

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

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Submitted - October 3, 2012

MARK C. DILLON, J.P.  
L. PRISCILLA HALL  
SHERI S. ROMAN  
JEFFREY A. COHEN, JJ.

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2011-11089

DECISION & ORDER

Maryann Derespino, appellant, v Cynthia Valenti,  
et al., respondents.

(Index No. 5595/09)

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Wellerstein & Associates, P.C., Maspeth, N.Y. (Hedva Wellerstein of counsel),  
for appellant.

Richard T. Lau & Associates, Jericho, N.Y. (Linda Meisler of counsel), for  
respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Vaughan, J.), dated November 2, 2011, 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) 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 Eycler*, 79 NY2d 955, 956-957). The defendants submitted competent medical evidence establishing, prima facie, that the alleged injuries to the lumbosacral region of the plaintiff's spine, and to the plaintiff's right shoulder, did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see Rodriguez v*

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*Huerfano*, 46 AD3d 794, 795).

However, in opposition, the plaintiff submitted competent medical evidence raising a triable issue of fact as to whether the alleged injuries to the lumbosacral region of her spine, and to her right shoulder, constituted serious injuries under the permanent consequential limitation of use and/or significant limitation of use categories of Insurance Law § 5102(d) (*see Perl v Meher*, 18 NY3d 208, 215-218). Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint.

DILLON, J.P., HALL, ROMAN and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court