

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

D14995  
O/gts

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 22, 2007

A. GAIL PRUDENTI, P.J.  
STEVEN W. FISHER  
ROBERT A. LIFSON  
DANIEL D. ANGIOLILLO, JJ.

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2006-02569

DECISION & ORDER

Michelle DePaola, plaintiff, v Albany Medical College, et al., defendants, Funeral Service Department of the Faculty-Student Association of Hudson Valley Community College, Inc., defendant third-party plaintiff-appellant; New York University College of Dentistry, et al., third-party defendants-respondents.

(Index Nos. 9291/04, 75506/05)

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Camacho Mauro Mulholland, LLP, New York, N.Y. (Andrea Sacco Camacho and Andrew M. Lauri of counsel), for defendant third-party plaintiff-appellant.

Jones Hirsch Connors & Bull, P.C., New York, N.Y. (Richard Imbrogno of counsel), for third-party defendant-respondent New York University (s/h/a New York University College of Dentistry and New York University).

In an action to recover damages for personal injuries, the defendant third-party plaintiff appeals from an order of the Supreme Court, Kings County (Schmidt, J.), dated January 18, 2006, which granted the motion of the third-party defendants New York University College of Dentistry and New York University for summary judgment dismissing the third-party complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly granted the third-party defendants' motion for summary judgment dismissing the third-party complaint seeking contribution and indemnification. In response to the third-party defendants' prima facie showing that the plaintiff did not sustain a "grave injury"

May 8, 2007

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as defined by the statute, the defendant third-party plaintiff failed to raise a triable issue of fact (*see* Workers' Compensation Law § 11; *Rubeis v Acqua Club, Inc.*, 3 NY3d 408; *Martelle v City of New York*, 31 AD3d 400, 401; *Angwin v SRF Partnership, L.P.*, 285 AD2d 568, 569; *Fitzpatrick v Chase Manhattan Bank*, 285 AD2d 487). Additionally, gross negligence and/or reckless conduct on the part of an employer will not neutralize the exclusivity of the Worker's Compensation Law as would an intentional tort (*see Acevedo v Consolidated Edison of N.Y.*, 189 AD2d 497, 500; *Briggs v Pymm Thermometer Corp.*, 147 AD2d 433, 436; *Orzechowski v Warner-Lambert Co.*, 92 AD2d 110, 113-117).

The defendant third-party plaintiff's remaining contentions are without merit.

PRUDENTI, P.J., FISHER, LIFSON and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court