

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

SHADY GROVE ORTHOPEDIC  
ASSOCIATES, P.A and  
SONIA E. GALVEZ,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

ALLSTATE INSURANCE COMPANY,  
Defendant.

CV 06 1842

C.A. No.:

TRIAL BY JURY DEMANDED

GARAUFIS, J.

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
APR 20 2006 \*  
BROOKLYN OFFICE

**MATSUMOTO, M.J.**  
**CLASS ACTION COMPLAINT**

Plaintiffs Shady Grove Orthopedic Associates, P.A. and Sonia E. Galvez, on behalf of themselves and all others similarly situated, allege as follows:

**Introduction: Nature of the Action and Summary of Facts**

1. This is an action seeking recovery of compensatory damages, treble damages and declaratory and other relief arising from defendant Allstate Insurance Company's violations of N.Y. Ins. Law §5106(a) and N.Y. Gen. Bus. Law §349(a); its breaches of contract and bad faith breaches of contract; and its otherwise wrongful failure to pay statutory interest owed to thousands (if not tens of thousands) of New York consumers on overdue no-fault insurance benefits. This action does not seek recovery of the benefits themselves, which in most instances have already been paid by defendant Allstate Insurance Company ("Allstate") without dispute. Rather, this action seeks payment of statutory interest wrongly and knowingly withheld by Allstate in connection with overdue benefit payments.

2. This is a proposed class action brought on behalf of those of Allstate's New York insureds who, during the period April 20, 2000 to the present, submitted covered claims for first-party insurance benefits under no-fault coverages issued as part of Allstate's automobile insurance contracts; but whose claims, though not disputed by Allstate in any timely fashion, either 1) remain unpaid by Allstate after the expiration of the thirty-day period under N.Y. Ins. Law §5106(a), or 2) were paid by Allstate only after the expiration of that thirty-day period.

#### **Jurisdiction and Venue**

3. The Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d)(2)(A).
4. Venue is properly placed in this Court pursuant to 28 U.S.C. §1391(b)(1) and (2).

#### **The Parties**

5. Plaintiff Shady Grove Orthopedic Associates, P.A. ("Shady Grove") is a Maryland corporation established for the practice of orthopedic medicine. Shady Grove's employees have rendered medical care and physical therapy to plaintiff Sonia E. Galvez in connection with injuries she suffered in a certain May 30, 2005 automobile collision (as more fully described below).

6. Plaintiff Sonia E. Galvez is a natural person residing at 14611 Bubbling Spring Road, Boyds, MD 28041, and a named insured under Allstate "New York Private Passenger Auto Insurance Policy" 0 73 885752 02/22, effective February 22, 2005 and still in effect as of May 30, 2005. Ms. Galvez has assigned to Shady Grove certain of her rights with respect to first-party no-fault benefits under the subject Allstate policy.<sup>1</sup> As more fully described below, Ms. Galvez has tendered claims for such benefits through Shady Grove, and under the Allstate policy.

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<sup>1</sup> Ms. Galvez's assignment of rights to Shady Grove is evidenced by the documents attached as Exhibit A.

7. Defendant Allstate Mutual Automobile Insurance Company is an Illinois corporation with offices at 3075 Sanders Road, Suite H1A, Northbrook, IL 60062. It is engaged in the business of insurance, and regularly sells automobile insurance within the State of New York.

**Factual Background Applicable to the Proposed Class**

8. Allstate is a prolific underwriter of automobile insurance, including first-party no-fault benefits for persons injured while driving or occupying motor vehicles.

9. Since at least April 2000 Allstate has been among the most prolific underwriters of automobile insurance (including no-fault coverage) in the State of New York. At all times relevant to this case, Allstate has derived substantial revenues and profits from the sale of such insurance products in New York.

**The Thirty-Day Standard**

10. Under N.Y. Veh. & Traf. Law §319(1) (part of New York's Motor Vehicle Financial Security Act), persons who own any motor vehicle registered in New York or operate or permit to be operated a motor vehicle in New York must maintain specified forms of liability insurance.

11. Under N.Y. Ins. Law §5103(a), liability insurance issued in satisfaction of the requirements of N.Y. Veh. & Traf. Law §319 must also provide for the payment of first-party insurance benefits to specified categories of persons, and for loss arising out of the use or operation of the insured motor vehicle within the State of New York. These first-party benefits (sometimes referred to as "no-fault" benefits) include, by virtue of the definitions set forth in N.Y. Ins. Law §5102, payments to reimburse persons for medical and other expenses up to \$50,000 per person, where such expenses are incurred on account of personal injury arising out of the use or operation of a motor vehicle.

12. Under N.Y. Ins. Law §5106(a), payment of first-party no-fault benefits pursuant to section 5103 must be made as the loss is incurred. Section 5106(a) further provides that such benefits are overdue if not paid within thirty days after the claimant supplies proof of the fact and amount of the loss sustained. Section 5106(a) also provides that overdue benefits shall bear interest at the rate of two percent per month. Under 11 NYCRR 65.15(h)(1), interest owed pursuant to N.Y. Ins. Law §5106(a) is compounded and calculated on a *pro rata* basis using a thirty-day month.

13. Regulations promulgated by New York's Insurance Department likewise govern the processing of claims for first-party no-fault benefits under New York's Insurance Law. Under 11 NYCRR 65.15(d)(1), an insurer may request verification of the claim for no-fault benefits within ten business days of its receipt of any completed application for the same. Such verification must be requested (if at all) through the use of prescribed forms as specified by 11 NYCRR 65.15(c)(3), including New York State Form N-F3 (Verification of Treatment by Attending Physician or Other Provider of Health Services) and New York State Form N-F4 (Verification of Hospital Treatment).

14. If an insurer makes a timely request for verification under 11 NYCRR 65.15(d)(1), the time within which the insurer must pay the claim for no-fault benefits is tolled pending the insurer's receipt of the requested verification. If the requested verification is not supplied to the insurer within thirty days of the original request, then 11 NYCRR 65.15(e)(2) requires the insurer to communicate to the claimant a follow-up request for verification within ten days thereafter. The regulations further provide, under 11 NYCRR 65.15(d)(2), that an insurer may request additional verification within ten business days of its receipt of one or more completed verification forms.

15. Under 11 NYCRR 65.15(g)(1)(i), no-fault benefits are overdue if not paid within thirty days after the insurer receives verification of all relevant information requested pursuant to 11 NYCRR 65.15(d) (in cases where such a request is made). N.Y. Ins. Law §5106(a) provides that such overdue benefits shall bear interest at the rate of two percent per month. Under 11 NYCRR 65.15(h)(1), such interest is compounded and calculated on a *pro rata* basis using a thirty-day month.

16. The effect of the regulatory scheme established under N.Y. Ins. Law §§5102, 5103 and 5106, in combination with the provisions of 11 NYCRR 65.15, is to require insurers to pay covered no-fault benefits within thirty days of the claimant's submission of proof of the fact and amount of loss sustained, or (in cases where the insurer makes any timely request for verification) within thirty days of the insurer's receipt of all requested verification. The same regulatory scheme makes no-fault insurers liable for payment of an interest penalty on overdue benefits, compounded and calculated at the rate of two percent per month.

#### **Allstate's Wrongful Conduct**

17. Allstate routinely fails to pay covered claims for first-party no-fault benefits within thirty days of the claimant's provision of proof of the loss, in violation of N.Y. Ins. Law §5106(a) and NYCRR 65.15.

18. Allstate routinely fails to pay covered claims for first-party no-fault benefits within thirty days of its receipt of the claimant's completed verification forms, in violation of 11 NYCRR 65.15.

19. In addition to violating the thirty-day payment standard under N.Y. Ins. Law §5106(a) and 11 NYCRR 65.15, Allstate routinely ignores its obligation to pay the statutory

interest owed in such cases. Allstate thus owes to the plaintiff Ms. Galvez, and to all members of the proposed class, interest under N.Y. Ins. Law §5106(a) and 11 NYCRR 65.15(h)(1).

20. On those occasions when Allstate fails to pay covered claims for first-party no-fault benefits within the thirty-day period under N.Y. Ins. Law §5106(a), Allstate routinely and falsely claims to have never received the insured's proof of loss in the first instance, all as a means of avoiding the consequences of its violation of the thirty-day standard.

**Allegations Specific to the Proposed Class Representatives**

21. Ms. Galvez was injured in an automobile collision on or about May 30, 2005. At the time of the collision, Ms. Galvez was driving a 2005 Toyota Corolla registered in the State of New York and bearing New York tag no. CZH3872 (the "insured vehicle").

22. On or about May 30, 2005, the insured vehicle was insured under Allstate "New York Private Passenger Auto Insurance Policy" no. 0 73 885752 02/22.

23. Ms. Galvez has tendered to Allstate (through Shady Grove) claims for first-party no-fault benefits under N.Y. Ins. Law §5106 and 11 NYCRR 65.15, and in connection with the injuries she suffered as a result of the May 30, 2005 collision.

24. With respect to the claims referenced by the preceding paragraph, Allstate has failed to make timely payment of benefits, in violation of the thirty-day standard under N.Y. Ins. Law §5106(a) and 11 NYCRR 65.15(g)(1)(i). Such benefits thus constitute overdue benefits within the meaning of N.Y. Ins. Law §5106(a) and 11 NYCRR 65.15(g)(1)(i).

25. Allstate has failed to pay to Ms. Galvez the interest owed to her under N.Y. Ins. Law §5106 and 11 NYCRR 65.15.

26. Allstate has failed to pay to Shady Grove the interest owed to it under N.Y. Ins. Law §5106 and 11 NYCRR 65.15.

27. Allstate has claimed falsely that one or more of the claims for first-party no-fault benefits tendered by Ms. Galvez through Shady Grove (as alleged in paragraph 23 above) was not received by Allstate on the date(s) when such claims had in fact been received. Allstate has made these false claims for the purposes of avoiding the consequences of its violation of the thirty-day payment standard under N.Y. Ins. Law §5106(a) and 11 NYCRR 65.15(h)(1).

**Class Certification Allegations**

28. Allstate owes to Ms. Galvez, and to all members of the proposed class, interest under N.Y. Ins. Law §5106 and 11 NYCRR 65.15.

29. Allstate owes to Shady Grove, and to all members of the proposed class, interest under N.Y. Ins. Law §5106 and 11 NYCRR 65.15.

30. This action is brought and may properly be maintained as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(1)(A), (2) and (3). Ms. Galvez and Shady Grove bring this action on behalf of themselves and all others similarly situated, as representatives of the following proposed class: All persons to whom Allstate owes interest under N.Y. Ins. Law §5106 and 11 NYCRR 65.15 with respect to claims for first-party no-fault benefits arising since April 20, 2000.

31. Specifically excluded from the proposed class are those persons who have already secured recovery against Allstate in connection with the conduct complained of, whether by settlement or judgment; and Allstate's officers, directors, employees, agents or legal representatives, or the successors or assigns of any of them.<sup>2</sup>

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<sup>2</sup> For purposes of this paragraph 31, no purported settlement or compromise in violation of 11 NYCRR 65.15(h)(2) shall constitute a settlement.

32. *Numerosity of the Class (Fed. R. Civ. P. 23(a)(1))*. The proposed class is so numerous that the individual joinder of all its members is impracticable. Allstate has been, at all relevant times, among New York's most prolific underwriters of no-fault coverage; and it remains so today. While the exact number and identities of the proposed class members is presently unknown, and can only be determined through investigation and discovery, plaintiff is informed and believes that the proposed class includes over 1,000 members.

33. *Existence and Predominance of Common Questions of Law and Fact (Fed. R. Civ. P. 23(a)(2), 23(b)(3))*. Common questions of law and fact exist as to all members of the proposed class, and predominate over any individual questions. They include, without limitation, the following:

- a. Whether Allstate owes interest to the proposed class members under N.Y. Ins. Law §5106 and 11 NYCRR 65.15;
- b. Whether Allstate's conduct is in violation of N.Y. Gen. Bus. Law §349;
- c. Whether Allstate's conduct constitutes a knowing or willful violation of N.Y. Gen. Bus. Law §349;
- d. Whether the proposed class is entitled to compensatory damages, and if so, the amount of such damages;
- e. Whether the proposed class is entitled to treble damages under N.Y. Gen. Bus. Law §349(h), and if so, the amount of such damages; and
- f. Whether the proposed class is entitled to recovery of its reasonable attorneys' fees under N.Y. Ins. Law §5106(a), 11 NYCRR 65.15(i)(1), N.Y. Gen. Bus. Law §349(h) or otherwise, and if so, the amount of such fees.

34. *Typicality of Claims (Fed. R. Civ. P. 23(a)(3))*. The proposed class representatives' claims are typical of the claims of the members of the proposed class. Ms. Galvez and/or Shady Grove are currently owed interest by Allstate under N.Y. Ins. Law §5106 and 11 NYCRR 65.15. All members of the proposed class are likewise owed such interest.

35. *Adequacy of Representation (Fed. R. Civ. P. 23(a)(4))*. Ms. Galvez and Shady Grove are under no actual or potential conflict of interest with respect to other members of the proposed class, and will fairly and adequately protect their interests. They have retained attorneys experienced in the prosecution of complex litigation, complex coverage litigation, no-fault litigation, and no-fault-related class action litigation.

36. *Superiority of Class Action (Fed. R. Civ. P. 23(b)(3))*. A class action is superior to other available methods of adjudication for this dispute, because individual joinder of all members of the proposed class is impracticable, and no other method of adjudication of the claims asserted herein is more efficient and manageable. Further, the damages suffered by individual members of the proposed class may be relatively modest, so that the burden and expense of prosecuting individual actions would make it difficult or impossible for such members to obtain relief. The prosecution of such individual actions would also impose a substantial burden on New York's civil justice system. At the same time, individualized litigation would entail a significant risk of varying, inconsistent or contradictory judgments, and would magnify the delay and expense to all parties and the courts, by requiring multiple trials for the same complex factual issues. By contrast, the class action mechanism presents fewer case-management problems; conserves the resources of the parties and the courts; and protects the rights of each member of the proposed class. The proposed class members thus have little interest in individually controlling the prosecution of separate actions; and to counsel's

knowledge, there has been no substantial litigation of this dispute in any forum. It is not anticipated that the prosecution of this dispute as a class action will entail any special case-management difficulties; and notice of the pendency of this action, and of any resolution of the same, can be provided to the proposed class by publication and/or individual notice.

37. *Other Grounds for Certification.* This action is also certifiable under Federal Rule of Civil Procedure 23(b)(1) and (2) because:

a. The prosecution of separate actions by the individual members of the proposed class would create a risk of inconsistent or varying adjudications with respect to such individual class members, thus establishing incompatible standards of conduct for Allstate; and

b. Allstate has acted or refused to act on grounds generally applicable to the class, thereby making appropriate declaratory relief with respect to the class as a whole.

## COUNT I

### Declaratory Judgment

38. Plaintiffs Shady Grove Orthopedic Associates, P.A. and Sonia E. Galvez, on behalf of themselves and all others similarly situated, repeat and incorporate by reference the allegations set forth in paragraphs 1 through 37 above.

39. Ms. Galvez's claims and the claims of all proposed class members arise under policies of automobile insurance issued by Allstate.

40. Shady Grove's claims (as Ms. Galvez's assignee) and the claims of all proposed class members arise under policies of automobile insurance issued by Allstate.

41. An implied representation of fact contained in all the subject automobile insurance policies is that Allstate will address claims for first-party no-fault benefits in a manner consistent with the requirements of N.Y. Ins. Law §5106 and 11 NYCRR 65.15.

42. Allstate denies or will deny that the implied representation of fact described in the preceding paragraph is contained in the subject insurance contracts.

43. Allstate has failed to address the proposed class members' claims for first-party no-fault benefits in a manner consistent with the requirements of N.Y. Ins. Law §5106 and 11 NYCRR 65.15.

44. An actual controversy of a justiciable nature exists between Ms. Galvez and/or Shady Grove, on behalf of themselves and all others similarly situated (on the one hand) and Allstate (on the other), concerning the parties' rights and obligations under the affected Allstate insurance contracts. That controversy turns on Allstate's obligation *vel non* to pay interest for overdue benefits under N.Y. Ins. Law §5106 and 11 NYCRR 65.15. The controversy is of sufficient immediacy to justify the entry of a declaratory judgment.

45. An award of declaratory relief by this Court will terminate some or all of the existing controversy between the parties.

## **COUNT II**

### **Breach of Contract**

46. Plaintiffs Shady Grove Orthopedic Associates, P.A. and Sonia E. Galvez, on behalf of themselves and all others similarly situated, repeat and incorporate by reference the allegations set forth in paragraphs 1 through 45 above.

47. Ms. Galvez's claims, Shady Grove's claims and the claims of all proposed class members arise under policies of automobile insurance issued by Allstate.

48. An implied representation of fact contained in all the subject automobile insurance policies is that Allstate will address claims for first-party no-fault benefits in a manner consistent with the requirements of N.Y. Ins. Law §5106 and 11 NYCRR 65.15. By failing to pay interest on overdue benefits as required by N.Y. Ins. Law §5106(a) and 11 NYCRR 65.15(h)(1), Allstate has failed to honor this implied representation of fact, and thereby breached the affected contracts of automobile insurance.

49. As a direct result of Allstate's breaches of the affected insurance contracts, Ms. Galvez, Shady Grove and all others similarly situated have been deprived of interest payments to which they are entitled under N.Y. Ins. Law §5106(a) and 11 NYCRR 65.15(h)(1).

### **COUNT III**

#### **Bad Faith Breach of Contract**

50. Plaintiffs Shady Grove Orthopedic Associates, P.A. and Sonia E. Galvez, on behalf of themselves and all others similarly situated, repeat and incorporate by reference the allegations set forth in paragraphs 1 through 49 above.

51. Allstate's failure to pay interest owed to Ms. Galvez, Shady Grove and all members of the proposed class under N.Y. Ins. Law §5106(a) and 11 NYCRR 65.15(h)(1) is a widespread and systematic failure, directed at consumers generally. Allstate has engaged in the wrongful withholding of such interest on a large enough scale to prove that its conduct is knowing and intentional.

52. Allstate's failure to pay interest owed to Ms. Galvez, Shady Grove and all members of the proposed class under N.Y. Ins. Law §5106(a) and 11 NYCRR 65.15(h)(1) is without reasonable basis.

53. Allstate's failure to pay interest owed to Ms. Galvez, Shady Grove and all members of the proposed class under N.Y. Ins. Law §5106(a) and 11 NYCRR 65.15(h)(1) is in bad faith.

54. As a direct result of Allstate's bad-faith breaches of the affected insurance contracts, Ms. Galvez, Shady Grove and all others similarly situated have suffered and will suffer injury as heretofore alleged.

#### **COUNT IV**

##### **Violations of N.Y. Ins. Law §5106**

55. Plaintiffs Shady Grove Orthopedic Associates, P.A. and Sonia E. Galvez, on behalf of themselves and all others similarly situated, repeat and incorporate by reference the allegations set forth in paragraphs 1 through 54 above.

56. Allstate has violated N.Y. Ins. Law §5106(a) by failing to pay interest owed thereunder to Ms. Galvez, Shady Grove and all proposed class members.

57. As a direct result of Allstate's violations of N.Y. Ins. Law §5106(a), Ms. Galvez, Shady Grove and all others similarly situated have suffered and will suffer injury as heretofore alleged.

#### **COUNT V**

##### **Violations of N.Y. Gen. Bus. Law §349**

58. Plaintiffs Shady Grove Orthopedic Associates, P.A. and Sonia E. Galvez, on behalf of themselves and all others similarly situated, repeat and incorporate by reference the allegations set forth in paragraphs 1 through 57 above.

59. Ms. Galvez's claims, Shady Grove's claims and the claims of all proposed class members arise under policies of automobile insurance issued by Allstate. Such policies are consumer insurance products, sold by Allstate to members of the consuming public at large.

60. An implied representation of fact contained in all the subject automobile insurance policies is that Allstate will address claims for first-party no-fault benefits in a manner consistent with the requirements of N.Y. Ins. Law §5106 and 11 NYCRR 65.15. By failing, on a widespread and systematic basis, to pay interest owed to members of the public under N.Y. Ins. Law §5106(a) and 11 NYCRR 65.15(h)(1), Allstate has betrayed that representation on a massive scale.

61. Through the conduct alleged herein, Allstate has engaged in practices that are deceptive in a material way. Those practices have not been isolated, but have been consumer-oriented, affecting the public at large.

62. Allstate's conduct, as alleged herein, is in violation of N.Y. Gen. Bus. Law §349.

63. Allstate's violations of N.Y. Gen. Bus. Law §349 have been willful and knowing, as evidenced by their frequency and scale.

64. As a direct result of Allstate's violations of N.Y. Gen. Bus. Law §349, Ms. Galvez and all others similarly situated have suffered and will suffer injury as heretofore alleged.

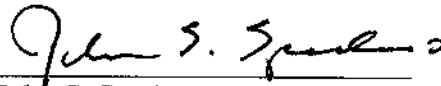
WHEREFORE, plaintiffs Shady Grove Orthopedic Associates, P.A. and Sonia E. Galvez, on behalf of themselves and all others similarly situated, respectfully request that this Court enter judgment as follows:

a. Entering an Order certifying the plaintiff class, appointing Ms. Galvez and/or Shady Grove as representatives of that class, and appointing Ms. Galvez's and Shady Grove's counsel to represent that class, all pursuant to Federal Rule of Civil Procedure 23;

- b. Declaring the parties' rights, duties, status or other legal relations under the affected insurance contracts;
- c. Awarding to Ms. Galvez, Shady Grove and all others similarly situated compensatory damages, in the form of interest owed under N.Y. Ins. Law §5106 and 11 NYCRR 65.15, for Allstate's breaches of its insurance contracts;
- d. Awarding to Ms. Galvez, Shady Grove and all others similarly situated compensatory damages, in the form of interest owed under N.Y. Ins. Law §5106 and 11 NYCRR 65.15, for Allstate's bad faith breaches of its insurance contracts;
- e. Awarding to Ms. Galvez, Shady Grove and all others similarly situated the interest owed to them under N.Y. Ins. Law §5106 and 11 NYCRR 65.15;
- f. Awarding to Ms. Galvez, Shady Grove and all others similarly situated compensatory damages, in the form of interest owed to them under N.Y. Ins. Law §5106 and 11 NYCRR 65.15, for Allstate's violations of N.Y. Gen. Bus. Law §349;
- g. Awarding to Ms. Galvez, Shady Grove and all others similarly situated treble damages under N.Y. Gen. Bus. Law §349(h);
- h. Awarding to Ms. Galvez, Shady Grove and all others similarly situated their reasonable attorneys' fees under N.Y. Ins. Law §5106(a), 11 NYCRR 65.15(i)(1), N.Y. Gen. Bus. Law §349(h) or otherwise;
- i. Awarding to Ms. Galvez, Shady Grove and all others similarly situated all costs of this action; and
- j. Awarding such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

MURPHY SPADARO & LANDON



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Wilmington, DE 19805  
(302) 472-8100

Attorneys for plaintiffs Shady Grove Orthopedic  
Associates, P.A and Sonia E. Galvez.  
(on behalf of themselves and all others  
similarly situated)

April 20, 2006



Patient Name: Sonia Galvez  
 Account No.: \_\_\_\_\_  
 Today's Date: 6-15-05  
 Doctor: Mark Peterson

MEDICAL HISTORY INFORMATION

Reason For Today's Visit: Pain in my neck. back. leg.  
 Date of Injury or Onset of Symptoms: 05-30-05  
 Where & How Did It Happen? Car Accident  
 Who Referred You To This Office? Shady Grove Hospital  
FULL NAME & ADDRESS PLEASE • INCLUDE ZIP CODE  
 Who Is Your Family Physician? NO  
FULL NAME & ADDRESS PLEASE • INCLUDE ZIP CODE  
 Were X-Rays Taken of This Injury or Problem? Yes:  No: \_\_\_\_\_  
 If Yes, Where Taken: 6-07-05 NECK Date Taken: 06-07-05  
 Have You Ever Been Treated By Any Of Our Physicians Before? Yes:  No:   
 If Yes, Where: Office: \_\_\_\_\_ Hospital: Shady Grove Hospital  
NAME & LOCATION PLEASE  
 Are You Presently Under The Care Of Any Physician? Yes: \_\_\_\_\_ No:  Name: \_\_\_\_\_  
 Are You Presently Taking Any Medication? Yes:  No: \_\_\_\_\_  
 If Yes, Please List Medications: BENZODIAZEPINES  
 Do You Have Any Known Drug Allergies? NO History of Ulcers: Yes: \_\_\_\_\_ No:   
PLEASE CLARIFY

COMPENSATION/  
AUTO / INJURY  
INFORMATION

Were you injured on the job? Yes: \_\_\_\_\_ No:   
 Will you be filing a workman's compensation claim? Yes: \_\_\_\_\_ No:   
 Was this injury due to an automobile accident? Yes:  No: \_\_\_\_\_  
 Will you be filing your Automobile/PIP insurance? Yes:  No: \_\_\_\_\_  
 Do you have an attorney representing you in this matter? Yes: \_\_\_\_\_ No:

**NOTE: IF YOU ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, PLEASE SECURE AN ADDITIONAL FORM FROM THE RECEPTIONIST SO THAT WE MAY FULLY COMPLETE ANY CLAIM IN YOUR BEHALF.**

**PATIENT AUTHORIZATION**

I, Sonia Galvez hereby authorize Shady Grove Orthopaedic Associates, PA., to apply for benefits on my behalf for covered services rendered by Shady Grove Orthopaedic Associated, PA. I request payment from \_\_\_\_\_ be made directly to Shady Grove Orthopaedic Associates, PA.

I certify that the information I have reported with regard to my insurance coverage is correct and further authorize the release of any necessary information, including medical for this or any related claim in order to determine benefits to which I may be entitled. I permit a copy of this authorization to be used in place of the original. This authorization may be revoked by either me or my insurance company at any time in writing.

**ALL CO-PAYS ARE DUE AND PAYABLE AT THE TIME OF SERVICE.  
 THERE IS A \$25.00 FEE FOR ALL RETURNED CHECKS**

Signature: [Signature] (SEAL) Date: 6-15-05

OFFICE  
USE ONLY

INITIATED BY [Signature] DATE \_\_\_\_\_ POSTED \_\_\_\_\_ DATE \_\_\_\_\_ REF. PHYS. NO. \_\_\_\_\_

**SHADY GROVE ORTHOPAEDIC ASSOCIATES, P.A.**  
 7776 Medical Center Drive, Suite 405, Rockville, MD 20850  
 (301) 591-3200 • Telex: 52104 • Fax: (301) 591-1922

**PLEASE ANSWER THESE QUESTIONS ABOUT THE VEHICLE IN WHICH YOU WERE DRIVING OR RIDING.**

Owner's Name: Sonia Gavuz  
 Address: 866 Easton St (CITY/STATE) Rockville, MD (ZIP CODE) 20850  
 State Where Vehicle Registered: N.Y. Date of Accident: 05/30/05  
 Auto Insurance Company: Allstate Tele. No.: 866-388-8888  
 Address For Claims: Medical Center (CITY/STATE) Rockville, MD (ZIP CODE) 20850  
 Policy Number: 0005745720505 Claim Number: 202 584310

**PLEASE COMPLETE THE FOLLOWING AUTHORIZATION & ASSIGNMENT FORM FOR CLAIMS UNDER MARYLAND'S "NO FAULT" ("PERSONAL INJURY PROTECTION") COVERAGE.**

I, Sonia Gavuz, authorize my physician at Shady Grove Orthopaedic Associates, P.A., to furnish the insurance company listed above any information they may request in reference to the injuries sustained by me, my spouse, or children on:

I also request that the insurance company pay directly to Shady Grove Orthopaedic Associates, P.A., any "PIP" benefits due me on their bill for prosthetic services rendered in connection with these injuries.

Signature: [Signature] Date: 6-15-05

**WORKMAN'S COMPENSATION INFORMATION**

Employer's Name: \_\_\_\_\_ (CITY/STATE) \_\_\_\_\_ (ZIP CODE) \_\_\_\_\_  
 Address: \_\_\_\_\_ (NUMBER & STREET) \_\_\_\_\_ (CITY/STATE) \_\_\_\_\_ (ZIP CODE) \_\_\_\_\_  
 Name/Tele. No. of Person Who Handles Insurance \_\_\_\_\_ (CITY/STATE) \_\_\_\_\_ (ZIP CODE) \_\_\_\_\_  
 Employer's Comp. Insurance Carrier \_\_\_\_\_ Tele. No. \_\_\_\_\_  
 Address: \_\_\_\_\_ (NUMBER & STREET) \_\_\_\_\_ (CITY/STATE) \_\_\_\_\_ (ZIP CODE) \_\_\_\_\_  
 Your Job (Injury Claim Number) \_\_\_\_\_ Date of Injury \_\_\_\_\_

**ATTORNEY INFORMATION**

Name: \_\_\_\_\_  
 Firm Name: \_\_\_\_\_ Tele. No. \_\_\_\_\_  
 Address: \_\_\_\_\_ (NUMBER & STREET) \_\_\_\_\_ (CITY/STATE) \_\_\_\_\_ (ZIP CODE) \_\_\_\_\_

**THIRD PARTY LIABILITY**

**PLEASE LIST NAME OF THIRD PARTY LIABILITY IF THIS CLAIM IS DUE TO ACCIDENT NOT RELATED TO JOB INJURY OR AUTO ACCIDENT (e.g. injury due to falling in parking lot, sidewalk, etc.)**

Third Party Liability Name: \_\_\_\_\_

**OFFICE USE**

INITIATED BY: \_\_\_\_\_ DATE: \_\_\_\_\_ POSTED: \_\_\_\_\_ FILED BY: \_\_\_\_\_

Patient Name: [Signature]  
 Physician: [Signature]  
 Physician's Office: [Signature]

**PLEASE READ & SIGN**

CIVIL COVER SHEET **CV 06 1842**

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

*SHAW Grove College Associates*

**DEFENDANTS**

*All State Insurance Company*

(b) County of Residence of First Listed Plaintiff Anne Arundel, MD  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

**GARAUFIS, J.**

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

John S. Spadaro, 1011 Centre Road, Suite 210, Wilm., DE 19805

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**MATSUMOTO, M.J.**

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | <b>PTF</b>                            | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                            |
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY - Med. Malpractice</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC §81 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. §1332(d)(2)(A)

Brief description of cause:  
Proposed class action regarding interest owed on overdue no-fault benefits under N.Y. Ins. Law §5106(a).

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE NGG MAG. JUDGE KAM

1842

ARBITRATION CERTIFICATION

I, John S. Spadaro, counsel for plaintiffs do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs. Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

Did the cause arise in Nassau or Suffolk County? No

If answered yes, please indicate which county.

County of residence of plaintiff(s) (1) (2) (3)

County of residence of defendant(s) (1) (2) (3)

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes [checked] No

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes (If yes, please explain) No [checked]

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE: JS3769

E-MAIL Address: jspadaro@msslaw.com

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

Signature: John S. Spadaro