

**KSLN's Syracuse Office Secures Summary Judgment:
Serious Injury Threshold Not Met by Plaintiff**

This action, handled by our Syracuse Managing Counsel, Bill Hathaway, arose from a one-car accident that occurred on June 10, 2008. Plaintiff, represented by personal injury firm DiFrancisco & Falgiatano of Syracuse, was a belted, front seat passenger in a car operated by our client. Following a severe storm, in order to exit a parking lot, our client had to drive over an open field to reach a service road. Plaintiff alleged that defendant drove her vehicle in an unsafe manner and at an excessive speed that caused the car to bottom out in a ditch and then bounce back on to the service road. There was approximately \$5,000 worth of property damage to the vehicle.

Plaintiff claimed that she sustained, bilateral facial numbness, headaches, neck pain radiating to her right shoulder, occipital neuralgia, and back pain along with some other injuries ' yet to be determined". Plaintiff's medical records established that she had treated for facial numbness, neck pain and back pain in years prior to the accident. She was actively treating with a chiropractor at the time of the accident and went to see him immediately following the accident. She also treated with a neurologist, an orthopedist and consulted with several other doctors including a dental surgeon for possible TMJ. She had a cervical spine MRI seventeen months after the accident that was normal.

In her Bill of Particulars, plaintiff claimed that she sustained a serious injury in that she sustained a permanent loss of a body organ, member, function or system; a permanent consequential limitation of use of a body organ, member, and/or a significant limitation of use of a body function or system. Notably, in her Bill of Particulars, in response to the questions regarding the 90/180 serious injury qualification, plaintiff simply said that all of her injuries were permanent.

Bill made a motion for summary judgment based upon plaintiff's own medical records that she did not qualify under any of the serious injury categories as set forth in her Bill of Particulars. In her response, plaintiff conceded that she did not qualify under any of the permanent categories but, for the first time, claimed that she qualified under the 90/180 category. In support of that argument plaintiff submitted her own affidavit and a report from a chiropractor who had conducted two no-fault IME's of the plaintiff, the first one being sixteen months after the accident. In response, we argued that plaintiff should not be allowed to raise the 90/180 category for the first time on this motion and further, that even if she were allowed to she didn't qualify under that section either.

The Court granted our motion for summary judgment finding that the plaintiff had failed to plead the 90/180 category but that, even if she had, she failed to come forward with sufficient evidence on the motion to create a triable issue of fact. The Court specifically noted that the IME chiropractor was not a treating physician and first saw plaintiff sixteen months after the accident so he could not describe her condition within the relevant time period following the accident. Plaintiff was apparently unable to get her treating chiropractor to support her claim, nor was she able to get any one of her other treating physicians to support her claim as well.

Therefore, the Court found that plaintiff did not have sufficient medical evidence that she suffered an injury that limited her usual daily activities for 90 out of the 180 days immediately following the accident.