

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

D13461  
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Argued - November 30, 2006

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
STEVEN W. FISHER  
MARK C. DILLON, JJ.

2005-08378

DECISION & ORDER

Greenman-Pedersen, Inc., respondent, v  
Zurich American Insurance Company, appellant.

(Index No. 23415/02)

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Melito & Adolfsen, P.C., New York, N.Y. (Ignatius John Melito, Tania Gondiosa, and Paul F. McAloon of counsel), for appellant.

Sinnreich Safar & Kosakoff, LLP, Central Islip, N.Y. (Jonathan Sinnreich of counsel), for respondent.

In an action, inter alia, for a judgment declaring that the defendant is obligated to defend and indemnify the plaintiff in an underlying personal injury action entitled *Byrne v Greenman-Pedersen, Inc.*, pending in the Supreme Court, New York County, under Index No. 124171/00, the defendant appeals from an order of the Supreme Court, Suffolk County (Cohalan, J.), dated July 27, 2005, which granted the plaintiff's motion for summary judgment declaring that it was obligated to defend and indemnify the plaintiff in the underlying personal injury action, and denied its cross motion for summary judgment declaring that it was not so obligated.

ORDERED that the order is modified, on the law, by deleting the provision thereof granting the plaintiff's motion for summary judgment, and substituting therefor a provision denying that motion; as so modified, the order is affirmed, without costs or disbursements.

On this record, we discern unresolved material issues of fact as to whether the plaintiff exercised reasonable diligence in ascertaining the existence of coverage under the policy issued by the defendant carrier and whether it complied with those policy conditions applicable to additional

insureds (*see Greaves v Public Serv. Mut. Ins. Co.*, 4 AD2d 609, 613, *affd* 5 NY2d 120; *Seeman v Sterling Ins. Co.*, 267 AD2d 677; *cf. Nationwide Ins. Co. v Empire Ins. Group.*, 294 AD2d 546; *Winstead v Uniondale Union Free School Dist.*, 201 AD2d 721). Accordingly, the Supreme Court erred in granting the plaintiff's motion for summary judgment.

The defendant's remaining contentions are without merit.

MASTRO, J.P., FLORIO, FISHER and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court