



## *New Potential Consequences for Undergoing Surgery Prior to IME, New York Law Journal*

*By Kenneth B. Danielsen and Steven I. Heyligers | October 23, 2019, New York Law Journal*

*In personal injury lawsuits, it is often the case that a plaintiff will undergo surgery during the course of litigation, without giving any prior notice to the defendants. Whether unintentional, or tactical, two decisions in the Supreme Court, including one issued earlier this year, may serve to change this practice, at least in cases where the defendants have demanded the right to conduct a presurgical independent medical examination (IME). Indeed, based on Mangione v. Jacobs and Martinez v. Nelson, the decision to ignore a defendant's request for a presurgical IME and proceed to surgery without first appearing for an exam can have serious consequences for a plaintiff, up to and including dismissal of the lawsuit on the basis of spoliation of evidence.*