Jury Finds In Favor of Defense:
Plaintiff's Degenerative Disc Disease, Not Auto Accident, Caused her Back Pain

Nancy Long, handled an action that arose out of a two-car accident that occurred on December 29, 2002 on Route 31 in Lockport, New York. The accident occurred as the defendant was attempting to overtake the plaintiff's' vehicle on the right. The defendant believed that the other vehicle was going to turn left because he had observed the vehicle slow down and move toward the center of the road. He claimed that the plaintiffs' rear taillights and turn signal were not working at the time. According to the defendant, the plaintiffs' vehicle suddenly turned towards a parking lot on the right and directly into his vehicle as he was passing. As a result of the accident, the plaintiffs' vehicle incurred approximately $3,000.00 in property damage.

Plaintiff, who was a passenger in her husband's vehicle at the time of the accident, alleged that she sustained injury to her neck and back as a result of the accident. Specifically, she alleged causation, activation and/or precipitation of disc bulges at C4-5 and C5-6 and aggravation of L1-2 and L4-5 disc bulges. Her Bill of Particulars asserted a claim for medical expenses and pain and suffering. She was not working at the time and as a result did not assert a claim for lost wages. Plaintiff's husband's claim for damages was solely derivative in nature.

Nancy retained a retired orthopedic surgeon, who performed the independent medical examination. After reviewing numerous records and studies and performing an examination of the plaintiff, the IME doctor opined that plaintiff had degenerative disc disease in her cervical, thoracic and lumbar spine. He felt that there was no evidence that she sustained any injury to her cervical, thoracic or lumbar spine as a result of the December 2002 accident.

A radiologist performed a radiologic review of all of the imaging studies. He concurred with the IME. In his opinion, all of the imaging studies were compatible with degenerative disc disease that pre-dated the December 2002 accident.

In addition to having numerous diagnostic studies, plaintiff had undergone epidural injections and had been prescribed pain medication. Plaintiff presented medical testimony from a pain management specialist, a chiropractor, a second chiropractor, who performed an examination for No-Fault and a radiologist, who all causally related the plaintiff's injuries. Plaintiff also called a friend of hers to testify about how the accident changed her life.

Trial commenced on June 7, 2010 and the jury rendered a no cause verdict on June 17, 2010. The jury concluded that plaintiff's husband and the defendant were each 50% at fault for the accident but that the plaintiff did not sustain a serious injury as a result of the accident.