

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

D16080
X/gts

_____AD3d_____

Submitted - May 30, 2007

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

2006-08074

DECISION & ORDER

Wei-San Hsu, appellant, v Briscoe
Protective Systems, Inc., et al., respondents.

(Index No. 14143/04)

Kurzman Karelsen & Frank, LLP, New York, N.Y. (Paul J. McGeough and Charles Palella of counsel), for appellant.

Epstein, Rayhill & Frankini, Woodbury, N.Y. (Mona C. Haas 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 (Weiss, J.), entered June 29, 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 established, prima facie, their entitlement to judgment as a matter of law by tendering proof in admissible form that the plaintiff did not sustain a serious injury to her jaw 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 Eycler*, 79 NY2d 955, 956-957). In opposition, the plaintiff failed to raise a triable issue of fact. Neither the plaintiff nor her examining dentist adequately explained the lengthy gap in the plaintiff's treatment between her termination of treatment two to three months post-accident and the evaluation by her examining dentist in October 2005 (*see*

Pommells v Perez, 4 NY3d 566, 574; *Zinger v Zylberberg*, 35 AD3d 851; *Hasner v Budnik*, 35 AD3d 366; *Caracci v Miller*, 34 AD3d 515). Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

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