

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

2006 NY Slip Op 30400(U)

August 7, 2006

SupremeCourt, Nassau County

Docket Number: 5384-02/

Judge: Anthony L. Parga

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU

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

Part 15

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff,

-against-

Index # 15384/02

95X

Motion Date: 6/13/06

Sequence No. 003, 004

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

Defendant.

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Upon the foregoing papers, the motion by the plaintiff for leave to renew the motion for summary judgment pursuant to CPLR 2221 is granted.

Upon reconsideration of new facts, plaintiff's motion for summary judgment is granted.

Defendants' cross-motion for summary judgment dismissing the action pursuant to CPLR 3212 is denied.

In this action, plaintiff seeks a declaratory judgment on the question of their obligation to provide uninsured or underinsured motorist benefits on behalf of their insured, decedent, Neil Spicehandler. He died from injuries sustained as a pedestrian after being struck by a car operated by Ronald Popadich on February 12, 2002. Popadich was subsequently arrested and charged with assault and vehicular homicide.

In the January 26, 2004 decision on the prior motion this Court denied the relief sought without prejudice to renew after the final disposition of Popadich's criminal case. The criminal disposition was crucial in determining if the crash was intentional which would preclude the benefits at issue (*Allstate v. Massve*, 14 AD3d 610 (2nd Dept., 2005)). The decision also dismissed defendant's second counterclaim and defendant's counterclaim demands for punitive and emotional distress damages.

It is undisputed that Ronald Popadich was eventually convicted of second degree murder of Neil Spicehandler which included an allocution as to Ronald Popadich's intent to cause the acts that led to Neil Spicehandler's death. Therefore, plaintiff concludes that the intentional nature of the event compels the Court to grant them a declaration that they are not obliged to provide uninsured or underinsured benefits to defendant.

In opposition, defendant maintains that despite the "intentional" nature of the car crash that serves as the predicate to Neil Spicehandler's injuries/death, the insurance policy provisions at issue do not contain the exclusion of coverage for intentional conduct. Furthermore, defendant argues that New York Law determines the occurrence of an accident is subjective from the prospective of the insured. Here, they argue there was no nexus between Neil Spicehandler and the criminal Ronald Popadich other than criminal and victim, unknown to each other.

Defendant also argues that decedent was able to recover on worker's compensation benefits issued by State Farm Fire & Casualty since his injuries and death were caused by an accident. Hence, defendant concludes plaintiff's payments under the worker's compensation accident policy constitute an admission of the "accidental nature" of this issue for the auto policy.

The Appellate Division has clearly found in this case that if the injuries and death were the result of "an intentional assault or an intentional homicide, then they were not the result of an accident, and the incident is not covered under the applicable policy" (*State*

Farm v. Langan, 18 AD2d 860 (2nd Dept., 2005)). It is undisputed that the driver of the car was convicted of an intentional crimes towards defendant. The finding of the Appellate Division constitutes the law of the case and is dispositive on the issues set forth in these motions.

Dated: August 7, 2006.



Anthony L. Parga, J.S.C.

ENTERED

AUG 10 2006

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COUNTY CLERK'S OFFICE**