

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK


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JOHN R. RICONDA : Index No.: 003655/2012  
 :  
 : Honorable Jerry Garguilo  
 :  
 Plaintiff, :  
 :  
 :  
 vs. : **NOTICE OF SETTLEMENT OF**  
 : **ORDER**  
 :  
 LIBERTY INSURANCE UNDERWRITERS, INC. :  
 :  
 :  
 Defendant. :  
 :  
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PLEASE TAKE NOTICE that in accordance with 22 N.Y.C.R.R. 202.48 and the decision and Order rendered by Honorable Jerry Garguilo, Justice of the Supreme Court, Suffolk County, dated and entered in the office of the Clerk of the Supreme Court, Suffolk County on September 7, 2018 (NYSCEF Doc. No. 460 ), Defendant Liberty Insurance Underwriters, Inc. will present for signature and entry by the Court the annexed Proposed Order (and Judgment annexed as Ex. B to the Proposed Order) on September 26, 2018 at 9:30 in the forenoon, or as soon thereafter as counsel may be heard, in Courtroom S-33 at the John P. Cohalon Courthouse located at 400 Carleton Avenue, Central Islip, New York 11722.

PLEASE TAKE NOTICE that in accordance with 22 N.Y.C.R.R. 202.48(c)(2), any proposed counter-order or judgment, together with a copy clearly marked to delineate each proposed change to the Order or Judgments to which objection is made, must be served on the undersigned within the time set by 22 NYCRR 202.48(c)(2).

DATED: New York, New York  
September 14, 2018

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WHEREAS, Plaintiff John R. Riconda (“Plaintiff”) having commenced this civil action by summons and his original complaint on February 2, 2012, and Defendant Liberty Insurance Underwriters, Inc. (“Defendant” or “Liberty”) having answered the original complaint on March 8, 2012;

WHEREAS, this Court, on September 22, 2017, having granted Plaintiff leave to file an Amended Complaint (the “Complaint”), and Defendant having answered the Complaint on October 20, 2017;

WHEREAS, on March 23, 26-30 and April 4, 2018 trial by jury having been held in this action;

WHEREAS, on April 4, 2018, the jury having returned a verdict in favor of Plaintiff pursuant to interrogatories placed to the jurors and having awarded Plaintiff \$2,282,000; and whereas the Court having provided that motions addressed to the verdict be filed within thirty (30) days;

WHEREAS, on May 4, 2018, Defendant having, pursuant to CPLR 4404(a), moved (Motion Sequence No. 15) by Notice of Motion To Set Aside The Verdict And Direct Judgment As A Matter of Law To Liberty Or For A New Trial Or, Alternatively, To Reduce The Jury Verdict

(“the motion”); and having filed the Affirmation of Peter A. Stroili in support of the motion, inclusive of Exhibits 1 through 7 and A through BB; and a Memorandum of Law in support of the motion (NYSCEF Nos. 406-443);

WHEREAS, on May 23, 2018, Plaintiff having filed his Memorandum of Law in opposition to the motion (NYSCEF No. 446);

WHEREAS, on June 5, 2018, Defendant having filed the Reply Affirmation of Peter A. Stroili, inclusive of Exhibits A through G; and Reply Memorandum of Law in further support of the motion (NYSCEF Nos. 447-455);

WHEREAS, on June 20, 2018, the parties having appeared before the Court for oral argument on the motion;

WHEREAS, on September 7, 2018, this Court (Honorable Jerry Garguilo, Justice of the Supreme Court, Suffolk County) having issued its Decision and Order (“the Decision,” annexed as Exhibit A) on the motion (Motion Sequence No. 15), finding that the “verdict of the jury must be set aside as a matter of law,” and that “the doctrine of judicial estoppel compels the Court to **GRANT** Defendant’s application in all respects” (Ex. A, NYSCEF No. 460);

NOW, therefore, based upon the Decision, and on the motion of Defendant, it is hereby

ORDERED that the verdict of the jury rendered on April 4, 2018 in this action is set aside; and it is further

ORDERED that Defendant’s motion for judgment as a matter of law, pursuant to CPLR 4404(a), in its favor is hereby **GRANTED** in its entirety, with costs and disbursements to Defendant; and it is further

ORDERED that the Complaint in this action is dismissed in its entirety with prejudice;

The Clerk of the Court shall enter judgment dismissing the Complaint with prejudice in this action accordingly in the form set forth as Exhibit B.

Dated: \_\_\_\_\_

SO ORDERED.

\_\_\_\_\_  
JSC

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