

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

D31369  
G/kmb

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

Argued - April 29, 2011

WILLIAM F. MASTRO, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

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2011-00373

DECISION & ORDER

Sonja Fogelbach, respondent, v Public Service  
Mutual Insurance Company, appellant.

(Index No. 13175/09)

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Weber Gallagher Simpson Stapleton Fires & Newby LLP, New York, N.Y. (Michael S. Savett of counsel), for appellant.

Stanton & Guzman, LLP, Franklin Square, N.Y. (Stacey Rinaldi Guzman and Jack Stanton 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 *Drexler v Fogelbach*, pending in the Supreme Court, Queens County, under Index No. 4252/09, the defendant appeals from an order of the Supreme Court, Nassau County (Galasso, J.), dated November 30, 2010, which denied its motion for summary judgment declaring that it is not so obligated.

ORDERED that the order is affirmed, with costs.

In opposition to the defendant insurer's prima facie showing of entitlement to judgment as a matter of law based upon the plaintiff's five-month delay in reporting the underlying occurrence to it, the plaintiff raised a triable issue of fact as to whether the delay was reasonable, based upon a good faith belief in her nonliability. Therefore, under these circumstances, the Supreme Court properly denied the defendant's motion for summary judgment (*see Bauerschmidt & Sons, Inc. v Nova Cas. Co.*, 69 AD3d 668, 669; *R & L Richmond Ave. Corp. v Public Serv. Mut. Ins. Co.*, 56 AD3d 643; *St. James Mech., Inc. v Royal & Sunalliance*, 44 AD3d 1030, 1031; *cf. Avery & Avery*,

May 24, 2011

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FOGELBACH v PUBLIC SERVICE MUTUAL INSURANCE COMPANY

*P.C. v American Ins. Co.*, 51 AD3d 695).

The defendant's remaining contention is not properly before this Court.

MASTRO, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court