment.”

Mr. Truong testified that he cannot work because he has a problem in his neck, that he cannot turn his head to the side and because he has very intense headaches. He said that he cannot perform the lifting required at work. He also said that his doctors will not clear him to return to work.

***Essential tasks of employment:***

Mr. Truong testified as to the tasks of his employment. As well, two worksite assessments were performed. Choice Rehabilitation did an assessment for Lumbermens in November 1999 and Toronto Assessment Centre did an assessment for Mr. Truong’s chiropractor in February 2000.

Federal Mogul Company was in the auto parts business. At the time of the accident, Mr. Truong’s job involved cleaning metal brake parts. The parts came to Federal Mogul with a grease covering to prevent the build-up of rust. Mr. Truong worked on one machine which washed the grease off the parts and two other machines, called wheelabrators, which tumbled and sand blasted the parts to give them a shiny and clean finish.

Mr. Truong tested the chemicals and temperature of the washing machine every hour. At the end of the wash cycle, he placed a metal basket at the end of the washing machine to retrieve the washed parts. He connected the basket to a mechanical hoist which he controlled by buttons. He pressed the buttons to lift the basket above a wheelabrator. Mr. Truong opened the wheelabrator door with a lever and then emptied the contents of the basket into the wheelabrator with the push of a button. He would assist this tilting process manually. He returned the empty basket to the plate wash area either manually or with the use of the hoist. He pulled the lever to close the wheelabrator door. The sand blasting process was complete after about ten minutes. Mr. Truong placed two plastic baskets weighing about four pounds each at the mouth of the wheelabrator. He pulled the door lever up and pushed a button which

emptied the parts into the plastic baskets. He pushed the baskets along rollers up a slight incline to the next stage in the assembly area. Mr. Truong could sit between cycles.

Mr. Truong stressed that he weighs 70 kg. and that he had to move baskets which weighed up to 300 lbs. The physiotherapist who performed the functional abilities evaluation at the disability DAC noted the discrepancy between what Mr. Truong said and what the worksite assessors reported and she telephoned the daytime supervisor at Federal Mogul. He reported that tilting the bucket into the wheelabrator required minimal force and that pushing the filled baskets along rollers at waist level a distance of six feet up a slight incline required moderate force. In a mechanized work place, this evidence sounds reasonable and I accept it. I find that the most physically demanding part of Mr. Truong's work was pushing two filled baskets a distance of six feet along rollers every ten minutes and that the work involved moderate forces. The rest of his work involved the use of a mechanical hoist and lifting using minimal forces with opportunities to sit every ten minutes.

### ***Treatment and Investigations:***

The ambulance attendant who attended at the scene of the accident noted that Mr. Truong was alert and conscious and that his vital signs were within normal limits. He took Mr. Truong to hospital where Mr. Truong was diagnosed with cervical and lumbar sprain and urinary retention. Mr. Truong was released from hospital after 24 hours when he could pass urine on his own.

Mr. Truong was released from hospital on a Friday and saw his family doctor, Dr. William Wong, the following Monday, August 16, 1999. On Thursday, August 19, 1999, Mr. Truong saw another family doctor, Dr. A.K. Soon, in Mississauga. Mr. Truong testified that his uncle advised him to see Dr. Soon because he had a good reputation for treating pain with acupuncture. Mr. Truong further explained that another reason he preferred to see Dr. Soon was that Dr. Soon could take him on short notice and that it took four days to obtain an appointment with a family doctor in Cambridge. He allowed Dr. Soon to

coordinate his accident-related complaints, although he continued to see Dr. Wong for non-accident related complaints.

Initially, Mr. Truong saw Dr. Soon once or twice a week. By the time of his last note on file, in November 2001, Dr. Soon saw Mr. Truong about once a month. Dr. Soon recorded that Mr. Truong lost consciousness for two to three minutes. It is difficult to read Dr. Soon's notes. In his disability certificate following his examination of August 26, 1999, his primary diagnosis is neck and back pain, head injury and post-traumatic headache. His records include x-rays of the chest, abdomen, cervical, thoracic and lumbar spine and both TM joints, a computed tomography scan of the TM joints and a pelvic sonagram. All the scans were normal.

Dr. Soon referred Mr. Truong to physiotherapy at Exxel Rehabilitation Centre Inc. ("Exxel"), in Mississauga. In his assessment, the physiotherapist records numerous complaints of pain and numbness. Exxel discharged Mr. Truong on February 10, 2000 with a recommendation that he return to part-time work and gradually increase to full-time hours.

On February 18, 2000, Mr. Truong saw Dr. Navraj Gill, a chiropractor in Mississauga. Dr. Gill submitted a treatment plan in which he recommended four weeks of treatment at three times per week. Dr. Gill continued to treat Mr. Truong about twice a week for the next two years at a cost of \$25,227.69. Lumbermens paid about one-half. Mr. Truong seeks the balance.

On August 23, 1999, Dr. Soon referred Mr. Truong to Dr. Roy Raghunan, a psychologist. Dr. Raghunan saw Mr. Truong for hourly sessions once or twice a month for the next two years. Lumbermens refused to pay for the last 15 treatment sessions. Dr. Raghunan found a number of cognitive impairments, fears, anxieties, conflicts, pain behaviours and other symptoms. He diagnosed a major depressive disorder, pain disorder associated with psychological factors and a general medical condition and "Other psychosocial problems: Exposure to MVA." He treated Mr. Truong with relaxation, visual imagery, ego building, systematic desensitization, cognitive behavioural therapy, cognitive rehabilitation, inductive thinking and exposure techniques. His goals were to help Mr. Truong

return to work and driving and overcome his numerous impairments and symptoms. Dr. Raghunan testified that after about a year, he recommended that Mr. Truong try to return to work. Dr. Raghunan suspected a head injury and referred Mr. Truong to Dr. M. Mamelak, a psychiatrist.

Dr. Mamelak met Mr. Truong on November 1, 1999 and treated him approximately monthly over the next three years up to the time of this arbitration. Dr. Mamelak arranged a brain MRI and although it was normal, Dr. Mamelak testified that he did not know if Mr. Truong suffered a mild head injury. He testified that after two months he decided that Mr. Truong was permanently crippled and that no treatment would help Mr. Truong return to work. He testified that his role was to listen to Mr. Truong and refer him to other specialists who might help with temporary relief of his chronic pain. Dr. Mamelak referred Mr. Truong to Dr. Julian Lo, a physiatrist, who injected drugs into Mr. Truong's neck and shoulder muscles and nerves.

On November 2, 1999, Mr. Truong's dentist referred Mr. Truong to Dr. I.M. Furst, a dentist in Cambridge, for treatment of TMJ pain. A bone scan of the TMJs showed no significant abnormality. Dr. Furst prescribed a bite splint and physiotherapy.

In April 2001, Mr. Truong saw Dr. Miriam Grushka, a dentist in Toronto, for his TMJ complaints. She reviewed an MRI taken in April 2000 and prescribed a thicker bite plate.

Dr. Soon also referred Mr. Truong to Dr. Brian McGoey, an orthopaedic surgeon. Dr. McGoey ordered an MRI which disclosed "a small posterolateral disk bulge at the C5-6 level." Dr. McGoey wrote that he could do nothing for that condition. He referred Mr. Truong to Dr. G. Israelian for electromyogram ("EMG") and nerve conduction studies to see if there was any nerve root compression affecting the left arm. Dr. Israel found no objective clinical, radiological or electro physiologic evidence of nerve entrapment.

***Opinions on disability:***

The evidence that Mr. Truong suffered a brain injury in the accident is very weak. I could not decipher all the handwritten notes relevant to the issue of whether Mr. Truong suffered a brain injury. Dr. Xenia Kirkpatrick is a psychiatrist who examined Mr. Truong for Lumbermens. She deciphered the handwriting and I rely on her uncontradicted interpretation of the handwritten medical records. According to Dr. Kirkpatrick, the ambulance call report indicated that Mr. Truong had lost consciousness for a few seconds in the accident, complained of dizziness, neck and back pain, chest tenderness and bilateral leg weakness but was ambulatory at the scene. He was alert and oriented and assigned a normal Glasgow Coma Scale rating of 15 by ambulance personnel. Emergency room notes revealed that Mr. Truong said he had a loss of consciousness of about a minute and complained of dizziness and neck and back pain.

Dr. Kirkpatrick read Dr. Wong's notes and found no indication that Mr. Truong complained of or was found to have cognitive impairment and that even though Dr. Wong wrote "blacked out x a few minutes" Dr. Kirkpatrick concluded that Dr. Wong was not concerned about a head injury because he did not perform, at the very least, a cursory neurological examination. Dr. Kirkpatrick also read Dr. Soon's notes and found no complaints of impaired cognition.

Although the brain MRI that Dr. Mamelak ordered was normal, Dr. Mamelak testified that he did not know whether Mr. Truong suffered a mild head injury.

Dr. John Gilman performed a neuropsychological assessment in June 2002 and found "severely impaired cognitive functioning" likely due to psychological difficulties and a mild brain injury. Dr. Kirkpatrick criticized Dr. Gilman's conclusion for a number of reasons including the fact that Dr. Gilman's test results showed that Mr. Truong exaggerated his symptoms to the level of individuals who require hospitalization, yet Dr. Gilman did not give a reasonable explanation as to why he relied on what he found were unreliable test results. For this reason, I do not find Dr. Gilman's opinion that Mr. Truong suffered a brain injury reliable.

On balance, the factual evidence leads to the conclusion that Mr. Truong did not suffer a brain injury and the remaining opinion evidence does not establish that Mr. Truong likely suffered a brain injury. I therefore find that Mr. Truong did not suffer a brain injury.

Except for the elbow complaints, for which neither Dr. McGoey or Dr. Israel could find any objective evidence of impairment, it is difficult to describe Mr. Truong's impairments with any specificity. Mr. Truong and the doctors who record his complaints refer to general complaints of pain in most parts of the body which move.

X-rays, CT scans, MRI scans, nerve conduction studies and other objective investigations did not reveal that Mr. Truong suffered any organic injury. Dr. Mamelak described Mr. Truong as suffering from "the chronic and painful myofascial strain injuries that occur following motor vehicle accidents. His pain syndrome is part of a posttraumatic state; the pain leads to sleeplessness, the sleeplessness to more pain and to fatigue and inattentiveness." Dr. Pierre Kirwin is a physiatrist who saw Mr. Truong in May 2002 at the request of Mr. Truong's counsel. He found a chronic pain disorder with both psychological factors and a general medical condition. Dr. Raghunan testified that Mr. Truong was traumatised by the accident and that he suffered from chronic pain.

In general, Mr. Truong complained at this hearing and to various doctors of daily headaches on both sides of the head, and pain on both sides of the neck and the back of the neck, pain in the TM joints, between the shoulder blades, mid-back, low back, right shoulder, left arm, left hand and left leg. He also complained of numbness and weakness in the left shoulder, arm, fingers and left leg. He complained of stiffness in the neck, right shoulder and low back.

Dr. Kirkpatrick testified and reported that the best predictor of how an individual will cope in the future is how he has coped in the past. Someone with a history of difficulty coping with stress and trauma may have difficulty coping with the affects of an accident. No one contradicted this opinion and I find it reasonable and I accept it. Mr. Truong has complained of diffuse pain, numbness and stiffness to many parts of his body without objective demonstrated organic injury. I examine the evidence with Dr.

Kirkpatrick's premise in mind to determine whether Mr. Truong suffered a disabling psychological impairment as a result of an inability to cope with the trauma of this motor vehicle accident.

Dr. Raghunan testified and reported that he found Mr. Truong very rigid and lacking in cognitive flexibility and that he had difficulty adjusting to the trauma of the motor vehicle accident. In part, Dr. Raghunan based his finding that Mr. Truong was rigid on evidence that Mr. Truong did the same job for 13 years after his arrival in Canada. However, Mr. Truong testified, as well as telling Dr. Gilman, that two years before the motor vehicle accident he was promoted from an inventory clerk to a wheelabrator operator.

As well, in my view, Mr. Truong's history does not show rigidity and inability to cope with stress and trauma. Mr. Truong recovered uneventfully from a serious arm injury in Vietnam which left scarring and decreased muscle bulk and required corrective surgery in Canada. He faced some danger when he left his home by boat. He made use of the three years he spent in a refugee camp and found it a happy and productive experience. He quickly found employment when he arrived in Canada, married, bought a house and started a family. Lastly, the manner in which Mr. Truong sought treatment after this motor vehicle accident demonstrated an ability to adjust. Within days of the motor vehicle accident, he found a new family doctor whom he thought would be more helpful with his motor vehicle accident-related complaints. And, within a few days of his discharge from physiotherapy with a recommendation that he try to return to work, he found a new service provider. I agree with Dr. Kirkpatrick that Mr. Truong's history indicates prior successful adaptations to stressful life circumstances and a level of coping which was probably above average.

Many treatment providers accepted Mr. Truong's complaints. Dr. Mamelak, for one, expressed deep concern for Mr. Truong's future. Others questioned Mr. Truong's credibility. The psychologist at the disability DAC in May 2000, found that Mr. Truong exaggerated his symptoms. Dr. A. Nashef noted that Mr. Truong saw himself as disabled and that he had a level of depressive symptomatology and demonstrated a degree of somatic concerns that was unusual, even in clinical samples. He reported that test findings and clinical impressions "point in the direction of exaggerated symptomatology." The

physiotherapist who conducted the functional abilities evaluation at the disability DAC concluded that Mr. Truong did not demonstrate his maximal functional ability for the test.

I find that Mr. Truong had above-average coping skills. Therefore, either he suffered a disabling impairment with which he could not cope, or he is malingering. The question is whether I believe Mr. Truong.

***Credibility:***

Mr. Truong presented himself to the medical examiners and at this hearing as someone who was completely disabled from work. Mr. Truong's treatment providers generally accepted his presentation. Dr. Mamelak said that after two months of treatment he came to the opinion that Mr. Truong would never work again. This presentation was difficult to reconcile with the large amount of driving from Cambridge to Mississauga, North York and Toronto that Mr. Truong did to get to medical appointments.

Mr. Truong lived in Cambridge and had a family doctor in that city who he continued to see after the motor vehicle accident for complaints not related to the motor vehicle accident. A week after the accident, his wife drove him to Mississauga to see Dr. Soon. Mr. Truong testified that after a few weeks he drove himself. At first he saw Dr. Soon every two weeks. He then drove to Mississauga to see Dr. Soon about once a month for two years. The trip one way took 45 minutes. Mr. Truong also drove to Mississauga about twice a week for two years for either physiotherapy or chiropractic treatment. He drove to Toronto about once a month for three years to see Dr. Mamelak and he drove to North York about once a month for two years to see Dr. Raghunan.

He often went to see Dr. Mamelak with his wife, and his wife may have drove. As well, a number of assessors noted that Mr. Truong's wife drove him to appointments. However, Mr. Truong admitted that he started driving to Mississauga to see Dr. Soon a few weeks after the accident and I received

surveillance evidence that Mr. Truong drove from Cambridge to Mississauga and Toronto four months after the accident.

Lumbermens arranged for surveillance which showed Mr. Truong doing errands, attending appointments and driving on December 23, 1999. The investigators recorded that Mr. Truong drove from Cambridge to a video store in Mississauga and then to the office of his representative in Mississauga. From there he went to his physiotherapist, also in Mississauga. He then drove to a parking garage in downtown Toronto and met with three other people and then drove to another parking garage in Toronto. Mr. Truong's activity started at 12:08 p.m. and ended at 6:44 p.m. when surveillance was discontinued. During this period he drove about two hours and fifteen minutes on highways and on city streets and parked his vehicle six times. Mr. Truong's explanation of the people he picked up was not clear. He said he was taking his nephews from Brampton to Mississauga for Christmas. The evidence is difficult to reconcile with Mr. Truong's presentation as someone who is completely crippled by pain in most parts of his body.

This surveillance evidence is also difficult to reconcile with evidence that at this time Dr. Raghunan was treating Mr. Truong for a fear of driving. In his report of December 8, 1999, Dr. Raghunan wrote:

Mr. Truong complained of being afraid to use motorized transportation as he feels that he may ". . . sustain more injuries or die from another accident." Hence, he has restricted his social experiences, as they are contingent upon him using motoric transportation. His family, as he reasons, also suffers from his limited use of operating a vehicle. He is afraid to have them in his vehicle as he believes they may suffer a similar fate, should he get into another accident.

Dr. Raghunan testified that Mr. Truong would not take passengers when he drove. When confronted with the surveillance, Dr. Raghunan said that he was not aware Mr. Truong drove with passengers.

Mr. Truong continued to complain of a fear of driving up to the medical and rehabilitation DAC in March 2000. Dr. John Cole, the psychologist at the assessment, noted that Mr. Truong described a consistent problem with driving anxiety, "although the video evidence suggested some degree of

comfort in that area, too.” Although, Dr. Cole also diagnosed a driving phobia, the video evidence which he thought demonstrated “some degree of comfort” was only a few minutes long and does not reveal that Mr. Truong’s ability to drive lasted at least 2 hours and 15 minutes according to the investigator’s notes.

Mr. Truong’s credibility also arose in connection with his claim for two years of housekeeping services. He submitted claims for a housekeeper who came seven times per week for 2 or 2 ½ hours each time. Mr. Truong testified that his wife’s sister came once or twice a week to help out with housekeeping. When asked to explain his signed claims for expenses, Mr. Truong said that sometimes his sister-in-law came every day and that he didn’t know exactly how often she came because he wasn’t home when she came. Mr. Truong also testified that he spent most of his time at home.

Mr. Truong’s credibility also came into question with respect to his claim that he suffers pain in his TM joints. He testified about pain in his head, neck, back, left arm and left leg without encouragement. His counsel asked him about his TMJ and he replied that it was the same. When asked for more detail he replied that the right side makes a creaking sound and the pain is relieved with two Tylenol 2s and he can sleep. In cross-examination, he could not remember if he told one of the Insurer’s examiners that his TMJ pain had resolved. He testified about a TMJ problem as if it was an afterthought.

The documentary evidence also puts the TMJ complaint into question. Mr. Truong mentions a TMJ complaint to some assessors and not to others. In his first disability certificate following his examination of August 26, 1999, Dr. Soon does not mention TMJ in his diagnosis or in the injury codes. Mr. Truong’s first physiotherapist in Cambridge recorded shortly after the accident that Mr. Truong reported a cracking in the jaw and tested the jaw and found it normal. The next physiotherapist, at Exxel, detailed 10 areas of complaint and treated Mr. Truong six months without mentioning TMJ in his reports or treatment plans. The chiropractor, Dr. Navraj Gill, did not record TMJ complaints in the two years of records that were submitted for his treatment. Some of the evidence concerning TMJ suggests that it is not a serious complaint which is inconsistent with evidence that a specialist treated Mr. Truong for a TMJ disorder and that Mr. Truong paid for a splint.

Mr. Truong's explanation that he changed family doctors because it was easier to see Dr. Soon in Mississauga than it was to see Dr. Wong in his home town of Cambridge was questionable. Mr. Truong was discharged from hospital on a Friday and saw Dr. Wong on Monday. He had confidence in Dr. Wong because he continued to see him for non-accident related matters. Yet he started to see Dr. Soon a week after the accident without waiting to see whether he would recover from his injuries.

Within a few days, Dr. Soon referred Mr. Truong to Dr. Raghunan for psychological treatment which included treatment for a driving phobia. He continued to receive treatment for a driving phobia without telling Dr. Raghunan that he could drive passengers. He continued to complain of a driving phobia and receive treatment up to the disability DAC in June 2000 when surveillance taken in December 1999 showed him driving with passengers to appointments and on errands over a six-hour period.

On January 6, 2000, shortly after the surveillance, Mr. Truong's orthopaedic surgeon suggested that Mr. Truong return to light part-time work. On February 10, 2000, Mr. Truong's physiotherapist discharged Mr. Truong from physiotherapy with a recommendation that he start working part time and gradually increase to full-time hours. The employer was agreeable to such an arrangement. However, instead of trying part-time work, Mr. Truong found Dr. Gill and started chiropractic treatment the next week.

Mr. Truong continued with chiropractic, psychological and psychiatric treatment and various assessments and investigations over the next two years. He presents himself as someone who is trying to find relief for his pain. He spent considerable time and effort driving from Cambridge to Mississauga, North York and Toronto for treatment, yet he made no effort to follow the recommendations of some of his own treatment providers and at least try to return to work part time.

Mr. Truong argues that he was motivated to rehabilitate himself. He went with his son once to a Manpower centre to check out possible jobs on a computer and he wrote a test for a correspondence

course. The test was graded on May 11, 2001 and Mr. Truong's request to cancel the course was acknowledged on May 14, 2001. I do not find these meagre efforts persuasive evidence that Mr. Truong was motivated to rehabilitate himself.

Considering the totality of the evidence, I do not believe Mr. Truong. I find it likely that he invested his time and effort trying to benefit financially from this accident. I find it likely that he changed family doctors to someone he thought would be more supportive of his claim. When he was discharged from physiotherapy with a recommendation that he try part-time work, and part-time work was available, and at a time his orthopaedic surgeon was recommending that he return to work, Mr. Truong made no inquiries as to how many hours he could attempt work. He ignored the recommendations to return to work and quickly found a chiropractor to treat him, even though that treatment involved driving twice a week from Cambridge to Mississauga for two years. As early as four months after the accident he could drive and he drove significant distances away from home to seek treatment instead of investing that time and energy in an attempt to return to part-time work. He continued to complain of and receive psychological treatment for a driving phobia many months after he was able to drive. Throughout, he continued to submit claims for daily housekeeping services for a housekeeper who he said came once or twice a week.

Mr. Truong's counsel argued that Mr. Truong was credible because no reasonable person would risk the security of his family and job in the hope that he might receive accident benefits. Mr. Truong gave some evidence which might answer this question. He testified that since he came to Canada he has had to work to support his wife and two children. He testified that many of his friends make good money at a computer job which he described as "C and C" and that he would like to take courses at Conestoga College in Waterloo so that he could do this work.

I do not have to decide why Mr. Truong decided not to return to work. Whatever his reason for not doing so, I find that Mr. Truong could have returned to work after Lumbermens terminated income replacement benefits on June 1, 2000.

**Chiropractic treatment:**

Dr. Gill treated Mr. Truong approximately twice a week from February 18, 2000 to February 11, 2002. He charged \$25,227.69 and Lumbermens paid \$13,463.29. Mr. Truong seeks the balance of \$11,764.40.

Mr. Truong sought out Dr. Gill rather than follow his physiotherapist's recommendation to try to return to work. The extensive treatment did not help Mr. Truong. In my view of the evidence, Mr. Truong took the treatment in the hope that it would substantiate his claim that he was disabled and needed treatment. Accordingly, it was not necessary or reasonable for Mr. Truong to incur the expenses for this treatment. In any event, Lumbermens paid for treatment for more than one year and after one year Mr. Truong should have seen that the treatment was not helping him and further treatment was a waste of resources.

### **Psychological treatment:**

Mr. Truong claimed medical expenses, set out in an invoice dated October 5, 2001, of \$2,700 for 15 one-hour counselling sessions provided by Dr. Roy Raghunan from November 20, 2000 to December 17, 2002. In separate OCF 21 forms Dr. Raghunan submitted claims for five further sessions within the same period for an additional \$900. This treatment included counselling to overcome Mr. Truong's alleged fear of driving, particularly with passengers. Mr. Truong admitted that a few weeks after the accident he started driving 45 minutes one-way to see Dr. Soon. As well, the surveillance is evidence that Mr. Truong engaged in significant driving, including driving with relatives as passengers. Dr. Raghunan admitted that he was not aware that Mr. Truong drove others. I find that Mr. Truong misrepresented his fear of driving to Dr. Raghunan. He cannot recover for unnecessary treatment which is based on misrepresentations to his treatment provider.

Further, Dr. Raghunan did not demonstrate a high degree of expertise. He misunderstood Mr. Truong's background. He mistakenly thought he had worked at the same job for 13 years. As well, his conclusion that Mr. Truong was rigid, inflexible and had difficulty coping with trauma and stress was highly questionable given the evidence I have referred to. As well, Dr. Raghunan prepared a report

shortly before the hearing which contradicted testimony he gave at the hearing on an important aspect of psychological impairment. He reported that Mr. Truong “did not endorse suicidal thoughts, concerns or wishes” yet he testified that Mr. Truong quite frequently talked about suicide and that one of his achievements was that he “kept him alive.”

In these circumstances, the treatment that Dr. Raghunan provided from November 20, 2000 to December 17, 2002 was not reasonable or necessary and Mr. Truong cannot recover the cost from Lumbermens.

***Account of Dr. Miriam Grushka:***

At the outset of the hearing, counsel for Mr. Truong identified as an issue medical expenses of \$923 for services provided by Dr. Grushka, oral surgeon.

Mr. Truong’s dentist referred Mr. Truong to Dr. Ian Furst in Cambridge to investigate Mr. Truong’s complaints of TMJ pain. Dr. Furst arranged for an MRI in London. Under “Impression” is recorded “Bilateral reduceable menisci with early degenerate changes on the right side.” I heard no explanation of what “reduceable” meant nor any persuasive evidence relating this condition to the motor vehicle accident. Dr. Furst prescribed a bite plate for which Lumbermens paid \$338 in August 2000.

On April 6, 2001, Mr. Truong saw Dr. Miriam Grushka at the request of his representative to investigate Mr. Truong’s TMJ pain. Dr. Grushka reported that Mr. Truong did not find the splint useful and that he reported that his TMJ pain was worse. Dr. Grushka arranged for a bone scan the next month which showed no significant abnormality involving the TM joints. In August 2001 a computed tomography scan done for Dr. Soon indicated that both TM joints appeared normal. In September Dr. Grushka ordered a new, thicker splint.

Mr. Truong did not remember telling Dr. Rajka Soric, as she reported in July 2002, that his TMJ pain had resolved. He testified that his TMJ pain was the same.

The accounts filed with respect to this claim include a rejection by Mutual Life, dated September 10, 2001, of an account for \$770 which included \$420 for a splint and \$350 for two adjustments. Also included is a receipt Dr. Grushka issued to Mr. Truong dated September 20, 2001 for \$410 for payment of the splint.

As I found earlier, Mr. Truong testified about his TMJ pain as if it was an afterthought, for which he had to be reminded. Again, he mentioned it to some assessors and not to others. As with his other complaints, I did not find the TMJ complaints credible. Further, I heard no persuasive evidence as to why a second bite plate was reasonable or necessary when Mr. Truong did not use his first bite plate prescribed by Dr. Furst.

***Housekeeping expenses:***

To summarize again, Mr. Truong did not reconcile his written expense claims that the housekeeper came daily with his testimony that the housekeeper came once or twice a week. I do not believe that Mr. Truong needed a housekeeper or that one came.

***Cost of examinations:***

Mr. Truong claims several expenses as the cost of examinations pursuant to section 24 of the *Schedule*.

Mr. Truong claims \$80 for a disability certificate completed by Dr. A.K. Soon. The exhibits contain two disability certificates completed by Dr. Soon. I have no evidence of whether he submitted an account to Lumbermens and if he did, the amount. Accordingly, this claim is dismissed.

Mr. Truong also claims \$3,800 for a report by Dr. Raghunan, \$5,300 for a report by Dr. M. Mamelak, \$2,800 for a report by Dr. John Gilman, and, \$900 for a report by Dr. Pierre Kirwin. In view of my finding that Mr. Truong exaggerated or made up his complaints to support his claim for benefits, it is not reasonable that I should order Lumbermens to pay for reports in support of such a claim.

Mr. Truong also claimed a total of \$2,070 for interpretation services. At the outset of the hearing, I interviewed Mr. Truong in English and determined that he required an interpreter for the hearing and I swore in the interpreter and advised Mr. Truong that he could speak in English if he felt more comfortable. At the beginning of his examination, Mr. Consky advised Mr. Truong to answer in English unless he had trouble. For the most part, Mr. Truong testified in English and relied very little on the interpreter. His English improved as he testified.

Dr. Raghunan counselled Mr. Truong in English, although he had Vietnamese speaking people in his office who could help out in written tests if Mr. Truong required help. Dr. Mamelak did not use an interpreter, although Mrs. Truong often accompanied her husband to see Dr. Mamelak and her English was better than that of her husband.

One of the invoices was for interpreting for Dr. Cooper, a psychologist. I heard no explanation of Dr. Cooper's role. Another invoice was for an income evaluation assessment with Mr. Gordon Krofchick. I heard no evidence to explain this assessment.

As with the other claims, this claim is so connected with the advancement of an exaggerated claim that it too is tainted and is not recoverable from Lumbermens.

### **Repayment:**

Lumbermens did not make any argument that Mr. Truong should repay any benefits.

### **EXPENSES:**

The parties chose not to make submissions on the issue of entitlement to expenses of the arbitration proceeding. If they cannot agree, they may make written submissions to me in accordance with the *Dispute Resolution Practice Code* (Fourth Edition) and within 45 days of the date of this decision. Such submissions should deal with both entitlement to and amount of expenses.

January 24, 2003

\_\_\_\_\_  
William Renahan  
Arbitrator

\_\_\_\_\_  
Date

**FSCO A01-001455**

**BETWEEN:**

**VAN THANH TRUONG**

**Applicant**

**and**

**LUMBERMENS MUTUAL CASUALTY COMPANY / KEMPER CANADA**

**Insurer**

**ARBITRATION ORDER**

Under section 282 of the Insurance Act, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. The application for arbitration is dismissed.
2. The issues of entitlement and amount of expenses is deferred.

January 24, 2003

\_\_\_\_\_  
William Renahan  
Arbitrator

\_\_\_\_\_  
Date

**TRUONG and LUMBERMENS**  
**FSCO A01-001455**