

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

D32616
O/prt

_____AD3d_____

Submitted - October 5, 2011

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-11861

DECISION & ORDER

Juliet R. Tudor, appellant, v Paul A. Yetman,
et al., respondents.

(Index No. 17439/08)

Sanders, Sanders, Block, Woycik, Viener & Grossman, P.C., Mineola, N.Y. (Aybike
Donuk of counsel), for appellant.

Richard T. Lau, Jericho, N.Y. (Kathleen Fioretti of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Nassau County (Palmieri, J.), entered October 12, 2010, which granted the defendants' 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).

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is denied.

The defendants met 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 plaintiff alleged, inter alia, that as a result of the subject accident, the cervical region of her spine sustained certain injuries. The defendants provided competent medical evidence establishing, prima facie, inter alia, that those alleged injuries did not constitute a serious injury within the meaning of Insurance Law § 5102(d) (*see Rodriguez v Huerfano*, 46 AD3d 794, 795) and, in any event, were not

October 18, 2011

Page 1.

TUDOR v YETMAN

caused by the subject accident (*see Jilani v Palmer*, 83 AD3d 786, 787).

However, in opposition, the plaintiff provided competent medical evidence raising a triable issue of fact as to whether the alleged injuries to the cervical region of her spine constituted a serious injury under the permanent consequential limitation of use and/or significant limitation of use categories of Insurance Law § 5102(d) (*see Dixon v Fuller*, 79 AD3d 1094, 1094-1095). She also provided competent medical evidence raising a triable issue of fact as to whether those injuries were caused by the subject accident (*cf. Jaramillo v Lobo*, 32 AD3d 417, 418).

Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint.

DILLON, J.P., DICKERSON, LEVENTHAL, AUSTIN and MILLER, 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