

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

Ygnacio Prado v. Town/Village of Harrison, et al.

Ygnacio Prado v. Town/Village of Harrison, 2025 NY Slip Op 06881 (2d Dep't 2025) · No. 2024-08516 ·
Decided December 10, 2025

SUMMARY

The Appellate Division, Second Department reversed a judgment dismissing Ygnacio Prado's personal-injury action arising from a motor vehicle accident. The court held that the defendants failed to establish prima facie that Prado did not sustain a serious injury under Insurance Law § 5102(d), and that his motion to amend the complaint to add Frederick J. Gioffre was timely because it was filed within the applicable limitations period.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Barry E. Warhit; Helen Voutsinas; Phillip Hom
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 10, 2025
DOCKET	2024-08516
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed from a judgment dismissing his personal-injury complaint after the Supreme Court denied leave to amend the complaint to add Frederick J. Gioffre and granted defendants' motion for summary judgment based on failure to sustain a serious injury under Insurance Law § 5102(d).
STANDARD OF REVIEW	Summary judgment is reviewed under the prima facie burden framework; a defendant must establish entitlement to judgment as a matter of law before the burden shifts to the plaintiff. Leave to amend a complaint is reviewed on the law and in the exercise of discretion.
PRECEDENTIAL VALUE	published
PARTIES	Ygnacio Prado v. Town/Village of Harrison, et al.

TOPICS

personal injury

summary judgment

statute of limitations

motion to amend

appellate procedure

PRACTICE AREAS

personal injury

motor vehicle negligence

New York no-fault serious-injury threshold

civil procedure

QUESTIONS PRESENTED

1. Whether defendants established prima facie that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d).
2. Whether defendants established prima facie that the plaintiff's alleged head and cervical-spine injuries were not caused or exacerbated by the accident.
3. Whether the plaintiff's motion for leave to amend the complaint to add Frederick J. Gioffre was timely when filed within the limitations period but decided after that period expired.

HOLDINGS

1. Defendants failed to establish prima facie that the plaintiff did not sustain a serious injury within the permanent consequential limitation of use or significant limitation of use categories of Insurance Law § 5102(d).
2. Defendants failed to establish prima facie that the alleged head and cervical-spine injuries were not caused by, or did not result from exacerbation by, the accident; therefore, the burden never shifted to plaintiff to prove causation or explain a gap in treatment.
3. The motion for leave to amend was timely because it was filed within the applicable three-year limitations period and included proposed pleadings, even though the court ruled after the limitations period expired.

KEY QUOTATIONS

*“Since the defendants failed to establish that the alleged injuries to the cervical region of the plaintiff’s spine and to his head were not caused or exacerbated by the accident, the burden never shifted to the plaintiff to raise a triable issue of fact regarding causation or to explain any gap in treatment” (*2)*

*“when a motion for leave to amend a complaint to add a defendant “is filed with the court within the applicable limitations period, but the ruling by the court does not occur until after expiration, dismissal is inappropriate and would offend the CPLR’s liberal policies of promoting judicial economy and preventing a multiplicity of suits”” (*2)*

FACTUAL BACKGROUND

The plaintiff allegedly sustained injuries to the cervical region of his spine and to his head in a motor-vehicle accident on October 29, 2020. He claimed that the accident caused or exacerbated preexisting injuries. Defendants submitted materials in support of summary judgment, but the Appellate Division found that those

submissions did not competently establish that the plaintiff failed to sustain a serious injury or that the head injuries were unrelated to the accident.

PROCEDURAL HISTORY

Prado commenced an action arising from an October 29, 2020 motor-vehicle accident. He moved on October 18, 2023, for leave to amend the complaint to add Frederick J. Gioffre; the Supreme Court denied that motion as untimely. The Supreme Court later granted defendants' summary-judgment motion, and entered judgment dismissing the complaint on August 5, 2024. The Appellate Division reversed, reinstated the complaint, granted leave to amend, and denied defendants' summary-judgment motion.

DISPOSITION

reversed

CASES CITED

- Toure v. Avis Rent A Car Sys., 98 N.Y.2d 345
- Gaddy v. Eyler, 79 N.Y.2d 955, 956-957
- Polight v. Martin, 237 A.D.3d 990, 991
- Zennia v. Ramsey, 208 A.D.3d 735, 735
- Tarnagorski v. Donofrio, 185 A.D.3d 865, 865
- Petric v. Retsina Cab Corp., 235 A.D.3d 672, 673
- Weber v. Kalisky, 218 A.D.3d 629, 630
- Sanclemente v. MTA Bus Co., 116 A.D.3d 688, 689
- Cortez v. Nugent, 175 A.D.3d 1383, 1384
- Pommells v. Perez, 4 N.Y.3d 566, 572
- Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853
- Che Hong Kim v. Kossoff, 90 A.D.3d 969, 969
- Perez v. Paramount Communications, 92 N.Y.2d 749, 754
- Schlapa v. Consolidated Edison Co. of N.Y., Inc., 174 A.D.3d 934, 936

OPINION

PER CURIAM.

Prado v Town/Village of Harrison (2025 NY Slip Op 06881) Prado v Town/Village of Harrison 2025 NY Slip Op 06881 Decided on December 10, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 10, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department LARA J. GENOVESI, J.P.

BARRY E. WARHIT HELEN VOUTSINAS PHILLIP HOM, JJ. 2024-08516 (Index No. 59318/21) [*1]Ygnacio Prado, appellant, v Town/Village of Harrison, et al., respondents. The Law Office of Jason Tenenbaum, P.C., Melville, NY, for appellant. Vincent J. Aceste, White Plains, NY, for respondents. DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Westchester County (Robert S. Ondrovic, J.), dated August 5, 2024.

The judgment, upon, inter alia, an order of the same court dated January 3, 2024, denying the plaintiff's motion for leave to amend the complaint to add Frederick J. Gioffre as a defendant, and upon an order of the same court dated May 24, 2024, granting 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 in favor of the defendants and against the plaintiff dismissing the complaint.

ORDERED that the judgment is reversed, on the law and in the exercise of discretion, with costs, the complaint is reinstated, the plaintiff's motion for leave to amend the complaint to add Frederick J. Gioffre as a defendant is 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 is denied, and the orders dated January 3, 2024, and May 24, 2024, are modified accordingly.

The plaintiff commenced this action to recover damages for personal injuries that he allegedly sustained in a motor vehicle accident that occurred on October 29, 2020. On October 18, 2023, the plaintiff moved for leave to amend the complaint to add Frederick J. Gioffre as a defendant.

In an order dated January 3, 2024, the Supreme Court denied the plaintiff's motion on the ground that the statute of limitations had expired. Thereafter, 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 accident.

In an order dated May 24, 2024, the court granted the defendants' motion. A judgment dated August 5, 2024, was issued in favor of the defendants and against the plaintiff dismissing the complaint. The plaintiff appeals from the judgment.

The defendants failed to establish, prima facie, 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.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957).

The defendants did not submit competent medical evidence establishing, prima facie, that the plaintiff did not sustain [*2]a serious injury to the cervical region of his spine or to his head under the permanent consequential limitation of use or significant limitation of use categories of

Insurance Law § 5102(d) (see *Polight v Martin*, 237 AD3d 990, 991; *Zennia v Ramsey*, 208 AD3d 735, 735; *Tarnagorski v Donofrio*, 185 AD3d 865, 865).

Moreover, the defendants failed to establish, prima facie, that the injuries to the plaintiff's head were not caused by the accident (see *Petric v Retsina Cab Corp.*, 235 AD3d 672, 673; *Zennia v Ramsey*, 208 AD3d at 735).

The defendants' submissions also failed to address the plaintiff's claims, set forth in his bill of particulars, that, as a result of the defendants' negligence, the accident exacerbated preexisting injuries to the cervical region of his spine and to his head (see *Petric v Retsina Cab Corp.*, 235 AD3d at 673; *Weber v Kalisky*, 218 AD3d 629, 630; *Sanclemente v MTA Bus Co.*, 116 AD3d 688, 689).

Since the defendants failed to establish that the alleged injuries to the cervical region of the plaintiff's spine and to his head were not caused or exacerbated by the accident, the burden never shifted to the plaintiff to raise a triable issue of fact regarding causation or to explain any gap in treatment (see *Cortez v Nugent*, 175 AD3d 1383, 1384; see generally *Pommells v Perez*, 4 NY3d 566, 572).

Accordingly, since the defendants failed to meet their prima facie burden, 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, regardless of the sufficiency of the plaintiff's opposition papers (see *Winegrad v New York Univ.*

Med. Ctr., 64 NY2d 851, 853; *Che Hong Kim v Kossoff*, 90 AD3d 969, 969). Further, when a motion for leave to amend a complaint to add a defendant "is filed with the court within the applicable limitations period, but the ruling by the court does not occur until after expiration, dismissal is inappropriate and would offend the CPLR's liberal policies of promoting judicial economy and preventing a multiplicity of suits" (*Perez v Paramount Communications*, 92 NY2d 749, 754; cf. *Schlapa v Consolidated Edison Co. of N.Y., Inc.*, 174 AD3d 934, 936).

Contrary to the Supreme Court's determination, the statute of limitations for the plaintiff's personal injury claim against Gioffre had not expired, as the plaintiff moved for leave to amend the complaint within the three-year limitations period and included a copy of the proposed pleadings (see *Perez v Paramount Communications*, 92 NY2d at 754; *Schlapa v Consolidated Edison Co. of N.Y., Inc.*, 174 AD3d at 936).

The plaintiff's claim against Gioffre therefore was timely, and the court should have granted the plaintiff's motion for leave to amend the complaint to add Gioffre as a defendant (see *Perez v Paramount Communications*, 92 NY2d at 754). GENOVESI, J.P., WARHIT, VOUTSINAS and HOM, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

PER CURIAM.

Prado v Town/Village of Harrison (2025 NY Slip Op 06881) Prado v Town/Village of Harrison 2025 NY Slip Op 06881 Decided on December 10, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 10, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department LARA J. GENOVESI, J.P.

BARRY E. WARHIT HELEN VOUTSINAS PHILLIP HOM, JJ. 2024-08516 (Index No. 59318/21) [*1]Ygnacio Prado, appellant, v Town/Village of Harrison, et al., respondents. The Law Office of Jason Tenenbaum, P.C., Melville, NY, for appellant. Vincent J. Aceste, White Plains, NY, for respondents. DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Westchester County (Robert S. Ondrovic, J.), dated August 5, 2024.

The judgment, upon, inter alia, an order of the same court dated January 3, 2024, denying the plaintiff's motion for leave to amend the complaint to add Frederick J. Gioffre as a defendant, and upon an order of the same court dated May 24, 2024, granting 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 in favor of the defendants and against the plaintiff dismissing the complaint.

ORDERED that the judgment is reversed, on the law and in the exercise of discretion, with costs, the complaint is reinstated, the plaintiff's motion for leave to amend the complaint to add Frederick J. Gioffre as a defendant is 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 is denied, and the orders dated January 3, 2024, and May 24, 2024, are modified accordingly.

The plaintiff commenced this action to recover damages for personal injuries that he allegedly sustained in a motor vehicle accident that occurred on October 29, 2020. On October 18, 2023, the plaintiff moved for leave to amend the complaint to add Frederick J. Gioffre as a defendant.

In an order dated January 3, 2024, the Supreme Court denied the plaintiff's motion on the ground that the statute of limitations had expired. Thereafter, 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 accident.

In an order dated May 24, 2024, the court granted the defendants' motion. A judgment dated August 5, 2024, was issued in favor of the defendants and against the plaintiff dismissing the complaint. The plaintiff appeals from the judgment.

The defendants failed to establish, *prima facie*, 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.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957).

The defendants did not submit competent medical evidence establishing, *prima facie*, that the plaintiff did not sustain [*2]a serious injury to the cervical region of his spine or to his head under the permanent consequential limitation of use or significant limitation of use categories of Insurance Law § 5102(d) (see *Polight v Martin*, 237 AD3d 990, 991; *Zennia v Ramsey*, 208 AD3d 735, 735; *Tarnagorski v Donofrio*, 185 AD3d 865, 865).

Moreover, the defendants failed to establish, *prima facie*, that the injuries to the plaintiff's head were not caused by the accident (see *Petric v Retsina Cab Corp.*, 235 AD3d 672, 673; *Zennia v Ramsey*, 208 AD3d at 735).

The defendants' submissions also failed to address the plaintiff's claims, set forth in his bill of particulars, that, as a result of the defendants' negligence, the accident exacerbated preexisting injuries to the cervical region of his spine and to his head (see *Petric v Retsina Cab Corp.*, 235 AD3d at 673; *Weber v Kalisky*, 218 AD3d 629, 630; *Sanclemente v MTA Bus Co.*, 116 AD3d 688, 689).

Since the defendants failed to establish that the alleged injuries to the cervical region of the plaintiff's spine and to his head were not caused or exacerbated by the accident, the burden never shifted to the plaintiff to raise a triable issue of fact regarding causation or to explain any gap in treatment (see *Cortez v Nugent*, 175 AD3d 1383, 1384; see generally *Pommells v Perez*, 4 NY3d 566, 572).

Accordingly, since the defendants failed to meet their *prima facie* burden, 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, regardless of the sufficiency of the plaintiff's opposition papers (see *Winegrad v New York Univ.*

Med. Ctr., 64 NY2d 851, 853; *Che Hong Kim v Kossoff*, 90 AD3d 969, 969). Further, when a motion for leave to amend a complaint to add a defendant "is filed with the court within the applicable limitations period, but the ruling by the court does not occur until after expiration, dismissal is inappropriate and would offend the CPLR's liberal policies of promoting judicial economy and preventing a multiplicity of suits" (*Perez v Paramount Communications*, 92 NY2d 749, 754; cf. *Schlapa v Consolidated Edison Co. of N.Y., Inc.*, 174 AD3d 934, 936).

Contrary to the Supreme Court's determination, the statute of limitations for the plaintiff's personal injury claim against Gioffre had not expired, as the plaintiff moved for leave to amend the complaint within the three-year limitations period and included a copy of the proposed pleadings (

see *Perez v Paramount Communications*, 92 NY2d at 754; *Schlapa v Consolidated Edison Co. of N.Y., Inc.*, 174 AD3d at 936).

The plaintiff's claim against Gioffre therefore was timely, and the court should have granted the plaintiff's motion for leave to amend the complaint to add Gioffre as a defendant (see *Perez v Paramount Communications*, 92 NY2d at 754). GENOVESI, J.P., WARHIT, VOUTSINAS and HOM, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court