

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

**437**

**CA 24-01621**

PRESENT: WHALEN, P.J., BANNISTER, GREENWOOD, NOWAK, AND HANNAH, JJ.

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COUNTY OF ERIE, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

SELECTIVE INSURANCE COMPANY OF AMERICA AND  
ZURICH AMERICAN INSURANCE COMPANY, DEFENDANTS-APPELLANTS.  
(APPEAL NO. 2.)

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KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (MATTHEW C. RONAN OF  
COUNSEL), FOR DEFENDANT-APPELLANT SELECTIVE INSURANCE COMPANY OF  
AMERICA.

COUGHLIN MIDLIGE & GARLAND LLP, NEW YORK CITY (NOAH M. WIESNER OF  
COUNSEL), FOR DEFENDANT-APPELLANT ZURICH AMERICAN INSURANCE COMPANY.

BOND, SCHOENECK & KING, PLLC, BUFFALO (STEPHEN A. SHARKEY OF COUNSEL),  
FOR PLAINTIFF-RESPONDENT.

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Appeals from an order and judgment (one paper) of the Supreme Court, Erie County (Donna M. Siwek, J.), entered September 17, 2024. The order and judgment, among other things, granted the motion of plaintiff for summary judgment, denied the cross-motion of defendant Selective Insurance Company of America for summary judgment and declared that defendants are obligated to defend plaintiff in an underlying action.

It is hereby ORDERED that the order and judgment so appealed from is unanimously modified on the law by denying plaintiff's motion insofar as it sought summary judgment against defendant Selective Insurance Company of America and vacating the declarations against that defendant, and as modified the order and judgment is affirmed without costs and the matter is remitted to Supreme Court, Erie County, for further proceedings in accordance with the same memorandum as in *County of Erie v Selective Ins. Co. of Am.* ([appeal No. 1] – AD3d – [June 26, 2026] [4th Dept 2026]).

Entered: June 26, 2026

Ann Dillon Flynn  
Clerk of the Court