

**State Farm Mutual Automobile Insurance Company v Langan**

2004 NY Slip Op 30243(U)

January 26, 2004

Supreme Court, Nassau County

Docket Number: 5384-02/

Judge: Anthony L. Parga

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SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU

PRESENT: HON. ANTHONY L. PARGA, J.S.C.

Part 17

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Plaintiff,

-against-

Index # 15384/02

Motion Date: 12/10/03

Sequence No. 001, 002

JOHN ROBERT LANGAN, as Administrator  
of the Estate of NEIL CONRAD SPICEHANDLER,

Defendant.

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Notice of Motion, Affs. & Exs. ....	1
Notice of Cross-Motion, Affs. & Exs. ....	2
Affidavit .....	3
Plaintiff's Memoranda of Law .....	4
Defendant's Memoranda of Law .....	5

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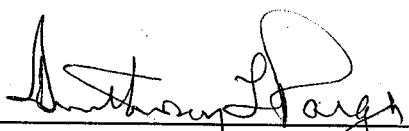
Upon the foregoing papers, the motion by the plaintiff for an order pursuant to CPLR 3212 granting summary judgment in its favor, and, the cross-motion by the defendant for an order pursuant to CPLR 3212 granting summary judgment dismissing the Complaint and granting summary judgment in his favor on his third counterclaim, are denied without prejudice to renew (see, *Winegrad v. New York Univ. Med. Center*, 64 NY2d 851, 853).

This is a declaratory judgment action pertaining to whether the plaintiff is obligated to provide uninsured or underinsured motorist benefits, No-Fault death benefits or Coverage S death benefits on behalf of decedent, Neil Spicehandler, who died from his injuries after being struck as a pedestrian by an automobile operated by Ronald Popadich on February 12, 2002. Popadich was subsequently arrested and has allegedly been charged with the crimes of assault and vehicular homicide. However, neither movant at bar has provided the Court with the status or disposition of the underlying Popacich criminal proceeding, which is

essential in this case in determining whether Neil Spicehandler's death was caused by an automobile (which would result in the entitlement to the benefits sought under the subject insurance policy) or by an intentional act, which would preclude the receipt of those benefits (see, *Westchester Med. Center*, 309 AD2d 927).

The attorneys for the parties shall appear for a status conference in IAS Part 17 on March 17, 2004, at 9:30 A.M.

Dated: January 26, 2004.



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Anthony L. Parga, J.S.C.

**ENTERED**

JAN 30 2004

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