

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

D18278  
G/kmg

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Submitted - February 13, 2008

PETER B. SKELOS, J.P.  
FRED T. SANTUCCI  
JOSEPH COVELLO  
WILLIAM E. McCARTHY  
CHERYL E. CHAMBERS, JJ.

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2007-01259

DECISION & ORDER

Christine Wright, appellant, v AAA Construction  
Services, Inc., et al., respondents.

(Index No. 1210/05)

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Fredric Lewis, New York, N.Y. (Nicholas W. Kowalchyn of counsel), for appellant.

Purcell & Ingrao, P.C., Mineola, N.Y. (Terrance J. Ingrao and Matthew M. Frank of  
counsel), for respondents AAA Construction Services, Inc., and Natanahel Barreira.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Kelly, J.), dated January 12, 2007, which granted the motion of the defendants AAA Construction Services, Inc., and Natanahel Barreira, and the separate motion of the defendants Jean Labranche and Jimward J. Labranche for summary judgment dismissing the complaint insofar as asserted against them 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 defendants' motions for summary judgment dismissing the complaint insofar as asserted against them are denied.

The Supreme Court erred in concluding that the defendants satisfied their respective prima facie burdens on their separate motions for summary judgment 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 support of their motions, the defendants relied on essentially the same submissions. Included

March 4, 2008

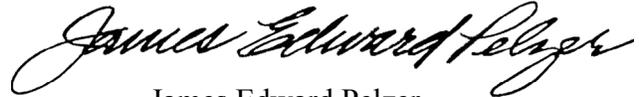
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within those submissions was the affirmed medical report of their examining orthopedic surgeon, who noted significant range of motion limitations in the plaintiff's left shoulder upon examination two years post-accident (*see Zamaniyan v Vrabeck*, 41 AD3d 472; *Sullivan v Johnson*, 40 AD3d 624; *Smith v Delcore*, 29 AD3d 890; *Sano v Gorelik*, 24 AD3d 747; *Spuhler v Khan*, 14 AD3d 693; *Omar v Bello*, 13 AD3d 430; *Scotti v Boutureira*, 8 AD3d 652). Accordingly, the defendants failed to establish their prima facie entitlement to judgment as a matter of law in the first instance, and it is unnecessary to reach the question of whether the plaintiff's opposition papers were sufficient to raise a triable issue of fact (*see Zamaniyan v Vrabeck*, 41 AD3d 472; *Sullivan v Johnson*, 40 AD3d 624; *Coscia v 938 Trading Corp.*, 283 AD2d 538).

SKELOS, J.P., SANTUCCI, COVELLO, McCARTHY and CHAMBERS, 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