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## CASE ALERT

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### *Appellate Division Applies Oswin Standards to Post-AICRA Verbal Threshold Claims*

On November 6, 2002 the Appellate Division handed down a pair of important decisions which will affect the handling of all auto accident bodily injury claims subject to the verbal threshold. Rios v. Szivos and James v. Torres recognize the continued vitality of both the summary judgment model and the “serious impact” requirement imposed by the landmark pre-AICRA case of Oswin v. Shaw.

The Automobile Insurance Cost Reduction Act of 1998 (AICRA) added the requirement that a plaintiff subject to the verbal threshold file a treating or certified physician’s certification of permanent injury. The plaintiff’s bar interpreted the certification provision as precluding consideration of a summary judgment motion whenever a plaintiff has submitted an adequate certification. Many trial courts accepted this argument and refused to consider summary judgment motions in the face of an appropriate certification – even in the context of cases which the courts agreed would have been dismissed under the “old” verbal threshold!

This literal interpretation of the certification provision promised to overload trial calendars with minor soft-tissue injury cases, even more so than the trial courts’ diverse interpretations of the No Fault law prior to AICRA. Thankfully, in Rios v. Szivos the Appellate Division struck a blow for common sense. Acknowledging the cost-saving and docket-clearing aims of AICRA, the Rios Court held that a valid certification submitted in accordance with AICRA will not operate to circumvent the Summary Judgment model created by Oswin v. Shaw. While this decision may lead to an increase in dispositive motions, the burden on judicial resources posed by increased motion practice will be minimal compared to the burden of artificially swollen trial calendars.

Of course, the continued viability of the Oswin Summary Judgment model will serve the cost-saving objectives of AICRA only if trial courts interpret the verbal threshold as intended by the legislature. In James v. Torres the Appellate Division resolved a split amongst trial courts (discussed in our August Case Update) to hold that a plaintiff subject to the verbal threshold under AICRA must present not only objective medical evidence of injury, but also proof that the injury has had a “serious impact” on the plaintiff’s life. Essentially, the Court held that AICRA’s definition of permanency does not affect the two-pronged test established by the Supreme Court in Oswin.

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Taken together, the Rios and Torres decisions provide much-needed support to the new verbal threshold under AICRA. These decisions should have an immediate impact on the evaluation and handling of verbal threshold claims. Should you have any questions about AICRA or any other area of auto insurance law, feel free to contact any member of our auto insurance litigation team.

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