SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU

PRESENT: **HON. ANTHONY L. PARGA, J.S.C.**

THELMA PINCKNEY,

Plaintiff,

- against -

SONIA ADAMS & STEPHANIE ADAMS,

Defendants.

Sequence #01
Motion Date: 6/21/00
Index # 011790/98
Part 26

Notice of Motion 1
Affirmation in Opposition 2

Upon the foregoing papers, the motion by the defendants for an order granting summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury as defined by Insurance Law §5102(d), is granted.

This is an action to recover damages for injuries which were allegedly sustained as a result of an automobile accident which occurred on October 12, 1997.

In support of the motion at bar, the defendants submitted affirmed medical reports from an orthopedist, a neuroradiologist and a plastic surgeon who examined the plaintiff on behalf of the defendants and found no objective evidence of facial burns and orthopedic or neurological impairments. The defendants also rely upon (1) the hospital's radiology report on plaintiff's right wrist dated October 16, 1997, which stated that a "clinical correlation for a fracture is recommended," and (2) the unsworn reports of plaintiff's treating orthopedist dated October 13, October 27 and November 17, 1997, which respectively stated, in relevant

parts, that (a) the plaintiff had a sprain injury or possible occult fracture, (b) repeated x-rays did not show a definite fracture and (c) the magnetic resonance image of plaintiff's right wrist was negative (see, *Pagano v. Kingsbury,* 182 AD2d 268). These reports sufficiently established a *prima facie* case that the plaintiff did not sustain a serious injury as a result of the underlying collision (see, *Gaddy v. Eyler,* 79 NY2d 955).

The burden then shifted to the plaintiff to come forward with sufficient admissible evidence to raise a triable issue of fact as to whether she had sustained a serious injury within the definitions set forth in Insurance Law §5102[d] (see, *Licari v. Elliot,* 57 NY2d 230, 237; *Pippis v. Tong,* ___ AD2d ___, 2000 N.Y. App. Div. LEXIS 8367 [2nd Dept.]; *Hasham v. Clarke,* __ AD2d __, 2000 N.Y. App. Div. LEXIS 8366 [2nd Dept.]). However, the plaintiff did not meet her burden in this regard (see, *Gilroy v. Duncombe,* ___ AD2d ___, 2000 N.Y. App. Div. LEXIS 8356 [2nd Dept. July 31, 2000]; *Welcome v. Diab.,* ___ AD2d ___, 2000 N.Y. App. Div. LEXIS 7071 [2d Dept. June 19, 2000]; *Villa v. Schechter,* ___ AD2d ___, 2000 N.Y. App. Div. LEXIS 6481 [2d Dept. June 12, 2000]). Although the affirmation of plaintiff's examining physician purports to quantify certain alleged restrictions in the plaintiff's range of motion, the physician failed to describe and explain the objective tests which were performed to support his conclusions in either his 10/29/97 report and his June 6, 2000 affirmation (see, *Watt v. Eastern Investigative Bureau,* ___ AD2d ___, 708 NYS2d 472, 473 [2d Dept. 2000]; *Grossman v. Wright,* ___ AD2d ___, 707 NYS2d 233, 237 [2d Dept. 2000]). Moreover, the plaintiff also failed to meet her burden by not submitting objective medical proof (e.g., x-ray, MRI) which would support her physician's findings and connect her purported physical limitations to the injuries she allegedly sustained from the car accident (*Gaddy v. Eyler, supra* at 957; *Grossman v. Wright, supra*). Furthermore,

plaintiff's treating physician does not explain the gap in treatment between May 13, 1998 and May 11, 2000, the day of plaintiff's most recent examination (*Goldin v. Lee,* __ AD2d __, 2000 N.Y. App. Div. LEXIS 8682 [2nd Dept.]; *Davis v. Brightside Fire Protection, Inc.,* __ AD2d __, 2000 N.Y. App. Div. LEXIS 8566 [2nd Dept.]; *Reynolds v. Cleary,* __ AD2d __, 2000 N.Y. App. Div. LEXIS 8200 [2nd Dept.]; *Kim v. Budhu,* __ AD2d __, 2000 N.Y. App. Div. LEXIS 6299 [2nd Dept.]). The plaintiff's subjective complaints of pain were insufficient for these purposes (see, *Grossman v. Wright, supra; Lincoln v. Johnson,* 225 AD2d 593; *Orr v. Miner,* 220 AD2d 567, 568).

Dated: September 13, 2000

Anthony L. Parga, J.S.C.
XXX