

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

D21587  
W/prt

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Submitted - December 3, 2008

STEVEN W. FISHER, J.P.  
JOSEPH COVELLO  
RUTH C. BALKIN  
ARIEL E. BELEN, JJ.

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2008-00658

DECISION & ORDER

John M. Rizzo, et al., respondents,  
v Vito A. Torchiano, appellant.

(Index No. 15468/05)

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Richard T. Lau, Jericho, N.Y. (Kathleen E. Fioretti of counsel), for appellant.

Joachim, Frommer, Cerrato & Levine, LLP, Garden City, N.Y. (Louis J. Cerrato and  
Mary Ellen O'Brien of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from an order of the Supreme Court, Nassau County (Mahon, J.), entered November 28, 2007, which denied his motion for summary judgment dismissing the complaint on the ground that the plaintiff John M. Rizzo did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

The defendant failed to make a prima facie showing that the plaintiff John M. Rizzo did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident (*see Staubitz v Yaser*, 41 AD3d 698; *O'Neal v Bronopolsky*, 41 AD3d 452; *Hughes v Bo Cai*, 31 AD3d 385). Accordingly, the defendant's motion for summary judgment dismissing the complaint was properly denied without the need to consider the sufficiency of the plaintiffs' opposition papers.

FISHER, J.P., COVELLO, BALKIN and BELEN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

December 23, 2008

RIZZO v TORCHIANO