

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

D26383
Y/kmg

_____AD3d_____

Submitted - January 27, 2010

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2009-02735

DECISION & ORDER

Esther Burrowes, appellant, v New York
City Transit Authority, et al., respondents.

(Index No. 24313/06)

Besen and Trop, LLP, Garden City, N.Y. (Vilma Blankowitz of counsel), for
appellant.

Steve S. Efron, New York, N.Y., for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from so
much of an order of the Supreme Court, Kings County (Miller, J.), dated January 27, 2009, as
granted the defendants' motion for summary judgment dismissing the complaint on 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 is denied.

The defendants failed to meet 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).

Since the defendants failed to meet their prima facie burden, it is unnecessary to
consider whether the papers submitted by the plaintiff in opposition to the defendants' motion for
summary judgment were sufficient to raise a triable issue of fact (*see Page v Belmonte*, 45 AD3d 825,

March 9, 2010

Page 1.

BURROWES v NEW YORK CITY TRANSIT AUTHORITY

826; *Coscia v 938 Trading Corp.*, 283 AD2d 538).

FISHER, J.P., SANTUCCI, ANGIOLILLO, HALL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court