

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

D22993
C/kmg

_____AD3d_____

Argued - March 19, 2009

A. GAIL PRUDENTI, P.J.
FRED T. SANTUCCI
ANITA R. FLORIO
ARIEL E. BELEN, JJ.

2008-07205

DECISION & ORDER

Edward Ayers, respondent, v Allstate
Insurance Company, appellant.

(Index No. 11044/07)

Marjorie E. Bornes, Plainview, N.Y., for appellant.

Steven F. Goldstein, LLP, Carle Place, N.Y. (Christopher R. Invidiata of counsel), for
respondent.

In an action to recover damages for economic losses incurred as a result of the defendant's alleged negligent inspection of the plaintiff's motor vehicle following an accident, the defendant appeals from stated portions of an order of the Supreme Court, Nassau County (Winslow, J.), entered June 27, 2008, which, inter alia, denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff alleges that he sustained economic loss as a result of the negligent inspection of his truck, which was damaged in an accident, by the defendant, his insurer. The plaintiff contends that if the defendant had properly declared the vehicle a total loss upon its original inspection, instead of directing that it be repaired, he could have avoided certain losses, including loss of business and the cost of repairs and of obtaining replacement vehicles during the months while his vehicle was being repaired.

The Supreme Court correctly determined that the defendant did not establish, prima

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facie, its entitlement to judgment as a matter of law. Disputes as to the facts surrounding the alleged losses preclude the granting of summary judgment, particularly at the pre-discovery stage.

The defendant's remaining contentions are without merit.

PRUDENTI, P.J., SANTUCCI, FLORIO and BELEN, 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