



A prima facie case of negligence is established

Many people do not totally understand negligence. Just because you are injured, you still must prove the defendant is negligent. Insurance Companies, defense law firms and the police may not agree with your version of the accident. SMBI can assist you in your case search for the correct and necessary information to establish the defendant owes you money for your injury and their actions.

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Fillette v Lundberg, 2017 N.Y. App. Div. LEXIS 4137

Copy Citation

Supreme Court of New York, Appellate Division, Third Department

May 25, 2017, Decided; May 25, 2017, Entered

523185

Core Terms

serious **injury**, summary judgment, psychiatric **injury**, cross motion, significant limitation, issue of fact, motor vehicle accident, daily activities, range of motion, tests, summary judgment motion, issue of liability, treating physician, medical evidence, left shoulder, affirmation, records, lumbar, neck

Case Summary

Overview

HOLDINGS: [1]-A northbound (NB) driver was entitled to summary judgment on the issue of the southbound (SB) driver's liability in a vehicle collision because the SB driver's vehicle crossed the double yellow line and entered the NB driver's lane of travel, and the SB driver pleaded guilty to a traffic ticket for crossing a double yellow line, thereby establishing the SB driver's per se negligence, Vehicle and Traffic Law §§ 1120, [1126\(a\)](#); [2]-A genuine issue of material fact existed as to whether the NB driver's alleged neck, **back** and left shoulder **injuries** qualified as a serious **injury**, [Insurance Law §§ 5102\(d\),5104\(a\)](#), because, in opposition to the SB driver's motion for summary judgment, one of the NB driver's treating physicians opined, inter alia, that the NB driver had muscle spasms in his spine, a cervical spine strain, and limited range of motion in his left shoulder.

Outcome

Order reversed; motion granted; cross motion denied; and partial summary judgment awarded to NB driver.

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