

Houghtaling v Alvord
2017 NY Slip Op 33503(U)
December 6, 2017
Supreme Court, Livingston County
Docket Number: Index No. 0245-2015
Judge: Robert B. Wiggins
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**SUPREME COURT
STATE OF NEW YORK COUNTY OF LIVINGSTON**

LOIS HOUGHTALING,

Plaintiff,

DECISION & ORDER

vs.

Index No. 0245-2015

DONNA ALVORD,

Defendant.

Plaintiff commenced this action seeking damages for personal injuries she allegedly sustained in a motor vehicle accident. Plaintiff was in the passenger seat of a car that was hit on the passenger side by Defendant's vehicle. She claimed at the time of the accident that her right shoulder, right wrist, neck, left knee and stomach hurt as a result. Plaintiff had been on disability since breaking her left arm in a fall from a porch in 2009. She also suffered spinal injuries in a 2010 car accident. Defendant now moves for summary judgment, claiming that plaintiff does not meet the threshold for a serious injury.

Initially, Defendant claims that she is entitled to dismissal because Plaintiff did not specify in her BOP what category of serious injury she is claiming - she just recited the entire definition from the statute. While Defendant contends that this warrants summary judgment, "[t]he drastic remedy of striking a pleading is not appropriate absent a clear showing that the failure to comply with discovery demands was willful or contumacious and, here, defendant failed to make that showing. The remedy for a plaintiff's failure to comply with a demand for a bill of particulars is a motion to compel compliance, and it does not appear on the record before us that defendant made such a motion" (*Johnson v Dow*, 56 AD3d 1288 [4th Dept 2008] [internal quotations and citations omitted]).

Plaintiff also raises a procedural argument - that the transcript of her

In support of the motion, Defendant submits the IME report of Dr. Daniel

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