

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU
PRESENT: HONORABLE JOHN M. GALASSO, J.S.C.

.....
GLORIA GLICK and SAM GLICK,

Plaintiffs,

Sequence #001

- against -

Index #1639/00

9/17/2001

Part 44

MICHEL A. ADAMOS and PROGRESSIVE
PAINTING GRP., Defendants.

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Before this Court is defendant's motion for an order pursuant to CPLR §3212 granting summary judgment in their favor on the ground that plaintiff Gloria Glick has not suffered a serious injury as defined by *Insurance Law §5102(d)*.

This case arises from an automobile accident that occurred on June 4, 1999 when the then thirty-seven year old plaintiff claims her car was hit from the rear causing her to crash into a telephone pole.

In the papers submitted before this Court, the Court finds that defendant has established a *prima facie* case that plaintiff's injuries are not serious within the meaning of *Insurance Law §5102(d)* by submission of the affirmed medical reports of Drs. Leon Sultan an Richard Bochner, orthopedists and Dr. Marie DeJesus, a neurologist indicating *inter alia* that plaintiff was not disabled, that she is orthopedically stable and neurologically intact and there is no permanent neurological injury as a result of the accident (*Gross v. Wright, 268 AD2d 79 [2<sup>nd</sup> Dept. 2000]*).

The burden then shifted to plaintiff to come forward with some admissible evidence of serious injury within the meaning of the No-Fault Law in order to survive the motion (*Gaddy v. Eyer 79 NY2d 955*). This she has been able to do.

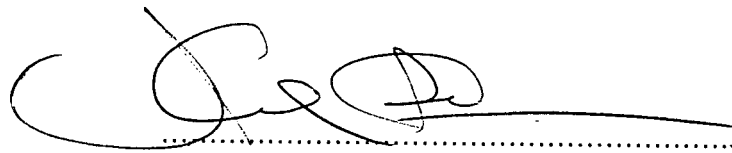
Chief among plaintiff's opposition is an affidavit and report from Dr. Craig Levitz, an orthopedic surgeon, who after examining plaintiff and reviewing MRI's taken shortly after the accident and comparing them to a recently ordered MRI concluded that plaintiff had a central disc protrusion at C6-7, a degenerative bulging at C3-4 and C5-6 and a central focal herniation at C2-3. Dr. Levitz' opinion is that as a result of the accident plaintiff now suffers from spondylolisthesis and

degenerative arthritis which will progress in time causing further pain and limitations in range of motion and is permanent in nature.

A disc herniation may constitute a serious injury within in the meaning of the No-Fault Law, likewise a 20% degree limitation in range of motion (*Boland v. Dig America, Inc.*, 277 AD2d 337 [2<sup>nd</sup> Dept 2000]; *Anderson v. Persell*, 272 AD2d 733 [3<sup>rd</sup> Dept. 2000]; *Lewis v. White*, 274 AD2d 455 [2<sup>nd</sup> Dept 2000]).

Accordingly, defendants' motion for summary judgment is denied.

Dated: November 20, 2001



J.S.C.

**ENTERED**

NOV 27 2001

**NASSAU COUNTY  
COUNTY CLERKS OFFICE**