

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

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_____AD3d_____

Submitted - March 18, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
JOSEPH COVELLO
RANDALL T. ENG, JJ.

2008-04364

DECISION & ORDER

Lorna Morgan, respondent, v Willie J. Littles,
et al., defendants, Jacques R. Francois, et al.,
appellants.

(Index No. 38439/05)

White & McSpedon, P.C., New York, N.Y. (Baker, McEvoy, Morrissey & Moskowitz, P.C. [Stacy R. Seldin] of counsel), for appellants.

Michael S. Lamonsoff, New York, N.Y. (Tara M. Ulezalka of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants Jacques R. Francois and Wilson Taxi Corp. appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Martin, J.), dated April 8, 2008, as denied their motion for summary judgment dismissing the complaint insofar as asserted against them 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 affirmed insofar as appealed from, with costs.

The appellants met their prima facie burden of 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 Eycler*, 79 NY 955, 956-957). In opposition, the plaintiff raised a triable issue of fact. The affirmation of the plaintiff's treating physician, who examined the plaintiff contemporaneously with the accident as well as recently, and conducted range of motion testing, was sufficient to raise a triable issue of fact as to whether the plaintiff sustained a

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serious injury to her lumbar spine under the significant limitation of use or permanent consequential limitation of use categories of Insurance Law § 5102(d) (*see Delorbe v Perez*, 59 AD3d 491; *Williams v Clark*, 54 AD3d 942; *Casey v Mas Transp., Inc.*, 48 AD3d 610, 611; *Green v Nara Car & Limo, Inc.*, 42 AD3d 430, 430; *Francovig v Senekis Cab Corp.*, 41 AD3d 643, 644-645; *Acosta v Rubin*, 2 AD3d 657, 659).

RIVERA, J.P., DILLON, COVELLO and ENG, 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