

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

D23189  
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Submitted - April 15, 2009

REINALDO E. RIVERA, J.P.  
MARK C. DILLON  
JOSEPH COVELLO  
L. PRISCILLA HALL, JJ.

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2008-07006

DECISION & ORDER

Dallas M. Kelly, appellant, v County of Suffolk,  
et al., respondents.

(Index No. 3693/05)

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Mallilo & Grossman, Flushing, N.Y. (Francesco Pomara, Jr., and Haenoon Kim of counsel), for appellant.

Kral, Clerkin, Redmond, Ryan, Perry & Girvan, Smithtown, N.Y. (Thomas F. Maher of counsel), for respondents County of Suffolk, Inter-County Motor Coach, Inc., and Walter Hess.

Faust Goetz Schenker & Blee LLP, New York, N.Y. (Dominic Boone of counsel), for respondent Barbara Falcone.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Weber, J.), dated June 13, 2008, which granted the motion of the defendants County of Suffolk, Inter-County Motor Coach, Inc., and Walter Hess, and the separate motion of the defendant Barbara Falcone, for summary judgment dismissing the complaint insofar as asserted against each of them on the ground that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is reversed, on the law, with one bill of costs to the plaintiff payable by the respondents appearing separately and filing separate briefs, and the motions for summary judgment dismissing the complaint insofar as asserted against each of the defendants are denied.

May 19, 2009

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The defendants failed to meet their prima facie burdens 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 Eyster*, 79 NY2d 955, 956-957). Thus, the Supreme Court should have denied the motions, regardless of the sufficiency of the plaintiff's opposition papers.

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