

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

1234

CA 10-00090

PRESENT: SMITH, J.P., LINDLEY, SCONIERS, PINE, AND GORSKI, JJ.

---

AMY MCCABE AND THOMAS MCCABE,  
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,  
DEFENDANT-APPELLANT,  
ET AL., DEFENDANT.  
(APPEAL NO. 1.)

---

ARONBERG GOLDGEHN DAVIS & GARMISA, CHICAGO, ILLINOIS (CHRISTOPHER J. BANNON, OF THE ILLINOIS BAR, ADMITTED PRO HAC VICE, OF COUNSEL), AND GOLDBERG SEGALLA LLP, BUFFALO, FOR DEFENDANT-APPELLANT.

LIPSITZ GREEN SCIME CAMBRIA LLP, BUFFALO (ANDREW O. MILLER OF COUNSEL), FOR PLAINTIFFS-RESPONDENTS.

---

Appeal from a judgment (denominated order) of the Supreme Court, Erie County (Patrick H. NeMoyer, J.), entered August 26, 2009. The judgment declared defendant St. Paul Fire and Marine Insurance Company is obligated to indemnify defendant David E. Fretz, Esq. on a judgment obtained by plaintiffs.

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

Same Memorandum as in *McCabe v St. Paul Fire & Mar. Ins. Co.* ([appeal No. 2] \_\_\_ AD3d \_\_\_ [Dec. 30, 2010]).

Entered: December 30, 2010

Patricia L. Morgan  
Clerk of the Court