

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D54869  
C/htr

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Argued - December 7, 2017

REINALDO E. RIVERA, J.P.  
LEONARD B. AUSTIN  
FRANCESCA E. CONNOLLY  
ANGELA G. IANNACCI, JJ.

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2015-10986

DECISION & ORDER

Maria Zyla, appellant, v Interboro Mutual Indemnity  
Insurance Company, respondent, et al., defendants.

(Index No. 14021/09)

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Garth A. Molander, Bohemia, NY, for appellant.

Picciano & Scahill, P.C., Westbury, NY (Francis J. Scahill and Andrea E. Ferrucci  
of counsel), for respondent.

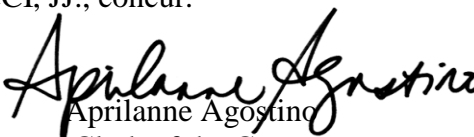
Appeal from an order of the Supreme Court, Nassau County (R. Bruce Cozzens, Jr.,  
J.), entered September 23, 2015. The order, insofar as appealed from, granted that branch of the  
motion of the defendant Interboro Mutual Indemnity Insurance Company which was for summary  
judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs,  
and that branch of the motion of the defendant Interboro Mutual Indemnity Insurance Company  
which was for summary judgment dismissing the complaint insofar as asserted against it is denied.

In support of that branch of its motion which was for summary judgment dismissing  
the complaint insofar as asserted against it, the defendant Interboro Mutual Indemnity Insurance  
Company (hereinafter Interboro) established its prima facie entitlement to judgment as a matter of  
law. However, in opposition, the plaintiff raised a triable issue of fact. Accordingly, the Supreme  
Court erred in granting that branch of Interboro's motion which was for summary judgment  
dismissing the complaint insofar as asserted against it (*see generally Winegrad v New York Univ.*  
*Med. Ctr.*, 64 NY2d 851, 853).

RIVERA, J.P., AUSTIN, CONNOLLY and IANNACCI, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court

March 21, 2018

ZYLA v INTERBORO MUTUAL INDEMNITY INSURANCE COMPANY