

**Longmore v Bah**

2025 NY Slip Op 34325(U)

November 12, 2025

Supreme Court, Kings County

Docket Number: Index No. 513309/2022

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 83, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 12<sup>th</sup> day of November, 2025.

P R E S E N T:

HON. INGRID JOSEPH,

Justice.

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KAREN LONGMORE and PATRICK MAYNE,

Plaintiffs,

Index No.: 513309/2022

-against-

**DECISION & ORDER**

MAKY BAH and JOHN DOE, fictitious name as true name is unknown to the plaintiff at this time,

Mot. Seq. No. 1

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Statement of Material Facts/Affirmation in Support/Exhibits.....	20 – 31
Affirmation in Opposition/Response to Statement of Material Facts/Affidavits/Exhibits.....	32 – 45
Reply Affirmation.....	48

Upon the foregoing papers, Defendant Maky Bah (“Defendant”) moves for an order, pursuant to CPLR 3212, (i) granting him summary judgment on the grounds that Plaintiffs Karen Longmore (“Longmore”) and Patrick Mayne’s (“Mayne”) (collectively, “Plaintiffs”) alleged injuries do not meet the “serious injury” threshold under Insurance Law § 5102 (d) (Mot. Seq. No. 1). Plaintiffs oppose the motion.

This action arises out of a motor vehicle accident that occurred on July 27, 2021, on Beach Channel Drive at its intersection with Beach 65<sup>th</sup> Street in Queens, New York. At the time of the accident, Longmore was driving a 2008 Infiniti with Mayne as a front-seat passenger. Plaintiffs assert that a vehicle owned by Defendant struck Plaintiffs’ vehicle. As a result of the accident, Plaintiffs allege that they sustained serious injuries to their cervical and lumbar spines.

Defendant now moves to dismiss the complaint, arguing that Plaintiffs did not sustain a “serious injury” as defined by Insurance Law § 5102 (d). In support of his motion, Defendant relies on

the independent medical examinations performed by Dr. Howard A. Kiernan, an orthopedic surgeon; the radiological evaluations done by Dr. Scott A. Springer, a radiologist; and Plaintiffs' deposition transcripts.

Dr. Kiernan examined Plaintiffs using a goniometer and found that Plaintiffs had full range of motion in their cervical and lumbar spines. In addition, all orthopedic tests conducted were negative. Dr. Kiernan concluded that their injuries to the lumbar spine had resolved and their injuries to their cervical spine had healed. Dr. Springer reviewed the MRIs of Plaintiffs' cervical and lumbar spines, as well as Longmore's left knee X-ray. Dr. Springer opined that these radiology films showed no posttraumatic changes causally related to the subject accident. Moreover, Dr. Springer found that the disc bulges, desiccation, and herniations reflected in Plaintiffs' cervical MRIs and disc desiccation and herniation in Mayne's lumbar MRI were degenerative.

Defendant further cites to Plaintiffs' deposition transcripts to argue that they did not sustain a serious injury. For example, Longmore testified that she did not seek treatment for her alleged injuries until a week or two after the accident, and she stopped treatment after less than a year. Moreover, Defendant contends that Longmore testified that she was only working three hours a week at the time of the accident. Similarly, Defendant argues that Mayne testified that he waited until a week after the accident to seek treatment and ceased all treatment after less than nine months.

In opposition, Plaintiffs argue that Defendant failed to meet his prima facie burden of demonstrating that they did not sustain a serious injury. First, Plaintiffs assert that Dr. Kiernan did not review any of their medical records and based his opinion solely on his examinations conducted almost two years after the accident. Second, Plaintiffs contend that Dr. Springer did not "offer[] an opinion with a reasonable degree of medical certainty that [certain findings] were degenerative" (NYSCEF Doc No. 32, ¶ 48 [emphasis in original]). With respect to Longmore, Plaintiffs argue that Dr. Springer only opined that two of the four cervical levels where bulging discs were present were of degenerative origin. Since Dr. Kiernan did not dispute traumatic causation, Plaintiffs aver that there is a conflict between Defendant's experts. In addition, Plaintiffs assert that Defendant's experts did not address their 90/180 claim. However, Plaintiffs contend that they "testified and attested to" their restrictions during the relevant time period, such as difficulty reaching, lifting, and doing household tasks (NYSCEF Doc No. 32, ¶ 52). In their affidavits, Plaintiffs assert that at their depositions, defense counsel did not ask about non-work limitations during the six months following the accident. Longmore stated that during that time, she needed help from her children to perform acts of daily living. Mayne also stated that he either could not, or could only do with great difficulty, certain

activities. Moreover, according to Plaintiffs, any argument as to “gap in treatment” is unavailing since they testified that they ceased treatment when their insurance stopped paying.

Even if Defendant met its prima facie burden, Plaintiffs contend that there are issues of fact. In support, Plaintiffs rely on their treating physician Dr. Joseph Jimenez’s reports and treatment records. Dr. Jimenez examined Plaintiffs on April 14, 2025, and found that both exhibited decreased ranges of motion in their cervical and lumbar spines. Dr. Jimenez concluded that Plaintiffs’ conditions were solely related to and have a direct causal relationship to the subject accident.

In reply, Defendant maintains that he met his prima facie burden through the reports of Drs. Kiernan and Springer. Defendant contends that since Plaintiffs are not medical professionals, their affidavits should be disregarded. In addition, Defendant argues that Dr. Jimenez’s reports rely on unaffirmed and uncertified medical records and should thus be disregarded. Since Plaintiffs’ medical records are neither certified nor affirmed, Defendant also argues that they should be disregarded. According to Defendant, the only affirmed report is by Dr. Jimenez, who examined Plaintiffs on February 2, 2022, and ceased treatment on April 3, 2022. Dr. Jimenez next examined Plaintiffs on April 14, 2025, evidencing a gap in treatment of almost three years. Thus, Defendant argues that his opinions as to causation does not have a rational basis since it is not based on any findings contemporaneous with the accident. In addition, Defendant avers that Plaintiffs’ doctor is required to provide an explanation for any gap in treatment.

Whether a claimed injury falls within the statutory definition of “serious injury” is a question of law for the Court (*Licari v Elliot*, 57 NY2d 230 [1982]). The movant bears the initial burden of establishing, by the submission of evidentiary proof in admissible form, a prima facie case that a party has not suffered a serious injury proximately resulting from the subject motor vehicle accident (*Toure v Car Sys., Inc.*, 98 NY2d 345 [2002]; *Gaddy v Eyler*, 79 NY2d 955 [1992]). The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [2016]). However, where the movant has made a showing that a party has not suffered a serious injury as a matter of law, the burden shifts to the opposing party to submit evidence in admissible form sufficient to create a material issue of fact warranting a trial (*Franchini v Palmieri*, 1 NY3d 536 [2003]; *Grasso v Angerami*, 79 NY2d 813 [1991]).

The Court first considers the permanent loss of use category. “In order to qualify as a serious injury within the meaning of the no-fault statute, a ‘permanent loss of use’ must be total” (*Albury v O’Reilly*, 70 AD3d 612, 612 [2d Dept 2010], citing *Oberly v Bangs Ambulance*, 96 NY2d 295, 297, 751 NE2d 457, 727 NYS2d 378 [2001]). Upon measuring Plaintiffs’ ranges of motion, Dr. Kiernan found normal results and thus recorded movement, which is contrary to a complete and total loss of

use. Accordingly, the Court finds that Defendants met their prima facie burden as to this category. In opposition, Plaintiffs failed to rebut this, let alone address this in their opposition.

The Court will now consider Plaintiffs' claims that they suffered a permanent consequential limitation of use of a body organ or member or a significant limitation of use of a body function or system. "A defendant who submits admissible proof that the plaintiff has a full range of motion, and that she or he suffers from no disabilities causally related to the motor vehicle accident, has established a prima facie case that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102 (d)" (*Kearse v NY City Tr. Auth.*, 16 AD3d 45, 49-50 [2d Dept 2005]). According to Dr. Kiernan, Plaintiffs' physical examinations revealed full range of motion and that all injuries had been resolved or healed. Dr. Kiernan concluded that Plaintiffs did not sustain any significant or permanent injury as a result of the subject accident. Nonetheless, Dr. Springer opined that although there was objective evidence of injuries, these were degenerative in origin. Due to these conflicting opinions, Defendant has not met his prima facie case, and the burden does not shift to Plaintiffs to demonstrate triable issues of fact (*see Lewis v Revello*, 172 AD3d 505, 506 [1st Dept 2019]).

Turning to the 90/180 category, the Court finds that Defendant also has not met his prima facie burden. At their depositions, Plaintiffs testified that they were not confined to their bed or home (Longmore tr at 48, lines 14-23; Mayne tr at 39, lines 5-14). However, Plaintiffs testified that they missed over eight months from work (Longmore tr at 43, lines 19-25; Mayne tr at 36, line 25; at 37, lines 2-5). Plaintiffs' deposition transcripts are devoid of any lines of questioning about their limitations within six months immediately after the accident (*see Jong Cheol Yang v Grayline NY Tours*, 186 AD3d 1501, 1501-1502 [2d Dept 2020]). Moreover, Defendant's experts did not address 90/180. Accordingly, Defendants failed to meet their burden as to the 90/180-day category (*see Menezes v Khan*, 67 AD3d 654, 655 [2d Dept 2009]; *see also Quinones v Ksieniewicz*, 80 AD3d 506, 506 [1st Dept 2011]).

Accordingly, it is hereby

ORDERED, that Defendant's motion for summary judgment (Mot. Seq. No. 1) is granted to the extent that Plaintiffs' claims of permanent loss are dismissed, but denied as to permanent consequential limitation of use, significant limitation of use, and 90/180.

All other issues not addressed herein are either without merit or moot.

This constitutes the decision and order of the Court.



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HON. INGRID JOSEPH, J.S.C.  
Hon. Ingrid Joseph  
Supreme Court Justice