

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

D18407  
X/kmg

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

Submitted - February 13, 2008

ROBERT A. SPOLZINO, J.P.  
DAVID S. RITTER  
MARK C. DILLON  
RUTH C. BALKIN  
JOHN M. LEVENTHAL, JJ.

---

2007-07454

DECISION & ORDER

Virginia Coleman, respondent, et al., plaintiff,  
v Shangri-La Taxi, Inc., et al., appellants.

(Index No. 18650/05)

---

Baker, McEvoy, Morrissey & Moskovitz, P.C., New York, N.Y. (Stacy R. Seldin of counsel), for appellants.

Douglas Herbert, Brooklyn, N.Y., for respondent.

In an action, inter alia, to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Held, J.), dated June 26, 2006, which denied their motion for summary judgment dismissing the complaint insofar as asserted by the plaintiff Virginia Coleman 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 affirmed, with costs.

The defendants failed to meet their prima facie burden of showing that the plaintiff Virginia Coleman (hereinafter 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, 351; *Gaddy v Eycler*, 79 NY2d 955, 956-957). The defendants failed to even address the plaintiff's allegation that she suffered a left shoulder injury as a result of the subject accident (*see Monkhouse v Maven Limo, Inc.*, 44 AD3d 630, 630-631; *O'Neal v Bronopolsky*, 41 AD3d 452; *Hughes v Cai*, 31 AD3d 385; *Loadholt v New York City Tr. Auth.*, 12 AD3d 352). Since the

March 11, 2008

Page 1.

COLEMAN v SHANGRI-LA TAXI, INC.

defendants failed to establish their prima facie entitlement to judgment as a matter of law in the first instance, it is unnecessary to consider whether the opposing papers were sufficient to raise a triable issue of fact (*see Monkhouse v Maven Limo, Inc.*, 44 AD3d at 631; *Coscia v 938 Trading Corp.*, 283 AD2d 538).

SPOLZINO, J.P., RITTER, DILLON, BALKIN and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court