

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

1233.2

CA 11-00752

PRESENT: SCUDDER, P.J., CARNI, LINDLEY, SCONIERS, AND GREEN, JJ.

NATALIE M. BARNHARD, PLAINTIFF-RESPONDENT,

V

ORDER

CYBEX INTERNATIONAL, INC., DEFENDANT-APPELLANT.

CYBEX INTERNATIONAL, INC., THIRD-PARTY
PLAINTIFF-APPELLANT,

V

AMHERST ORTHOPEDIC PHYSICAL THERAPY, P.C.,
THIRD-PARTY DEFENDANT-RESPONDENT.
(APPEAL NO. 2.)

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP, WHITE PLAINS (ROBERT A. SPOLZINO OF COUNSEL), AND HURWITZ & FINE, P.C., BUFFALO, FOR DEFENDANT-APPELLANT AND THIRD-PARTY PLAINTIFF-APPELLANT.

BAXTER SMITH & SHAPIRO P.C., WEST SENECA (SIM R. SHAPIRO OF COUNSEL), FOR THIRD-PARTY DEFENDANT-RESPONDENT.

PHILLIPS LYTLE LLP, BUFFALO (KEVIN J. ENGLISH OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Diane Y. Devlin, J.), entered March 7, 2011. The order, inter alia, denied the motion of defendant to set aside the verdict.

It is hereby ORDERED that said appeal is unanimously dismissed without costs (*see Smith v Catholic Med. Ctr. of Brooklyn & Queens*, 155 AD2d 435; *see also* CPLR 5501 [a] [1], [2]).

Entered: November 18, 2011

Patricia L. Morgan
Clerk of the Court