

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

D15426  
W/hu

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

Submitted - May 2, 2007

REINALDO E. RIVERA, J.P.  
ROBERT A. SPOLZINO  
STEVEN W. FISHER  
ROBERT A. LIFSON  
THOMAS A. DICKERSON, JJ.

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2006-03235

DECISION & ORDER

Paulette Bartley, appellant, v Trans Car & Limo,  
Inc., et al., respondents.

(Index No. 24182/04)

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Elliot Iffaimoff & Associates, P.C., Forest Hills, N.Y. (David E. Waterbury 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, Queens County (Agate, J.), dated January 11, 2006, 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.

The defendants made a prima facie showing 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 Eyler*, 79 NY2d 955). The defendants' affirmed medical reports demonstrated that the  
plaintiff's injuries were not permanent and were of a degenerative nature, predating the accident.  
Further, the defendants demonstrated that the plaintiff was able to perform all of her daily activities  
for more than 90 days of the first 180 days subsequent to the accident (*see Sainte-Aime v Ho*, 274  
AD2d 569).

June 19, 2007

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In opposition to the defendants' showing, the plaintiff failed to raise a triable issue of fact.

RIVERA, J.P., SPOLZINO, FISHER, LIFSON and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court