

Defendant.

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PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Complaint entered in this action in the Office of the Clerk of the Supreme Court, Suffolk County, New York, on the _____ day of October, 2018.

Dated: October 5, 2018
New York, New York

Yours, etc.,

D'AMATO & LYNCH, LLP

By: 

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E-FILE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

At a AS Term, Part 48 of the Supreme
Court of the State of New York, held in
and for the County of Suffolk at Central Islip
New York on the 4th day of October 2018

JOHN R. RICONDA

Plaintiff,

vs.

LIBERTY INSURANCE UNDERWRITERS, INC.

Defendant.

: Index No.: 003655/2012
: Honorable Jerry Garguilo

ORDER

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: Oct. 4, 2018

SO ORDERED.

GRANTED
OCT 04 2018
Judith A. Pascale
CLERK OF SUFFOLK COUNTY

Jerry Garguilo
JSC
HON. JERRY GARGUILO