

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

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CA 10-00156

PRESENT: SMITH, J.P., FAHEY, CARNI, GREEN, AND GORSKI, JJ.

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JACQUELYN E. MURAD,  
PLAINTIFF-RESPONDENT-APPELLANT,

V

MEMORANDUM AND ORDER

JOSEPHINE RUSSO, DEFENDANT-RESPONDENT.  
(ACTION NO. 1.)

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CITY OF UTICA,  
PLAINTIFF-APPELLANT-RESPONDENT,

V

JOSEPHINE RUSSO, DEFENDANT-RESPONDENT.  
(ACTION NO. 2.)

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LINDA SULLIVAN FATATA, CORPORATION COUNSEL, UTICA (ARMOND J. FESTINE OF COUNSEL), FOR PLAINTIFF-APPELLANT-RESPONDENT.

BRINDISI, MURAD, BRINDISI, PEARLMAN, JULIAN & PERTZ, LLP, UTICA (STEPHANIE A. PALMER OF COUNSEL), FOR PLAINTIFF-RESPONDENT-APPELLANT.

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Appeal and cross appeal from an order of the Supreme Court, Oneida County (Norman I. Siegel, A.J.), entered July 2, 2009. The order, among other things, denied those parts of the motion of plaintiff in action No. 1 and the cross motion of plaintiff in action No. 2 seeking declarations concerning their entitlement to the proceeds of an insurance policy covering the defendant in action Nos. 1 and 2.

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

Memorandum: In these consolidated actions, Supreme Court, inter alia, denied those parts of the motion of Jacquelyn E. Murad, the plaintiff in action No. 1, and the cross motion of City of Utica, the plaintiff in action No. 2, seeking declarations concerning their entitlement to the proceeds of an automobile insurance policy covering the defendant in action Nos. 1 and 2. Murad was injured during the course of her duty as an officer of the Utica Police Department when the vehicle operated by defendant collided with Murad's vehicle. We affirm. "It is, of course, beyond our province to 'perform useless or futile acts,' and we are thus to refrain from 'resolv[ing] disputed legal questions unless [to do so] would have an immediate practical

effect on the conduct of the parties' " (*Burnett v Columbus McKinnon Corp.*, 69 AD3d 58, 64, quoting *New York Pub. Interest Research Group v Carey*, 42 NY2d 527, 530). Here, although the record establishes that defendant's insurer was amenable to settling the actions for the limits of the policy in question, it cannot be said with certainty that such settlements would occur. Consequently, the issue is not ripe for our review, and it would be "merely advisory" to grant the declaratory relief sought by plaintiffs (*New York Pub. Interest Research Group*, 42 NY2d at 531; see *Burnett*, 69 AD3d at 64).

Entered: June 11, 2010

Patricia L. Morgan  
Clerk of the Court