Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PATRICIA P. SATTERFIELD IAS TERM, PART 19
Justice

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MARVIN SAMUELS,

Plaintiff,

-against-

HUNTER AMBULETTE-AMBULANCE, INC. and
RENETTE M. MARSHALL,

Defendants.

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Index No.: 11636/08
Motion Date: 9/22/10
Motion Cal. No: 23
Motion Seq. No: 2

The following papers numbered 1 to 10 read on this motion by defendants Hunter Ambulette-Ambulance, Inc. and Renette M. Marshall for an order, pursuant to CPLR §3212, granting summary judgment in favor of defendants and dismissing the complaint in its entirety on the ground that plaintiff Marvin Samuels has not satisfied the threshold requirements under the Insurance Law of the State of New York §5102.

	PAPERS NUMBERED
Notice of Motion-Affidavits-Exhibits.....	1 - 4
Affirmation in Opposition-Exhibits.....	5 - 7
Reply Affirmation-Exhibits.....	8 - 10

Upon the foregoing papers, it is hereby ordered that the motion is disposed of as follows:

This is a personal injury action in which plaintiff Marvin Samuels ("plaintiff") seeks to recover damages for injuries sustained by him as a result of a motor vehicle accident that occurred on November 3, 2007, between the vehicle operated by defendant Renette M. Marshall ("Marshall"), an employee of defendant Hunter Ambulette-Ambulance, Inc. ("Hunter Ambulette"), and plaintiff's vehicle, at or near the intersection of Rockaway Boulevard and 132nd Avenue, Queens, New York. Plaintiff claims in his Bill of Particulars that, as a result of the accident, he sustained injuries to his right and left knees, lumbar spine and cervical spine, resulting in permanent consequential limitation of use and significant limitation of use of body organ or function. He further alleges that his injuries prevented him from performing substantially all of the material acts which constituted his customary daily activities for not less than ninety days during the one hundred eighty days immediately following the accident. Defendants move for summary judgment in their favor, on the ground that plaintiff failed to meet the "serious injury" threshold requirement of section 5102(d) of the Insurance Law, which, in pertinent part, defines a "serious injury" as:

> a personal injury which results in ...significant disfigurement; ...permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured party from performing substantially all of the material acts which constitute such person customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

It is well established that summary judgment should be granted when there is no doubt as to the absence of triable issues. See, Rotuba Extruders, Inc. v. Ceppos, 46 N.Y. 2d 223, 231 (1978); Andre v. Pomeroy, 35 N.Y. 2d 361, 364 (1974); Taft v. New York City Tr. Auth., 193 A.D. 2d 503, 505 (1st Dept. 1993). As such, the function of the court on the instant motion is issue finding and not issue determination. See, D.B.D. Nominee, Inc. v. 814 10th Ave. Corp., 109 A.D. 2d 668, 669 (2nd Dept. 1985). The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. See, Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his position. See, Zuckerman v. City of New York, supra.

The issue of whether plaintiff sustained a serious injury is a matter of law to be determined in the first instance by the court. See Licari v. Elliott, 57 N.Y.2d 230 (1982). The burden is on the defendant to make a prima facie showing that plaintiff's injuries are not serious. Toure v. Avis Rent A Car Sys., 98 N.Y.2d 345 (2002). By submitting the affidavits or affirmations of medical experts, who, through objective medical testing, conclude that plaintiff's injuries are not serious within the meaning of Insurance Law § 5102(d), a defendant can meet his or her prima facie burden. See Margarin v. Krop, 24 A.D.3d 733 (2nd Dept. 2005); Karabchievsky v. Crowder, 24 A.D.3d 614 (2nd Dept. 2005). The threshold question in determining a summary judgment motion on the issue of serious injury is the sufficiency of the moving papers, with consideration only given to opposing papers once defendant, as the movant, makes a prima facie showing that plaintiff did not sustain a serious injury. Toure v Avis Rent A Car System, 98 N.Y.2d 345 (2002).

In support of their motion, defendants submitted plaintiff's bill of particulars and deposition testimony; the affirmed medical reports of Dr. Frank Hudak, an orthopedist who examined plaintiff on January 13, 2010; the February 6, 2008 affirmed medical report of Dr. Wayne Kerness, the orthopedist who examined plaintiff within months of the accident; the March 24, 2008 medical report of Dr. Warren Cohen, the neurologist who examined plaintiff within months of the accident; uncertified records of Jamaica Hospital; uncertified physical therapy records of Glenwood Medical Neuro-Rehabilitation; uncertified and unsworn MRI reports; the January 21, 2010 independent radiology report of Dr. A. Robert Tantleff, a radiologist who interpreted the MRIs of plaintiff's

lumbar spine taken November 20, 2007, right knee taken November 21, 2007, cervical spine taken November 30, 2007, left knee and left ankle taken December 7, 2007, and thoracic spine taken December 8, 2007.

Dr. Hudak, the orthopedist who examined plaintiff on January 13, 2010, found, upon physical examination and using the goniometer, that plaintiff had normal range of motion in the cervical spine, with a flexion of 60 degrees (normal 45 degrees or greater); extension of 75 degrees (normal 45 degrees or greater); left rotation of 70 degrees and right rotation of 75 degrees (normal 60 degrees or greater); and tilting to the left of 40 degrees and to the right 45 degrees (normal 30 degrees or greater). He further found a normal range of motion with respect to plaintiff's upper and lower extremities, and right knee. He noted tenderness in the right side of the lower lumbosacral spine from L3 to S1 and "noted pain in the anterior medial proximal left leg," but no effusion or crepitus. His diagnosis was "that of status post cervical and lumbosacral spine sprains resolved, status post left ankle sprain resolved, and status right and left knee sprain resolved.

Dr. Wayne Kerness, the orthopedist who examined plaintiff within months of the accident, found, with respect to plaintiff's neck:

> The claimant can flex his neck at 45 degrees (45 degrees normal), extension to 45 degrees (45 degrees normal), right rotation to 60 degrees (60 degrees normal), left rotation to 60 degrees (60 degrees normal), right lateral flexion to 45 degrees (45 degrees normal).

With respect to his lumbar spine, Dr. Kerness observed that plaintiff was wearing a lumbosacral corset and opined:

> The claimant is self-restricting range of motion of the lumbar spine on forward flex to 70 degrees (90 normal), backward extend to 10 degrees (30 normal), lateral flexion on right and left to 10 degrees (30 normal) and rotate right and left to 10 degrees.

Dr. Kerness, upon examination of the right knee noted that plaintiff was wearing a knee support, determined that its extension was 0 degrees (0-5 normal) and flexion was 135 degrees (135 degrees normal), and no signs of abnormality. He made similar findings as to the left knee. Dr. Kerness' diagnosis was resolved sprain/strain of the cervical spine, lumbar spine and bilateral knee. He "found no evidence of causally related orthopedic disability in regards to the accident of November 3, 2007."

Dr. Warren Cohen, the neurologist who examined plaintiff within months of the accident, in his March 24, 2008 report, found that plaintiff's range of motion in his cervical spine and lumbosacral spine were normal, set forth as his diagnosis resolved lumbar sprain, found no "neurologic deficit and. . . no evidence of radiculopathy or traumatic neuropathy." He concluded that plaintiff had "no disability at this time. He was working as a full-time cleaner at the time of the

alleged accident. He is able to work and perform all activities of daily living without restrictions."

Dr. A. Robert Tantleff, a radiologist who interpreted, on behalf of defendants, the MRIs of plaintiff's right knee taken November 21, 2007, left knee taken December 7, 2007, cervical spine taken November 30, 2007, lumbar spine taken November 20, 2007, thoracic spine taken December 8, 2007, and left ankle taken December 7, 2007. His impression of plaintiff's right knee was:

> MRI examination of the right knee reveals wear-and-tear degenerative changes not inconsistent with the individual's age. There is no evidence of acuity. There are degenerative changes of the patellofemoral joint compartment with significant chondromalacia along the medial and lateral facets, slightly more prominently along the medial facet with subchondral bony change. There is a degenerative linear/oblique tear of the posterior horn of the medial meniscus. The findings depicted represent wear-and-tear degenerative changes as a result of chronic micro-traumatic insult and stress changes. The osseous alignment is anatomic. There is no evidence of traumatic tear or rupture of the regional ligaments, tendons or menisci. There is no evidence of acute or recent injury or exacerbatory change.

His impression of plaintiff's left knee was:

> MRI examination of the right knee reveals wear-and-tear degenerative changes not inconsistent with the individual's age. There is no evidence of acuity. There are degenerative changes of the patellofemoral joint compartment with significant chondromalacia along the medial and lateral facets, slightly more prominently along the medial facet with subchondral bony change. There is grade II signal of the posterior horn of the medial meniscus. The findings depicted represent wear-and-tear degenerative changes as a result of chronic micro-traumatic insult and stress changes. The osseous alignment is anatomic. There is no evidence of traumatic tear or rupture of the regional ligaments, tendons or menisci. There is no evidence of acute or recent injury or exacerbatory change.

Dr. Tantleff's impression of plaintiff's cervical spine was:

> MRI examination of the Cervical Spine reveals longstanding chronic degenerative discogenic disc disease and cerviocothoracic spondylosis with variable loss of height most pronounced at C5/6 and C6/7. There is regional facet arthropathy identified. The neural formina are open, patent and adequate. There is no evidence of

> muscle spasm of the deep muscles adjacent to the cervical spine. There are minimal atraumatic noncompressive degenerative traction bulges at C4/5, C5/6 and C6/7 with anterior vectors of expansion without significant posterior prominence. The lordosis is maintained as are the regional soft tissues. There is no evidence of prevertegral, perivertebral or posterior soft tissue swelling. Additionally in association with the finding is disc degeneration, dessication, loss of height and discovertebral endplate spurring, which further confirms the chronicity of the findings. The C5/6, and to a lesser extent, the C4/5 and C6/7 levels are areas most subjected to increased physiological stress prone to degenerative change. There is no evidence of acute disc herniations, acute exacerbatory change or evidence of recent trauma to the regional soft tissue structures including the cartilaginous endplates and regional osseous structures as detailed. The findings are consistent with the individual's age and are not causally related to the date of incident of 11/3/07, only 27 days prior to the performance of the MRI examination as the findings are chronic longstanding processes requiring years to develop as presented and are consistent with wear-and-tear of the normal aging process.

After reviewing the MRI of plaintiff's lumbar spine, Dr. Tantleff stated his impression:

> MRI examination of the Lumbar Spine reveals longstanding chronic degenerative discogenic disc disease and thoracolumbar spondylosis. There is regional facet arthropathy identified. The neural formina are open, patent and adequate. There is a mild levoconvex scoliosis. There is no evidence of muscle spasm of the deep muscles adjacent to the cervical spine. At L5/S1, there is minimum atrumatic noncompressive degenerative disc bulge of no definitive significance. The lordosis is maintained as are the regional soft tissues. There is no evidence of prevertegral, perivertebral or posterior soft tissue swelling. Additionally in association with the finding is disc degeneration, dessication, loss of height and discovertebral endplate spurring, which further confirms the chronicity of the findings. There is no evidence of acute disc herniations, acute exacerbatory change or evidence of recent trauma to the regional soft tissue structures including the cartilaginous endplates and regional osseous structures as detailed. The L4/5 and L5/A1 levels are the commonest levels for discal degeneration in the lumbar spine and account for approximately 78-85% of all degenerative changes in the lumbar spine. The findings are consistent with the individual's age and are not causally related to the date of incident of 11/3/07, only 17 days

> prior to the performance of the MRI examination as the findings are chronic longstanding processes requiring years to develop as presented and are consistent with wear-and-tear of the normal aging process.

After reviewing the MRI of plaintiff's lumbar spine, Dr. Tantleff stated his impression:

> MRI examination of the thoracic Spine reveals chronic degenerative discogenic disc disease and cervicothoracic spondylosis. There is no evidence of thecal sac, cord, exiting nerve or nerve root compression, displacement or deviation. Nor is there evidence of disc bulge, protrusion or herniation. The lordosis is maintained as are the regional soft tissues. There is no evidence of prevertebral, perivertebral or posterior soft tissue swelling. There is no evidence of central canal, lateral recess or neural foraminal stenosis at any level. Nor is there evidence of mass effect on the thoracic cord or exiting nerve roots. There is no evidence of recent trauma or annular edema of any of the outermost annuli noted to suggest a recent herniation or recent acute exacerbatory change. Nor is there evidence of posterior endplate fractures of the opposing discovertebral endplates to suggest whiplash/trauma. The findings are consistent with the individual's age and are not causally related to the date of incident that occurred on 11/3/07, approximately five weeks prior to the MRI examination.

With respect to plaintiff's left ankle, Dr. Tantleff set forth his impression:

> MRI examination of the Left Ankle reveals no evidence of acute injury. However, despite the individual's age, there is evidence of significant osteoarthritic change talonavicular and cuneiform denoted. There are degenerative changes of the subtalar joints as detailed with significant regional degenerative change, especially, of the calcaneal cuboidal joint indicative of chronic micro-traumatic stress changes to the ankle. Degenerative changes include the calcaneal and cuboidal subtalar joints, talonavicular and navicular medial cuneiform joints, in particular, representing chronic micro-traumatic insult. There is no evidence of acute or recent injury. The findings depicted are the result of chronic overuse change unrelated to the date of incident of 11/3/07.

In his Bill of Particulars, plaintiff claims that he sustained a tear of the posterior horn of the medial meniscus of the right knee; central disc bulge and disc space narrowing at L5-S1; joint effusion and increased signal in the posterior horn of the medial meniscus consistent with tear;

internal derangement of both knees; joint effusion and left ankle internal derangement; right and left posterolateral disc bulges ast C6-C7; broad-based disc bulge at C5-C6; and vertebral derangement. In his deposition testimony, plaintiff, who was born August 22, 1982, testified that at the time of the accident, he was employed, and continues to be employed, as a cleaner with the New York City Board of Education, cleaning bathrooms and classrooms. He further testified that he returned to work in December 2007, following his accident in November 2007. He also testified that since the accident, he has difficulty playing basketball, bending, turning his neck. Defendants point to plaintiff's deposition testimony in which he testified that he received physical therapy from the office of Dr. Opam for his left and right knee, both shoulders and neck for six months, and except for Dr. Opam, he received no additional treatment.

Through the submission of the affirmed medical reports of Dr. Tantleff, Dr. Hudak, Dr. Kerness, Dr. Cohen and plaintiff's own testimony, defendants made the requisite prima facie showing that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d). See, Pommells v. Perez, 4 N.Y.3d 566 (2005); Rodriguez v. Huerfano, 46 A.D.3d 794 (2nd Dept. 2007); Baez v. Rahamatali, 6 N.Y.3d 868 (2006); Zhang v. Wang, 24 A.D.3d 611 (2005); Burgos v Vargas, 33 A.D.3d 579 (2nd Dept. 2006); Batista v Olivo, 17 A.D.3d 494 (2nd Dept. 2005); Sainte-Aime v Ho, 274 A.D.2d 569 (2nd Dept. 2000). They established, prima facie, that plaintiff suffered no limitation of motion as a result of the accident, and no medically determined injury or impairment of a non-permanent nature which prevented her from performing substantially all of the material acts which constituted his customary daily activities for not less than ninety days during the one hundred eighty days immediately following her alleged injury or impairment, thus established their entitlement to summary judgment dismissing the complaint insofar as asserted by plaintiff on the threshold issue. See, Baez v. Rahamatali, 6 N.Y.3d 868 (2006); Toure v. Avis Rent A Car Systems, Inc., 98 N.Y.2d 345 (2002); Gaddy v. Eyler, 79 N.Y.2d 955 (1992); Licari v. Elliott, 57 N.Y.2d 230 (1982); Djetoumani v. Transit, Inc., 50 A.D.3d 944 (2nd Dept. 2008). The burden then shifts to plaintiff to demonstrate the existence of a triable issue of fact as to whether she sustained a serious injury. See Gaddy v. Eyler, 79 N.Y.2d 955 (1992).

Plaintiff submitted in opposition to defendant's summary judgment motion his attorney's affirmation, annexed to which were certified hospital records from Jamaica Hospital; certified medical records of Osafradum Opam, M.D., a neurologist, and Glenwood Medical Neuro-Rehabilitation; the affirmation of Mark Shapiro, M.D., the radiologist who read the December 7, 2007 MRIs of plaintiff left knee and left ankle, and the November 21, 2007 MRI of his right knee; the affirmation of Daniel Beyda, M.D., the radiologist who read the December 8, 2007 MRI of plaintiff's thoracic spine, the November 30, 2007 MRI of his cervical spine, and the November 20, 2007 MRI of his lumbar spine; the certified medical records of Island Musculoskeletal Care, M.D., P.C.; the certified office records of David Benatar, M.D., an orthopedic surgeon, which includes the unsworn and unaffirmed MRI report of David L. Milbauer, M.D., of All County Open MRI & Diagnostics Radiology, P.C.; the affirmation of David L. Milbauer, a radiologist with All County Open MRI & Diagnostics Radiology, P.C.; and a Supplemental Bill of Particulars, reflecting that plaintiff underwent arthroscopy surgery on his right knee for medial meniscal repair. These submissions were sufficient to raise a triable issue of fact and to defeat defendant's motion for

summary judgment.

Dr. Opam, who initially examined plaintiff November 5, 2007, assessed plaintiff's cervical spine, thoracic spine, lumbosacral spine, knees and ankles. With respect to the cervical spine, Dr. Opam found:

> Active and passive range of motion was severely restricted in flexion, extension, lateral bending and rotation due to pain and discomfit. Pain and tenderness in the neck paraspinal muscles radiating to the shoulders bilaterally. Pain aggravated by movement. Foraminal compression test positive. Soto-Hall test positive. Spurling's maneuver positive. Moderately painful spasm of the paravertebral musculature in the cervical area. Tenderness and pain at palpation of multiple trigger points in the posterior neck.

The range of motion in plaintiff's cervical spine was 30 degrees at flection (normal 60 degrees), 30 degrees at extension (normal 60 degrees), left and right lateral bending at 10 degrees (normal 40 degrees), lateral rotation on left at 40 degrees (normal 80 degrees) and lateral rotation on right 30 degrees (normal 80 degrees). With respect to his thoracic spine/lumbosacral spine, Dr. Opam found:

> Active and passive range of motion severely restricted in flexion, extension, lateral bending and rotation due to pain and stiffness. Pain and tenderness in the lumbosacral paraspinal muscles radiating to the buttocks bilaterally worse on the left side. Pain aggravated by movement. Laseque's test positive. Braggart's sign positive. Kemp's test positive. Ely's test positive. Nach's test positive. positive. Moderately painful spasm of the paravertebral musculature in the lumbosacral area. Tenderness and pain at palpation of multiple trigger points in the lumbosacral area.

The range of motion in plaintiff's thoracic spine/lumbosacral spine was 60 degrees at flection (normal 90 degrees), 10 degrees at extension (normal 30 degrees), left and right lateral bending at 10 degrees (normal 20 degrees). With respect to limitations in plaintiff's knees, the range of motion was 10 degrees at flexion of the left knee and 20 degrees of flection of the right knee (normal 30 degrees), 70 degrees at extension of the left knee and 80 degrees of extension of the right knee (normal 90 degrees). And, with respect to limitations in plaintiff's ankles, the range of motion was 20 degrees at plantar flexion of the left ankle and 40 degrees of plantar flection of the right ankle (normal 40 degrees), 10 degrees at dorsiflexion of the left ankle and 20 degrees of dorsiflexion of the right knee (normal 20 degrees), 10 degrees at inversion of the left ankle and 30 degrees of inversion of the right ankle (normal 30 degrees), and 10 degrees at eversion of the left ankle and 20 degrees at eversion of the right ankle (normal 20 degrees). Following his examination, Dr. Opam set forth his prognosis:

> Prognosis is reserved (guarded). Patient sustained significant limitations in cervical, dorsal and lumbosacral spine, both knees and left ankle. The above-mentioned limitations interfere with the patient's working ability and his activity of daily living. Patient is totally incapacitated until further notice. Overall prognosis for full and complete recovery is difficult to determine at this time, additional tests will be performed to determine the full extent of the injury, and consultations of specialists will be obtained as necessary. We will observe the patient's response to provided treatment and conduct additional examinations, which will lead us to the final decision regarding this patient's prognosis.

Plaintiff was sent for MRIs and EEG testing, for consultation, for physical therapy, and was prescribed a cervical pillow, cervical collar, lumbosacral support, both knee support, left ankle support and thermophore.

Upon his examination of plaintiff on March 15, 2010l, Dr. Opam, in his affirmed medical report, noted that plaintiff complained of right knee pains with buckling, persistent lower back pain with restricted motion, radiating pain into the right leg, and left side neck stiffness. The range of motion in plaintiff's cervical spine was 50 degrees at flection (normal 60 degrees), 40 degrees at extension (normal 60 degrees), left lateral flexion at 30 degrees (normal 40 degrees), right lateral flexion at 20 degrees (normal 40 degrees), lateral rotation on left at 60 degrees (normal 80 degrees) and lateral rotation on right 50 degrees (normal 80 degrees). The range of motion in plaintiff's lumbar spine was 70 degrees at flection (normal 90 degrees), 15 degrees at extension (normal 30 degrees), left and right rotation at 10 degrees (normal 20 degrees), left and right lateral flection at 10 degrees (normal 20 degrees). With respect to limitations in plaintiff's knees, the range of motion was 30 degrees at flexion of the left knee and 20 degrees of flection of the right knee (normal 30 degrees), 90 degrees at extension of the left knee and 70 degrees of extension of the right knee (normal 90 degrees). Dr. Opam set forth as his diagnosis:

> The prognosis as of the patient's final consultation on 3/15/10 in regard to a full and complete recovery to a state as existed prior to the accident of 11/3/07 is guarded. In my opinion, the motor vehicle accident of 11/3;/07 was the competent producing cause of the injuries sustained by the patient. The patient's knee continues to deteriorate, and he reports he is scheduling surgery to try to improve. Plaintiff's lower back continues to produce pain, and the more recent MRI shows that the disc has herniated and is encroaching upon the canal causing radiculopathy. He also has significant restrictions in range of motion of the lumbosacral spine and knee and these must be considered to be permanent. I do not believe these injuries are degenerative are pre-existed the accident. It can be stated, with a reasonable degree of medical certainty, that these conditions affecting

Mr. Samuels are chronic, permanent and disabling in nature.

Dr. Shapiro, who read the December 7, 2007 MRIs of plaintiff's left knee and left ankle, and the November 21, 2007 MRI of his right knee, identified a "tear of the posterior horn of the medial meniscus" of the right knee; "joint effusion" and "increased signal in the posterior horn of the medial meniscus without definite articular extension" of the left knee; and "joint effusion" in the left ankle. Dr. Beyda, who read the December 8, 2007 MRI of plaintiff's thoracic spine, the November 30, 2007 MRI of his cervical spine, and the November 20, 2007 MRI of his lumbar spine found the thoracic spine to be normal; identified "at C5-C6, a broad-based disc bulge . . . that indents the ventral thecal sac" and "at C6-C7, right and left posterolateral disc bulges" in plaintiff's cervical spine; and "at the L5-S1 level, disc space narrowing and a central disc bulge" in plaintiff's lumbar spine. Dr. David L. Milbauer of All Country Open MRI & Diagnostics Radiology, who read the November 18, 2009 MRI of plaintiff's lumbar spine, found "posterior disc herniation larger to the right of midline noted at L4-5. . . minimal disc bulging at L4-5. The medical records of Island Musculoskeletal Care, M.D., P.C., where plaintiff was treated for injury to his right knee, contains the May 28, 2010 operative report of Gust Katsigiorgis, D.O., for repair of his right knee medial meniscal tear and synovitis of suprapatellar space.

Plaintiff 's opposition to defendants' summary judgment motion presents competent medical evidence sufficient to raise a triable issue of fact. As set forth above, while the "mere existence of a herniated or bulging disc is not evidence of a serious injury in the absence of objective evidence of the extent of the alleged physical limitations resulting from the disc injury, as well as its duration (citations omitted)" Stevens v. Sampson, 72 A.D.3d 793 (2nd Dept. 2010)), here, plaintiff's experts presented objective evidence of plaintiff 's physical limitations, as well as their durations. See, Chanda v. Varughese, 67 A.D.3d 947 (2nd Dept. 2009). Moreover, plaintiff through his treating doctors proffered competent medical evidence that revealed the existence of significant limitations in the cervical and lumbar regions of his spine, and right knee that were contemporaneous with the subject accident. See, Eusebio v. Yannetti, 68 A.D.3d 919 (2nd Dept. 2009); cf., Bleszcz v. Hiscock 69 A.D.3d 890 (2nd Dept. 2010). Moreover, where, as here, there are conflicting opinions of experts, such conflicts may not be resolved on a motion for summary judgment. Tolpygina v. Teper, 44 A.D.3d 747 (2nd Dept. 2007); Dandrea v. Hertz, 23 A.D. 3d 332 (2nd Dept. 2005). This evidence was sufficient to raise a triable issue of fact as to whether plaintiff sustained a serious injury. See, Desir v. Castillo, 59 A.D.3d 659 (2nd Dept. 2009). Accordingly, the motion for summary judgment dismissing the complaint of plaintiff is denied.

Dated: November 8, 2010

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J.S.C.