

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

D15634  
O/nl

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Submitted - May 16, 2007

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

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2006-05355

DECISION & ORDER

Angela A. Cossentino, appellant, v Lauren T.  
Kelly, et al., respondents.

(Index No. 839/05)

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Dupée & Monroe, P.C. (William J. Garvin of counsel), for appellant.

Marc D. Orloff, P.C., Goshen, N.Y. (Steven A. Kimmel of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Orange County (Slobod, J.), entered May 3, 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 affirmed, with costs.

The defendants satisfied their prima facie burden by showing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957). In opposition, the plaintiff failed to raise a triable issue of fact. The plaintiff's treating physician relied on the unsworn reports of others in reaching the conclusions in his affirmation (*see Iusmen v Konopka*, 38 AD3d 608; *Elder v Stokes*, 35 AD3d 799; *Friedman v U-Haul Truck Rental*, 216 AD2d 266). The submission of the plaintiff's magnetic resonance imaging report of her cervical spine did not raise a triable issue of fact. The mere existence of a herniated or bulging disc is not evidence of a serious injury in the absence of objective evidence of the extent of the alleged physical limitations

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resulting from the disc injury and its duration (*see Yakubov v CG Trans Corp.*, 30 AD3d 509; *Cerisier v Thibiu*, 29 AD3d 507; *Bravo v Rehman*, 28 AD3d 694; *Kearse v New York City Tr. Auth.*, 16 AD3d 45; *Diaz v Turner*, 306 AD2d 241).

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, flowing style.

James Edward Pelzer  
Clerk of the Court