

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA  
COURT OF APPEAL, THIRD CIRCUIT**

**CA 11-1355**

**STATE FARM MUTUAL AUTOMOBILE INS. CO., ET AL.**

**VERSUS**

**NORCOLD, INC., ET AL.**

**CONSOLIDATED WITH:**

**CA 11-1356**

**PROGRESSIVE SECURITY INS. CO.  
AS SUBROGEE OF RONALD SEMAR, ET AL.**

**VERSUS**

**NORCOLD, INC., ET AL.**

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**APPEAL FROM THE  
FIFTEENTH JUDICIAL DISTRICT COURT  
PARISH OF LAFAYETTE, NO. C-20093278 C/W 20097060  
HONORABLE JOHN DAMIAN TRAHAN, DISTRICT JUDGE**

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**J. DAVID PAINTER**

**JUDGE**

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Court composed of Oswald A. Decuir, Billy H. Ezell, and J. David Painter, Judges.

**RULE RECALLED AND APPEAL MAINTAINED IN 11-1355.  
APPEAL DISMISSED IN 11-1356.**

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**PAINTER, Judge.**

This court issued, *sua sponte*, a rule ordering the Appellants, Norcold, Inc., American Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA, to show cause, by brief only, why one of these two consolidated appeals should not be dismissed as premature. The instant appeal has been consolidated with another appeal, which is filed under this court's docket number 11-1356 and which bears the caption *Progressive Security Ins. Co. As Subrogee of Ronald Semar, et al. versus Norcold, Inc., et al.* For the reasons given herein, we hereby recall the rule and maintain the instant appeal filed under docket number 11-1355. However, we order that the companion appeal, filed under docket number 11-1356, be dismissed.

Two related lawsuits were filed as a result of property damages sustained when a fire ignited in a mobile home allegedly due to a defective refrigerator located in the mobile home. As a result of the fire, Ronald and Delores Selmar, who owned the mobile home, museum building and two vehicles which were also damaged by the fire, filed property damage claims and recovered under insurance policies issued by State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company (hereinafter collectively referred to as "State Farm") as well as under a policy issued by Progressive Security Insurance Company (Progressive). After paying the Selmars' claims, State Farm and Progressive filed separate lawsuits seeking reimbursement from Newmar Corporation, the manufacturer of the mobile home, and Norcold, Inc., the manufacturer of the refrigerator in the mobile home. The lawsuits were consolidated. The suit filed by State Farm went to trial and, on July 19, 2011, a money judgment was rendered against Appellants, Norcold, Inc., American Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. Thereafter, Appellants filed a motion for appeal, and an order of appeal was signed by the trial court.

When the appeals were lodged in this court, it appeared that Appellants were seeking an appeal with regard to both of the consolidated cases. While the appeal record indicated that a final judgment had been rendered with regard to the suit filed by State Farm, there was no indication that a final judgment been rendered with regard to the suit filed by Progressive. Therefore, this court issued a rule for Appellants to show cause why the appeal with regard the Progressive suit should not be dismissed for having been taken prematurely.

In their response to this court's rule to show cause order, Appellants assert that the appeal from the State Farm suit is not premature because it was taken from a final judgment rendered after a trial on the merits of the case. Appellants contend that, although the docket numbers for both suits were listed on the motion and order for appeal, Appellants did not wish to take an appeal with regard to the Progressive suit. In fact, Appellants point out that the Progressive suit was settled and dismissed prior to the trial of the State Farm suit.

We find that that the appeal regarding the suit filed by State Farm is properly before this court because it has been taken from a final, appealable judgment. *See* La.Code Civ.P. arts. 1841 and 2083. However, as noted by Appellants, because the suit filed by Progressive was settled before trial, there are currently no issues pending on appeal with regard to that case. Therefore, we hereby recall the rule and allow the appeal to proceed with regard to the State Farm case filed under docket number 11-1355. However, we hereby order that the appeal regarding the other consolidated case, which involves the lawsuit filed by Progressive and which bears this court's docket number 11-1356, be dismissed.

**RULE RECALLED AND APPEAL MAINTAINED IN 11-1355.  
APPEAL DISMISSED IN 11-1356.**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION.  
Rule 2-16.3 Uniform Rules, Court of Appeal.