

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

D21559  
C/kmg

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Submitted - May 14, 2008

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

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2007-11235

DECISION & ORDER

Aleksandr Strok, respondent,  
v Diana Chez, et al., appellants.

(Index No. 30035/05)

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Longo & D'Apice, Brooklyn, N.Y. (Deborah Ann Kramer and Victor A. Vincenzi of counsel), for appellants.

Aleksandr Vakarev (James M. Lane, New York, N.Y. of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Jacobson, J.), dated October 1, 2007, as, upon reargument, 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), which had been determined in an order of the same court dated May 9, 2007.

ORDERED that the order dated October 1, 2007, is reversed insofar as appealed from, on the law, with costs, and, upon reargument, the determination in the order dated May 9, 2007, granting the motion of the defendants 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), is adhered to.

On their motion for summary judgment, the defendants established, prima facie, their entitlement to judgment as a matter of law 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 motor vehicle accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955). In opposition, the

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plaintiff failed to raise a triable issue of fact. Neither the plaintiff nor his examining orthopedist adequately explained a lengthy gap in the plaintiff's treatment (*see Pommells v Perez*, 4 NY3d 566, 574; *Sibrizzi v Davis*, 7 AD3d 691; *cf. Black v Robinson*, 305 AD2d 438, 439-40). Accordingly, upon reargument, the Supreme Court should have adhered to its original determination granting the defendants' motion for summary judgment dismissing the complaint (*cf. Wei-San Hsu v Briscoe Protective Sys., Inc.*, 43 AD3d 916, 917; *Waring v Guirguis*, 39 AD3d 741, 742).

The defendants' remaining contention has been rendered academic in light of our determination.

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