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2017 NY Slip Op 32712(U)

December 29, 2017

Supreme Court, New York County

Docket Number: 155678/2015

Judge: Paul A. Goetz

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This opinion is uncorrected and not selected for official publication.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

RECEIVED NYSCEF: 12/29/2017

# SUPREME COURT OF THE STATE OF NEW YORK **NEW YORK COUNTY**

PRESENT:	HON. PAUL A. GOETZ J.S.J.	PART
RODRI	CUEZ, JESUS	INDEX NO. <u>155678/26</u> MOTION DATE
	· <b>y</b> -	MOTION DATE
DWZ	, VICTUR NICONOR	MOTION SEQ. NO. OU
The following papers	, numbered 1 to, were read on this motion to/for	
Notice of Motion/Orde	er to Show Cause — Affidavits — Exhibits	No(s). 3
Answering Affidavits	— Exhibits	No(s)
Replying Affidavits _		No(s). 3
	papers, it is ordered that this motion is	
CPLR 3212 on the	nts Victor Niconor Diaz and Julio O. Urena's motion for the grounds that the injuries allegedly sustained by Plain all to establish a serious injury threshold as defined by 7s:	ntiff as a result of the October 12,
and PTSD. Plaint	s bill of particulars alleges injuries to his cervical and tiff's bill of particulars avers that his injuries meet the nemberment; significant disfigurement; fracture; perm and 90/180-day.	following Insurance Law § 5102
2016, During his negative/normal of	nts' neurologist, Dr. Edward M. Weiland, conducted a examination of Plaintiff, Dr. Weiland found normal objective tests for his cervical and lumbar spine. Dr. V	ranges of motion of and
Dr. Weiland diagi	laintiff and found that he had a normal examination.  nosed Plaintiff as having resolved, cervical and lumba	
Defendan	laintiff and found that he had a normal examination.	r spine strain/sprain. 's of Plaintiff's cervical and
Defendan lumbar spine (bot of Plaintiff's cerv described with ad spondylitic spurri evidence of acute concludes that his decades to develo	laintiff and found that he had a normal examination. nosed Plaintiff as having resolved, cervical and lumba nts' radiologist, Dr. A. Robert Tantleff reviewed MRI	ar spine strain/sprain.  As of Plaintiff's cervical and Dr. Tantleff's findings on the MRI cervicothoracic spondylosis as ation, degeneration and merative disc disease and no ema or contusion. Dr. Tantleff ling changes, requiring years and so age and are not causally related
Defendan lumbar spine (bot of Plaintiff's cerv described with ad spondylitic spurrievidence of acute concludes that his decades to develo Dated:	laintiff and found that he had a normal examination. nosed Plaintiff as having resolved, cervical and lumbants' radiologist, Dr. A. Robert Tantleff reviewed MRI thaken on October 29, 2014) on October 18, 2016. Exical spine include "chronic degenerative disease and elvanced discogenic changes manifested by disc desicating" as well as other markers of longstanding degenerations and no evidence of bone marrow edges findings depict "chronic, degenerative and longstand op as presented [and] are consistent with [Plaintiff' 1920]	ar spine strain/sprain.  As of Plaintiff's cervical and Dr. Tantleff's findings on the MRI cervicothoracic spondylosis as ation, degeneration and nerative disc disease and no ema or contusion. Dr. Tantleff ling changes, requiring years and solve and are not causally related.  A 4
Defendan lumbar spine (bot of Plaintiff's cerv described with ad spondylitic spurri evidence of acute concludes that his decades to develo Dated:	laintiff and found that he had a normal examination. nosed Plaintiff as having resolved, cervical and lumbants' radiologist, Dr. A. Robert Tantleff reviewed MRI thaken on October 29, 2014) on October 18, 2016. Exical spine include "chronic degenerative disease and elvanced discogenic changes manifested by disc desicating" as well as other markers of longstanding degenerations and no evidence of bone marrow edges findings depict "chronic, degenerative and longstand op as presented [and] are consistent with [Plaintiff]	ar spine strain/sprain.  As of Plaintiff's cervical and Dr. Tantleff's findings on the MRI cervicothoracic spondylosis as ation, degeneration and nerative disc disease and no ema or contusion. Dr. Tantleff ling changes, requiring years and solven and are not causally related  NON-FINAL DISPOSITION.
Defendan lumbar spine (bot of Plaintiff's cerv described with ad spondylitic spurri evidence of acute concludes that his decades to develo Dated:  12/29/	laintiff and found that he had a normal examination. nosed Plaintiff as having resolved, cervical and lumbants' radiologist, Dr. A. Robert Tantleff reviewed MRI that taken on October 29, 2014) on October 18, 2016. Description of the prical spine include "chronic degenerative disease and of the variety of the prical spine include "chronic degenerative disease and of the variety of the prical spine include "chronic degenerative disease and of the variety of the prical spine include "chronic degenerative and longstanding degeneration of the prical spine include "chronic, degenerative and longstanding as presented [and] are consistent with [Plaintiff' 194]	ar spine strain/sprain.  As of Plaintiff's cervical and Dr. Tantleff's findings on the MRI cervicothoracic spondylosis as ation, degeneration and nerative disc disease and no ema or contusion. Dr. Tantleff ling changes, requiring years and solven and are not causally related  NON-FINAL DISPOSITION.

MOTIONICASE IS RESPECTFULLY REFERRED TO JUSTICE

## SUPREME COURT OF THE STATE OF NEW YORK **NEW YORK COUNTY**

PRESENT:	HON. PAUL A. GOETZ J.S.C.		<b>22</b> PART
	Jus	ice	
7	DIX-Z		MOTION SEQ. NO. CO
The Sallandara	ers, numbered 1 to, were read on this mo		
	rder to Show Cause — Affidavits — Exhibits		No(s)
	its — Exhibits		No(s).
	3		No(s).
	ng papers, it is ordered that this motion is		
acute disc hern changes." Dr. [changes] requ [Plaintiff's] ag  Concerthat after the ac	of disc at L5-S1, markers of longstanding deliations and "no evidence of bone marrow examples and the concludes that his findings depict iring years and decades to develop as prese and [are] not causally related to a traumatering 90/180-day, Defendants refer to Plain ecident he did not go to the hospital and retwork weeks thereafter.	dema or contusion to suggether control of the findings are control of the findings are control of the first contro	gest traumatic d longstanding onsistent with y wherein he testified
serious injury to cervical and lusare the result of spine raise tria 2017]; <i>Johnson</i> [1st Dept 2008] Plaintiff is proposed biaz, 82 AD36 sufficient to raspine and whether the spine and whether the cervical and sufficient to raspine and sufficient to raspine and whether the cervical and sufficient to raspine and suffici	dants' submissions fail to eliminate triable to his cervical and lumbar spine. Dr. Weilar mbar spine are resolved strains/sprains but f degeneration. These contradictory finding ble issues of fact for the jury to resolve (Kan v Salaj, 130 AD3d 502 [1st Dept 2015]; M.). Defendants submission did not address ceeding with his claim of PTSD, Defendants an issue of fact on whether he sustained ther he suffers from PTSD as a result of the larger v Gae Limo Corp., 91 AD3d 526 [1st I	nd concludes that Plaintif Dr. Tantlefff concludes the gs concerning Plaintiff's of rounos v Doulalas, 153 A fartinez v Pioneer Transp. Plaintiff's claim of PTSD is failed to make a prima from does not shift to Plaintifie a serious injury to his cer accident (Jackson v Leun	ff's injuries to his nat Plaintiff's injuries cervical and lumbar AD3d 1166 [1st Dept Corp., 48 AD3d 306 D. To the extent that facie showing Reys viff to submit evidence rvical and lumbar
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MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE.

# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

J.S.C.Justice	ي د د د د د د د د د د د د د د د د د د د
RUDNIGUEZ DIXZ	INDEX NO. SS 678/
• <b>v-</b>	MOTION DATE
DMZ	MOTION SEQ. NO
The following papers, numbered 1 to, were read on this motion to/for	
Notice of Motion/Order to Show Cause — Affidavits — Exhibits	No(s)
Answering Affidavits — Exhibits	
Replying Affidavits	No(s)
Upon the foregoing papers, it is ordered that this motion is	
Marshall 117 AD3d 805 [2nd Dent 2014]) Defendants also met the	
Marshall, 117 AD3d 805 [2nd Dept 2014]). Defendants also met the Plaintiff's 90/180-day claim by submitting Plaintiff's deposition terms to day after the accident and continued to work five day work we AD3d 445 [1st Dept 2017]). Plaintiff's opposition does not raise a claims of headaches and vertigo and his 90/180-day claim. The one submitted by Plaintiff, a report by Dr. Boris Tsatskis, does not addrheadaches and vertigo or his 90/180-day claim. However, in the event to his cervical and/or lumbar spine or PTSD then he will be able to including his claim of headaches and vertigo (Karounos v Doulalas [holding "[i]f plaintiff establishes a serious injury to her cervical or entitled to recover damages for any other injuries caused by the accessious injury threshold."]; Boateng v Yiyan, 119 AD3d 424 [1st De AD3d 404 [1st Dept 2013]; Delgado v Papert Transit, Inc., 93 AD3 "[o]nce a serious injury has been established, it is unnecessary to access the serious injury to her cervical or entitled to recover damages for any other injuries caused by the access to the serious injury threshold."]; Boateng v Yiyan, 119 AD3d 424 [1st De AD3d 404 [1st Dept 2013]; Delgado v Papert Transit, Inc., 93 AD3 "[o]nce a serious injury has been established, it is unnecessary to access to the serious injury has been established, it is unnecessary to access the serious injury has been established, it is unnecessary to access the serious injury has been established, it is unnecessary to access the serious injury has been established, it is unnecessary to access the serious injury has been established, it is unnecessary to access the serious injury has been established.	stimony that he returned to work the eeks thereafter (Cf Fathi v Sodhi, 146 triable issue of fact as to Plaintiff's ly admissible medical evidence ress Plaintiff's allegations of rent that Plaintiff proves serious injury recover for all his claimed injuries s, 153 AD3d 1166 [1st Dept 2017] lumbar spine at trial, she will be eident, even those that do not meet the ept 2014]; Caines v Diakite, 105 3d 457 [1st Dept 2012] [holding
Plaintiff's 90/180-day claim by submitting Plaintiff's deposition tent next day after the accident and continued to work five day work we AD3d 445 [1st Dept 2017]). Plaintiff's opposition does not raise at claims of headaches and vertigo and his 90/180-day claim. The only submitted by Plaintiff, a report by Dr. Boris Tsatskis, does not address headaches and vertigo or his 90/180-day claim. However, in the event to his cervical and/or lumbar spine or PTSD then he will be able to including his claim of headaches and vertigo (Karounos v Doulalas [holding "[i]f plaintiff establishes a serious injury to her cervical or entitled to recover damages for any other injuries caused by the accessious injury threshold."]; Boateng v Yiyan, 119 AD3d 424 [1st DeAD3d 404 [1st Dept 2013]; Delgado v Papert Transit, Inc., 93 AD3	stimony that he returned to work the eeks thereafter (Cf Fathi v Sodhi, 146 triable issue of fact as to Plaintiff's ly admissible medical evidence ress Plaintiff's allegations of rent that Plaintiff proves serious injury recover for all his claimed injuries s, 153 AD3d 1166 [1st Dept 2017] lumbar spine at trial, she will be eident, even those that do not meet the ept 2014]; Caines v Diakite, 105 3d 457 [1st Dept 2012] [holding
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MOTIONICASE IS RESPECTFULLY REFERRED TO JUSTICE

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### RECEIVED NYSCEF: 12/29/2017

# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT:	TON, PAUL	A. GOETZ J.S.C <sub>Justice</sub>	PART
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$\mathcal{D}$	102		MOTION SEQ. NO. <u>どひ)</u>
		ere read on this motion to/for _	
		avits — Exhibits	No(s)
Replying Affidavits			No(s).
Upon the foregoing p	papers, it is ordered that	at this motion is	
whether the proof	is sufficient to withsta	and defendants' summary jud	lgment."]).
According	ly, based on the foreg	oing it is hereby	
ORDERE Plaintiff's claims of	of headaches and verti	go and his 90/180-day clain	and DENIED as to his PTSD and
Plaintiff's claims of cervical and lumba	of headaches and verti or spine claims of serio	go and his 90/180-day claim ous injury; and it is further directed to appear for settler	n and DENIED as to his PTSD and ment conference in Part 22, at 80
Plaintiff's claims of cervical and lumba  ORDERE Centre Street, Roo	of headaches and verting spine claims of seriod That the parties are	go and his 90/180-day claim ous injury; and it is further directed to appear for settles ruary 20, 2018.	
Plaintiff's claims of cervical and lumba  ORDERE Centre Street, Roo	of headaches and verting spine claims of seriod. D that the parties are m 136, at 9:30 on Feb	go and his 90/180-day claim ous injury; and it is further directed to appear for settles ruary 20, 2018.	
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Plaintiff's claims of cervical and lumba  ORDERE Centre Street, Roo  This const	of headaches and verting spine claims of seriod D that the parties are m 136, at 9:30 on Feb itutes the Decision and more management of the parties of the parties are management of the p	go and his 90/180-day claim ous injury; and it is further directed to appear for settler truary 20, 2018.  d Order of the Court.	ment conference in Part 22, at 80

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