

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

D18557  
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Submitted - February 13, 2008

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

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2007-07456

DECISION & ORDER

Robert Doherty, respondent, v  
Singh Ajaib, et al., appellants.

(Index No. 2966/04)

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Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Thomas Torto [Jason Levine] of counsel), for appellants.

Steven J. Mandel, P.C., New York, N.Y. (Donald T. Ridley 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 (Ruchelsman, J.), dated June 11, 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 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 report of his treating physician was without any probative value since it is clear that in coming to his conclusions therein he relied upon the unsworn medical reports of others (*see Malave v Basikov*, 45 AD3d 539; *Verette v Zia*, 44

March 25, 2008

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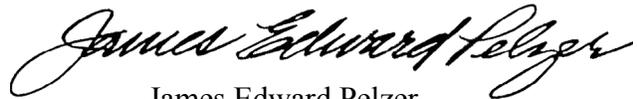
DOHERTY v AJAIB

AD3d 747; *Furrs v Griffith*, 43 AD3d 389; *Friedman v U-Haul Truck Rental*, 216 AD2d 266, 267).

Further, the plaintiff's self-serving affidavit was insufficient to raise a triable issue of fact as to whether he sustained a serious injury as a result of the subject accident (see *Rasid v Estevez*, 2008 WL 192102; *Roman v Fast Lane Car Service, Inc.*, 46 AD3d 535; *Verette v Zia*, 44 AD3d 747; *Duke v Saurelis*, 41 AD3d 770). Moreover, neither the plaintiff nor his treating physician adequately explained the discontinuance of the plaintiff's treatment in October 2002 (see *Pommells v Perez*, 4 NY3d 566; *Hsu v Briscoe Protective Systems, Inc.*, 43 AD3d 916; *Bestman v Seymour*, 41 AD3d 629; *Albano v Onolfo*, 36 AD3d 728).

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

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court