

KSLN Wins Summary Judgment in Auto Accident Case on Tort Threshold Defense

In this case, handled by Ryon Fleming, the nineteen-year old plaintiff was involved in two motor vehicle accidents within four months and commenced litigation against the defendant drivers in both accidents. Plaintiff was a full-time student and worked part time at a beauty salon. The plaintiff had numerous X-rays and MRIs following both accidents, all of which revealed normal findings. Her physical therapist indicated that he could not find any objective evidence to support plaintiff's subjective complaints of pain. Despite this, plaintiff continued chiropractic care, pain management, and neurological consultations. She made the dean's list several times, got married, and gave birth to two children since the accidents.

Our independent medical examiner performed an IME and opined, inter alia, that she had reduced range of motion in only one plane of both her cervical and lumbar spines. Plaintiff opposed the motion with an affirmation from her pain management physician. However, the judge agreed with the defense that the pain management physician's records revealed that the plaintiff was treated by a nurse practitioner on nearly all of her visits, and all records were marked "dictated but not read," so the records were not in admissible form and contained no probative value.

This case further illustrates that a defense expert's finding of a 20% reduced range of motion in flexion four years following the motor vehicle accident does not create an issue of fact when plaintiff's medical records that were contemporaneous with the motor vehicle accident did not reveal reduced range of motion.

The judge also found that there was not a 90/180 claim because plaintiff continued to go to school and work part time.