

**Etienne v Kennis**

2026 NY Slip Op 31439(U)

April 6, 2026

Supreme Court, Kings County

Docket Number: Index No. 504870/2020

Judge: Wavny Toussaint

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 70 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 6<sup>th</sup> day of April, 2026.

P R E S E N T:  
HON. WAVNY TOUSSAINT,  
Justice.

\_\_\_\_\_  
YVETTE ETIENNE,

Index No.: 504870/2020

Plaintiff,

-against-

**DECISION AND ORDER**

*MS 5*

ROY A. KENNIS, HARRY ABROMOWITZ,  
and JEAN ROOD PAPILLON,

Defendants.

\_\_\_\_\_  
The following papers numbered 1 to read herein  
Notice of Motion/Order to Show Cause/  
and Affidavits (Affirmations) Annexed  
Cross Motion and Affidavits (Affirmation) Annexed  
Answers/Opposing Affidavits (Affirmations)  
Reply Affidavits (Affirmations)  
Affidavit (Affirmation)  
Other Papers

NYSCEF Doc. Nos.

76-83

87-93

95

Defendant Jean Rood Papillon (“defendant”) moves (Seq. 05) for an order, pursuant to CPLR § 3212, granting summary judgment dismissing the complaint of plaintiff Yvette Etienne (plaintiff) on the grounds that plaintiff did not suffer a “serious injury” as defined under New York Insurance Law § 5102 [d] (the “Insurance Law”). Plaintiff opposes the motion.

### **Background**

On July 4, 2019, plaintiff alleges she was a passenger in the taxicab owned and operated by defendant, when it came into contact with the vehicle owned by defendant Roy A. Kennis and operated by defendant Harry Abromowitz, at the intersection of 6<sup>th</sup> Avenue and West 58<sup>th</sup> Street, in Manhattan, New York (the “accident”). Plaintiff alleges she sustained serious injuries and was transported by ambulance to New York Presbyterian Medical Hospital’s Emergency Room immediately after the accident, complaining of pain in the left knee, left shoulder, neck and back; as well as a laceration to her upper lip. Plaintiff was treated and released and sought follow-up treatment from her various doctors and therapists.

This action was commenced by summons and complaint filed on February 26, 2020. Defendants Roy A. Kennis and Harry Abromowitz filed an answer with crossclaim on March 20, 2020.<sup>1</sup> Moving defendant filed an answer on August 30, 2021.

### **The Parties’ Submissions**

In the current motion, defendant argues plaintiff’s injuries, allegedly sustained in this “minor accident”, fail to satisfy the “serious injury” threshold set forth under the Insurance Law. Defendant relies on the independent medical examination (IME) report of orthopedist Dr. Ken Hansraj (Dr. Hansraj), who determined that range of motion testing was normal for plaintiff’s cervical and lumbar spine, left shoulder, and left knee.

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<sup>1</sup> The action was subsequently discontinued as to these defendants by stipulation filed on June 24, 2025 (NYSCEF Doc. No. 71).

Defendant argues that based on Dr. Hansraj's findings, plaintiff's alleged injuries have all fully resolved; that in any event, plaintiff did not sustain disability or permanent injury as a result of the accident, and is able to perform activities of work and daily living without causally related restrictions. Defendant also argues that the extended gap in treatment between August 2019 and March 2020, with plaintiff having never resumed treatment, is further evidence plaintiff did not suffer a serious injury. Finally, defendant argues that plaintiff's alleged injuries are derived from a prior 2006 auto accident, in which she injured the same body parts as alleged in this action.

In opposition, plaintiff contends she was in excellent health before the subject accident. However, as she was not wearing a seatbelt at the time of the impact, her body was violently jerked back and forth resulting in immediate pain and a brief loss of consciousness. Plaintiff alleges she sustained injuries to her neck, back, shoulder and knees; as a result of those body parts coming into contact with the front seat of the vehicle. She also sustained a laceration to her upper lip requiring eight stitches to close. To support the injuries claimed, plaintiff points to the October 23, 2019 post-operative report, and subsequent treatment report, both prepared by orthopedic surgeon Dr. Shahid Mian. Plaintiff contends the reports confirm she sustained serious injuries as a result of the accident; some of which, plaintiff asserts, may require additional surgery (i.e., potential left knee replacement and right knee surgery). Plaintiff refutes the assertion that her injuries stem from the prior 2006 accident, contending she fully recovered from the left knee injury she sustained therein. Finally, plaintiff contends any gap in treatment for the period August 2019 through March 2020 coincided with and was caused by the COVID-

19 pandemic and, that when she sought to resume treatment, she could not continue as she was told her insurance coverage had expired.

In reply, defendant argues that the IME, performed by Dr. Hansraj, concluded plaintiff did not suffer any orthopedic injuries or sustain any disability or limitation as a result of the accident, requiring further intervention. As Dr. Hansraj concluded plaintiff had no evidence of any casually related injury or continued disability, and is able to perform activities of work and normal living activities without restriction, defendant argues the motion must be granted upon plaintiff's failure to raise any material questions of fact in opposition.

### Discussion

#### *Standard of Review*

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *see also Paul v Weatherwax*, 146 AD3d 792, 794 [2d Dept 2017]). The issue of whether a claimed injury falls within the statutory definition of "serious injury" is a question of law for the court, which may be decided on a motion for summary judgment (*see Licari v. Elliott*, 57 NY2d 230, 237 [1982]).

A moving defendant bears the initial burden of establishing, by the submission of evidentiary proof in admissible form, a *prima facie* case that plaintiff has not sustained a serious injury from the subject motor vehicle accident, as a matter of law (*Toure v. Avis Rent A Car Sys., Inc.*, 98 NY2d 345, 352 [2002]; *Gaddy v. Eyler*, 79 NY2d 955, 956-957

[1992]). A failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad*, 64 NY2d at 853).

***Motion Seq. 05***

Defendant moves to dismiss the complaint on the basis plaintiff did not sustain a serious injury as a result of the accident. As supporting proof on the motion, defendant primarily relied on the Bill of Particulars, the IME report of orthopedist Dr. Hansraj, plaintiff's deposition testimony, and the arguments set forth in an attorney's affirmation.

***1. The Bill of Particulars***

Defendant cites to the Bill of Particulars through the supporting attorney's affirmation and, in generalized fashion, refers to plaintiff's alleged injuries as "Cervical Spine", "Lumbar spine", "Left knee", "Left shoulder" and "Headache/Head" (NYSCEF Doc. No. 77 at p. 2). As more fully set forth in the Bill of Particulars, however, plaintiff alleged a tear to the anterior horn of the lateral meniscus of the left knee and an intra-meniscal tear of the medial meniscus of the left knee, which required arthroscopic surgery to repair (NYSCEF Doc. No. 81 at p. 2). Plaintiff also alleged an upper lip laceration which required eight stitches to close, among other related injuries (*Id.* at ps. 2-3). Additionally, plaintiff alleged a disc herniation at L3-L4 compressing on the thecal sac, disc bulging at L4-L5 encroaching on the neural foramina, and a partial tear of the subscapularis and supraspinatus tendons of the left shoulder (*Id.* at p. 3). Plaintiff alleges she was confined "to bed and home" for approximately fifteen (15) weeks after the subject accident except for necessary excursions (*Id.* at p. 4). Plaintiff also asserted the need for possible left knee replacement surgery (*Id.* at p. 2).

As a result of the foregoing injuries, plaintiff alleged she sustained permanent and disabling injury for 90 out of the first 180 days following the subject accident; a significant limitation of use of a bodily function or system; significant disfigurement; and a permanent consequential limitation of use of a bodily organ and/or member, as stated under the Insurance Law (*Id.* at p. 5).

## ***2. Plaintiff's Deposition Testimony***

Defendant points to plaintiff's June 2, 2022 deposition testimony that although she "went to the emergency room after the accident", and x-rays were taken; she suffered no broken bones and was discharged after "a few hours" (NYSCEF Doc. No. 77 at p. 5). Defendant further points to plaintiff's testimony that she sought treatment at a physical therapy facility, but ceased that therapy after a year; that she "claimed" to have had left knee surgery; that she was employed as a nurse's aide before the accident and is currently so employed (as of the deposition date); that since the accident she has traveled to Florida, and that she was involved in a prior accident in which she injured her left knee, lumbar spine, and bilateral shoulders (*Id.* at p. 5-6).

Plaintiff also confirmed in her deposition, though not cited by defendant, that she immediately complained to the responding paramedics of pain in her knees, shoulder, and back, and that her mouth "was bleeding profusely", and, that she was subsequently put in a neck brace and taken by ambulance to New York Presbyterian Hospital (NYSCEF Doc. No. 83 at ps. 42 and 44). Plaintiff was treated at the hospital between six and seven hours (*Id.* at ps. 44-45). Within two days after the accident, plaintiff saw her primary care physician, complaining of pain in her mouth and back (*Id.* at p. 46). She also received

physical therapy for about a year after the accident, attending three days a week, interrupted only by the COVID-19 pandemic and lack of insurance thereafter, when she tried to resume the treatment (*Id.* at ps. 49-52).

Plaintiff was also referred for x-rays and at least three different MRI's relative to her neck, head and back; and received "many" injections to her knees and one to her back (*Id.* at ps. 53 and 54). Plaintiff confirmed that ultimately, she underwent surgery on her left knee (*Id.* at p. 56) and that her doctor has also recommended right knee surgery (*Id.* at ps. 63-64). Plaintiff also testified regarding her ongoing limitations as a result of the accident, stating its "difficult" for her to get dressed because of "pressure" on her neck and shoulder; that she experiences a "sharp pain" that makes it "uncomfortable . . . to carry anything"; and that at times, its difficult for her to "go to the bathroom and also go up and down a stairway", and that she no longer goes to the gym, among other stated limitations (NYSCEF Doc. No. 83, pgs. 65-69).

### **3. Dr. Hansraj's IME**

Dr. Hansraj examined plaintiff on November 14, 2024, over five years after the accident. Notably, Dr. Hansraj did not review plaintiff's medical records, stating: "[n]o legally authenticated medical records were available for review" (NYSCEF Doc. No.82 at p. 2). At the same time, however, Dr. Hansraj also stated the records would be relevant to his assessment of plaintiff's condition noting: "I will be pleased to review [the medical records] and advise whether they have any effect on my opinion, which is based solely on today's examination" (*Id.*).

Dr. Hansraj conducted plaintiff's examination with the aid of a goniometer and found all ranges of motion of the effected body parts to be normal. At the end of the examination, Dr. Hansraj concluded: "the injured body parts alleged in the Bill of Particulars have resolved", with no "significant or permanent injury" (*Id.* at p. 5). The Court finds this conclusion general, with no demonstrated nexus between the accident and plaintiff's confirmed injuries.

Dr. Hansraj also failed to address plaintiff's claim that she sustained an injury or impairment of a non-permanent nature which prevented her from performing substantially all of the material acts which constituted her usual and customary daily activities for not less than 90 days during the 180 days immediately following the accident. On this point, as set forth in the very deposition transcript cited by defendant, plaintiff testified that she missed approximately "two years and a couple of months" from work as a result of the accident (NYSCEF Doc. No. 83 at ps. 27 and 47). This testimony alone raises a question of fact as to the 90/180-day category.

Dr. Hansraj states that a post-IME review of plaintiff's medical records (which was not done) could potentially alter the conclusions stated in his IME report. Without an initial or subsequent review of the medical records, Dr. Hansraj had no objective reference for plaintiff's alleged injuries, particularly for the immediate period of years following the accident. This failing renders the IME report inconclusive, as Dr. Hansraj himself concedes and, in conjunction with the other proof submitted by defendant, fail to establish defendant's *prima facie* showing. Since the defendants failed to satisfy their *prima facie*

burden, it is unnecessary to consider whether the papers submitted by plaintiff in opposition were sufficient to raise a triable issue of fact (*Winegard*, 64 NY2d at 853).

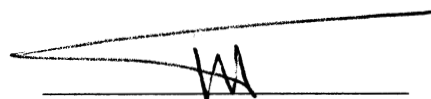
**Conclusion**

Accordingly, it is hereby

**ORDERED**, that defendant Jean Rood Papillon’s motion (Seq. 05) for an order, pursuant to CPLR § 3212, granting summary judgment dismissing the complaint, on the basis plaintiff fails to meet the serious injury threshold under Insurance Law § 5102 [d], is denied in every respect.

This constitutes the decision and order of the Court.

E N T E R

  
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J.S.C.

**HON. WAVNY TOUSSAINT  
J.S.C.**

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