

Dr. Garson Conn, Orthopaedic Surgeon

Jazey and State Farm [+] Arbitration, 2014-12-09, Reg 403/96.

<https://www5.fsco.gov.on.ca/AD/4330>

Mr. Jazey testified that State Farm denied the hot tub treatment plan on June 17, 2011. He stated that State Farm based their decision on the opinion of Dr. Garson Conn, an orthopedic surgeon, who had completed an insurer's examination on June 7, 2011, and stated in his report:[9]

He (Jazey) continues to find this (the hot tub) to be helpful. However, from a strictly orthopedic perspective, the installation of a hot tub would not, in my opinion, be considered reasonable and necessary.

That is not to say that Jazey should not use a hot tub if he finds this to be comfortable, but I would think that a warm bath would be satisfactory or very helpful in that regard as well, and I think the necessity of a hot tub, on the basis of what would appear to have been a very successful surgical procedure and given the fact that Jazey had some compromise evident prior to the accident in question, which likely aggravated the symptomatology, is not, in my opinion, an orthopedic requirement and, therefore, I would consider the Treatment Plan not to be reasonable and necessary, as I have already outlined.

Dr. Conn was not called as a witness by State Farm and thus his credentials and statements were not tested by cross-examination. I attach more weight to oral testimony than to untested written reports.

Dr. Christopher Bailey is an orthopedic surgeon specializing in spinal injuries, the Director of Spine Research at Victoria hospital, and an Associate Professor at Western University. In his testimony, Dr. Bailey respectfully pointed out that Dr. Conn, while an orthopedic surgeon, is not a specialist in spinal orthopedics and spinal rehabilitation.

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Dr. Keith Siqueira is an expert in physical medicine and rehabilitation (physiatry). He testified that he disagrees with Dr. Conn and, in his opinion, the hot tub is a significant and necessary aid to assist in pain management and enhanced functionality, thereby allowing Mr. Jazey to

continue to work and remain active. He testified that he has often prescribed hot tubs for his spinal cord injury patients.

When questioned about Dr. Conn's statement, Dr. Siqueira stated:[12]

So, Dr. Conn essentially notes that the hot tub is not an orthopedic requirement. He notes that from an orthopedic perspective the hot tub would not be considered reasonable and necessary. So, a hot tub is not going to fix his bones, all right. So, from an orthopedic requirement perspective, Dr. Conn is correct.

But again it misses the point of this. (It's) a treatment modality that's helping this gentleman. It's reducing his pain. It's helping him more considerably than a hot bath would or a hot shower would. He was using it consistently and it was allowing him to maintain work and function (sic).

In my opinion, the hot tub is absolutely reasonable and necessary given the severity of his injuries.

Safi and Sovereign General [+] Arbitration, 2008-01-23, Reg 403/96.
Final Decision <https://www5.fscso.gov.on.ca/AD/2985>

Dr. Conn agreed that Mr. Safi had some symptoms and possibly nerve root irritation, but emphasized that his pain behaviour was disproportional, enhanced, and heightened. In his opinion, soft tissue injuries healed after three months, although in some cases, "the symptoms never went away." [emphasis mine] As an orthopaedic surgeon, Dr. Conn's focus was on the musculoskeletal component of any medical presentation, and by his own admission, he did not treat chronic pain or test for fibromyalgia. He did not accept that pain itself could be a disability or an impairment.

Crossey and Farmers' Mutual - Appeal [+] Appeal, 2007-06-08, Reg 776/93
<https://www5.fscso.gov.on.ca/AD/765>

I am not satisfied the arbitrator erred. His main reason for refusing the motion was that the report was not produced in accordance with the pre-hearing disclosure rules of the *Dispute Resolution Practice Code* (the "Code"). Dr. Conn's report was not the only evidence excluded; the arbitrator also denied Mrs. Crossey's motion to admit Dr. Barry Malcolm's report commenting on Dr. Conn's report. As this discussion occurred on the fifth day of hearing, after Mrs. Crossey testified, the ruling helped focus the hearing and ensure its timely completion, especially given the insurer's stated intention of calling Dr. Malcolm for cross-examination if his report was admitted. In any event, as the arbitrator's comments on the record indicate, Dr. Conn's amended

report was likely to invite a challenge to his impartiality, and the resulting battle of the experts would probably have extended the hearing without providing much helpful evidence. Ultimately, it was the arbitrator's role to decide whether the medical record was consistent with Mrs. Crossey's claim, and he was in as good a position as Dr. Conn (or Dr. Malcolm) to make the assessment. The ruling was well within his authority. For the same reasons of timely disclosure and hearing efficiency, I am not persuaded the arbitrator erred in refusing to admit the insurer's surveillance evidence, which was not disclosed in accordance with Rule 40 of the *Code*.

Ritorto and Allstate [\[+\]](#) Arbitration, 2006-03-03, Reg 403/96
<https://www5.fsco.gov.on.ca/AD/2890>

Allstate's orthopaedic surgeon, Dr. Garson Conn, found Mrs. Ritorto suffered residual neck and right shoulder stiffness, with some pain at the end range of motion and mild restricted back flexion. His February 2004 report concluding that Mrs. Ritorto had no disability is premised on the assumption that most soft tissue injuries usually heal within three months. In his evidence at the hearing, Dr. Conn accepted that Mrs. Ritorto suffered symptoms outside the normal recovery period, and I reduce the weight of his opinion because he failed to explain the reasons why her symptoms and restrictions do not support any disability whatsoever.