

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

D16850  
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Submitted - October 17, 2007

ROBERT W. SCHMIDT, J.P.  
ROBERT A. SPOLZINO  
PETER B. SKELOS  
ROBERT A. LIFSON  
WILLIAM E. McCARTHY, JJ.

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2007-01971

DECISION & ORDER

Gerardo Pazmino, respondent, v Universal  
Distributors, LLC, et al., appellants.

(Index No. 1751/05)

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Morris, Duffy, Alonso & Faley, New York, N.Y. (Anna J. Ervolina and Andrea  
Alonso of counsel), for appellants.

Eric H. Green, New York, N.Y. (Marc Gertler and Hiram Anthony Raldiris of  
counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an  
order of the Supreme Court, Kings County (Kurtz, J.), dated January 12, 2007, which denied their  
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 reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is granted.

The defendants met their prima facie burden by establishing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident on August 24, 2002 (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eycler*, 79 NY2d 955).

November 7, 2007

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In opposition, the plaintiff failed to raise a triable issue of fact. In the most recent medical report of Dr. Hausknecht, the plaintiff's treating neurologist, dated June 27, 2006, he noted that the plaintiff was involved in "several" accidents since he last examined the plaintiff a year earlier. Rather than address those accidents, Dr. Hausknecht simply concluded that the significant range of motion limitations in the plaintiff's cervical and lumbar spine, as well as the injuries noted in the plaintiff's magnetic resonance imaging reports, were the result of the subject accident. These conclusions were clearly rendered speculative in light of the fact that he failed to address what those prior accidents involved (*see Moore v Sarwar*, 29 AD3d 752; *Tudisco v James*, 28 AD3d 536; *Bennett v Genas*, 27 AD3d 601; *Allyn v Hanley*, 2 AD3d 470).

The magnetic resonance imaging reports of the plaintiff's cervical and lumbar spine, dated October 2002, merely showed evidence that the plaintiff had disc herniations and bulges in those regions of his spine at that time. This Court has held that the mere existence of a herniated or bulging disc, and even radiculopathy, is not evidence of a serious injury in the absence of objective evidence of the extent of the alleged physical limitations resulting from the disc injury and its duration (*see Meija v DeRose*, 35 AD3d 407; *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; *see also Furr v Griffith*, 43 AD3d 389).

SCHMIDT, J.P., SPOLZINO, SKELOS, LIFSON and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court