

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

M90427
S/sl

FRED T. SANTUCCI, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2008-04187

DECISION & ORDER ON MOTION

Progressive Northeastern Insurance Company,
respondent, v North State Autobahn, Inc.,
etc., et al., appellants.
(Appeal No. 1)

2009-00904, 2009-04958

Progressive Northeastern Insurance Company,
appellant, v North State Autobahn, Inc., etc.,
et al., respondents.
(Appeal Nos. 2 and 3)

(Index No. 05-8750)

On the court's own motion, it is

ORDERED that its decision and order on motion dated July 20, 2009, in the above-entitled case is recalled and vacated, and the following decision and order on motion is substituted therefor:

Motion by the defendants to consolidate appeals from (1) two orders of the Supreme Court, Westchester County, dated April 18, 2008, and December 23, 2008, respectively, and (2) an order and judgment (one paper) of the same court entered January 12, 2009, for leave to *withdraw two volumes of the record on the ground that those two volumes are duplicates of material appearing on pages 411-1613 of the record* filed in connection with the order and judgment entered January 12, 2009 (Appellate Division Docket No. 2009-04958), and to file a supplemental record on that appeal, and to enlarge their time to serve and file a respondents' brief on that appeal.

August 5, 2009

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PROGRESSIVE NORTHEASTERN INSURANCE COMPANY v
NORTH STATE AUTOBAHN, INC.

Upon the papers filed in support of the motion and no papers having been filed in opposition or relation thereto, it is

ORDERED that on the court's own motion the appeal from the order dated December 23, 2008 (Appellate Division Docket No. 2009-00904), is dismissed, without costs or disbursements, as that order is not appealable as of right and leave to appeal has not been granted (*see* CPLR 5701); and it is further,

ORDERED that the branch of the motion which is for *withdraw two volumes of the record on the appeal from the order and judgment entered January 12, 2009, on the ground that those two volumes are duplicates of material appearing on pages 411-1613 of the record and for leave to file a supplemental record* is denied as unnecessary as the two volumes at issue were never filed with this court and the supplemental record has already been filed upon stipulation of the parties; and it is further,


ORDERED that the *branch of the motion which is to enlarge the time to file a respondents' brief* is granted, and the defendants' time to serve and file a respondents' brief on the appeal from the order and judgment entered January 12, 2009, is enlarged until August 28, 2009, and the defendants' brief shall be served and filed on or before that date; the plaintiff's reply brief shall be served and filed on or before September 18, 2009; and it is further,

ORDERED that the branch of the motion which is to consolidate the appeals is denied; and it is further,

ORDERED that on the court's own motion, the appeals shall be heard together, and shall be argued or submitted on the same day.

SANTUCCI, J.P., ANGIOLILLO, BALKIN and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court