

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

**277**

**CA 10-02188**

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

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ALAN G. JERGE AND LAUREL AND HARDY CAFÉ, INC.,  
PLAINTIFFS-RESPONDENTS,

V

ORDER

PENN-AMERICA GROUP, INC., PENN-STAR INSURANCE  
COMPANY, UNITED AMERICA INSURANCE GROUP, UNITED  
AMERICA INDEMNITY, LTD., DEFENDANTS-APPELLANTS,  
RONALD BRANIA, SR. AND DARLENE BRANIA,  
DEFENDANTS-RESPONDENTS.

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KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (JUDITH TREGER SHELTON OF  
COUNSEL), FOR DEFENDANTS-APPELLANTS.

MUSCATO & SHATKIN LLP, BUFFALO (PAUL SHATKIN OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS.

MICHAEL G. COOPER, HAMBURG, FOR PLAINTIFFS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Erie County (Timothy J. Drury, J.), entered June 2, 2010. The order, among other things, denied the motion of defendants Penn-America Group, Inc., Penn-Star Insurance Company, United America Insurance Group and United America Indemnity, Ltd. for summary judgment and granted that part of plaintiffs' cross motion seeking a declaration that those defendants are obligated to defend plaintiffs in the underlying action commenced by defendants Ronald Brania, Sr. and Darlene Brania.

Now, upon reading and filing the stipulation to withdraw appeal signed by the attorneys for the parties on March 24, 28 and 31, 2011,

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

Entered: April 29, 2011

Patricia L. Morgan  
Clerk of the Court