

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

D34971
W/prt/kmb

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Submitted - March 28, 2012

MARK C. DILLON, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2011-04631

DECISION & ORDER

Luis J. Burgos, appellant, v Luis Mario Castro,
et al., respondents.

(Index No. 25986/08)

Mallilo & Grossman, Flushing, N.Y. (Elliot L. Lewis of counsel), for appellant.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of
counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Pineda-Kirwan, J.), entered April 5, 2011, which granted the defendants' 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) as a result of the subject accident.

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 Eyler*, 79 NY2d 955, 956-957). In opposition, however, the plaintiff raised a triable issue of fact as to whether he sustained a serious injury to the cervical region of his spine within the meaning of Insurance Law § 5102(d) as a result of the subject accident (*see Perl v Meher*, 18 NY3d 208, 215-218). Accordingly, the defendants'

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motion for summary judgment dismissing the complaint should have been denied.

DILLON, J.P., BALKIN, BELEN and AUSTIN, JJ., concur.

ENTER:

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Aprilanne Agostino
Clerk of the Court