

Romano v Cuenca Coronel Trucking, Inc.

2025 NY Slip Op 35300(U)

March 11, 2025

Supreme Court, Queens County

Docket Number: Index No. 713780/2020

Judge: Chereé A. Buggs

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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**

IAS PART 30

Justice

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GUY J. ROMANO,

Index No.:713780/2020

Motion Date:12/16/2025

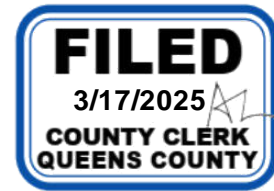
Plaintiff,

Motion Cal. No.: 19

-against-

Motion Sequence No.: 3

CUENCA CORONEL TRUCKING, INC., DIEGO I.
IDROVO-AGUAYAZA, and CITY OF NEW YORK



Defendants.

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The following efiled papers numbered 81-87, 97-99 and 101 submitted and considered on this motion by Guy J. Romano (hereinafter “Romano”) seeking an Order pursuant to Civil Practice Law and Rules (“CPLR”) 3212 granting Romano partial summary judgment on the issue of no-fault threshold against Defendants Cuenca Coronel Trucking Inc. (hereinafter “Cuenca”) and Diego I. Idrovo-Aguayaz (hereinafter “Idrovo-Aguayaz”). The motion is **granted**.

Motion Sequence 3	Papers <u>Numbered</u>
Notice of Motion-Affirmation in Support- Affidavits-Exhibits.....	EF 81-87
Affirmations in Opposition-Affidavits-Exhibits.....	EF 97-99
Affirmation in Reply-Affidavits-Exhibits.....	EF 101

Relevant Factual and Procedural Background

This action arises from an accident that occurred on October 8, 2019, at approximately 7:00 a.m. at the Kew Gardens Interchange Project worksite in Queens, New York. Plaintiff, Guy J. Romano, a construction foreman, was allegedly standing 6 to 9 feet in front of and approximately 1 foot to the passenger side of a 2016 Peterbilt dump truck owned by Cuenca Coronel Trucking, Inc. and operated by Diego I. Idrovo-Aguayaza. Romano claims that while he was in this position, the dump truck, without warning and without being signaled to move, ran over his feet and then backed over them again, causing multiple metatarsal fractures that required open reduction and fusion surgery.

Romano subsequently commenced this action, asserting that the accident was caused by Idrovo-Aguayaza's negligent operation of the dump truck. In a separate motion, he also sought partial summary judgment on liability, arguing that the uncontroverted evidence established the defendants' negligence. In the present motion, Romano seeks partial summary judgment on the issue of whether he sustained a "serious injury" under New York Insurance Law § 5102(d), specifically based on his metatarsal fractures, which required surgery.

In support of his motion, Romano submitted his own testimony, medical records, and the affirmation of his treating physician, Dr. Justin Greisberg. According to Dr. Greisberg, Romano sustained multiple metatarsal fractures that necessitated surgical intervention, including open reduction, internal fixation, and fusion of multiple midfoot joints. Dr. Greisberg personally observed the fractures during surgery and opined that they were directly caused by the accident. Romano argues that because fractures are explicitly recognized as a qualifying serious injury under New York law, he is entitled to summary judgment on this threshold issue. He further contends that once a serious injury is established, he is entitled to recover for all injuries causally related to the accident, including those that might not independently meet the statutory threshold.

Defendants Cuenca and Idrovo-Aguayaza do not dispute that Romano sustained multiple metatarsal fractures in the accident or that such injuries satisfy the serious injury threshold under New York Insurance Law § 5102(d). However, they oppose the motion to the extent that it may be interpreted as precluding them from contesting the nature and extent of Romano's injuries at trial. They argue that even when a plaintiff is found to have sustained a serious injury, it remains the jury's role to determine the scope of the injuries, their impact, and the appropriate measure of damages. Defendants assert their right to introduce evidence at trial, including testimony from their expert orthopedic surgeon, Dr. Wei Shen, and their vocational rehabilitation expert, Michael Ehrenreich, both of whom have examined Romano and will opine on the extent of his injuries and his post-accident functional limitations. Defendants emphasize that their ability to challenge the damages sought by Romano remains intact, even if the Court grants summary judgment on the issue of whether his fractures satisfy the serious injury threshold.

In reply, Romano clarifies that his motion does not seek a determination on the amount of damages or an order preventing the defendants from presenting evidence at trial regarding the extent of his injuries. Instead, he argues that defendants have already conceded the core issue in dispute, namely, that his fractures constitute a serious injury under the law. Given this concession, and in light of the uncontroverted medical evidence confirming the causal relationship between the accident and his injuries, Romano contends that he is entitled to summary judgment on the no-fault threshold issue as a matter of law. He further reiterates that under the applicable legal framework, once a serious injury is established, he is entitled to recover for all damages resulting from the accident, with the final amount to be determined by the jury at trial.

Law and Application

CPLR §3212 provides:

(a) Time; kind of action. Any party may move for summary judgment in any action, after issue has been joined; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown.

(b) Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. Where an expert affidavit is submitted in support of, or opposition to, a motion for summary judgment, the court shall not decline to consider the affidavit because an expert exchange pursuant to subparagraph (i) of paragraph (1) of subdivision (d) of section 3101 was not furnished prior to the submission of the affidavit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion...

(f) Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.

Insurance Law § 5102(d) provides:

(d) "Serious injury" means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; 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 person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

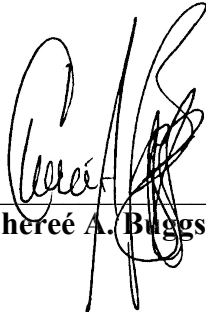
On a summary judgment motion, “[t]he movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*see Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024]; citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*see Morejon v New York City Tr. Auth.*, 216 AD3d 134, 136 [2d Dept 2023]; citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *see also Rev 5, LLC v Congregation Beth Elohim*, 229 AD3d 820 [2d Dept 2024]).

In this case, Romano has met his prima facie burden of demonstrating that he sustained a serious injury within the meaning of Insurance Law § 5102(d) as a result of the accident. The affirmation of Dr. Greisberg and the report of Dr. Wei Shen, M.D., Ph.D., constitute competent medical evidence establishing, prima facie, that Romano suffered multiple metatarsal fractures to his right foot, which falls within the definition of a serious injury under the statute (*see Maniscalco v Thomas*, 217 AD3d 761 [2d Dept 2023]). Moreover, Defendants do not dispute that Romano sustained a serious injury within the meaning of Insurance Law § 5102(d).

However, Romano's assertion that the establishment of a serious injury entitles him to recover all damages proximately caused by the accident is without merit. The extent of Romano's recoverable damages remains a question for the jury, contingent upon its determinations on both liability and damages at trial. Additionally, Defendants' argument that they retain the right to present evidence to the jury regarding the nature and extent of Romano's claimed damages is correct, but such an assertion is premature at this stage, as it does not affect the determination of whether Romano meets the serious injury threshold in this partial summary judgment motion. Accordingly, it is hereby

ORDERED that Romano's motion for partial summary judgment on the issue of the no-fault threshold is **granted** solely to the extent that Romano has sustained a serious injury as defined by Insurance Law § 5102(d).

Dated: March 11, 2025



Hon. Chereé A. Buggs, JSC

