

**SHORT FORM ORDER**

SUPREME COURT, STATE OF NEW YORK  
COUNTY OF NASSAU

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**STACI NORTON,**

Plaintiff

**Trial/IAS Part 17**  
**Index No. 07-19931**  
**Sequence No. 02**  
**Submit Date 1/30/09**

*against*

**FRANK RODER AND**  
**MICHELE SADLOWSKI,**  
Defendants

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**The following papers read on this motion:**

<b>Notice of Motion/Order to Show Cause.....</b>	<b>X</b>
<b>Answering Affidavits.....</b>	<b>X</b>
<b>Replying Affidavits.....</b>	<b>X</b>

**PRESENT: HON. JOSEPH P. SPINOLA**

Defendants, **FRANK RODER AND MICHELE SADLOWSKI**, move for summary judgment pursuant to Insurance Law §5102(d).

The instant application arises out of the personal injuries sustained by the plaintiff as the result of a motor vehicle accident that occurred on September 19, 2007. The defendants, **FRANK RODER AND MICHELE SADLOWSKI**, now move for summary judgment pursuant to Insurance Law §5102(d) maintaining that the plaintiff did not sustain a "serious injury" as that term is defined by the statute.

In support of the motion, the defendants have submitted the affirmed reports of Naunihal Singh, M.D., a neurologist and the report of Alan B. Greenfield, M.D., who reviewed the plaintiff's MRI of the Thoracic spine. Dr. Singh opines after examination that plaintiff suffered from cervical and lumbar sprain with no evidence of permanence or limitation of use all of which are resolved and no objective evidence of any neurological disability in the plaintiff. Dr. Greenfield opines, after review of plaintiff's thoracic spine MRI, that the MRI reveals findings that are degenerative in origin with no causal relation to plaintiff's accident.

A defendant can establish that the plaintiff's injuries are not serious within the meaning of Insurance Law §5102(d) by submitting the affidavits or affirmations of medical experts who examined the plaintiff and conclude that no objective medical findings support plaintiff's claim (see, *Turchuk v Town of Wallkill*, 255 AD2d 576, 681

NYS2d 72). With this established, the burden shifts to the plaintiff to come forward with evidence to overcome the defendants' submissions that a serious injury was sustained within the meaning of the Insurance Law (see, *Gaddy v Eyler*, 79 NY2d 955, 582 NYS2d 990, 591 NE2d 1176.) The plaintiff in such a situation must present objective evidence of the injury. The mere parroting of language tailored to meet statutory requirements is insufficient (see, *Powell v Hurdle*, 214 AD2d 720, 625 NYS2d 634; *Giannakis v Paschilidou*, 212 AD2d 502, 622 NYS2d 112). Further, this court has consistently held that a plaintiff's subjective claim of pain and limitation of motion must be sustained by verified objective medical findings (see, *Kauderer v Penta*, 161 AD2d 365, 689 NYS2d 190; *Carroll v Jennings*, *supra*). Moreover, these verified objective medical findings must be based on a recent examination of the plaintiff (see, *Kauderer v Penta*, *supra*). In that vein, any significant lapse of time between the cessation of the plaintiff's medical treatments after the accident and the physical examination conducted by his own expert must be adequately explained (see, *Smith v Askew*, 264 AD2d 834, 695 NYS2d 405). *Grossman v Wright*, 268 AD2d 79, 707 NYS2d 233, 237 [2nd Dept., 2000]).

In the instant matter, the Court finds that the defendants have established that plaintiff's injuries are not serious within the meaning of Insurance Law 5102(d), thereby shifting the burden to plaintiff.

In opposition to the motion, the plaintiff has submitted the affirmed MRI reports of Harvey Lefkowitz, M.D. and Richard Rizzuti, M.D., the affirmed medical reports of Lisa Daly, M.D. and James Liguori, D.O., the affirmed operative report of Arjang Abbasi, M.D. and the disability notes of Teymuraz Datikashivili, M.D.

In the instant matter, the Court finds that plaintiff has come forward with sufficient medical evidence to create a question of fact as to whether the plaintiff has sustained a serious injury as that term is defined in Insurance Law §5102(d). Moreover, plaintiff has sufficiently demonstrated that she was unable to perform substantially all of her daily activities for not less than 90 of the first 180 days subsequent to the subject accident.

As such, the defendant's motion is denied.

This constitutes the decision and order of the Court.

*JP Spinola*  
ENTERED

Joseph P. Spinola, Justice

Supreme Court, Nassau County

APR 02 2009

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

Dated: March 31, 2009