

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

D34677
Y/kmb

_____AD3d_____

Submitted - March 28, 2012

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2011-10683

DECISION & ORDER

Juan Fernandez-Velez, et al., respondents,
v Kristen Joy O'Hara, et al., appellants.

(Index No. 44022/09)

Martin, Fallon & Mullé, Huntington, N.Y. (Richard C. Mullé of counsel), for
appellants.

Steven Louros, New York, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Farneti, J.), dated October 4, 2011, as denied their motion for summary judgment dismissing the complaint on the ground that the plaintiff Juan Fernandez-Velez did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is granted.

The defendants met their prima facie burden of showing that the plaintiff Juan Fernandez-Velez (hereinafter the injured 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). The defendants submitted evidence establishing, prima facie, that the alleged injuries to the cervical and thoracolumbar regions of the injured plaintiff's spine did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see Rodriguez v Huerfano*, 46 AD3d 794, 795).

April 24, 2012

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In opposition, the plaintiffs failed to raise a triable issue of fact. Accordingly, the Supreme Court should have granted the defendants' motion for summary judgment dismissing the complaint.

SKELOS, J.P., DICKERSON, HALL, ROMAN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court