

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

D14892  
G/gts

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Submitted - March 7, 2007

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

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2006-04026

DECISION & ORDER

Amy K. Yu, appellant, v C&A Seneca  
Construction, et al., respondents.

(Index No. 11323/04)

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Sim & Park, LLP, New York, N.Y. (Sang J. Sim of counsel), for appellant.

Stockschlaeder, McDonald & Sules, P.C., New York, N.Y. (Richard Sules and  
Robert Seigal of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Richmond County (Giacobbe, J.), dated March 9, 2006, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is reversed, on the law, with costs, and the motion for summary judgment dismissing the complaint is denied.

The defendants' evidence, consisting of the plaintiff's deposition testimony, the bill of particulars, the supplemental bill of particulars, and the affirmed medical reports of their examining neurologist, orthopedist, and radiologist, established, prima facie, that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102 (d) (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eycler*, 79 NY2d 955, 956-957; *Meyers v Bobower Yeshiva Bnei Zion*, 20 AD3d 456). In opposition, the plaintiff raised a triable issue of fact as to whether she sustained a

serious injury (*see generally Zuckerman v City of New York*, 49 NY2d 557). Accordingly, the Supreme Court improperly granted the defendants' motion for summary judgment dismissing the complaint.

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

ENTER:

A handwritten signature in cursive script, reading "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court