

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Vetiaque v. Kistler Serv. Corp.

Vetiaque, 2026 NY Slip Op 03021 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2024-09164 · Decided May 13, 2026

SUMMARY

The Appellate Division, Second Department, reversed an order granting defendants summary judgment in a motor-vehicle personal-injury action. The court held that the plaintiff raised a triable issue of fact regarding serious injuries under Insurance Law § 5102(d), and that defendants failed to establish prima facie that the alleged injuries were not caused by the accident.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Linda Christopher, J.; Barry E. Warhit, J.; Carl J. Landicino, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	May 13, 2026
DOCKET	2024-09164
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' motion for summary judgment dismissing a personal-injury complaint on the ground that plaintiff failed to sustain a serious injury under Insurance Law § 5102(d).
STANDARD OF REVIEW	De novo review of the grant of summary judgment; defendants first had to make a prima facie showing that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d), after which plaintiff had to raise a triable issue of fact.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Ebert Vetiaque v. Kistler Service Corp., et al.

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QUESTIONS PRESENTED

1. Whether defendants established prima facie entitlement to summary judgment by demonstrating that plaintiff did not sustain a serious injury under Insurance Law § 5102(d).
2. Whether plaintiff's opposing evidence raised a triable issue of fact as to serious injuries involving the permanent consequential limitation of use and significant limitation of use categories.
3. Whether defendants established prima facie that the alleged injuries were not caused by the accident, thereby shifting the burden to plaintiff to address causation and any gap in treatment.

HOLDINGS

1. Plaintiff raised a triable issue of fact as to whether he sustained serious injuries to his left shoulder, left hip, and the cervical and lumbar regions of his spine under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d).
2. Defendants failed to establish prima facie that the alleged injuries were not caused by the accident; therefore, the burden did not shift to plaintiff to raise a triable issue concerning causation or explain any gap in treatment.

KEY QUOTATIONS

“Further, the defendants failed to establish, prima facie, that the alleged injuries to the plaintiff's left hip, left shoulder, and the cervical and lumbar regions of his spine were not caused by the accident, and the burden therefore did not shift to the plaintiff to raise a triable issue of fact as to causation or to explain any gap in treatment” (at [*1]-[*2])

FACTUAL BACKGROUND

Plaintiff allegedly sustained injuries to his left shoulder, left hip, and the cervical and lumbar regions of his spine in a motor vehicle accident. Defendants moved for summary judgment, asserting that plaintiff had not sustained a serious injury within the statutory categories of permanent consequential limitation of use or significant limitation of use. Although defendants made a prima facie showing regarding the serious-injury threshold, plaintiff submitted evidence raising a triable issue concerning those injuries, and defendants did not establish that the injuries were unrelated to the accident.

PROCEDURAL HISTORY

Plaintiff commenced an action for personal injuries allegedly sustained in a motor vehicle accident. The Supreme Court, Rockland County, granted defendants' motion for summary judgment in an order dated July 1, 2024. The Appellate Division reversed and denied the motion.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order granting defendants' motion for summary judgment is reversed, and defendants' motion for summary judgment dismissing the complaint on the serious-injury ground is denied.

CASES CITED

- Toure v Avis Rent A Car Sys., Inc., 98 NY2d 345
- Gaddy v Eyler, 79 NY2d 955, 956-957
- Staff v Yshua, 59 AD3d 614
- Perl v Meher, 18 NY3d 208
- Medina v Cruz, 239 AD3d 630, 631
- Valdez v Classic Hauling, LLC, 233 AD3d 959, 961
- Baptiste v New York City Tr. Auth., 230 AD3d 629, 630

OPINION

Vetiaque v. Kistler Serv. Corp. 2026 NY Slip Op 03021

PER CURIAM.

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<p>This decision is uncorrected and subject to revision before publication in the Official Reports.
</p> </div> <div> <p>Ebert Vetiaque, appellant,</p> <p>v</p> <p>Kistler Service Corp., et al.,
respondents.</p> <p>Supreme Court of the State of New York, Appellate Division, Second
Judicial Department</p> <p>Decided on May 13, 2026</p> <p>2024-09164, (Index No.
35115/22)</p> <p>Mark C. Dillon, J.P.</p> <p>Linda Christopher</p> <p>Barry E. Warhit</p>
<p>Carl J. Landicino, JJ.</p> <div> <p>Harmon, Linder & Rogowsky (Mitchell Dranow,
Sea Cliff, NY, of counsel), for appellant.</p> <p>Correia, Conway & Stiefeld, White Plains,
NY (Sami P. Nasser of counsel), for respondents.</p> </div> [*1] <p>DECISION

& ORDER

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Rockland County (Christie L. D'Alessio, J.), dated July 1, 2024. The order granted the defendants' motion for summary judgment dismissing the complaint on the ground that the plaintiff 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 on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident is denied.

The plaintiff commenced this action to recover damages for personal injuries that he allegedly sustained in a motor vehicle accident. The defendants moved for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident. In an order dated July 1, 2024, the Supreme Court granted the motion. The plaintiff appeals.

The defendants met their prima facie burden of demonstrating that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the accident (*see* *Toure v Avis Rent A Car Sys., Inc.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957). The defendants demonstrated, prima facie, that the plaintiff did not sustain a serious injury under the permanent consequential limitation of use or significant limitation of use categories of Insurance Law § 5102(d) (*see* *Staff v Yshua*, 59 AD3d 614). In opposition, however, the plaintiff raised a triable issue of fact as to whether he sustained serious injuries to his left shoulder, left hip, and the cervical and lumbar regions of his spine under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d) (*see* *Perl v Meher*, 18 NY3d 208). Further, the defendants failed to establish, prima facie, that the alleged injuries to the plaintiff's left hip, left shoulder, and the cervical and lumbar regions of his spine were not caused by the accident, and the burden therefore did not shift to the plaintiff to raise a triable issue of fact as to causation or to explain any gap in treatment (*see* *Medina v Cruz*, 239 AD3d 630, 631; *Valdez v Classic Hauling, [redacted] LLC*, 233 AD3d 959, 961; *Baptiste v New York City Tr. Auth.*, 230 AD3d 629, 630).

Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the accident.

The parties' remaining contentions need not be reached in light of our determination.

DILLON, J.P., CHRISTOPHER, WARHIT and LANDICINO, JJ., concur.

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PER CURIAM.

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shoulder, and the cervical and lumbar regions of his spine were not caused by the accident, and the burden therefore did not shift to the plaintiff to raise a triable issue of fact as to causation or to explain any gap in treatment (see *Medina v Cruz* , 239 AD3d 630 , 631; *Valdez v Classic Hauling, [*2] LLC* , 233 AD3d 959 , 961; *Baptiste v New York City Tr. Auth.* , 230 AD3d 629 , 630). Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the accident. The parties' remaining contentions need not be reached in light of our determination. DILLON, J.P., CHRISTOPHER, WARHIT and LANDICINO, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.