

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

D27465  
W/prt

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Submitted - May 5, 2010

PETER B. SKELOS, J.P.  
HOWARD MILLER  
RANDALL T. ENG  
L. PRISCILLA HALL  
LEONARD B. AUSTIN, JJ.

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2009-05715

DECISION & ORDER

Barbara H. Mullally, appellant, v  
Michael E. Saclaridis, respondent.

(Index No. 21524/07)

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Nora Constance Marino, Great Neck, N.Y., for appellant.

Richard T. Lau, Jericho, N.Y. (Linda Meisler of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Nassau County (Adams, J.), entered May 4, 2009, which, upon an order of the same court dated April 7, 2009, granting the defendant's cross motion for summary judgment dismissing the complaint on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d), and denying, as academic, her motion for summary judgment on the issue of liability, is in favor of the defendant and against her dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

The defendant met his 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 Eyer*, 79 NY2d 955, 956-957). In opposition, the plaintiff, who limited her claims of injury to only her right shoulder, failed to raise a triable issue of fact (*see Gaddy v Eyer*, 79 NY2d 955).

Since the Supreme Court properly granted the defendant's motion for summary

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judgment, it also properly denied, as academic, the plaintiff's motion for summary judgment on the issue of liability.

SKELOS, J.P., MILLER, ENG, HALL and AUSTIN, 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