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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 211 SSM 21  
Illinois Union Insurance Company,  
Respondent,  
v.  
Assurance Company of America,  
Appellant.

Submitted by Robert W. Muilenburg, for appellant.  
Submitted by Kevin D. Szczepanski, for respondent.

MEMORANDUM:

The order of the Appellate Division should be modified,  
without costs, by granting judgment declaring in accordance with  
this memorandum and, as so modified, affirmed. The certified  
question should be answered in the negative.

In this insurance coverage dispute, to which California law applies, plaintiff Illinois Union Insurance Company had a duty to defend the insured in the underlying action because Illinois Union did not "eliminate the possibility that the insured's conduct falls within the coverage of the policy" (Montrose Chem. Corp. v Superior Court, 6 Cal 4th 287, 301, 861 P2d 1153, 1161 [1993]). Under the circumstances of this case, however, we agree with Illinois Union that pursuant to equitable contribution principles, it is entitled to reimbursement from defendant Assurance Company of America for an equal share of the costs associated with Illinois Union's defense of the claims in the underlying action.

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On review of submissions pursuant to section 500.11 of the Rules, order modified, without costs, by granting judgment declaring in accordance with the memorandum herein and, as so modified, affirmed and the certified question answered in the negative, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided June 28, 2012