

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

D26541  
W/kmg

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Submitted - March 3, 2010

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
FRED T. SANTUCCI  
DANIEL D. ANGIOLILLO  
PLUMMER E. LOTT, JJ.

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2009-08088

DECISION & ORDER

Jeanne Collins, respondent, v Annamae Leung, et al.,  
appellants.

(Index No. 22632/07)

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Martin, Fallon & Mullé, Huntington, N.Y. (Richard C. Mullé of counsel), for  
appellants.

Daniel Collins, Hauppauge, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Nassau County (Galasso, J.), entered September 2, 2009, which denied their 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 affirmed, with costs.

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 Eycler*, 79 NY2d 955, 956-957). The defendants' motion papers failed adequately to address the plaintiff's claim, clearly set forth in her bill of particulars, that she sustained a medically-determined injury or impairment of a nonpermanent nature which prevented her from performing substantially all of the material acts which constituted her usual and customary daily activities for not less than 90 days during the 180 days immediately following the subject accident (*see Smith v Quicci*, 62 AD3d 858; *Alexandre v Dweck*, 44 AD3d 597; *Sayers v Hot*, 23 AD3d 453, 454).

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 were sufficient to raise a triable issue of fact (*see Gaccione v Krebs*, 53 AD3d 524; *Yashayev v Rodriguez*, 28 AD3d 651; *Coscia v 938 Trading Corp.*, 283 AD2d 538).

MASTRO, J.P., FISHER, SANTUCCI, ANGIOLILLO and LOTT, 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