

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

D21463  
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Submitted - November 12, 2008

STEVEN W. FISHER, J.P.  
ROBERT A. LIFSON  
JOSEPH COVELLO  
RUTH C. BALKIN  
ARIEL E. BELEN, JJ.

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2008-00827

DECISION & ORDER

Scott M. Cracolici, et al., respondents, v Joseph  
J. Lassiter, et al., appellants, et al., defendants.

(Index No. 103026/05)

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Scott D. Middleton, Bohemia, N.Y., for appellants.

Andrew John Calcagno, Staten Island, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the defendants Joseph J. Lassiter, Cardinal Freight Carriers, Inc., and Cardinal Logistics Management, Inc., appeal from an order of the Supreme Court, Richmond County (McMahon, J.), dated December 18, 2007, which denied their motion for summary judgment dismissing the complaint insofar as asserted against them on the ground that the plaintiff Scott M. Cracolici did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

The movants failed to make a prima facie showing that the plaintiff Scott M. Cracolici (hereinafter the injured 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 Eyley*, 79 NY2d 955, 956-957). Since the movants failed to meet their initial burden, their motion for summary judgment should have been denied without regard to the sufficiency of the opposing

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papers (*see Hughes v Cai*, 31 AD3d 385, 385-386; *see also Coscia v 938 Trading Corp.*, 283 AD2d 538).

FISHER, J.P., LIFSON, COVELLO, BALKIN and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer  
Clerk of the Court