

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

D23469  
O/kmg

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Submitted - March 18, 2009

REINALDO E. RIVERA, J.P.  
MARK C. DILLON  
ANITA R. FLORIO  
RANDALL T. ENG, JJ.

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2008-04844

DECISION & ORDER

Harriet N. Landman, appellant,  
v Lisa M. Sarcona, respondent.

(Index No. 19285/05)

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Dominick W. Lavelle, Mineola, N.Y., for appellant.

Richard T. Lau, Jericho, N.Y. (Gene W. Wiggins of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Nassau County (Lally, J.), dated April 1, 2008, which granted the defendant's 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).

ORDERED that the order is reversed, on the law, with costs, and the defendant's motion for summary judgment dismissing the complaint is denied.

The defendant failed to meet her 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 NY2d 955, 956-957). In support of her motion, the defendant relied, inter alia, upon the affirmed medical reports of Dr. Mathew Chacko and Dr. Vartkes Khachadurian. Dr. Chacko, the defendant's examining neurologist, noted significant limitations in the plaintiff's cervical and lumbar spine ranges of motion when he examined her on May 2, 2007, some 2½ years after the accident (*see Bagot v Singh*, 59 AD3d 638; *Hurtte v Budget Roadside Care*, 54 AD3d 362; *Jenkins v Miled Hacking Corp.*, 43 AD3d 393; *Bentivegna v Stein*, 42 AD3d 555; *Zamaniyan v Vrabeck*, 41 AD3d 472). Moreover, the medical report of Dr. Khachadurian, the defendant's examining orthopedic surgeon, noted a significant limitation in the plaintiff's cervical spine range of motion when he examined her on March 21, 2007.

June 2, 2009

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Dr. Khachadurian opined that such limitation was due to the plaintiff's age and evidence of degenerative disease in her cervical spine. However, such opinion was conclusory (*see Powell v Prego*, 59 AD3d 417).

Since the defendant failed to establish her prima facie entitlement to judgment as a matter of law, it is unnecessary to consider the sufficiency of the plaintiff's opposition (*see Bagot v Singh*, 59 AD3d 638; *Coscia v 938 Trading Corp.*, 283 AD2d 583).

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