

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

D25294
H/kmg

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Submitted - October 19, 2009

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2009-00804

DECISION & ORDER

Michelle Altamura, respondent, v OneBeacon
Insurance Group, appellant.

(Index No. 18806/08)

DeCicco, Gibbons & McNamara, P.C., New York, N.Y. (Joseph T. Gibbons and Ankur H. Doshi of counsel), for appellant.

Everett J. Petersson, P.C., Brooklyn, N.Y., for respondent.

In an action, inter alia, to recover damages for breach of the supplemental underinsured motorist provision of an insurance policy, the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Knipel, J.), dated December 17, 2008, as granted that branch of the plaintiff's motion which was for summary judgment on the issue of serious injury.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the plaintiff's motion which was for summary judgment on the issue of serious injury is denied.

The plaintiff failed to make a prima facie showing of entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). Since the plaintiff failed to meet her prima facie burden, we need not consider the sufficiency of the defendant's opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Accordingly, the Supreme Court should

December 8, 2009

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have denied that branch of the plaintiff's motion which was for summary judgment on the issue of serious injury.

DILLON, J.P., DICKERSON, BELEN and ROMAN, 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