

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

D27664  
G/ct

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

Submitted - May 19, 2010

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

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2009-09831

DECISION & ORDER

Jordan Fields, respondent, v Jose Hildago, et al.,  
appellants, et al., defendants.

(Index No. 9868/08)

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Molod Spitz & DeSantis, P.C., New York, N.Y. (Marcy Sonnenborn and Salvatore J. DeSantis of counsel), for appellants.

Bartlett, McDonough, Bastone & Monaghan, LLP, White Plains, N.Y. (Warren J. Roth of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants Jose Hildago and Calvery Center Church appeal from an order of the Supreme Court, Westchester County (Colabella, J.), entered September 29, 2009, which denied their motion for summary judgment dismissing the complaint insofar as asserted against them 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 appellants 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). In support of their motion, the appellants relied on, inter alia, the affirmed medical report of Dr. Martin Barschi, their examining orthopedic surgeon. Dr. Barchi noted significant limitations in the cervical and lumbar regions of the plaintiff's spine during active range-of-motion testing when he

examined the plaintiff more than a year post-accident.

Since the appellants failed to meet their prima facie burden, we need not address the question of whether the plaintiff's submissions raised a triable issue of fact (*see Smith v Hartman*, \_\_\_\_\_AD3d\_\_\_\_\_, 2010 NY Slip Op 03899, \*1[2d Dept 2010]; *Quiceno v Mendoza*, 72 AD3d 669; *Kjono v Fenning*, 69 AD3d 581, 582; *Coscia v 938 Trading Corp.*, 283 AD2d 538).

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