

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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JOHN R. RICONDA : Index No.: 003655/2012  
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 Plaintiff, : Honorable Jerry Garguilo  
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 :  
 : **[PROPOSED] COUNTER-**  
 : **ORDER**  
 vs. :  
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 LIBERTY INSURANCE UNDERWRITERS, INC. :  
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 :  
 Defendant. :  
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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");

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, 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.

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JSC

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

WHEREAS, this Court, on September 22, 2017, having granted Plaintiff’s 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 \$1,000,000.00, whereas the Court having provided that motions addressed to the verdict be filed within 10 days;

WHEREAS, on May 4, 2018, Defendant having, pursuant to CPLR 3101(b) (Motion Sequence No. 15) by Notice of Motion To Set Aside The Verdict And Judgment As A Matter of Law To Liberty Or For A New Trial Or, Alternatively, To Reduce

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

~~WHEREAS, on June 20, 2018, the parties having appeared before t  
argument on the motion;~~

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

NOW, therefore, based upon the Decision, and on the motion of Defend

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

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

ORDERED that the Complaint in this action is dismissed in its entirety

