STATE OF VERMONT
DEPARTMENT OF LABOR

GARY WEBSTER	)	
	)	
v.	)	STATE FILE NO. S-15680
	)	
STEVEN'S GAS	)	

ARBITRATION DECISION

At issue in this case is whether TIG Insurance or First Cardinal is responsible for payments for Claimant's right shoulder injury.

APPEARANCES:

John W. Valente, Esq., on behalf of First Cardinal, relevant workers compensation insurer after January 18, 2002.

Eric N. Columber, Esq., on behalf of TIG, relevant workers compensation insurer prior to January 18, 2002.

EXHIBITS:

Exhibits submitted jointly by the parties:

1. Joint medical record.
2. The parties stipulated with respect to the relevant workers compensation insurance coverage dates, the change from TIG to First Cardinal occurring on January 18, 2002.
3. Deposition of Claimant.
4. Deposition of Hyman Glick, M.D.
5. Deposition of George P. White Jr., M.D.

FINDINGS OF FACT:

1. At all times relevant, Claimant Gary Webster was employed by Steven's Gas ("Steven's"). Claimant's duties at Steven's had varied over the years, but they have included making

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gas deliveries, delivering and placing propane tanks (including the 50 pound concrete blocks on which the tanks are placed), filling propane tanks, shop cleanup and some paperwork. By Claimant's account, the duties can be physically demanding, the climbing, stepping over walls, and particularly dragging hoses involved can make it a "hell of a tough job" in Claimant's words.

2. Claimant has also worked for many years as a volunteer fireman and rescue worker. This work can also be physically demanding in its nature.

3. On December 24,2001, during the course of his employment with Steven's, Claimant slipped and fell on vinyl siding under some snow and fell onto his outstretched right arm. Claimant felt a hot, burning sensation and had sudden and immediate pain in his right shoulder. Claimant had experienced prior shoulder pain including a ruptured biceps tendon of the right upper extremity in the 1980s and of the left biceps tendon in the early 1990s.

4. Claimant sought treatment with his treating physician who referred Claimant to a surgical specialist at Central Vermont Hospital, Anthony Lapinsky, M.D., who suspected a rotator cuff tendon tear.

5. An MRI was performed on February 26, 2002 that was interpreted by the radiologist as showing "...fairly extensive tearing of the rotator cuff tendon and it is probably a full thickness tear although I do not see any tendon retraction." The radiologist's impression was: (1) extensive tearing of rotator cuff tendon; and (2) tear of long head of biceps tendon.

6. With continued pain, weakness and impingement symptoms, Claimant elected to proceed with a surgical repair on May 3, 2002. Dr. Lapinsky performed a right shoulder arthroscopy with debridement of labrum and arthroscopic and open subacromial decompression. In the course of this procedure, Dr. Lapinsky determined that the rotator cuff had an area of scuffed or thin tendon but this was fully intact from the musculotendinous junction to the greater tuberosity. In short, the suspected "tear" was absent.

7. By May 13, 2002 Dr. Lapinsky reported that Claimant's preoperative pain symptoms had resolved. Claimant underwent physical therapy from May 13, 2002 until June 26, 2002 (a total of nine sessions). The physical therapy notes reflect steady progress but with some continued soreness and pain, especially after work. The August 12, 2002 physical therapy Discharge Summary reflects that Claimant is "generally doing well with increase range of motion, decreased pain, increased strength; gets 'stiff and "achey" *[sic]* post work but generally reports very little pain and able to lie on right side; has home exercise program and performs well."

8. On May 15, 2002 Claimant was cleared to drive. On May 17, 2002 Dr. Lapinsky provided a "prescription" for three months of TTD from April 28, 2002. This demonstrates an anticipated return to work of July 28, 2002. However, on May 23, 2002 Dr. Lapinsky cleared Clamant to return to work, light duty, with a lifting restriction of 40 pounds. Claimant returned to work in that capacity.

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9. On June 10,2002 Dr. Lapinsky found that Claimant had full range of motion with weakness of abduction and forward flexion. Dr. Lapinsky recommended "return to work activities as full." By August 1, 2002 Claimant had regained full range of motion and strength and was further cleared for firefighting activities. However, Claimant noted some pain after strenuous work activities and was provided a prescription for 60, 5mg Percocet for night pain.

10. Also, on August 1, 2002 Dr. Lapinsky noted "his lawyer will contact me for permanency related to his injury and subsequent surgery. This will be determined after six to twelve months from his procedure."

11. On his return to work, Claimant testified that he was doing all his normal work, including lifting and carrying 50 pound concrete blocks and pulling propane hoses. He reported his shoulder would get tired, but he was able to work full duty. Claimant took medication for nighttime pain relief after his 2002 return to work; however, he is vague on what drugs were taken, when he took them and in what amounts. The Arbitrator notes that there appears to have been no refill of the Percocet prescription between its issuance on June 10, 2002 and the second incident in December 2002.

12. Claimant sought no medical treatment from a provider for right shoulder symptoms from August 1, 2002 until December 23, 2002. Claimant was not placed at a medical end result by December 23, 2002 and as a result, no permanency evaluation occurred. Although, according to Dr. Lapinsky's earlier notes, these issues could have appropriately been addressed by November 3, 2002, six months from the first surgery.

13. During December 2002 Claimant re-injured his right shoulder. Claimant testified he was pulling a hose through the snow to refill a tank. Claimant said it suddenly felt like a rubber band broke in his shoulder. The pain knocked him to his knees and he considered this second injury worse than the first. The exact date of this incident is not clear from the record.

14. There is a Dr. Lapinsky medical record dated December 23, 2002 (a Monday). We do not know when or how this office visit was scheduled. Interestingly, this record makes no note of the specific incident described by Claimant, although it does note a "strain." Dr. Lapinsky noted Claimant "continues to have right shoulder pain with his high level work activities. He had strained his shoulder once again." He recommended an MRI and noted that "with tendinosis, injury to the tendon and scarring, this can be a weakening point and even lead to a tear."

15. In Dr. Lapinsky's opinion the subsequent MRI revealed "a tom rotator cuff tendon, full thickness, this was not found in his previous surgery but is with high likelihood, in my medical opinion, the result of his previous injury and then return to strenuous work activities. The tendon was likely injured and despite decompression, it went on to a full thickness tear." Lapinsky note of 3/11/03.

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16. Claimant continued to experience pain during the winter of 2003 and he treated with joint injections.

17. Dr. Lapinsky's March 25, 2003 note states "Mr. Webster sustained injury to his right shoulder in the winter of 2001. He subsequently underwent surgery for his shoulder but this was not curative for him. He has a recurrence of his previous right shoulder condition. This is not an aggravation. The recurrence is based on his partial thickness rotator cuff tendon repair, which was treated by decompression. Despite decompression surgery, his pain continues and he has developed a full thickness rotator cuff tendon repair, which is not uncommon with the guarded prognosis of a partial thickness tear."

18. Hyman Glick, M.D. is a Board Certified orthopedic surgeon. Dr. Glick performed a records review, but he did not review Claimant's deposition. Dr. Glick made the following observations. Claimant had an extremely degenerative rotator cuff. The first surgery by Dr. Lapinsky in May 2002 was a decompression that made more room for the rotator cuff tendons. Generally speaking, such a decompression is successful 70% of the time and unsuccessful 30% of the time. This 2002 surgery provided short-term benefit ". . . only to aggravate and cause a recurrence of his pre-existing condition of rotator cuff tendinopathy in December 2002 by straining his shoulder again." By December 2002 Claimant was close to medical end result. He wrote that the benefits of the 2002 shoulder "did not hold up." Because his evaluation was a review of the records, Dr. Glick did not know if there had been an acute injury, an accident, preceding the December 23, 2002 visit with Dr. Lapinsky. When Claimant's description of the December 2002 incident was provided to Dr. Glick, i.e. pulling on the gas hose, the feeling of a rubber band breaking and excruciating pain, the doctor agreed this presentation is consistent with an acute injury and would represent a worsening of the underlying condition of Claimant's shoulder.

19. On May 5, 2003 Claimant underwent right shoulder arthroscopy and open revision subacromial decompression and rotator cuff tendon repair, supraspinatus tendon, acute. The relevant findings were a completely torn biceps tendon and a full thickness (3cm) tear of supraspinatus tendon from the greater tuberosity. The supraspinatus tendon was reattached with a bio-corkscrew suture anchor.

20. Claimant went through a recovery period and all indications are that he subsequently returned to work.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks, Morse Co.*, 123 VT. 161 (1962). Claimant must establish by sufficient credible evidence the character and extent of the injury, as well as the causal connection between the injury and the employment. *Egbert v. The Book Press*, 144 VT. 367 (1984). Because the medical issues involved are beyond the ken of a layperson, expert testimony

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is required. See *Lapan v. Berno's Inc.*, 137 VT. 393 (1979). There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden & Martin Lumber Co.*, 112 VT. 17 (1941).

2. This is an aggravation/recurrence dispute between two Insurers for the same employer. The terms "aggravation" and "recurrence" have legal significance and have been given precise definitions by the Vermont Supreme Court and by the Commissioner of Labor. The Commissioner has provided Regulatory definitions for these terms and many administrative decisions establishing factors to be weighed and balanced.

3. Pursuant to 21 VSA §662(c), First Cardinal has the burden of proof because it was the insurer at the time of the most recent alleged personal injury for which the employee claims benefits. *Farris v. Bryant Grinder Corporation, et al.* 2005 VT 5, PP7, 16 Vt.L.W. 13, 14-15.

4. The Vermont Supreme Court has explained, "In workers' compensation cases involving successive injuries during different employments, the first employer remains liable for the full extent of benefits if the second injury is solely a 'recurrence' of the first injury, i.e. if the second accident did not causally contribute to the claimant's disability (cite omitted). If, however, the second incident aggravated, accelerated, or combined with a pre-existing impairment or injury to produce a disability greater than would have resulted from the second injury alone, the second incident is an 'aggravation,' and the second employer becomes solely responsible for the entire disability at that point." *Pacher v. Fairdale Farms & Eveready Battery Company,* 166 Vt. 626(1997) (mem.) "Mere continuation or even exacerbation of symptoms, without a worsening of the underlying disability, does not meet the causation requirement." *Stannard v. Stannard Company, Inc., et at.,* 2003 VT 52 ¶ 11. The Supreme Court has defined a third type of situation, the flare up, which is neither an aggravation nor a recurrence. A flare up is a temporary worsening of a pre-existing disability caused by a new trauma for which the new employer is responsible for paying compensation benefits until the worker's condition returns to the baseline and not thereafter. *Cehic v. Mack Molding, Inc.,* 17 VT.L.W. 38 (2006).

5. The Regulatory definitions provided by the Commissioner follow: "Aggravation" means an acceleration or exacerbation of a pre-existing condition caused by some intervening event or events. Rule 2.111 0, Vermont Workers" Compensation and Occupational Disease Rules (2001). This has been explained as "a destabilization of a condition which has become stable, although not necessarily fully symptom free." *Cote v. Vermont Transit,* Opinion No. 33-96 WC (June 19, 1996).

6. The Commissioner has decided many cases by applying the Regulatory definitions in addition to a five factor test described by the Supreme Court without specific approval in *Farris.* In *Trask v. Richburg Builders,* Opinion No. 51-98WC (1998), the Commissioner explained that recurrence is the return of symptoms following a temporary remission or a continuation of a problem, which had not previously resolved or become stable. An aggravation means an

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acceleration or exacerbation of a previous condition caused by some intervening event or events; it is a destabilization of a condition, which had become stable, although not necessarily fully symptom free.

7. The five factors used by the Vermont Department of Labor and Industry when analyzing whether a condition is an aggravation or recurrence are: (1) whether a subsequent incident or work condition destabilized a previously stable condition; (2) whether the claimant had stopped treating medically; (3) whether the claimant had successfully returned to work; (4) whether the claimant had reached a medical end result; and (5) whether the subsequent work contributed to the final disability. *Trask v. Richburg Builders,* Opinion No. 51-98 WC (Aug. 25, 1998) and cases cited therein.

8. Application of these factors in this case is challenging and the competing carriers have presented different and colorable interpretations and arguments arising from the same set of facts and medical evidence and testimony. In a nutshell, Dr. White opines this is an aggravation and Dr. Glick opines this is a recurrence. The treating surgeon, Dr. Lapinsky, describes this as a recurrence but also as a further injury or re-injury. I will review the *Trask* factors with the understanding that the weighing and balancing of these issues is not a simple matter of majority rules arithmetic and that the Supreme Court is the law of the land. We will discuss the *Trask* factors more or less in chronological order.

9. Did Claimant reach a medical end result? Medical end result is a medical/legal expression referring to a point where the injured worker has reached a substantial plateau in the recovery process and is not expected to make signficant future improvement. Workers Compensation Rule 2.1200. There is no question that Claimant was never described to be at a medical end result by his treating physician, Dr. Lapinsky. Dr. Lapinsky's notes suggest an examination of this issue would have been appropriate as early as November 2002 or as late as May 2003 (barring the second incident, of course). Dr. Glick testified that Claimant may have been close to medical end result in the Fall or early Winter of 2002. Dr. White felt that Claimant had significantly recovered by December 2002. This is too close to call but because both experts feel Claimant was either near MER or significantly recovered, and because Claimant told Dr. White he "seemed all right," I conclude Claimant had reached medical end result prior to the December 2002 incident. Claimant was probably healed from the decompression surgery by December 2002.

10. Did Claimant have a successful return to work? There can be little dispute that Claimant had successfully returned to work. Claimant appears to have demonstrated the physical capacity and actual ability to perform the duties of the job without disabling pain and/or imminent risk of reinjury. Rule 18.1410. In fact, the pace of his return is somewhat remarkable. Dr. Lapinsky indicated on May 17, 2002 that Claimant would be out of work for three months. However, by May 23,2002 Claimant was back at work, light duty (with a 40 pound lifting restriction), and by June 10, 2002 he was working with no restrictions. Claimant testified that by that time he was doing all his

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regular work, including lifting, climbing, stepping over walls and dragging hoses. Given these factors, it cannot be said that Claimant did not make a successful return to work. Furthermore, Claimant testified that his return to work had been successful and that he believed his shoulder had ceased to be an issue. This is not to say that the December 2002 incident occurring within eight months of surgery and within seven months of returning to work doesn't give me pause to wonder with the benefit of hindsight whether the aggressive return to full duty so quickly after surgery was prudent.

11. Did Claimant stop medical treatment? Claimant stopped seeking physical therapy or actively visiting the doctor for shoulder issues by August 1, 2002. In fact, his last physical therapy was June 26, 2002. Claimant testified that he experienced soreness at the end of the day and some nights awoke with a very sore, sometimes throbbing, shoulder and occasionally took Advil and Percocet to control this pain. Nonetheless, prior to the date when the alleged aggravation occurred, he had stopped treating medically. In particular, these symptoms did not prevent Claimant from working his regular duties and evidently were not sufficient in nature or severity to lead him to decide to return to his doctors.

12. Did the incident in question or work condition destabilize a previously stable condition? Claimant has testified to a very specific incident which triggered a significant increase in pain and loss of function. The description of the event is dramatic and traumatic. Claimant similarly told Dr. White at the July 26, 2004 IME that he was pulling on a propane hose with this right arm when he had a sudden painful experience feeling like someone kicked him in the shoulder and arm. But, this contrasts to Dr. Lapinsky's December 23,2002 note that merely states, "He had strained his shoulder again." Several questions must be answered. Did the propane hose incident occur? I conclude it did. There is no evidence from any person in a position to know that it did not occur. The employer produced no records that Claimant was not present at the time and place where he claims the incident happened. There are no prior inconsistent statements. Did the propane hose incident cause injury to Claimant's right shoulder? Yes it did. On this point, First Cardinal argues that there is no documented second work incident and that the progression from a scuffed or thin tendon to a full thickness tendon tear was the natural course of the condition. This will be discussed in detail in paragraph 14 of this Decision. Had the condition of Claimant' s right shoulder "stabilized" prior to the December 2002 propane hose incident? Yes. As discussed above, by all accounts the shoulder had stabilized prior to December 23, 2002. Was the shoulder destabilized by December 23, 2002? Yes, Dr. Lapinsky's record on that date mentions a strain and further states that Claimant was not at medical end result and he began evaluation of the shoulder symptoms. The destabilization was caused by the incident that preceded the visit with Dr. Lapinsky on December 23, 2002.

13. Did the subsequent work contribute to the disability? There is really no evidence on this question from any of the doctors in the sense that any doctor evaluated Claimant's level of disability before and after December 2002. The only impairment ratings are those by Drs. White

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and Lapinsky but both were made after Claimant had recovered from the second surgery. I find that Claimant had a permanent partial impairment prior to the December 2002 incident, but no evidence was presented of what that impairment was for purposes of allocation. We do have evidence from before and after the second surgery of Claimant's range of motion. A review of Claimant' s range of motion values following the respective surgeries paints a picture which suggests two very different injuries and levels of impairment. On June 3, 2002 the values were reported as: abduction 145°; extension 40°; flexion 125°; external rotation 65°; internal rotation 70°. In contrast, by March 16, 2004 the values were considerably worse: abduction 90°; extension 30°; flexion 80°; external rotation 10°; internal rotation 60°. These reports reflect a significant decrease in range of motion and an increase in Claimant's disability due to loss of shoulder function.

14. I return to the destabilization question. This is really a question of causation. Dr. Glick sees Claimant's problem as a degenerative condition that merely progressed from partial tear to full tear, whereas Dr. White believes the shoulder was disrupted by trauma. The Supreme Court holds that ". . . when evaluating successive injuries related to a degenerative disease, the pivotal question is whether the disability occurred earlier than it would have without the second injury." *Farris v. Bryant Grinder* at ¶16. Did the 2003 surgery become necessary as a consequence of continuing rotator cuff impingement caused by the original 2001 injury such that it was merely an evolution of a degenerative process, or did the need for the 2003 surgery become necessary as a consequence of an incident or work condition that brought on the disability earlier than it would have otherwise? *Stannard* at ¶11.

15. Characterizing the condition of the shoulder before the December 2002 incident is important. As Dr. Glick described it, Claimant's shoulder condition was an extremely degenerative rotator cuff with impingment syndrome and a very significant partial thickness tear of the tendon. Dr. Glick stated the chronic impingement and prior incidents caused a scuffed, thinned or partially torn tendon of Claimant's rotator cuff. Dr. Lapinsky described the condition (5/13/02 record) as an impingement syndrome and partial rotator cuff tendon tear. Dr. White characterized the pre-existing problem as a degenerative change in the rotator cuff.

16. What do the various doctors say about causation? We have comments from Drs. White, Glick, Lapinsky and Brigham. Each doctor has credentials beyond question. Drs. Lapinsky and Glick are surgeons. Drs. White and Brigham are medical specialists who specialize in occupational disability treatment and evaluation. Dr. Lapinsky is the treating physician who performed two surgeries and dealt with the patient directly and personally observed the patient's condition and heard what the patient had to say. While Dr. White performed an IME, Dr. Glick and Dr. Brigham performed records reviews.

17. Dr. White has provided the opinion that the subsequent condition was different because there was no actual tear of the rotator cuff in December 2001 and there was more significant tissue damage found at the time of the 2003 surgery. Dr. White characterized the events of

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December 2002 as both an aggravation and a new injury. Even though the rotator cuff was thin and maybe scuffed in 2001, there was a new injury in 2002 which was caused by a "traumatic event." Dr. White believed that while the shoulder may have been more prone to injury, the second incident was not a natural progression of the first. Dr. White performed an IME of Claimant and had the ability to take a history and assess his condition in person. Additionally, Dr. White is well aware of the aggravation/recurrence distinction in the context of Vermont Workers' Compensation law.

18. Dr. Brigham did a records review and concluded the episode of December 2002 was a significant aggravation of the pre-existing condition.

19. Dr. Glick testified that Claimant had an extremely degenerative and progressively deteriorating shoulder. The right shoulder rotator cuff tendon was worn and torn by accidents and chronic impingement. The 2002 surgery was designed and intended to make more room for the tendons to glide over one another without impingement, but the surgery had a less than satisfactory outcome. So, there was continued impingement leading to a full thickness tear of the already partially torn and worn tendon. On his review of the records, Dr. Glick was unaware of the December 2002 incident, although Dr. Glick was aware that Claimant told Dr. White that the December 2002 incident felt like he'd been kicked in the shoulder. When informed of Claimant's testimony about the December 2002 incident and asked to characterize it, Dr. Glick testified that this would be consistent with an acute injury, a "new traumatic event on a deficient shoulder." He agreed it would be a worsening of the underlying condition of the shoulder. He stated, "Having heard about the incident that happened in December of '02, I would have to say that that contributed to disruption of the rotator cuff. The rotator cuff was not normal to begin with. It was a thin rotator cuff, but there was an acute event that caused that thinned-out cuff to tear." But, Dr. Glick ventured, with continued impingement, the partial tear or thinned-out tendon could develop to a full thickness tear without an incident.

20. Dr. Lapinsky was not deposed. His records contain many statements on the disputed issue, none with the benefit of the Department's definitions. In his December 2002 office note he describes a strain of the shoulder. In March 2003 he states Claimant ". . . has a recurrence of his previous right shoulder condition. This is not an aggravation. The recurrence is based on his partial thickness rotator cuff tear . . . he has developed a full thickness rotator cuff tendon tear which is not uncommon with the guarded prognosis of a partial thickness tear." In the May 2003 surgical note he describes a "re-injury" and "further injury" of the shoulder resulting in a "full thickness rotator cuff tendon tear which was not present prior." It is not clear how Dr. Lapinsky distinguished between aggravation and recurrence, but what he means by re-injury and further injury has to be seen in the context of his office note of December 23, 2002 that states, ". . . he strained his shoulder once again."

21. I conclude that the incident described by Claimant did occur and that it caused a material worsening of the condition of Claimant' s right shoulder, necessitated the May 2003 surgery

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and the lost time and resulted in additional disability. Given Dr. White's superior knowledge of the actual event which caused the second injury, the arbitrator favors his opinion. Dr. White's opinions are also consistent with the medical records of Dr. Lapinsky. Dr. Lapinsky described the change in Claimant's condition as both "re-injury" and "further injury" which are more consistent with an intervening event than a simple return of symptoms following a temporary remission. When Dr. Glick's opinions and the basis of his opinion were tested in deposition, the doctor appears to have come to the view that if there was an event such as Claimant described in deposition and to Dr. White, then such an event "had to be a significant contributor to the complete disruption." When Dr. Lapinsky's notes of the two surgeries are compared, they paint dramatically different pictures as to the condition of the shoulder. In the first surgical note (May 3, 2002), Dr. Lapinsky states the rotator cuff was fully inspected and there was an area of scuffed or thin tendon but this was fully intact from the musculotendinous junction to the greater tuberosity. The bicep tendon was also palpable along its course. By contrast, in the second surgery (May 5, 2003) Dr. Lapinsky says the rotator cuff was no longer intact and there was now a confirmed full thickness tear. The rotator cuff tendon had gone from intact to fully torn. In addition, at the May 5, 2003 surgery the biceps tendon was torn leaving a scarred remnant and an empty biceps tendon sheath, as compared to the May 3, 2002 surgery when Dr. Lapinsky described palpating the bicep tendon along its course to the greater tuberosity. These dramatically different findings underscore that a new and dramatic event occurred in December 2002. While Claimant's rotator cuff was scuffed or partially torn from the original injury, I cannot conclude that the change in the condition of the shoulder from a partial tear to a full thickness tear was wholly attributable to deterioration in the pre-existing condition unaffected by some work-related intervening event or accident. With respect to the change in the rotator cuff tendon, the December 2002 incident was not coincidence, it was causation.

CONCLUSIONS

When all factors are considered in light of the evidence submitted by the parties, the Arbitrator finds the following:

1. The December 2002 injury constitutes an aggravation under Vermont standards, rules and case law.

2. First Cardinal is ordered to reimburse TIG for TTD payments in the amount of $12,990.09, provided it and Claimant agreed to the medical end result date.

3. With respect to PPD payments, provided that Claimant and First Cardinal agreed to the permanency paid by TIG and provided no evidence exists on the date hereof of Claimant's right shoulder PPD prior to the December 2002 incident, then First Cardinal shall reimburse TIG in the amount of $17,253.32 for the PPD paid. In the event evidence exists of the right shoulder

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impairment prior to the December 2002 incident, then the total, final PPD shall be allocated between TIG and First Cardinal.

4. With respect to medical payments, the Arbitrator is unable to reconcile the exact amount paid by TIG on this claim on the evidence submitted. Accordingly the Parties are ordered to attempt to reconcile the medical payment amount due from First Cardinal to TIG between themselves. Alternatively, the Parties may submit additional evidence to the Arbitrator with respect to this aspect of the claim. The arbitrator notes that the variance appears to be either $206.89 less, or $153.43 more than the $15,733.57 claimed by TIG.

5. Finally, First Cardinal is to adjust the claim going forward until it is relieved of that obligation by law.

Dated at Burlington, Vermont, this 8th day of June, 2006.

Glen L. Yates Jr., Esq., Arbitrator

cc: John W. Valente, Esq.
Eric N. Columber, Esq.

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