

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

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Submitted - November 12, 2008

PETER B. SKELOS, J.P.
DAVID S. RITTER
MARK C. DILLON
EDWARD D. CARNI
JOHN M. LEVENTHAL, JJ.

2008-02226

DECISION & ORDER

Michael J. Atan, et al., respondents, v Deborah J. Fitzgerald, et al., appellants.

(Index No. 22073/05)

John W. Hobbes, PLLC (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum], of counsel), for appellants.

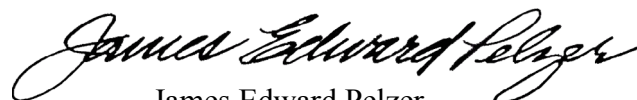
In an action to recover damages for personal injuries, etc., the defendants appeal from an order of the Supreme Court, Suffolk County (R. Doyle, J.), dated November 30, 2007, which denied their motion for summary judgment dismissing the complaint on the ground that the plaintiff Michael J. Atan did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, without costs or disbursements.

The defendants failed to establish their prima facie entitlement to judgment as a matter of law. Accordingly, the defendants' motion for summary judgment dismissing the complaint was properly denied (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

SKELOS, J.P., RITTER, DILLON, CARNI and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

December 9, 2008

ATAN v FITZGERALD