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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 149 SSM 22  
Mark Dzielski et al.,  
Respondents,  
v.  
Essex Insurance Company,  
Appellant,  
et al.,  
Defendant.

Submitted by Dan D. Kohane, for appellant.  
Submitted by Kathleen M. Reilly, for respondent.

\* \* \* \* \*

On review of submissions pursuant to section 500.11 of the Rules,  
order reversed, with costs, plaintiffs' motion for summary  
judgment denied, defendant's motion for summary judgment granted,  
and judgment granted to defendant declaring that it has no  
obligation to indemnify its insured in the underlying personal  
injury action, for the reasons stated in the dissenting  
memorandum at the Appellate Division (90 AD3d 1493, 1495-1497  
[2011]). Chief Judge Lippman and Judges Ciparick, Graffeo, Read,  
Smith, Pigott and Jones concur.

Decided June 5, 2012