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

No. 121 SSM 7
American Transit Insurance
Company,
 Appellant,
 v.
Arthur Brown,
 Respondent,
et al.,
 Defendant.

Submitted by Marjorie E. Bornes, for appellant.
Submitted by Scott Star, for respondent.

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On review of submissions pursuant to section 500.11 of the Rules,
order reversed, with costs, defendant Brown's motion for summary
judgment denied, plaintiff's motion for summary judgment granted
and judgment granted declaring that plaintiff's disclaimer of
coverage was proper, that it had no obligation to defend or
indemnify its insured in the subject underlying action and that
it is not responsible for payment of any portion of the judgment
rendered therein. Defendant Brown failed to provide a valid
excuse for his failure to use reasonable diligence in providing
plaintiff insurer with notice of the underlying personal injury
action. Chief Judge Lippman and Judges Ciparick, Graffeo, Read,
Smith, Pigott and Jones concur.

Decided April 1, 2010