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

No. 236 SSM 60

Pat Roddy,

Appellant,

v.

Nederlander Producing Company of
America, Inc., et al.,

Respondents,

et al.,

Defendants.

(And a Third-Party Action.)

Submitted by Jonny Kool, for appellant.

Submitted by Robert S. Cypher, Jr., for respondents
Nederlander Producing Company of America, Inc. et al.

Submitted by Scott T. Horn, for respondent Abhann
Productions, Inc.

MEMORANDUM:

The order of the Appellate Division should be reversed,
with costs, and plaintiff's complaint as against defendants
Nederlander Producing Company of America, Inc. and The Gershwin
Theatre reinstated.

Plaintiff did not have a full and fair opportunity to litigate the issue of defendants' negligence. The issue of defendants' negligence was previously determined in an Appellate Division order granting defendants summary judgment on a third-party contractual indemnification claim against plaintiff's employer, third-party defendant Abhann Productions, Inc. Plaintiff had no interest in the outcome of the third-party indemnification claim. Plaintiff thus had neither incentive to litigate the motion for summary judgment nor adequate notice that the issue of defendants' negligence could be conclusively decided against him. Under these circumstances, the law of the case doctrine does not preclude plaintiff from litigating the issue of defendants' negligence.

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On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and plaintiff's complaint as against defendants Nederlander Producing Company of America, Inc. and The Gershwin Theatre reinstated, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided December 21, 2010