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SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK

Present:

HON. RALPH P. FRANCO,

Justice

TRIAL/IAS, PART 13

DWAYNE WELLS

NASSAU COUNTY

Plaintiff(s),

-against-

INDEX No.: 008508/99
MOTION SEQ. #1&2

RITA LEWIS, TRACEY C. LEWIS,
and TIMOTHY B. GREGG,

Defendant(s).

The following papers read on this motion:

- Notice of Motion/ Order to Show Cause..... 1 - 2
- Answering Affidavits.....
- Replying Affidavits.....

Motion Seq. No. 1 and No. 2 for an Order pursuant to CPLR 3212 granting Defendants', Timothy B. Gregg, Rita Lewis and Tracey C. Lewis summary judgment and dismissing the complaint of Plaintiff, Dwayne Wells for failure to comply with Insurance Law Sec. 5102 and

5104 are **denied**.

Plaintiff was a passenger in a vehicle owned and operated by Defendant, Timothy Gregg. The vehicle owned and operated by Defendants', Rita Lewis and Tracey Lewis came into contact with the vehicle owned and operated by Defendant, Timothy Gregg.

Plaintiff has presented to the Court an Affidavit sworn to on January 29, 2001, by Dr. Bruce Kamins.

Dr. Kamins reviewed the notes prepared by Dr. Manuel A. Mendoza and the Riverdale Medical Diagnostic Testing MRI scans of the cervical and lumbo spine.

Dr. Kamins performed the following objective tests: cervical compression test; cervical distraction test and Soto Hall test, which showed limitations of motion. The MRI scan of the cervical spine, performed by Damadian MRI revealed straightening of the normal

cervical lordosis and bulging disc at C4/5. MRI scan of the lumbo-sacral spine, performed by Damadian M.R.I. revealed straightening of the normal cervical lordosis and bulging disc at C4/5. MRI scan of the Lumbo-sacral spine, performed by Damadian M.R.I. revealed bulging of the disc at L4/5 and L5/S1 level.

Dr. Kamins concluded that as a result of the auto accident on **October 31, 1997**, Plaintiff

“sustained a permanent injury to his cervical spine and lumbar spine which has resulted in restricted range of motion.

At the present time, the patient’s condition remains chronic and the injuries sustained on **October 31, 1997**, caused structural changes.

Injuries of this nature do not respond to continued treatment after a level of partial temporary relief has been achieved. Mr. Wells has obtained the maximum relief possible through his treatment and continued treatment beyond this point in time would not improve his symptoms or alleviate his pain. These changes of the neck and low back are permanent in nature with acute episodes directly related to the patient’s activities. It is my opinion that Dwayne Wells suffered a permanent disability due to the injuries sustained to his neck and low

back. It is also my opinion that the injuries are a direct result of the accident of October 31, 1997.”

See: Flanagan v. Hoeg, 212 A.D.2d 756, Boehm v. Estate of Mack, 255 A.D.2d 749, and Hyacinthe v. V. Haul Co., __A.D.2d __ 2000 WL 1851983).

There are questions of fact that preclude the granting of summary judgment.

Dated: April 3, 2001



J.S.C.

ENTERED

APR 05 2001

NASSAU COUNTY
COUNTY CLERK'S OFFICE