

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D12978  
G/mv

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - October 25, 2006

HOWARD MILLER, J.P.  
GABRIEL M. KRAUSMAN  
ROBERT A. SPOLZINO  
STEVEN W. FISHER  
MARK C. DILLON, JJ.

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2005-09929

DECISION & ORDER

Neo Nkhereanye, appellant, v  
Inatus Hillaire, et al., respondents.

(Index No. 18608/04)

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Schwartzapfel Novick Truhowsky & Marcus, P.C. (Alexander J. Wulwick, New York, N.Y., of counsel), for appellant.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Holly E. Peck of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Dabiri, J.), dated August 17, 2005, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

Contrary to the plaintiff's contention, the defendants established their prima facie entitlement to judgment as a matter of law through competent evidence that the plaintiff did not sustain a serious injury within the meaning of Insurance Law §5102(d) as a result of the subject automobile accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eycler*, 79 NY2d 955; *D'Alba v Yong-Ae Choi*, 33 AD3d 650; *Faulkner v Steinman*, 28 AD3d 604; *Giraldo v Mandanici*, 24 AD3d 419; *Meyers v Bobower Yeshiva Bnei Zion*, 20 AD3d 456). In opposition, the plaintiff

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failed to raise a triable issue of fact. Most of the plaintiff's medical submissions were without probative value because they were unsworn or unaffirmed (*see Grasso v Angerami*, 79 NY2d 813; *Bycinthe v Kombos*, 29 AD3d 845; *Pagano v Kingsbury*, 182 AD2d 268). The affirmed medical report of the plaintiff's orthopedist also lacked probative value because it relied on the unsworn reports of others (*see Baksh v Shabi*, 32 AD3d 525; *Felix v New York City Tr. Auth.*, 32 AD3d 527; *Jian-Yu Zhang v Qiang Wang*, 24 AD3d 611; *Friedman v U-Haul Truck Rental*, 216 AD2d 266). The remainder of the plaintiff's submissions was insufficient to raise a triable issue of fact (*see Brobeck v Jolloh*, 32 AD3d 526).

MILLER, J.P., KRAUSMAN, SPOLZINO, FISHER and DILLON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court