

**Page v Belmonte**

2006 NY Slip Op 30406(U)

May 16, 2006

Supreme Court, Suffolk County

Docket Number: 0315016

Judge: Robert W. Doyle

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SUPREME COURT - STATE OF NEW YORK  
POST-NOTE MOTION PART - SUFFOLK COUNTY

**P R E S E N T :**

Hon. ROBERT W. DOYLE  
Justice of the Supreme Court

MOTION DATE 1-18-06  
ADJ. DATE 3-10-06  
Mot. Seq. # 001 MG; CASEDISP

-----X	
ARDELLA PAGE,	:
	:
Plaintiff,	:
	:
	:
– against –	:
	:
HEATHER BELMONTE and ROBERT PERRY,	:
	:
	:
Defendants.	:
-----X	

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Upon the following papers numbered 1 to 31 read on this motion for summary judgment :  
Notice of Motion/ Order to Show Cause and supporting papers 1 - 12 ; Notice of Cross Motion and supporting  
papers \_\_\_\_\_; Answering Affidavits and supporting papers 13 - 29 ; Replying Affidavits and supporting  
papers 30 - 31 ; Other \_\_\_\_\_; (~~and after hearing counsel in support and opposed to the motion~~) it is,

**ORDERED** that the motion by defendants for summary judgment dismissing the  
complaint on the ground that plaintiff’s injuries do not meet the “serious injury” threshold of  
Insurance Law §5102 (d) is granted.

Plaintiff Ardella Page commenced this action to recover damages for personal injuries  
allegedly sustained on August 4, 2000, when she was struck and knocked to the ground by a  
vehicle owned by defendant Robert Perry and operated by defendant Heather Belmonte.  
Plaintiff, who was hit as she was walking across a driveway used by vehicles exiting a shopping  
mall, alleges in the complaint that she suffered “serious injury” within the meaning of Insurance  
Law §5102 (d) as a result of defendants’ negligence. By her bill of particulars, plaintiff alleges  
that she sustained numerous injuries in the subject accident, including a Grade I tear of the

posterior horn of the lateral meniscus in the right knee; a Grade I-II tear of the posterior horn of the medial meniscus of the left knee; internal derangement of the knees; bulging discs at levels C5-6, C6-7, and L4-5; thyroid asymmetry; and headaches with dizziness. She also alleges that she was unable to work due to her injuries during the periods from August 5 to August 26, 2000 and October 10 to October 24, 2000, and then intermittently thereafter.

Defendants now move for summary judgment dismissing the complaint on the ground that plaintiff did not suffer a “serious injury” as a result of the accident. Defendants’ submissions in support of the motion include copies of the pleadings, a transcript of plaintiff’s deposition testimony, a copy of a radiograph report of plaintiff’s cervical spine, and sworn medical reports prepared by Dr. Craig Ordway and Dr. Stanley Friedman. At defendants’ request, Dr. Ordway, an orthopedic surgeon, conducted a physical examination of plaintiff on July 6, 2005, and reviewed various medical records concerning plaintiff’s alleged injuries. Dr. Friedman, a radiologist, reviewed the MRI scans of plaintiff’s knees that were performed in September 2000.

Dr. Ordway’s report states that plaintiff presented with complaints of pain in both knees and pain “radiating from her knees posteriorly all way into her lower back,” and gave a medical history that includes a prior whiplash injury to her neck and back, a fractured right leg, three mild strokes, and diabetes. It states, among other things, that an orthopedic examination of plaintiff’s mid and lower back regions revealed normal lordosis of the spine and no spasm in the paravertebral musculature. It indicates that while range of motion testing revealed minor limitations in plaintiff’s lumbar region, the amount of joint movement in such area is considered “excellent” in view of plaintiff’s age and body type. Other objective tests performed on plaintiff’s spine, including the straight leg raise test, were negative. The report states that plaintiff demonstrated full range of motion in both knees. It states that there was no swelling or instability in the knees, and that clinical tests of the cartilage and ligament structures in the knees were negative. Further, the report indicates that a review of MRI studies of plaintiff’s knees revealed the presence of degenerative arthritis. Dr. Ordway opines that plaintiff suffers from a mild degenerative condition in her knees, and that such condition was not caused or exacerbated by the subject accident. He concludes that plaintiff is not physically impaired, and that there is no evidence of any significant impairment in the past due to the accident.

Dr. Friedman’s report states that the MRI scans from September 2000 show Grade II signals in the menisci of both knees, and that such signals are commonly seen on knee MRIs. It states that the signals “do not extend into the articular surface and do not represent meniscal tears.” Further, Dr. Friedman opines that such signals may indicate degenerative meniscopthy in plaintiff’s knees, and that the MRI does not show any evidence of posttraumatic changes in plaintiff’s knees.

Plaintiff opposes the motion for summary judgment, arguing that defendants’ submissions are insufficient to meet their burden on the motion. Alternatively, plaintiff argues

that the evidenced submitted in opposition is sufficient to raise a triable issue of fact as to whether she sustained a serious injury. Plaintiff's submissions include an affidavit by Dr. Jimmy Lim, unsworn MRI reports of plaintiff's knees and lumbar spine, an unsworn x-ray report from Southside Hospital, and medical reports prepared by Dr. Socorro Vicente and Dr. Joseph Perez.

Dr. Lim, an orthopedic surgeon, states in his affidavit that he conducted an orthopedic examination of plaintiff's knees in September and October 2000, and that he reviewed the MRI studies of plaintiff's knees that were conducted in September 2000. He states that the MRI films showed a Grade I tear of the posterior horn of the medial meniscus with buckling of the posterior cruciate ligament in the right knee, and a tear of the lateral meniscus in the left knee. Dr. Lim opines that plaintiff suffered a broad-based disc bulge at L4-5, left knee joint effusion, a tear of the lateral meniscus in the right knee, a tear of the medial meniscus in the right knee, and buckling of the posterior anterior cruciate ligament as a result of the subject accident; that such injuries are permanent; and that plaintiff's right knee required surgery. He also states that, based on his review of the MRIs and the results of clinical tests performed on the knees, he recommended that plaintiff undergo arthroscopic surgery to correct the condition in her right knee, and that plaintiff refused the procedure.

A sworn report prepared by Dr. Vicente, dated November 15, 2000, states that a follow-up examination of plaintiff conducted that same day showed tenderness and spasm in the cervical and lumbosacral paraspinal muscles upon palpation, and tenderness of plaintiff's knees on palpation. The report contains a diagnosis of posttraumatic contusions of the cervical and lumbosacral regions and posttraumatic contusions of the knees. A sworn medical report prepared by Dr. Vicente the previous month contains essentially the same medical findings, yet diagnoses plaintiff as suffering posttraumatic cervical strain, posttraumatic lumbosacral sprain/strain, posttraumatic headaches, and posttraumatic contusion of the lower abdominal wall. A sworn report prepared by Dr. Perez, dated September 21, 2001, states that plaintiff presented for an evaluation that day with complaints of headaches, intermittent neck pain radiating to the right shoulder and upper arm, intermittent lower back pain, and constant knee pain. It states that plaintiff exhibited decreased range of motion in her knees and in her cervical and lumbar regions during the examination. A sworn report prepared by Dr. Perez in August 2001 contains the same findings, as well as findings of thyroid asymmetry and a possible mass anterior to the left trapezium.

In addition, plaintiff submitted a copy of a decision by the Social Security Administration, dated May 20, 2002, which determined that plaintiff was disabled under Section 1614(a)(3)(A) of the Social Security Act, and that such disability began on the date of the accident and continued until at least the date of such decision. More particularly, the decision by Administrative Law Judge Joseph Halpern finds, in relevant part, that based upon the testimony and medical evidence presented at a hearing conducted on April 11, 2002, plaintiff "is severally impaired by non-insulin dependent diabetes mellitus, a torn medial meniscus of the right knee, a torn lateral meniscus of the right [sic] knee, and disc bulges at C5-6, C6-7, and L4-5; however,

none of [plaintiff's] impairments [ ] alone or in combination meet or equal the criteria for a listed impairment." It also states that due to pain and resultant limitations, plaintiff "cannot perform any substantial gainful activity on a regular and continuous basis at acceptable levels of performance," and that plaintiff's "exertional and nonexertional limitations, in combination, preclude her from performing any of her past relevant work and materially erode her remaining occupational base for other work to such an extent that she cannot engage in any alternate substantial gainful activity existing in significant numbers in the national economy."

New York's No-Fault Insurance Law precludes recovery for any "non-economic loss, except in the case of serious injury, or for basic economic loss" arising out of the negligent use or operation of a motor vehicle (Insurance Law §5104[a]). As long recognized by the Court of Appeals, the "legislative intent underlying the No-Fault Law was to weed out frivolous claims and limit recovery to significant injuries" (*Dufel v Green*, 84 NY2d 795, 798, 622 NYS2d 900 [1995]; see, *Toure v Avis Rent A Car Sys.*, 98 NY2d 345, 746 NYS2d 865 [2002]; *Licari v Elliot*, 57 NY2d 230, 455 NYS2d 570 [1982]). To help achieve this goal, the Legislature vested trial courts with the authority to determine the issue of whether a plaintiff has established prima facie that he or she sustained a "serious injury" in a motor vehicle accident (see, *Licari v Elliot*, *supra*).

Insurance Law § 5102 (d) defines "serious injury" as "a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment."

To recover under the "permanent loss of use" category, plaintiff must demonstrate a total loss of use of a body organ, member, function or system (*Oberly v Bangs Ambulance*, 96 NY2d 295, 727 NYS2d 378 [2001]). To establish a permanent consequential limitation or a significant limitation of use, the medical evidence submitted by a plaintiff must include objective, quantitative evidence with respect to diminished range of motion or a qualitative assessment, based on objective findings, comparing the plaintiff's present limitations to the normal function, purpose and use of the affected body, organ, member or function (see, *Toure v Avis Rent A Car Sys.*, *supra*). "Whether a limitation of use or function is 'significant' or 'consequential' \* \* \* relates to medical significance and involves a comparative determination of the degree or qualitative nature of an injury based on the normal function, purpose and use of the body part" (*Dufel v Green*, *supra*, at 798, 622 NYS2d 900; see, *Toure v Avis Rent A Car Sys.*, *supra*). A minor, mild or slight limitation of use is considered insignificant within the meaning of the statute (see, *Licari v Elliott*, *supra*).

A defendant seeking summary judgment on the ground that a plaintiff's negligence claim is barred under the No-Fault Insurance Law bears the initial burden of establishing a prima facie case that the plaintiff did not sustain a "serious injury" (*see, Toure v Avis Rent A Car Sys., supra; Gaddy v Eyler*, 79 NY2d 955, 582 NYS2d 990 [1992]; *Pagano v Kingsbury*, 182 AD2d 268, 587 NYS2d 692 [2d Dept 1992]). When a defendant seeking summary judgment based on the lack of serious injury relies on the findings of the defendant's own witnesses, "those findings must be in admissible form, i.e., affidavits and affirmations, and not unsworn reports" to demonstrate entitlement to judgment as a matter of law (*Pagano v Kingsbury, supra*, at 270, 587 NYS2d 692). A defendant also may establish entitlement to summary judgment using the plaintiff's deposition testimony and medical reports and records prepared by the plaintiff's own physicians (*see, Fragale v Geiger*, 288 AD2d 431, 733 NYS2d 901 [2d Dept 2001]; *Vignola v Varrichio*, 243 AD2d 464, 662 NYS2d 831 [2d Dept 1997]; *Torres v Micheletti*, 208 AD2d 519, 616 NYS2d 1006 [2d Dept 1994]; *Pagano v Kingsbury, supra*). Once a defendant meets this burden, the plaintiff must present proof in admissible form which creates a material issue of fact or demonstrate an acceptable excuse for failing to meet the requirement of tender in admissible form (*Gaddy v Eyler, supra; Pagano v Kingsbury, supra; see, Grasso v Angerami*, 79 NY2d 813, 580 NYS2d 178 [1991]; *see generally, Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). Here, the unsworn x-ray report, the unsworn MRI report of plaintiff's lumbar spine, and Dr. Vicente's handwritten note and unsworn report dated August 22, 2000, which were offered by plaintiff in opposition to the motion, were not considered by the Court in this determination, as they were not in admissible form. However, the unsworn MRI reports concerning plaintiff's knees were considered, as defendants' experts referred to such reports (*see, Silkowski v Alvarez*, 19 AD3d 476, 798 NYS2d 468 [2d Dept 2005]; *Ayzen v Melendez*, 299 AD2d 381, 749 NYS2d 445 [2d Dept 2002]; *Raso v Statewide Auto Auction*, 262 AD2d 387, 691 NYS2d 158 [2d Dept 1999]).

The evidence submitted by defendants establishes prima facie that plaintiff did not sustain a serious injury as a result of the subject accident, and that she suffers from a preexisting degenerative condition in her knees (*see, Giraldo v Mandanici*, 24 AD3d 419, 805 NYS2d 124 [2d Dept 2005]; *McCauley v Ross*, 298 AD2d 506, 748 NYS2d 409 [2d Dept 2002]; *Clark v Perry*, 21 AD3d 1373, 801 NYS2d 645 [4th Dept 2005]; *Houston v Gajdos*, 11 AD3d 514, 782 NYS2d 839 [2d Dept 2004]; *Carrasco v Mendez*, 5 AD3d 716, 773 NYS2d 605 [2d Dept 2004], *aff'd Pommells v Perez*, 4 NY3d 566, 797 NYS2d 380 [2005]). The burden, therefore, shifted to plaintiff to raise a triable issue of fact (*see, Gaddy v Eyler, supra*). Plaintiff failed to meet this burden.

Initially, the Court rejects plaintiff's assertion that the determination by Administrative Law Judge Halpern that plaintiff was entitled to social security disability benefits for the period from August 4, 2000 to May 20, 2002, in and of itself, raises a triable issue of fact as to whether she sustained a "significant limitation of use of a body function or system" or a "medically determined injury or impairment of a nonpermanent nature" which prevented her from performing substantially all of her normal activities for at least 90 of the 180 days following the

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accident. The determination that plaintiff was eligible for social security disability benefits was based on Social Security Law standards, without any consideration of the requirements for recovery established by the No-Fault Law. As stated above, to raise a triable issue as to whether plaintiff sustained an injury within the scope of the No Fault Law, a plaintiff must submit competent medical proof of an injury within the scope of Insurance Law §5102 (d). The evidence regarding the administrative law judge's determination, therefore, is insufficient to defeat summary judgment (*see, Jockimo v Abess*, 304 AD2d 999, 759 NYS2d 219 [3d Dept 2003]; *Murphy v Arrington*, 295 AD2d 865, 744 NYS2d 255 [3d Dept 2002]).

It also rejects plaintiff's assertion that evidence of a bulging disc is sufficient to raise a triable issue of fact. To constitute a serious injury, a disc bulge or herniation must be accompanied by objective evidence of the extent and duration of the alleged disability or physical limitations due to such disc injury (*see, Pommells v Perez*, 4 NY3d 566, 797 NYS2d 380 [2003]; *St. Pierre v Fevrier*, \_\_ AD3d \_\_, 2006 WL 1009604 [2d Dept, April 18, 2006]; *Hernandez v DIVA Cab Corp.*, 22 AD3d 722, 804 NYS2d 396 [2d Dept 2005]; *Kearse v New York City Tr. Auth.*, 16 AD3d 45, 789 NYS2d 281 [2d Dept 2005]). If a defendant submits proof that a plaintiff has normal range of motion and suffers no impairment in spinal function, a prima facie case is made that the plaintiff did not sustain a serious injury within the meaning of the No-Fault Law, regardless of medical evidence showing a bulging or herniated disc (*Meely v 4 G's Truck Renting Co.*, 16 AD3d 26, 30, 789 NYS2d 277 [2d Dept 2005]; *see, Kearse v New York City Tr. Auth.*, *supra*). Thus, even if the MRI report of plaintiff's lumbar spine was in admissible form, such evidence, by itself, would be insufficient to raise a triable issue of fact.

When a defendant in an action to recover damages for serious injury presents evidence demonstrating that a plaintiff's alleged pain and injuries are related to a preexisting condition, the plaintiff must come forward with evidence addressing the defense of lack of causation (*Pommells v Perez*, *supra*, at 580, 797 NYS2d 380; *see, Franchini v Palmieri*, 1 NY3d 536, 775 NYS2d 232 [2003]; *Mullings v Huntwork*, 26 AD3d 214, 810 NYS2d 443 [1st Dept 2006]; *Clark v Perry*, 21 AD2d 1373, 801 NYS2d 645 [4th Dept 2005]; *Shaw v Looking Glass Assocs.*, 8 AD3d 100, 779 NYS2d 7 [1st Dept 2004]). Further, when a plaintiff suffers from a preexisting medical condition, it is not the original injury, but the aggravation of the condition as caused by that accident that must be shown to constitute a "serious injury" (*see, Suarez v Abe*, 4 AD3d 288, 772 NYS2d 317 [1st Dept 2004]; *Trunk v Spross*, 306 AD2d 463, 761 NYS2d 322 [2d Dept 2003]).

To raise a triable issue of fact as to whether he or she suffered a serious injury within the "significant limitation of use" category, a plaintiff is required to come forward with objective medical evidence substantiating his or her complaints of pain and restricted movement (*see, Mahabir v Ally*, 26 AD3d 314, \_\_ NYS2d \_\_ [2d Dept 2006]; *Farozes v Kamran*, 22 AD3d 458, 802 NYS2d 706 [2d Dept 2005]). Subjective complaints of pain and limitation of movement must be verified by objective medical findings that are based on a recent examination of the plaintiff (*see, Ali v Vasquez*, 19 AD3d 520, 797 NYS2d 528 [2d Dept 2005]; *Batista v Olivo*, 17

AD3d 494, 795 NYS2d 54 [2d Dept 2005]; *Grossman v Wright*, 268 AD2d 79, 707 NYS2d 233 [2d Dept 2000]). In addition, a plaintiff claiming “serious injury” who terminates treatment after the accident must offer a reasonable explanation for having done so (*Pommells v Perez, supra*, at 574, 797 NYS2d 380; *see, Joseph v Layne*, 24 AD3d 516, 808 NYS2d 253 [2d Dept 2005]; *Ali v Vasquez, supra*; *Batista v Olivo, supra*).

Here, the affidavit by Dr. Lim fails to address the findings by defendants’ experts that plaintiff suffers from a degenerative condition in her knees, or to explain how such condition may have affected his diagnosis (*see, Franchini v Palmieri, supra*; *Kaplan v Vanderhans*, 26 AD3d 468, 809 NYS2d 582 [2d Dept 2006]; *Giraldo v Mandanici*, 24 AD3d 419, 805 NYS2d 124 [2d Dept 2005]; *Montgomery v Pena, supra*; *Shaw v Looking Glass Assocs., supra*; *Lorthe v Adeyeye*, 306 AD2d 252, 760 NYS2d 530 [2d Dept 2003]). In addition, Dr. Lim’s affidavit indicates that he conducted only two physical examinations of plaintiff, both of which took place within two months of the subject accident. Dr. Lim’s opinion that plaintiff suffers from a “partial permanent disability” due to injuries sustained in the accident, therefore, is rejected as speculative and tailored to meet the statutory requirements of the No Fault law (*see, Pommells v Perez, supra*; *Kaplan v Vanderhans, supra*; *Bennett v Genas*, \_\_ AD3d \_\_, 2006 WL 711188 [2d Dept, March 21, 2006]; *Giraldo v Mandanici, supra*).

As to the medical reports prepared by Dr. Vicente and Dr. Perez, such reports do not include an assessment of the significance or permanency of plaintiff’s injuries (*see, Bennett v Genas, supra*), or discuss the nature and extent of treatment provided to plaintiff (*see, Nixon v Muntaz*, 1 AD3d 329, 766 NYS2d 593 [2d Dept 2003]; *Smith v Askew*, 264 AD2d 834, 695 NYS2d 405 [2d Dept 1999]). The reports fail to quantify any limitations of motion in plaintiff’s spine and knees, or to provide a “qualitative assessment” of plaintiff’s condition (*see, Toure v Avis Rent A Car Sys.*, 98 NY2d 345, 746 NYS2d 865 [2002]; *Bennett v Genas, supra*; *Suarez v Abe, supra*; *Dominguez-Gionta v Smith*, 306 AD2d 432, 761 NYS2d 310 [2d Dept 2003]). They also fail to discuss whether plaintiff suffered any “medically indicated” restrictions on her daily activities that were causally related to the subject accident (*Dabiere v Yager*, 297 AD2d 831, 832-833, 748 NYS2d 38 [3d Dept], *lv denied* 99 NY2d 503, 753 NYS2d 806 [2002]). In addition, the reports do not set forth the clinical tests, if any, performed by Dr. Vicente or Dr. Perez during their examinations of plaintiff (*see, Murray v Hartford*, 23 AD3d 629, 804 NYS2d 416 [2d Dept 2005]; *Ersop v Variano*, 307 AD2d 951, 763 NYS2d 482 [2d Dept 2003]; *Kassim v City of New York*, 298 AD2d 431, 748 NYS2d 265 [2d Dept 2002]; *Delgado v Hakim*, 287 AD2d 592, 732 NYS2d 233 [2d Dept 2001]; *Sainte-Aime v Ho*, 274 AD2d 569, 712 NYS2d 133 [2d Dept 2000]), and do not indicate any awareness of plaintiff’s past medical history (*see, Guzman v New York City Tr. Auth.*, 15 AD3d 541, 790 NYS2d 217 [2d Dept], *lv dismissed* 5 NY3d 837, 805 NYS2d 540 [2005]).

Dr. Vicente and Dr. Perez’s medical reports, therefore, do not constitute competent medical evidence that plaintiff sustained a nonpermanent injury or impairment that prevented her from performing “substantially all” of her normal daily activities for not less than 90 of the 180

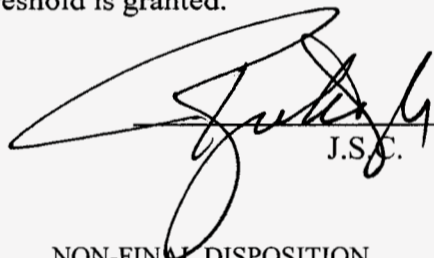
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days immediately following the accident (*see, Toure v Avis Rent A Car Sys., supra; Sayas v Merrick Transp.*, 23 AD3d 367, 804 NYS2d 769 [2d Dept 2005]; *Dabiere v Yager, supra; Melino v Lauster*, 195 AD2d 653, 599 NYS2d 713 [3d Dept], *affd* 82 NY2d 828, 605 NYS2d 4 [1993]; *Crane v Richard*, 180 AD2d 706, 579 NYS2d 736 [2d Dept 1992]). Further, such medical reports fail to raise a triable issue as to whether plaintiff suffered an injury within the “significant limitation of use” category, as Dr. Vicente’s last examination of plaintiff was conducted in November 2000, and Dr. Perez’s last examination was conducted in September 2001 (*see, Barzey v Clarke*, \_\_ AD3d \_\_, 2006 WL 711209 [2d Dept, March 21, 2006]; *Hernandez v DIVA Cab Corp.*, 22 AD3d 722, 804 NYS2d 396 [2d Dept 2005]; *Nelson v Amicizia*, 21 AD3d 1015, 803 NYS2d 87 [2d Dept 2005]; *Paykina v Golden*, 21 AD3d 1021, 802 NYS2d 696 [2d Dept 2005]; *Kauderer v Penta*, 261 AD2d 365, 689 NYS2d 190 [2d Dept 1999]).

Finally, plaintiff’s vague, unsubstantiated statement that she stopped seeking treatment for her injuries approximately 16 months after the accident, because the no-fault insurance coverage was terminated, is insufficient to explain the cessation of medical treatment (*see, Pommells v Perez*, 4 NY3d 566, 797 NYS2d 380 [2005]; *Bent v Jackson*, 15 AD3d 46, 788 NYS2d 56 [1st Dept 2005]). Similarly, plaintiff’s subjective complaints of pain and restricted movement in her lower back and knees, expressed during her deposition and in her affidavit in opposition to the motion, are insufficient to substantiate the claim that she suffered an injury that substantially limited her activities for at least 90 of the 180 days following the accident (*see, McConnell v Ouedraogo*, 24 AD3d 423, 805 NYS2d 418 [2d Dept 2005]; *Mercado v Garbacz*, 16 AD3d 631, 792 NYS2d 519 [2d Dept 2005]; *Davis v New York City Tr. Auth.*, 294 AD2d 531, 742 NYS2d 658 [2d Dept], *lv denied* 98 NY2d 612, 749 NYS2d 475 [2002]; *Sainte-Aime v Ho, supra*).

Accordingly, defendants’ motion for summary judgment dismissing the complaint based on plaintiff’s failure to meet the serious injury threshold is granted.

DATED:                       
 MAY 16 2006

  
 J.S.C.

FINAL DISPOSITION       NON-FINAL DISPOSITION