

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

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CA 12-01503

PRESENT: SMITH, J.P., FAHEY, VALENTINO, WHALEN, AND MARTOCHE, JJ.

WALTER J. NARY, II, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ROSEMARY JONIENTZ, DEFENDANT.

STATE FARM INSURANCE COMPANIES, APPELLANT.

HISCOCK & BARCLAY, LLP, ROCHESTER (GARY H. ABELSON OF COUNSEL), FOR APPELLANT.

CELLINO & BARNES, P.C., ROCHESTER (RICHARD P. AMICO OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (Evelyn Frazee, J.), entered October 27, 2011. The order, insofar as appealed from, directed State Farm Insurance Companies to produce certain documentation.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: In this personal injury action, nonparty State Farm Insurance Companies (State Farm) appeals from an order insofar as it denied in part State Farm's motion to quash the subpoena duces tecum of plaintiff and ordered State Farm to produce certain documents. We conclude that this appeal is moot inasmuch as the documents at issue herein were never admitted in evidence at trial (*see generally Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714; *Matter of Gannett Co., Inc. v Doran*, 74 AD3d 1788, 1789). The exception to the mootness doctrine does not apply under these circumstances (*see generally Hearst Corp.*, 50 NY2d at 714-715).

Entered: March 15, 2013

Frances E. Cafarell
Clerk of the Court