

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

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CA 09-00346

PRESENT: SMITH, J.P., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ.

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MILHELM ATTEA & BROS., INC.,  
PLAINTIFF-APPELLANT,

V

ORDER

PHILIP MORRIS USA, INC.,  
DEFENDANT-RESPONDENT,  
ET AL., DEFENDANTS.

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ZDARSKY, SAWICKI & AGOSTINELLI LLP, BUFFALO (GERALD T. WALSH OF  
COUNSEL), FOR PLAINTIFF-APPELLANT.

HARRIS BEACH PLLC, BUFFALO (RICHARD T. SULLIVAN OF COUNSEL), AND  
ARNOLD & PORTER LLP, WASHINGTON, D.C. (KENNETH L. CHERNOF OF COUNSEL),  
FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (John M. Curran, J.), entered January 12, 2009. The order, inter alia, granted the motion of defendant Philip Morris USA, Inc. to dismiss the complaint against it.

Now, upon reading and filing the stipulation of discontinuance signed by the attorneys for the parties to the appeal on February 3, 2010,

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

Entered: March 19, 2010

Patricia L. Morgan  
Clerk of the Court