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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

2 No. 44
Saramilia Gaston et al.,
 Respondents,

 v.
American Transit Insurance
Company,

 Appellant.

Marjorie E. Bornes, for appellant.
William D. Fireman, for respondents.

MEMORANDUM:

The order of the Appellate Division should be modified,
without costs, by denying plaintiffs' motion for summary judgment
and, as so modified, affirmed.

In this Insurance Law § 3420 action, defendant insurer

should not have been collaterally estopped from litigating the issue of whether the car that collided with the bus in which the injured plaintiffs were traveling was insured on the date of the accident. Three prior judgments involving different parties' claims arising from the same bus accident were submitted to the court. The plaintiffs* proffered two default judgments that resolved the coverage issue against the insurer while the insurer demonstrated that the same coverage question had been adjudicated in a third proceeding resulting in a judgment in the insurer's favor. In light of these conflicting judgments on the same issue, application of the doctrine of collateral estoppel was not warranted (see Restatement [Second] of Judgments § 29[4]). Since plaintiffs' arguments in opposition to the insurer's cross-motion for summary judgment were not addressed by either of the courts below, we decline to grant the insurer's cross-motion for summary judgment.

* * * * *

Order modified, without costs, by denying plaintiffs' motion for summary judgment and, as so modified, affirmed, in a memorandum. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided December 16, 2008

* Plaintiff Nicole Jean died during the pendency of this appeal. Following proceedings in Surrogate's Court, Supreme Court substituted Stephanie Jean, the administratrix of her estate, as a plaintiff and amended the caption to reflect both the substitution and the fact that the former infant plaintiff, Saramilia Gaston, is now over the age of 18.