



APPELLATE COURT HOLDS THAT POST-CAR ACCIDENT ELBOW SURGERY DOES NOT GIVE RISE TO SERIOUS INJURY

In a lawsuit arising out of Bronx County, New York's appellate court (First Department) held that a car accident resulting in elbow surgery did not give rise to a "serious injury" - the required level of personal hurt necessary to maintain a lawsuit for a car accident.

The case is Cartha v. Quin, where plaintiff claimed back and arm injuries from a car accident. He had surgery to his damaged elbow eight months after his accident and missed time from work.

Regarding plaintiff's claimed arm and back injuries, the court found that he did not show "significant limitations in their use" and thus failed to show the requisite "serious injury" level of hurt, required by New York's Insurance Law.

Comment: How could the plaintiff's lawyers lose this? Either they were lazy or unknowing in their lawyering, overlooking that New York's courts want to see formulaic "range of motion" studies to show serious injury. Is this dumb of the courts? Yes. But without such testing - which is cheap, simple to do, and non-invasive - there is an underlying assumption that the injured accident victim got all better. And if the plaintiff got all better, he or she is blocked from recovery under New York's No-Fault insurance law.

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