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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 241 SSM 43
Michel D. Tyson,
 Appellant,
 v.
Lawrence Nazarian,
 Respondent.

Submitted by Mark C. Davison, for appellant.
Submitted by Hilary C. Banker, for respondent.

MEMORANDUM:

The order of the Appellate Division should be modified, without costs, by denying defendant's motion for summary judgment and remitting to the Appellate Division for further proceedings in accordance with this memorandum, and, as so modified, affirmed.

Sufficient record evidence exists to raise a triable issue of fact as to whether plaintiff suffered a "serious injury" within the meaning of Insurance Law § 5102 (d) (see Gaddy v Eyler, 79 NY2d 955, 957 [1992]). In view of its disposition, the Appellate Division did not address plaintiff's contention that she is entitled to summary judgment on the issue of defendant's negligence. We therefore remit for that purpose.

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On review of submissions pursuant to section 500.11 of the Rules, order modified, without costs, by denying defendant's motion for summary judgment and remitting to the Appellate Division, Fourth Department, for further proceedings in accordance with the memorandum herein and, as so modified, affirmed. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Pigott concur.

Decided December 18, 2012