

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

D28852  
W/kmg

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

Submitted - October 6, 2010

REINALDO E. RIVERA, J.P.  
JOSEPH COVELLO  
RANDALL T. ENG  
JOHN M. LEVENTHAL  
LEONARD B. AUSTIN, JJ.

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2010-00299

DECISION & ORDER

Walter Drobecker, appellant, v Adrian L. Lawrence,  
Jr., et al., respondents.

(Index No. 4526/08)

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Galasso, Langione, Catterson & LoFrumento, LLP, Garden City, N.Y. (Michael F. LoFrumento of counsel), for appellant.

Russo, Apoznanski & Tambasco, Westbury, N.Y. (Susan J. Mitola of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Nassau County (Murphy, J.), entered September 28, 2009, as granted the defendants' cross motion for summary judgment dismissing the complaint on the ground that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the defendants' cross 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 Eycler*, 79 NY2d 955, 956-957; *Burrowes v New York City Tr. Auth.*, 71 AD3d 714).

November 3, 2010

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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' cross motion for summary judgment motion were sufficient to raise a triable issue of fact (*see Karvay v Gueli*, \_\_\_ AD3d \_\_\_, 2010 NY Slip Op 07146 [2d Dept 2010]; *Burrowes v New York City Tr. Auth.*, 71 AD3d at 714; *Chiara v Dernago*, 70 AD3d 746, 747; *Page v Belmonte*, 45 AD3d 825, 826).

RIVERA, J.P., COVELLO, ENG, LEVENTHAL and AUSTIN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court