

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

D14234  
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Submitted - February 7, 2007

WILLIAM F. MASTRO, J.P.  
DAVID S. RITTER  
PETER B. SKELOS  
EDWARD D. CARNI  
WILLIAM E. McCARTHY, JJ.

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2006-03898

DECISION & ORDER

Orly Tagger, respondent, v Olympic Van Line, Inc.,  
et al., appellants.

(Index No. 41279/04)

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Chalos, O'Connor & Duffy, LLP, Port Washington, N.Y. (Michael Siravo of counsel), for appellants.

Robert Weiss, New York, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Harkavy, J.), dated March 8, 2006, as granted that branch of the plaintiff's motion which was for summary judgment dismissing the eighth "affirmative defense" asserting that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court providently exercised its discretion in granting that branch of the plaintiff's motion which was for summary judgment dismissing the eighth "affirmative defense." The plaintiff made a prima facie showing that the subject accident caused her to sustain a fracture, and

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thus, a “serious injury” within the meaning of Insurance Law § 5102(d). In opposition, the defendants failed to raise a triable issue of fact (*see generally Baez v Rahamatali*, 6 NY3d 868, 869; *Cervino v Gladysz-Steliga*, 36 AD3d 744; *cf. Benedetto v Carrera Realty Corp.*, 32 AD3d 874, 876).

MASTRO, J.P., RITTER, SKELOS, CARNI and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court