

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

D28877  
Y/hu

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Submitted - October 20, 2010

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
THOMAS A. DICKERSON  
ARIEL E. BELEN  
PLUMMER E. LOTT, JJ.

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2009-09784

DECISION & ORDER

Theresa Bitterman, respondent, v Sheri A. Dennis,  
appellant.

(Index No. 8391/05)

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Alan B. Brill, P.C., Suffern, N.Y. (Joshua Douglass and Donna M. Brautigam of counsel), for appellant.

Jacobwitz and Gubits, LLP, Walden, N.Y. (Peter R. Eriksen and Carmee Murphy of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Rockland County (Berliner, J.), dated September 3, 2009, which denied her 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 defendant failed to meet her prima facie burden of showing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957), with respect to the plaintiff's allegation that she sustained a left shoulder injury as a result of the subject accident (*see McMillian v Naparano*, 61 AD3d 943; *O'Neal v Bronopolsky*, 41 AD3d 452; *Hughes v Cai*, 31 AD3d 385; *Loadholt v New York City Tr. Auth.*, 12 AD3d 352).

November 3, 2010

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Since the defendant failed to satisfy her prima facie burden, it is unnecessary to consider whether the plaintiff's opposition papers were sufficient to raise a triable issue of fact (*see McMillian v Naparano*, 61 AD3d at 943; *Coscia v 938 Trading Corp.*, 283 AD2d 538).

MASTRO, J.P., FLORIO, DICKERSON, BELEN and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court