

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

D26530  
H/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - February 18, 2010

JOSEPH COVELLO, J.P.  
HOWARD MILLER  
RUTH C. BALKIN  
CHERYL E. CHAMBERS, JJ.

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2008-10979

DECISION & ORDER

Erich J. Preis, appellant, v State of New York,  
respondent.

(Claim No. 111565)

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Erich J. Preis, Huntington, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Peter H. Schiff and Michael S. Buskus of counsel), for respondent.

In a claim to recover damages for personal injuries, the claimant appeals from a judgment of the Court of Claims (Milano, J.), dated November 6, 2008, which, upon a decision of the same court dated October 3, 2008, made after a nonjury trial on the issue of liability, is in favor of the defendant and against him dismissing the claim.

ORDERED that the judgment is affirmed, without costs or disbursements.

On the record before us, we discern no basis to disturb the finding of the Court of Claims that the claimant's own negligence in choosing to leave an illuminated shoulder along a road was the sole proximate cause of the accident in question (*see Young v New York Thruway Auth.*, 76 AD2d 834; *Lyons v State of New York*, 274 AD 1086).

COVELLO, J.P., MILLER, BALKIN and CHAMBERS, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

March 16, 2010

PREIS v STATE OF NEW YORK