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## Motor Vehicle

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### Multi-car crash caused merely minor injuries, defense argued

**Verdict:** Defense

**Case Type:** No-Fault Case, Motor Vehicle - Rear-ender, Motor Vehicle - Multiple Impact, Motor Vehicle - Multiple Vehicle, Motor Vehicle - Uninsured Motorist

**Case:** Diana & John Zubko v. Metropolitan Casualty Ins. Co., No. 138/05

**Venue:** Suffolk Supreme, NY

**Judge:** Patrick A. Sweeney

**Date:** 06-04-2009

### PLAINTIFF(S)

#### Attorney:

- Steve Lane; Law Offices of Kenneth J. Ready; Mineola, NY, for Diana Zubko, John Zubko

#### Expert:

- Ali Guy M.D.; Physical Medicine; New York, NY called by: Steve Lane

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### DEFENDANT(S)

#### Attorney:

- Richard G. Corde; Boeggeman, George & Corde, P.C.; White Plains, NY, for Metropolitan Casualty Insurance Co.

#### Expert:

- None

### Facts:

On Nov. 3, 2003, plaintiff Diana Zubko, 44, a schoolteacher, was driving on the eastbound side of Jericho Turnpike, near its intersection at Brush Hollow Road, in Jericho. When she reached the intersection, she stopped at a red traffic signal. Before she could resume travel, her vehicle's rear end was struck by a trailing vehicle. A moment earlier, that vehicle's rear end was struck by a trailing vehicle that was being driven by an uninsured person. Zubko claimed that she sustained injuries of her back and neck.

Zubko sued her own insurer, Metropolitan Casualty Insurance Co. She alleged that the uninsured motorist was negligent in the operation of his or her vehicle. Zubko sought recovery from the

supplementary-underinsured-motorist provision of her insurance policy.

Defense counsel conceded liability. The trial addressed damages.

**Injury:**

Zubko claimed that she sustained injuries that produced bulges and herniations of her C4-5, L3-4, L4-5 and L5-S1 intervertebral discs. She also claimed that she developed radiculopathy. The bulges and herniations were confirmed by the results of an MRI scan, and the radiculopathy was confirmed by an electromyogram.

Zubko underwent about six months of physical therapy, and her treating physiatrist performs follow-up treatment every three months. The doctor contended that Zubko had not previously reported any difficulties related to her back and neck.

Zubko contended that she suffers constant residual pain that stems from her back and neck. She acknowledged that she is not completely disabled, but she claimed that she cannot endure prolonged periods in which she is seated or standing. She also claimed that she has not been able to resume one of her favorite recreational activities: hiking. Zubko's treating physiatrist contended that Zubko suffers spasms and trigger points, symptoms that suggest that her condition will deteriorate and necessitate surgery and lifelong physical therapy.

Zubko sought recovery of \$191,000 for her future medical expenses, \$250,000 for her past pain and suffering, and \$250,000 for her future pain and suffering.

Defense counsel contended that Zubko's injuries prevented her performance of merely two days of work, that Zubko was never required to wear a back brace or a neck brace, and that Zubko is able to withstand 21-mile-long trips to and from her job. Thus, he argued that Zubko did not sustain a serious injury, as defined by the no-fault law, Insurance Law § 5102(d).

**Verdict Information** The jury rendered a defense verdict. It found that Zubko did not sustain a serious injury.

**Editor's Comments** This report is based on information that was provided by defense counsel. Plaintiffs' counsel did not respond to the reporter's phone calls.