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

1 No. 202 SSM 23
William McCleery et al.,
 Appellants,
 v.
Consolidated Edison of New York,
Inc. et al.,
 Respondents.

Submitted by Thomas Torto, for appellants.
Submitted by Richard Lerner, for respondents.

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On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and defendants' motion for summary judgment denied. We agree with the dissenting justices at the Appellate Division that the injured plaintiff presented issues of fact as to how his foot was crushed and whether his injuries were a result of the Consolidated Edison driver's negligence, which preclude the grant of summary judgment to defendants. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided September 16, 2008