

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

431

CA 12-01415

PRESENT: SCUDDER, P.J., PERADOTTO, LINDLEY, VALENTINO, AND MARTOCHE, JJ.

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UTICA MUTUAL INSURANCE COMPANY, EXPRESSWAY  
AUTO AUCTION, INC. AND EDWARD MILLER,  
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

ERIE INSURANCE COMPANY, DEFENDANT-APPELLANT.  
(APPEAL NO. 2.)

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HURWITZ & FINE, P.C., BUFFALO (KATHERINE A. FIJAL OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

LESTER SCHWAB KATZ & DWYER, LLP, NEW YORK CITY (JOSHUA C. ZIMRING OF  
COUNSEL), FOR PLAINTIFFS-RESPONDENTS.

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Appeal from a judgment of the Supreme Court, Oneida County (David A. Murad, J.), entered June 27, 2012. The judgment awarded plaintiff Utica Mutual Insurance Company the sum of \$260,803 against defendant.

It is hereby ORDERED that the judgment so appealed from is unanimously vacated without costs.

Same Memorandum as in *Utica Mut. Ins. Co. v Erie Ins. Co.* ([appeal No. 1] \_\_\_ AD3d \_\_\_ [June 14, 2013]).

Entered: June 14, 2013

Frances E. Cafarell  
Clerk of the Court