

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

522

CA 23-01300

PRESENT: WHALEN, P.J., CURRAN, BANNISTER, DELCONTE, AND HANNAH, JJ.

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RESETARITS CONSTRUCTION CORPORATION,  
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

NORFOLK SOUTHERN RAILWAY COMPANY,  
DEFENDANT-APPELLANT,  
ET AL., DEFENDANT.

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PHILADELPHIA INDEMNITY INSURANCE COMPANY,  
PLAINTIFF-RESPONDENT,

V

NORFOLK SOUTHERN RAILWAY COMPANY,  
DEFENDANT-APPELLANT.  
(APPEAL NO. 2.)

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COHEN & FREY P.C., ARDMORE, PENNSYLVANIA (TIMOTHY L. FREY, ADMITTED  
PRO HAC VICE, OF COUNSEL), AND ZDARSKY, SAWICKI & AGOSTINELLI LLP,  
BUFFALO, FOR DEFENDANT-APPELLANT.

LIPSITZ GREEN SCIME CAMBRIA LLP, BUFFALO (JOSEPH J. MANNA OF COUNSEL),  
FOR PLAINTIFF-RESPONDENT RESETARITS CONSTRUCTION CORPORATION.

ADAMS LECLAIR LLP, ROCHESTER (THEODORE M. BAUM OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT PHILADELPHIA INDEMNITY INSURANCE COMPANY.

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Appeal from an order of the Supreme Court, Erie County (Timothy J. Walker, A.J.), entered June 23, 2023. The order denied the motion of defendant Norfolk Southern Railway Company to dismiss the third cause of action in plaintiff Resetarits Construction Corporation's first amended complaint and denied the motion of defendant Norfolk Southern Railway Company to dismiss the intervenor complaint of Philadelphia Indemnity Insurance Company.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Same memorandum as in *Resetarits Constr. Corp. v Norfolk S. Ry. Co.* ([appeal No. 1] – AD3d – [July 26, 2024] [4th Dept 2024]).

Entered: July 26, 2024

Ann Dillon Flynn  
Clerk of the Court