Myrie v New York City Tr. Auth.
2026 NY Slip Op 30477(U)
February 9, 2026
Supreme Court, New York County
Docket Number: Index No. 152133/2023
Judge: Richard Tsai
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. RICHARD TSAI** **PART** **21**

Justice

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JOEL MYRIE,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, MTA BUS COMPANY, MABSTOA, METROPOLITAN TRANSPORTATION AUTHORITY, and FRANCISCO ALMANZAR,

Defendants.

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INDEX NO. 152133/2023

MOTION DATE 07/10/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 80 - 96 were read on this motion to/for JUDGMENT - SUMMARY.

In this action, arising out of a collision between a bus and a bicyclist on September 7, 2022, plaintiff moves for partial summary judgment in his favor as to the issue of the serious injury threshold under New York State Insurance Law § 5102 (d). Defendants oppose the motion.

> "To prevail on a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial. All facts are viewed in the light most favorable to the non-moving party" (*Nellenback v Madison County* 44 NY3d 329, 334 [2025] [internal citations omitted]).

"Under Insurance Law § 5104(a), there is no right of recovery for noneconomic loss in any action between covered persons for personal injuries arising out of the negligent use or operation of a motor vehicle 'except in the case of a serious injury.'" (*Moore v Maley*, 242 NYS3d 594, 597 [1st Dept 2025]). "A plaintiff moving for summary judgment on the issue of serious injury must establish, prima facie, that he or she sustained a serious injury within the meaning of Insurance Law § 5102(d) and 'that the [serious] injury was causally related to the accident'" (*Degachi v Faridi*, 215 AD3d 733, 733-34 [2d Dept 2023] [internal citations omitted]). "A fracture, by definition, constitutes a 'serious injury' under the statute" (*Baez v Boyd*, 90 AD3d 524, 525 [1st Dept 2011]).

At his statutory hearing, plaintiff testified that, after the incident, he was quickly transported via ambulance to Columbia Presbyterian Hospital (plaintiff's Exhibit E [NYSCEF Doc. No. 87], Signed 50H Tr. at 26, lines 15 – 22). After arriving to the

hospital, plaintiff stated he complained of injuries pertaining to "my ribs, my left foot" and that "there was a brace on my foot as well, my arm, my forearm, [and] my shoulder" (*id.* at 30 lines 15 – 19). While at the hospital, plaintiff received a CT scan which revealed plaintiff sustained several broken ribs to his left side (*id.* at 31, lines 16 – 23).

Plaintiff submits the results from said CT scan and the medical records from his hospital visit in further support of the motion. According to the results of the CT scan taken on September 8, 2022, plaintiff suffered several fractures from the fifth to the tenth rib on his left side (plaintiff's Exhibit B [NYSCEF Doc. No. 84], CT Scan Results). Additionally, in the hospital records, the Supervising Physician noted that imagining of plaintiff "demonstrated multiple left sided rib fractures" (plaintiff's Exhibit A [NYSCEF Doc. No. 83], Certified Hospital Records).

In opposition, defendants principally argue that "a question of fact is created as to how the fractures relate to the subject incident as sufficient proof has not been provided that the subject incident caused such" (defendants' counsel's affirmation in opposition to motion [NYSCEF Doc. No. 94] ¶ 26). During plaintiff's deposition, he testified to being involved in a small "fender bender" in 2016; however, plaintiff also testified to not suffering any injuries from this incident (defendants' Exhibit A [NYSCEF Doc. No. 96], Myrie Deposition Tr. at 48, line 8 through 49, line 6). Based on this testimony, defendants argue that "plaintiff's alleged fractures could have been caused during said [2016] incident" since "at the present time such is still unclear" (defendants' counsel's affirmation in opposition, ¶¶ 17 – 18).

Defendants' argument is unavailing. Given the contemporaneous medical records and CT scan taken immediately after the incident, plaintiff has satisfied the prima facie burden that he suffered fractures, and that the fractures were causally related to the accident (*compare Perez-Hernandez v M. Marte Auto Corp.*, 104 AD3d 489, 490 [1st Dept 2013] [granting plaintiff's motion based on plaintiff's testimony and "certified contemporaneous hospital records showing fractures"] *with Brackenbury v Franklin,* 93 AD3d 423 [1st Dept 2012] [holding plaintiff failed to satisfy their prima facie burden based on the lack of contemporaneous medical records demonstrating a serious injury]).

Defendants have not put forth any evidence raising a material issue of fact as to whether plaintiff suffered a serious injury (*compare Frias v Gonzalez-Vargas*, 147 AD3d 500 [1st Dept 2017] [where plaintiff defeated a motion for summary judgment by submitting opposing medical records demonstrating she suffered a fracture whereas defendants' medical records did not show such a fracture]; *see also Bailey v Islam*, 99 AD3d 633, 633 [1st Dept 2012] [holding a triable issue of fact was found based on competing expert opinions regarding plaintiff's injuries]). Defendants' own orthopedist, Dr. Andrew N. Bazos, who examined plaintiff on December 5, 2024 and who apparently reviewed the emergency department records, did not opine that plaintiff's rib fractures were not causally related to the accident. Instead, Dr. Bazos opined that "beyond the rib fractures," any other injury that plaintiff sustained "is based solely on his history and

subjective complaints alone due to the lack of any accident-related objective findings" (plaintiff's Exhibit K [NYSCEF Doc. No. 93], IME Report Findings, at 11).

Defendants' assertion that the fractures were caused by a prior accident in 2016 is therefore speculative. "Speculative and conclusory assertions are insufficient to defeat summary judgment" (*Cipriano v E. End Disability Assoc., Inc.*, 236 AD3d 985, 986 [2d Dept 2025]; *see also Judith M. v Sisters of Charity Hosp.*, 93 NY2d 932, 934 [1999] [holding that "mere speculation and unsubstantiated allegations . . . are insufficient to raise a triable issue of fact"]).

Additionally, defendants argue that plaintiff's motion is improper due to outstanding discovery (defendants' counsel's affirmation in opposition ¶¶ 31 - 35). Specifically, defendants argue that there are outstanding medical authorizations, from Lenox Hill Radiology, which could contain "key discoverable information related to Plaintiff's alleged fractures" (*id.* ¶ 34). It is well settled that "[t]he mere hope that additional discovery may lead to sufficient evidence to defeat a summary judgment motion is insufficient to deny such a motion" (*Singh v New York City Hous. Auth.*, 177 AD3d 475 [1st Dept 2019]). Since defendants are only hoping that these authorizations will reveal more information that the fractures were not caused by the accident, this argument is equally unavailing.

Thus, plaintiff's motion for summary judgment in his favor on the issue of the serious injury threshold is granted. Pursuant to CPLR 3212 (g) (4), it is hereby deemed established for all purposes in the action that plaintiff has suffered a "serious injury" within the meaning of Insurance Law, based on fractures that are causally related to the collision on September 7, 2022. "Because plaintiff has established a fracture, he is entitled to recover for all injuries causally related to the accident, including those not meeting the serious injury threshold" (*Perez-Hernandez*, 104 AD3d at 490).

Finally, the branch of plaintiff's motion for summary judgment dismissing an affirmative defense of serious injury is denied as academic. Defendants did not assert an affirmative defense of lack of serious injury in their answer (*see* plaintiff's Exhibit G [NYSCEF Doc. No 89], answer).

Based on the foregoing documents, it is hereby **ORDERED** that plaintiff's motion is **GRANTED IN PART TO THE EXTENT** that it is hereby deemed established for all purposes in the action that plaintiff has suffered a "serious injury" within the meaning of Insurance Law, based on fractures that are causally related to the collision on September 7, 2022; and it is further

ORDERED that the courts directs a trial on the issues regarding damages and plaintiff's comparative fault; and it is further

ORDERED that the remainder of the motion is **DENIED.**

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DATE

RICHARD TSAI, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	X	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**