

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

D25109
C/kmg

_____AD3d_____

Submitted - October 28, 2009

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2008-09658

DECISION & ORDER

Danny A. Reyes, appellant, v Linda M. Dagostino,
et al., respondents.

(Index No. 7743/07)

Sacco & Fillas, LLP, Whitestone, N.Y. (Paul Polios of counsel), for appellant.

Mendolia & Stenz, Westbury, N.Y. (Tracy Morgan of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Satterfield, J.), dated August 14, 2008, which granted the defendants' 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 defendants' 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) is denied.

The defendants 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 Eyler*, 79 NY2d 955, 956-957).

In opposition, however, the plaintiff raised a triable issue of fact as to whether he sustained a serious injury to the lumbar and cervical regions of his spine under the permanent consequential limitation and/or significant limitation of use categories of Insurance Law § 5102(d) as a result of the subject accident (*see Noel v Choudhury*, 65 AD3d 1316; *Gaviria v Alvarado*, 65

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AD3d 567). The affirmation of Dr. Jatinder Bakshi, one of the plaintiff's treating physicians, revealed, inter alia, significant limitations in the lumbar and cervical regions of the plaintiff's spine contemporaneous with the subject accident. The affirmed medical report of Dr. Panagiotis Zenetos, another of the plaintiff's treating physicians, which was based on an examination conducted in April 2008, showed that the plaintiff had significant limitations of motion in the lumbar and cervical regions of his spine. These physicians also properly recited the affirmed findings contained in reports of magnetic resonance imaging scans of the plaintiff's spine that revealed, among other things, herniated discs in the lumbar and cervical regions of his spine. Both physicians concluded that the injuries noted were caused by the subject accident and were permanent. Consequently, the defendants' motion for summary judgment dismissing the complaint should have been denied.

FISHER, J.P., SANTUCCI, DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court