

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

D17629  
O/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - November 28, 2007

STEPHEN G. CRANE, J.P.  
STEVEN W. FISHER  
DAVID S. RITTER  
JOSEPH COVELLO  
THOMAS A. DICKERSON, JJ.

---

2007-02090

DECISION & ORDER

In the Matter of Dennis J. DeVivo, appellant;  
Nationwide Mutual Insurance Company, respondent.

(Index No. 26115/06)

---

Gathman & Bennett, LLP, Huntington, N.Y. (John C. Bennett and Eric Cahalan of counsel), for appellant.

Bingham McCutchen, LLP, New York, N.Y. (Ben M. Krowicki and Brian R. Hole of counsel), for respondent.

In a proceeding pursuant to CPLR 3102(c) to obtain pre-action disclosure, the petitioner appeals from an order of the Supreme Court, Suffolk County (Emerson, J.), dated December 20, 2006, which denied the petition and dismissed the proceeding.

ORDERED that the appeal is dismissed as academic, with costs.

Under the particular circumstances of this case, including the fact that the petitioner has commenced the action for which he allegedly needed the pre-action disclosure, any determination by this Court with respect to the denial of the petition for such disclosure would not directly affect the parties' rights (*see Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714). Since the matter does not warrant invoking the exception to the mootness doctrine (*see Matter of Hearst Corp. v Clyne*, 50 NY2d at 714), we dismiss the appeal as academic.

CRANE, J.P., FISHER, RITTER, COVELLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

January 22, 2008

MATTER OF DeVIVO; NATIONWIDE MUTUAL INSURANCE COMPANY