

Acosta v Acosta

2026 NY Slip Op 30520(U)

February 6, 2026

Supreme Court, Kings County

Docket Number: Index No. 535104/2023

Judge: Reginald A. Boddie

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At an IAS Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 6th day of February 2026.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

-----X
JOSE M. LANDRAU ACOSTA and CHASTITY
KRISTAL MARIE WRENCH,

Index No. 535104/2023

Plaintiffs,

-against-

Cal. No. 2 MS 2

JEAN CARLOS LANDRAU ACOSTA, THEODORE
KARAOUNOS and JOHN DOE, fictitious name as true
name is unknown to the plaintiff at this time,

Decision and Order

Defendants.

-----X
The following e-filed papers read herein:
MS 2

NYSCEF Doc Nos.
28-60

The motion by defendant Theodore Karaounos (“Karaounos”) seeking summary judgment dismissing the complaint is decided as follows:

This action arises out of a May 10, 2023 rear-end motor vehicle accident on the Long Island Expressway in which plaintiffs Jose M. Landrau Acosta (“Acosta”), a front-seat passenger, and Chastity Kristal Marie Wrench (“Wrench”), a rear-seat passenger, claim they sustained personal injuries after the vehicle in which they rode, driven by defendant Jean Carlos Landrau Acosta, was struck from behind by defendant Karaounos’ vehicle. On December 1, 2023, plaintiffs commenced this action alleging that the accident was caused by defendants’ negligence and that, as a result,

they sustained severe, permanent, and serious injuries within the meaning of Insurance Law § 5102(d). Issue has since been joined, discovery completed, and the Note of Issue filed on August 21, 2025.

Karaounos now moves for summary judgment pursuant to CPLR 3212 dismissing the complaint on the ground that plaintiffs did not sustain a “serious injury” within the meaning of Insurance Law § 5102(d). In support, he submits plaintiffs’ deposition testimony and bills of particulars, affirmed reports of an orthopedic surgeon finding full range of motion and no objective disability, and a biomechanical analysis disputing causation. Plaintiffs oppose the motion with affirmed medical reports and treatment records asserting objectively measured limitations, causation, and permanency, and argue that the conflicting medical proof raises triable issues of fact. In reply, Karaounos reasserts that plaintiffs failed to raise a triable issue of fact and that their claims, including those under the 90/180-day category, must be dismissed as a matter of law.

It is well established that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a material and triable issue of fact (*T. Mina Supply v Clemente Bros. Contr. Corp.*, 194 AD3d 879, 881 [2d Dept 2021]). Once the proponent has made a prima facie showing, the burden then shifts to the motion’s opponent to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). Upon a motion for summary judgment, the court’s function is one of issue finding rather than issue determination (*id. citing Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). “It is not the function of a court . . . to make credibility determinations or findings of fact,

but rather to identify material triable issues of fact (or point to the lack thereof)” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505[2012] [citation omitted]).

Insurance Law § 5102(d) provides:

“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.”

Here, Karaounos met his prima facie burden by submitting, inter alia, the bills of particulars, plaintiffs’ deposition testimony, and the affirmed reports of Dr. Pierce J. Ferriter, an orthopedic surgeon, who examined both plaintiffs on June 27, 2025. Dr. Ferriter conducted range-of-motion testing using a goniometer and found that both plaintiffs demonstrated full range of motion in the cervical spine, lumbar spine, and shoulders, with no objective evidence of orthopedic disability. He diagnosed all of plaintiffs’ alleged conditions as “resolved” and concluded that each plaintiff was capable of working and performing all normal activities without restriction. (*see* NYSCEF Docs No. 41-42). Defendant also submitted biomechanical analyses opining that the low-speed rear-end collision was insufficient to cause the injuries alleged. (*see* NYSCEF Doc No. 43-44). Accordingly, defendant established, prima facie, that plaintiffs did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

In opposition, plaintiffs submitted affirmed medical reports from Dr. Richard Seldes, Dr. Anjani Sinha, and Dr. Joseph Jimenez, along with contemporaneous treatment records, MRI reports, operative records, and deposition testimony. The documentary evidence and deposition testimony reflect that plaintiffs began treatment immediately after the accident and underwent months of therapy, injections, and surgical intervention. Plaintiffs’ physicians documented

quantified limitations in range of motion of the cervical spine, lumbar spine, and shoulders, measured with objective testing and compared to normal values. The affirmed reports further opined that plaintiffs' injuries were causally related to the May 10, 2023 accident and that the resulting limitations were permanent and/or significant in nature.

Upon consideration of the foregoing, the Court finds that plaintiffs raised triable issues of fact as to whether they sustained a serious injury under the "significant limitation of use" and "permanent consequential limitation of use" categories of Insurance Law § 5102(d). Plaintiffs' submissions contain objectively measured range-of-motion deficits, documented over an extended period of time and corroborated by diagnostic imaging and surgical treatment. The parties' conflicting medical opinions raise issues of credibility that cannot be resolved on a motion for summary judgment.

Notwithstanding the foregoing, Karaounos is entitled to summary judgment with respect to plaintiffs' claims under the 90/180-day category of serious injury. To satisfy this category, a plaintiff must demonstrate "a medically determined injury or impairment of a non-permanent nature which prevented him from performing substantially all of the material acts constituting his usual and customary daily activities for not less than 90 days during the 180 days immediately following the accident" (*Bacon v Bostany*, 104 AD3d 625, 627 [2d Dept 2013]).

Here, plaintiffs' Bills of Particulars allege confinement for "approximately one (1) month post-accident," which amounts to roughly 30 days. (NYSCEF Doc No. 35). Although plaintiffs further allege that they were confined "again for approximately three (3) months post-surgery," Acosta's surgery occurred 208 days after the accident and Wrench's surgery occurred 160 days after the accident. (*Id.*). Moreover, the medical records submitted do not establish that plaintiffs were medically directed to confine themselves to bed or home for the requisite statutory period.


Accordingly, plaintiffs failed to raise a triable issue of fact that they sustained a serious injury under the 90/180-day category sufficient to defeat Karaounos' prima facie showing of entitlement to summary judgment.

Conclusion

Based on the foregoing, Karaounos' motion for summary judgment is granted to the extent that plaintiffs' claims premised upon the 90/180-day category of Insurance Law § 5102(d) are hereby dismissed. The remainder of Karaounos' motion is denied.

Any arguments not expressly addressed herein were considered and deemed to be without merit or unnecessary to address given the court's determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

**HON. REGINALD A. BODDIE
J.S.C.**